
(1990) 10 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16690 of 1990

Ram Narain Rai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:

Essential Commodities Act, 1955 — Section 2
Industries (Development and Regulation) Act, 1951 — Section 11
Land Acquisition Act, 1894 — Section 11, 15A, 17, 17(1), 17(2)
Registration and Licensing of Industrial Undertakings Rules, 1952 — Rule 7

Citation : (1991) 1 AWC 166

Hon'ble Judges : N.N. Mithal, J;G.P. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This writ petition has been filed for quashing the notifications dated 9-5-1990 and 18-3-1990 issued by the State of U.P. u/s 4(1) and Section 6 of the Land Acquisition Act and for a writ of mandamus restraining the Respondents 1 to 3 from dispossessing the Petitioners from plot Nos. 12, 13, 15 and 24 situate in village Jalilpur Parao, Pargana Ralbupur district Varanasi, in pursuance of the aforesaid notifications. The Petitioners have impleaded the State of U.P., the Land Acquisition Officer, Varanasi, and Uttar Pradesh Ganna Kisan Sansthan (hereinafter referred to as Ganna Sansthan) as Respondents 1 to 3 respectively to the writ petition.

2. A notification under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in U.P. Gazette on April 28, 1990. This was followed by a notification u/s 6 of the Act which was published on May 18, 1990. Since the language of the notifications will be material for the decision of the controversy involved in this case, It will be appropriate to reproduce the same. The notification u/s 4(1) of the Act, omitting the schedule annexed thereto, reads as follows:

Under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1894), the Governor is pleased to notify for general information that the land mentioned in the Schedule below, is needed for a public purpose, namely, for the construction of building for training centre of Uttar Pradesh Ganna Kisan Sansthan in district Varanasi.

The Governor being of the opinion that the provisions of Sub-section (1) of Section 17 of the said Act are applicable to the said land inasmuch as the said land is urgently required for the construction of building, for training centre of Uttar Pradesh Ganna Kisan Sansthan in district Varanasi and that in view of the pressing urgency it is as well necessary to eliminate the delay likely to be caused by an enquiry u/s 5A of the said Act the Governor is further pleased under Sub-section (4) of the said Section 17 to direct that the provisions of Section 5A of the said Act shall not apply.

The subsequent notification u/s 6 of the Act reads as follows:

In continuation of Government notification No. 177 MCM/XLVI-1000(66)-76 dated April 28, 1990 issued under Sub-section (i) of Section 4 and Sub-section (4) of Section 17 of the Land Acquisition Act, 1894 (Act No. 1 of 1894) and lastly published in the news paper "Dainik Ajj" dated May 9, 1990, the Governor is pleased to declare u/s 6 of the said Act that the land mentioned in the schedule below is needed for a public purpose, namely for the construction of building for training centre of Uttar Pradesh Ganna Kisan sansthan in district Varanasi and u/s 7 of the said Act to direct the Collector or Varanasi to take order for the acquisition of the land.

2. The Governor being satisfied that the case is one of urgency is further pleased under Sub-section (1) of Section 17 of the said Act, to direct that the Collector of Varanasi, through no award u/s 11 has been made, may on the expiry of fifteen days from the publication of the notice mentioned in Sub-section (1) of Section 9, take possession of the land mentioned in the Schedule for the said public purpose.

3. A perusal of the notification u/s 4(1) of the Act shows that the land mentioned in the schedule was needed for a public purpose, namely, for construction of buildings for training centre of Uttar Pradesh Ganna Kisan Sansthan in the district Varanasi. The notification further shows that the State Government was of the opinion that the provisions of Sub-section (1) of Section 17 of the Act were applicable to the land inasmuch as the said land was urgently required for the construction of the buildings for the aforesaid training centre and in view of the pressing urgency it was necessary to eliminate the delay likely to be caused by an inquiry u/s 5A of the Act. The State Government further made a direction under Sub-section (4) of Section 17 to the effect that the provisions of Section 5A of the Act shall not apply. A perusal of the notification u/s 6 shows that the State Government was satisfied that the case was one of urgency and it further made a direction under Sub-section (1) of Section 17 of the Act to the effect that the

Collector may, on the expiry of 15 days from the publication of the notification under Sub-section (1) of Section 9, take possession of the land mentioned in schedule. The Petitioners have filed the present petition challenging the aforesaid notifications issued under Sections 4(1) and u/s 6 of the Act. The principal ground taken in the writ petition is that there was absolutely no material before the State Government to show that it was a case of extreme urgency wherein the provisions of Section 17(1) of the Act may be applied ; that the construction of a building for setting up a training institute was not such a purpose which could be described as extremely urgent wherein the State Government could not wait for an inquiry as contemplated u/s 5A of the Act and the direction issued by the State Government dispensing with the inquiry u/s 5A of the Act was wholly illegal. There is neither any sugar mill nor any sugar cane is produced in the neighbouring area which was essentially a rice producing area and, therefore, no useful purpose would be served by setting up a training centre in village Jalipur in district Varanasi. Such a training institute could be established where sugar cane is produced. The other ground taken in the writ petition is that the Petitioners have a number of residential buildings over the plots in question and the area under acquisition is a business and industrial area where the Petitioners have their godowns. There are a number of transporters carrying on business over the plots in dispute. In case an inquiry as contemplated by Section 5A of the Act was held the Petitioners would have demonstrated that there was absolutely no need of setting up a training centre pertaining to cane in that area and that there was "banjar" surplus land in the vicinity and on Varanasi-Ram Nagar and Varanasi-Mugalsarai Road. The notification issued by the State Government applying Section 17(4) of the Act was, therefore, illegal.

4. Two counter-affidavits have been filed on behalf of Respondents 1 and 2 (State of U.P. and the Special Land Acquisition Officer, Varanasi). Shri Raj Kumar, Joint Secretary, Department of Sugar Industry and Cane Development, Government of U.P. has filed a counter-affidavit stating that there are several cooperative sugar mills in the district of Varanasi and in the neighbouring districts like Azamgarh, Ghazipur, Jaunpur, Ballia, Suitanpur and Rae Bareilly and names of eight such sugar mills are also mentioned in paragraph 2; that these mills are situated in the backward areas of Uttar Pradesh; that sugar cane is an important industry in eastern U.P.; that for the cane development programme, which is of a great importance, it is necessary that the land be acquired for construction of buildings for the training centre to be run by U.P. Ganna Kisan Sansthan in order to train the cane growers and farmers to produce good quality cane free from disease; that it is proposed to build a hostel for the trainees and farmers etc. and the idea to setup the training centre is for the reason that the cane growers and farmers should come in direct contact with scientists so that high yield disease free cane is available from small areas; that parting of scientific knowledge through modern method for growing cane is of immense advantage and benefit to the cane growers and farmers. It was further stated that any delay in construction of building including hostels for trainees is

detrimental to the cane growers and farmers, that in parting of training etc. to the cane growers and farmers for producing good quality cane is of paramount necessity and urgency and upon the production of good quality cane depends on the efficient functioning of the sugar mills. Therefore, the construction of training centre was a matter of urgency which could not be delayed and as such the inquiry u/s 5A of the Act was dispensed with.

5. Another counter-affidavit has been filed by Shri Ram Adhar Srivastava, Ahalmad in the office of the Special Land Acquisition Officer, Varanasi, on behalf of Respondent No. 2, giving details of the material which was placed before the State Government and after consideration of which the impugned notifications were issued. The Director of Ganna Sansthan, Lucknow, sent a letter dated 17-3-1989 to the Special Land Acquisition Officer, Varanasi for taking necessary steps for acquisition of 9.66 acres land in village Jalipur for the construction of a training centre in which training would be imparted to sugar cane growers and personnel of Sugar Cane Development Department. It was mentioned in the letter that it was necessary to start this work immediately in the national interest. Along with the latter several other documents including the map, copies of Khasra and Khatauni and administrative sanction was also sent. In the form of application for acquisition of land in column No. 9 relating to whether possession was wanted immediately and if so reasons thereof it was mentioned that possession was required immediately for implementation of the scheme. Copies of these documents have been filed as Annexure CA1 and CA2 to the counter-affidavit. After receipt of the aforesaid letter the Special Land Acquisition Officer, Varanasi, sent a letter to the Director, Ganna Sansthan, on 12-4-1989 informing him that spot inspection of the land sought to be acquired was done and it was found that on some portion construction had been made and, therefore, necessary amendments in the proposal may be done by sending a special messenger. The Director, Ganna Sansthan, then sent letter dated 25-4-1989 by which he sent a revised proposal for acquisition of only 9.36 acres of land instead of 9.66 acres as the land over which constructions had been made was excluded. Copies of these documents have been filed as CA3 and CA4 to the counter-affidavit. Thereafter the Collector, Varanasi, sent a letter dated 10-5-1989 to the Secretary, Department of Sugar Industries and Cane Development, Lucknow, stating that he had examined the proposal for acquisition of the land and the purpose for which the land was required was essential. Towards the end of the letter it was mentioned that looking to the importance of the scheme necessary notifications under Sections 4 and 6 read with Section 17 may kindly be issued. The proposal sent by the Director of Ganna Sansthan was also sent along with this letter of the Collector. A copy of the same has been filed as Annexure CA3 to the counter Affidavit. Annexure CA7 is copy of a letter dated 5-6-1989 sent by the Secretary, Sugar Industries and Cane Development, U.P. Lucknow, to the Collector, Varanasi, stating that the Chief Minister had given instructions to the effect that the training centre for sugar cane development and training be immediately constructed over the proposed land but the work was not

proceeding at required pace. He directed the Collector to send a report regarding the progress within a week so that the Chief Minister may be informed accordingly. Annexure CA8 is a letter dated 8-7-1989 sent by the Collector, Varanasi to the Secretary, Sugar Industries and Cane Development, informing him that the proposal for acquisition of 9.36 acres of land was under consideration and except for 0.65 acres of land the remaining land was covered by the proceedings under the Urban Land Ceiling Act. The Collector also sent a copy of the layout as well as the map along with his letter. The letter further shows that the Secretary had also talked to him on phone regarding the establishment of training centre. Annexure CA 6 is the copy of a letter dated 15-3-1990 sent by the Joint Secretary to the Chief Minister to the Secretary, Sugar Industries and Cane Development Department, informing him that the Chief Minister had desired that necessary action should be taken on priority basis for acquisition of 9.36 acres of land in village Jalipur, district Varanasi, for establishment of a training centre of Ganna Kisan Sansthan. Along with the letter a note regarding proposed acquisition was also sent. The Secretary was requested to submit his report before the Chief Minister for his consideration/orders. Annexure CA9 is the copy of proceedings of the meeting of the Secretaries held on 21-4-1990 under the chairmanship of the Finance Secretary. In this meeting Secretaries of five departments, namely, Finance, Sugar Industries and Cane Development, Housing, Revenue and Law, besides two Joint Secretaries, two Directors and one Deputy Secretary participated. The proceedings show that the Committee considered two matters one relating to the acquisition of land for extension of research work of U.P. Ganna Kisan Sansthan in Lucknow district, and the other relating to acquisition of land for establishment of training centre of U.P. Ganna Kisan Sansthan in district Varanasi. The Committee took an important decision to the effect that as the requirement of land for extension of Ganna Sansthan at Lucknow was not unavoidable the proposal for its acquisition was rejected. The Committee, however, took a decision that looking to the unavoidable need of land for establishment of training centre of U.P. Ganna Kisan Sansthan at Varanasi, the disputed land should be acquired. Thereafter the State Government considered the entire material and on being satisfied that it was a case of urgency the necessary notification was issued u/s 4(1) read with Section 17(4) of the Act on 28-4-1990.

6. A counter-affidavit has also been filed by Shri Prem Shanker Srivastava, Stenographer in the office of the U.P. Ganna Sansthan, Lucknow, on behalf of Respondent No. 3. It is stated in the counter-affidavit that there was great pressing urgency and hence the State Government rightly dispensed with the provisions of Section 5A of the Act; that the construction of the building for training centre was extremely urgent, that due to the urgency of the scheme and to avoid delay an approval of the nominated committee was obtained for issuing notification under Sections 4 and 6 read with Section 17(4) of the Act; that in order to develop the production of sugar cane and sugar technical training of the persons concerned was extremely urgent and that it was incorrect that there was

any business or industrial area in the locality. In paragraph 10 it is specifically asserted that there are a number of sugar mills in Varanasi and other adjoining district and sugar cane crop is cultivated in the area. The copies of the letters dated 10-5-1989 sent by the Collector, dated 15-3-1990 sent by the Joint Secretary to the Chief Minister and copies of the proceedings of the meeting of the nominated committee dated 21-4-1990 were also filed.

7. We have heard Shri R.N. Singh for the Petitioners, the learned Advocate General and Shri Shitala Prasad, Additional Chief Standing Counsel, on behalf of Respondents 1 and 2 and Shri Sankatha Rai for Respondent No. 3, at considerable length.

8. Counsel for Respondent No. 3 had placed before us a copy of the memorandum of association of the Uttar Pradesh Ganna Kisan Sansthan, Lucknow. A perusal thereof shows that the Uttar Pradesh Ganna Kisan Sansthan is a society which has been registered under the provisions of the Societies Registration Act (Act No. 21 of 1860) on May 17, 1976. The governing council of the society consists of the Cane Commissioner, U.P. as ex-officio Chairman, President, U.P. Cooperative Sugar Factories Federation Ltd., Lucknow, Chairman, U.P. State Sugar Corporation, Lucknow, Vice-President, U.P. Cooperative Cane Unions Federation Ltd., Lucknow, nominee of the U.P. Sugar Mills Association, Lucknow, Director, Indian Institute of Sugarcane Research, Lucknow, Director of National Sugar Institute, Kanpur, and Director of U.P. Ganna Kisan Sansthan, Lucknow as ex-officio members besides the Director, U.P. Ganna Kisan Sansthan, two co-opted members and two elected representatives. The objects of the Sansthan are mentioned in Clause 3, Sub-clause (i) whereof mentions to establish, run and maintain a training institute including facilities of boarding and lodging for the benefit of Cane Growers and the personnel in Cane Development by giving them upto date practical knowledge about scientific ways of sugarcane cultivation and management. Sub-clause (v) mentions to diffuse practical and scientific ways of sugar cane cultivation and management through Sugarcane Research Workers. Sub-clause (vii) mentions to establish, manage and run any Libraries, reading rooms and to publish journals, Magazines or other useful booklets, pamphlets and charts etc. for the diffusion of knowledge relating to sugarcane cultivation and management. It is, therefore clear that the U.P. Ganna Kisan Sansthan is a society registered under the provisions of U.P. Societies Registration Act and one of its objects is to impart training in scientific ways of sugarcane cultivation and management. Sub-section (f) of Section 3 of the Land Acquisition Act defines "public purpose" and under Sub-clause (vi) of Sub-section (f) the provision of land for carrying out any educational scheme by a society registered under the Societies Registration Act is a "public purpose". The acquisition of land for U.P. Ganna Kisan Sansthan is, therefore, for a "public purpose." The notifications, therefore, cannot be challenged on the ground that the land is not needed for a public purpose.

9. Learned Counsel for the Petitioners vehemently contended that the State

Government had acted illegally in exercising powers u/s 17(4) of the Act and in dispensing with the enquiry u/s 5A of the Act. The learned Counsel also urged that there was absolutely no material before the State Government to show that it was a case of extreme urgency wherein provisions of Section 17(1) may be applicable. The purpose of setting up of a training institute for sugarcane growers and personnel of Cane Development Department was not such a purpose which could be described as extremely urgent where the State Government could not wait for an enquiry as contemplated by Section 5A of the Act.

10. The application of Sub-section (4) of Section 17 of the Act has the result of depriving persons interested in any land, which has been notified under Sub-section (1) of Section 4, of the opportunity of tilling objections to the acquisition of their land u/s 5A of the Act. The effect of such a direction has no doubt a serious consequence upon the person interested in the land. But the decision of the State Government that the case is one of urgency can be challenged only on limited grounds. In *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, , the Supreme Court held in para 8 as follows:

It is true that the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) of the Act, is subjective and a court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government u/s 17(4). The legal position has been explained by the Judicial Committee in AIR 1945 156 (Privy Council) , and by this Court in a recent case-*Jaichand Lal Sethia v. State of West Bengal*, Crl. Appeal No. 110 of 1966, D/-27-7-1966; (reported in AIR 1967 SC 488). But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a court of law If it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide.

The scope of challenge to the formation of opinion by the appropriate government that the case was one of urgency was again considered by the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , and in paragraph 10 it was observed as follows:

It is true that, in such cases, the formation of an opinion is a subjective-matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which courts do impose. That test basically is : Was the authority concerned action within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meager, on which it could reasonably

base its opinion, the courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative the it to consider.

It is, therefore, well settled that the question of urgency is a matter for the subjective satisfaction of the appropriate government and it is not open to the courts to examine the property or correctness of the satisfaction on an objective consideration of facts. The opinion of the appropriate government can only be challenged in a court of law if it can be shown that the government never applied its mind to the matter or that the action of the government is mala fide.

11. In the present writ petition no allegation of malafide has been made against the Respondents. Learned Counsel for the Petitioner has also not raised any such contention that the acquisition of the Petitioners' land was mala fide. In these circumstances challenge to the acquisition of the land on the ground of mala fide is not available to the Petitioners.

12. Learned Counsel for the Petitioners next contended that there was no material on record to show that the case was one of urgency and the State Government never applied its mind to the question as to whether there was urgency of such a nature that even the summary inquiry u/s 5A of the Act should be dispensed with. According to the learned Counsel it is not just the existence of an urgency but the need to dispense with the enquiry u/s 5A which has to be considered. In our opinion the contention advanced by the learned Counsel for the Petitioners is wholly unfounded. The counter-affidavits filed on behalf of the Respondents show that not only there was material to show that there was urgency in the matter but the State Government had also applied its mind to the said material before applying the provisions of Section 17(4) and in dispensing with the inquiry u/s 5A of the Act. The Director of Ganna Kisan Sansthan had sent a letter dated 17-3-1989 to the Land Acquisition Officer, Varanasi, that a training centre would be established for giving training to the sugar cane growers and the personnel of the Sugarcane Development Department and it was necessary to start the work immediately in national interest. In pursuance of the said letter spot inspection was done and the Land Acquisition Officer wrote to the Director of Ganna Kisan Sansthan for excluding that portion of the land over which constructions had been made. The Director then sent a revised proposal after excluding the land over which constructions had been made. The proposal made by the Director of the Ganna Kisan Sansthan was examined by the Collector and he also made a recommendation that the purpose for which the land was sought to be acquired was absolutely necessary. He further recommended that looking to the importance of the scheme necessary

notifications under Sections 4 and 6 read with Section 17 of the Act may be issued. The material on record further shows that the Chief Minister had given directions prior to 5-6-1989 to the effect that the training centre should be established immediately. The Secretary, Sugar Industries and Cane Development, wrote to the Collector, Varanasi, in this regard and expressed his apprehension that the matter was not proceeding at the requisite speed. He further requested that necessary report be sent for information to the Chief Minister within a week. The letter of the Joint Secretary to the Chief Minister dated 15-3-1990 sent to the Secretary, Sugar Industries and Cane Development, shows that the Chief Minister had directed that the proceedings for acquisition of 9 36 acres of land in village Jalilpur should be taken on priority basis and a report regarding the same may be sent for appropriate orders of the Chief Minister. The matter was then considered in the meeting of the nominated committee held on 21-4-1990 which was presided over by the Finance Secretary and was attended by ten officers including five Secretaries of different Departments. The nominated committee specifically rejected the proposal for acquisition of land in the district of Lucknow as in its opinion there was no unavoidable necessity for acquiring the land. However, for the training centre at Varanasi the committee took the view that in view of its pressing urgency it was essential to acquire the disputed land. After taking into consideration the above mentioned material the State Government issued the notification dated April 28, 1990, under Sub-section (1) of Section 4 which also mentioned that provisions of Section 5A of the Act shall not apply. Therefore, it is apparent that there was material to show that there was urgency in the matter and the State Government after applying its mind to the aforesaid material had issued the necessary directions for applying the provisions of Section 17(4), eliminating the enquiry u/s 5A of the Act.

13. Sugar is a commodity which is consumed by everybody rich or poor. It is an essential commodity as defined in Section 2(a) of the Essential Commodities Act. The production of sugar is directly linked with the production of sugarcane. Sugarcane is considered as a cash crop by the farmers. A good harvest of sugarcane crop results in higher production of sugar thereby benefitting both the farmers and the workers employed in the sugar factories. Sugar production is one of the important industries in the State of U.P. Judicial notice can be taken of the fact that whenever there is shortage of sugar in the market its price goes skyrocketing. Very often the government has to import sugar spending scarce foreign exchange in order to bring down the price of sugar. Therefore, production of good sugarcane is necessary to provide raw material to the sugar industry as well as to provide sugar at cheap rate to the public at large. The establishment of the training centre by the Ganna Kisan Sansthan will help in educating the farmers to increase the production of sugarcane and consequently increase the production of sugar which will be beneficial to the public at large. Therefore, it cannot be said that there was no urgency in the project undertaken by the Ganna Kisan Sansthan.

14. Shri R.N. Singh, learned Counsel for the Petitioners, placed strong reliance on the case of Narayan (*supra*) and particularly on paragraphs 37 and 38 of the report wherein the Supreme Court has held that the mind of the officer or the authority concerned has to be applied to the question whether there is urgency of such a nature that even the summary proceedings u/s 5A of the Act should be eliminated and it is not just the existence of an urgency but the need to dispense with the enquiry u/s 5A which has to be considered. This case is entirely distinguishable on facts. Writ petitions were filed in the High Court of Maharashtra relating to four groups of land which were sought to be acquired. The notification u/s 4 read with Section 17(4) of the Act was published in respect of the first group on 11-10-1963 and it was mentioned in the notification that provisions of Section 5A shall not apply in respect of the said group of land. With respect to the second group of land identically similar notification u/s 4 together with identically worded declaration-cum-direction u/s 17(4) of the Act were issued on 13-6-1965 but was not followed by a notification u/s 6 of the Act and the proceedings became invalid. The Supreme Court observed in paragraph 3 of the report that the declaration made u/s 17(4) of the Act with regard to the second group of land which was not followed by a notification u/s 6 of the Act suggested that direction u/s 17(4) had been mechanically issued for all the groups in identical terms without due application of mind to the factual requirements prescribed by law. With regard to the land in the fourth group notification u/s 4 was published on 13-11-1963 but there was no direction u/s 17(4) of the Act and consequently persons interested filed objections but later on a notification u/s 6 accompanied by identically worded vague declaration of urgency u/s 17(4) of the Act was published on 13-7-1964. The Supreme Court observed in paragraph 5 of the report that this course of action suggested that the notification u/s 17(4) was made only to save the bother action of enquiry begun u/s 5A of the Act which could have been concluded quite easily before 13-7-1964. It was also observed in paragraph 42 of the report that there was no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case of necessity and for elimination of the enquiry u/s 5A of the Act. The recital in the notification also did not mention at all that any opinion was formed on the need to dispense with the enquiry u/s 5A of the Act and it was a case in which the recital was atleast defective. The stand of the State of Maharashtra, as observed in paras 8 and 9 of the report, was that it was a matter solely for the determination of the State Government whether an urgency existed or not for exercising the powers u/s 17(4) of the Act and the existence of urgency was not justifiable matter at all left for the determination by the courts. In the counter-affidavit no facts or particulars were stated. Thus the facts of the case of Narayan (*supra*) are entirely distinguishable from the facts of the present case.

15. In *Smt. Kailashwati Vs. State of U.P. and Another*, a Division Bench of this Court consisting of Hon"ble K.N. Singh J. (as His-lordship then was) and Hon"ble K.C. Agarwal, J., considered the true import of the observations made by the

Supreme Court in the case of Narayan (supra) and observed as follows in paragraph 10 of the report:

Sri Markandey Katju laid great emphasis on the case of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, and urged that in the said case the Supreme Court laid down that the power conferred by Section 17 could be applied only in cases where by operation of natural forces beyond the human control, the land had to be urgently taken possession of, and as the present was not a case of that nature, Section 5A could not be dispensed with. It is true that in para 39 of the judgment the Supreme Court made observation to the effect, but it would not be correct, in our opinion, to say that the Supreme Court laid down exhaustively the list of cases where alone such a power could be exercised. The example taken was only illustrative. In Narayan's case before the Supreme Court, neither in the counter-affidavit filed on behalf of the acquiring body nor in the notification issued, there was any material showing that the State Government had applied. Its mind to the question that there existed urgency which warranted the elimination of the enquiry contemplated by Section 5A of the Act, on the special facts and circumstances of the case the Supreme Court dismissed the State appeal and issued a direction that the enquiry u/s 5A of the Act be held.

16. The observations made In the Narayan's case (supra) again came up for consideration before another Division Bench of this Court in Technical Associates (Pvt.) Ltd. Lucknow v. State 1984 ALJ 1093 and the Bench observed as follows in paragraph 27A of the report:

These observations have to be read in the context of the facts of that case. The greatest distinguishing feature is that the statute which was considered by their Lordships in that case did not, it seems, empower the Government, as our Sub-section (IA) of section 17 does, to invoke the urgency clause in cases of planned development. Secondly, a perusal of paras 3 to 9 of the report shows that the Government in that case did not even attempt to place before the court any material in support of the alleged urgency. They merely took their stand on the plea of non-justiciability of the satisfaction of the Government. Such a plea could obviously not stand in view of the principles of challengeability mentioned earlier. In para 42 it was further noted by their Lordship that "The recital does not say at all that any opinion was formed on the need to dispense with the enquiry u/s 5A of the Act" and that it was "certainly a case in which the recital was at least defective" and that "the burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry u/s 5A of the Act and that the mind of the Commissioner was applied to this essential question." The matter was thus decided only on the basis of burden of proof. The observations extracted above cannot be read as if they were the words of a statute, but have to be read only as forming part of the train of reasoning while formulating the principles of law laid down in the case. It would be contrary to the intent of the

Legislature to construe the said dicta of their Lordships to mean that even though the Legislature says that Section 17 can be invoked if the Government thinks it necessary for purposes of planned development, yet it cannot be invoked for purposes merely of planned development. There is no doubt, an observation in para 39 of Narayan (supra), that the urgency clause could be invoked in the case of operation of natural physical forces beyond human control, but as was pointed out in Smt. Kailashwati Vs. State of U.P. and Another, , (paras 8 to 10), this observation was only illustrative and not exhaustive of the situations in which the urgency clause could be invoked.

17. Learned Counsel for the Petitioners also placed reliance on the case of A.P. Sarin v. State of U.P. 1983 ALJ 1016 in support of his contention that the State Government acted illegally in taking recourse to Section 17(4) and eliminating the enquiry u/s 5A of the Act. In our opinion this case is also entirely distinguishable on facts. Land was acquired for the planned industrial development in district Ghaziabad through U.P. State Industrial Development Corporation Ltd. (briefly U.P.S.I.D.C). Paragraph 5 of the report shows that the State Government did not consider the reasons mentioned by the Managing Director of U.P.S.I.D.C. in his letter of June 22, 1981, to the District "Magistrate, Ghaziabad, for dispensing with the enquiry u/s 15A as sufficient. Some correspondence exchanged between the Deputy Secretary of Industries Department, U.P. Government, and the Collector of Ghaziabad. In a note of August 24, 1981, put up before the Industries Department of U.P. Government it was mentioned that in case land was not made immediately available to M/s. Delhi Cloth Mills they may go to another State and as such it was a fit case for dispensing with the provisions of Section 5A of the Act. On consideration of this matter the appropriate authorities felt convinced that it was a case where there was urgency for dispensing with the enquiry u/s 5A of the Act and thereafter notifications under Sections 4 and 6 were issued. It is observed in para 17 of the report that it was not open to the Delhi Cloth Mills to withdraw their project from the State of U.P. to another State by themselves on their sweet will as the provisions of Section 11 of the Industries (Development and Regulations) Act, 1951, read with Rule 7(i-A) of the Registration and Licensing of Industrial Undertaking Rules 1952 precluded such an unilateral change of location. The Bench accordingly observed as follows:

The State Government assumed the existence of a reason for considering the case to be one of urgency which was in reality non-existent when reasonably visualised. The inference of urgency in the circumstances of this case was clearly based upon consideration of a nonexistent reason. In law, therefore, the present is a case of non-application of mind to the problem of urgency by the appropriate authorities. A decision arrived on by such non-application of mind is clearly arbitrary and cannot be sustained.

18. Another ground which weighed with the Bench in A.P. Sarin's case (supra) was the slow pace at which the State was taking steps to acquire the land. In

paragraph 16 the Bench observed that there was substance in the submission made on behalf of the Petitioners that enquiry u/s 5A could not be reasonably dispensed with in the instant case for the pace at which the entire exercise resulting in the issuance of the two notifications dated August 25 and 26, 1981, proceeded, was not indicative of any extreme urgency in the matter of handing over of possession to the allottees of the land. It was observed that a decision to make land in village Surajpur available to the entrepreneurs within three months had been taken in the meeting of the High Powered Committee dated April 8, 1981 but the Collector was asked to make a proposal in that respect only in June 1981, and the proposal was made after repeated reminders in the month of August, 1981. The request for dispensing with an enquiry u/s 5A of the Act was made by the U.P.S.I.D.C. for the first time in the letter dated June 22, 1981. In this context the Bench observed that it was apparent that the pace at which the Respondents were taking steps to acquire the land was not consistent with the concept of urgency as reasonably understood and there was no difficulty in notifying the land u/s 4 and thereafter affording 21 days period for filing objections to the proposed acquisition before proceeding to acquire it. With respects to the learned members of the Bench deciding A.P. Sarin's case (supra) we feel that any pre-notification delay cannot be a ground for holding that there was no urgency. The observation made by the Bench runs contrary to the law laid down by the Supreme Court in *Jage Ram and Others Vs. State of Haryana and Others*, . It was observed as follows:

The fact that the State Government or the party concerned was lethargic at any earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the Government in a given case that there was urgency is entitled to weight, if not conclusive.

This was reiterated by the Supreme Court in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, where challenge was made to the action of the government in taking recourse to Section 17(4) and dispensing with the enquiry u/s 5A of the Act on the ground that a period of eight years was spent in departmental discussion which showed that there was no urgency. The court negated the contention of the Petitioner and observed as follows:

The other ground of attack is that if regard is had to the considerable length of time spent on interdepartmental discussion before the notification u/s 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause u/s 17(4) and dispensing with the enquiry u/s 5A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This bound to result. In a multiplicity of enquiries, communications and discussions leading to delay in the execution of even urgent projects. Very often the delay makes the problem more acute and increases the urgency of the necessity for acquisition. It is, therefore,

not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void.

It is, therefore, clear that any pre-notification delay can be no ground for holding that there was no urgency in the matter and the second reason given by the Bench in A.P. Sarin's case does not appear to be in consonance with the law laid down by the Supreme Court.

19. A plain reading of Section 17 of the Act also does not support the contention raised by the learned Counsel for the Petitioners. Sub-section (4) of Section 17 only says that in the case of any land, to which in the opinion of the appropriate government the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate government may direct that the provision of Section 5A of the Act shall not apply. The words used in the statute provide that the appropriate government has to form an opinion on the question as to whether the provisions of Sub-section (1) or Sub-section (2) are applicable. Sub-section (1) of Section 17 provides that in cases of urgency whenever the appropriate government so directs the Collector, though no such award has been made, may on the expiration of 15 days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for public purpose. Therefore, if the State Government has formed an opinion that the provisions of Sub-section (1) are applicable, which means that it was a case of urgency, it may make a direction that the provisions of Section 5A shall not apply. To our mind the only requirement of Sub-section (4) is the formation of opinion by the appropriate government that the provisions of Sub-section (1) or Sub-section (2) are applicable which means that the case is of urgency. The formation of opinion by the appropriate government has to be on the question of urgency. The language of the section does not indicate that the appropriate government should besides forming an opinion about urgency also form an additional opinion on the need to dispense with the enquiry u/s 5A.

20. There are several decisions of this Court where after noticing the law laid down by the Supreme Court in Narayan's case (*supra*) it was held that the question of urgency is a matter for the subjective satisfaction of the government and it is not open to the courts to examine the propriety or correctness of the satisfaction on an objective appraisal of facts. The opinion can be challenged in a court of law only if it can be shown that the government never applied its mind to the matter or its action was *mala fide*.

In *Rajbali v. State* AIR 1983 All 78, a Division Bench consisting of Hon''ble Satish Chandra, C.J. and Hon''ble K.C. Agarwal, J. (as his Lordship then was) observed as follows:

The question as to whether the enquiry u/s 5A should be dispensed with is primarily and fundamentally a matter of subjective satisfaction of the State Government. The decision of the State Government whether or not urgency exists cannot be questioned in any Court provided the Government applies its

mind and acts in good faith. It is only in a case of mala fide exercise of power that the Court can interfere.

In *Trilochan v. State* 1985 ALJ 781, land was acquired for setting up a watch factory by the Government of India in district Nainital under a planned development scheme and a direction had been issued by the Governor u/s 17(4) of the Act that the provisions of Section 5A shall not apply. It was urged on behalf of the Petitioner that there was no such urgency as to justify the dispensing of the provisions of Section 5A of the Act and reliance was placed on the Supreme Court case of *Narayana (supra)*. Hon'ble N.D. Ojha, J. (as his Lordship then was) approved the observations made in paragraph 27A of the report in the case of *Technical Associates (P.) Ltd. v. State of U.P.* 1984 ALI 1093, with regard to the distinguishing features of *Narayan's* case. The Division Bench repelled the contention that there was no such urgency so as to justify the dispensing with the provisions of Section 5A of the Act and upheld the notifications issued under Sections 4 and 6 of the Act, In *Mohd Hanif v. State of U.P.* 1985 ALJ 1405, similar argument was advanced on behalf of the Petitioners challenging the action of the State Government in dispensing with the enquiry u/s 5A of the Act and reliance was placed on *Narayan's* case (supra) and *A.P. Sarin's* case (supra). Repelling the contention raised by the Petitioners the Division Bench held as follows:

When a decision making function is entrusted to the subjective satisfaction of statutory functionary, the limited obligation is to apply mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. It is this principle which has to be applied while judging whether the State Government while dispensing with Section 5A was influenced by extraneous or irrelevant matters or not. If the answer to this question is in the affirmative dispensation of Section 5A cannot be regarded as arbitrary.

Again in *Gayatri Nagar Sahkari Avas Samiti Ltd. v. State* 1985 ALJ 1182 , acquisition of land for housing scheme made by the State Government after making a direction u/s 17(4) to the effect that the provisions of Section 5A will not be applicable was challenged on the ground that the dispensation with the enquiry u/s 5A was illegal and reliance was placed on *Narayan's* case (supra) and on *State of Punjab and Another Vs. Gurdial Singh and Others*, . A division Bench of this Court held as follows:

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 *Kunwar Lal v. State of U.P.* 1989 ALJ 570, it was held by a Division Bench of this Court that dispensation of enquiry u/s 5A depends on the subjective

satisfaction of the State Government and the same can be quashed only if it is mala fide.

21. Another Division Bench of our court in *Satbir Singh and Others Vs. State of U.P. and Others*, , approved the decisions given in the case of *Smt. Kailashawati v. State and Trilochan v. State* (supra) where the true import of the law laid down by the Supreme Court in *Narayan's case* (supra) was explained, In para 19 the Bench held as follows:

The question whether enquiry u/s 5A was necessary or not is a question of fact which should be determined in the facts and circumstances of each case, normally this question is a matter of subjective satisfaction of the State Government. Such a decision cannot be questioned in any Court if the Government has applied its mind and has acted in good faith. When the Government is best judge for determining the question it is only in the case of mala fide exercise of power that the High Court can interfere.

The Supreme Court has considered the case of *Narayan* (supra) in its later decision in *State of U.P. Vs. Smt. Pista Devi and Others*, . In this case land was acquired for Meerut Development Authority for its housing scheme. The notification u/s 4(1) was published on June 12, 1980. The notification further stated that the State Government being of the opinion that the provisions of Section 17(1) of the Act were applicable to the said land which was urgently required and is directed that the provisions of Section 5A shall not apply. Thereafter notification u/s 6 of the Act was issued on May 1, 1981. The High Court set aside the notifications and the declaration on the ground that the case of urgency put forward by the State Government for dispensing with the compliance with the provisions of Section 5A of the Act had been belied by the delay of about one year that had ensued between the date of notification u/s 4 and the date of declaration made u/s 6 of the Act. The Supreme Court while allowing the appeal of the State of U.P. observed as follows:

In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that In the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to Invoke Section 17(1) of the Act and to dispense with the compliance with Section 5A of the Act. Perhaps, at the time to which the decision In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , related the situation might have been that the schemes relating to development of residential areas in the urban centres were not so urgent and it was not necessary to eliminate the inquiry u/s 5A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone by hundreds of millions and it Is no longer possible for the Court to take the view that the schemes of development of residential areas do not appear to demand

such emergent action as to eliminate summary inquiries u/s 5A of the Act.

The principle that the enquiry u/s 5A should be dispensed with or not is primarily a matter of subjective satisfaction of the government and if there was some material before the government to come to such a conclusion the court should not and will not interfere was reiterated in a recent case in *Krishi Utpadan Mandi Samiti v. Ratan Prakash Mangal* AIR 1988 SC 1439. In this case the State Government issued a notification u/s 4(1) read with Section 17(4) of the Act with regard to certain land including plot No. 289 on 26th October, 1978 which was followed by a notification u/s 6 on 27th October, 1978. The Petitioners challenged the aforesaid notifications before the High Court which quashed both the notifications. *Krishi Utpadan Mandi Samiti* filed appeal before the Supreme Court which was allowed in part and the judgment of the High Court was set aside in so far as it quashed the notification u/s 4(1) of the Act in its entirety. A direction was given that the Petitioners and their transferees may file objections to the proposed acquisition and the appropriate authority will then hold an enquiry u/s 5A and proceed with the matter in accordance with law. In pursuance of the aforesaid direction enquiry u/s 5A was made and the Land Acquisition Officer after giving opportunity to the parties to produce evidence submitted a report to the effect that plot No. 289 may be exempted from acquisition. The government did not agree with the report of the Land Acquisition Officer and issued notification dated 20th May, 1982 u/s 4(1) read with Section 17(4) of the Act and also the consequential notification dated 21st May, 1982 u/s 6 of the Act. The Petitioners then filed writ petition in the High Court which quashed the notification u/s 4(1) of the Act in part in so far as it invoked Section 17(4) of the Act and thereby dispensed with the enquiry u/s 5A of the Act and the notification u/s 6 was also quashed. *Krishi Utpadan Mandi Samiti* filed appeal before the Supreme Court. The Supreme Court after examining the material which was considered by the State Government before issuing the notification u/s 4(1) read with Section 17(4) of the Act held as follows:

Therefore the opinion of the State Government that it was a fit case to invoke Section 17(4) of the Act could not be said to be invalid on the ground that there was no basis or material in support of that opinion. It could not be said that the Notification dated 20th May, 1982 had been issued by the State Government in colourable exercise of its power. On the facts a case even of legal mala fides was not made out.

The appeal filed by the Mandi Samiti was allowed and the notifications were upheld.

22. Learned Counsel for the Petitioners also referred to *Sitaram Maroti Girnale Vs. The State of Maharashtra and Others*, *The Printers House P. Ltd. v. Misrilal Dilip Singh* AIR 1970 Pun. 1, *Natwarlal Jerambhai Patel Vs. State of Gujarat and Others*, *Thirame Gowda v. State* AIR 1974 Kar. 158, *S.K. Gupta Vs. The Union of India and Others*, and *Gurdev Singh and Others Vs. The State of Punjab and Others*, in support of his contention. The law appears to be well settled by the

decisions of the Supreme Court as well as by a series of judgments of our own court. It is, therefore, not necessary to refer to the aforesaid cases in detail.

23. We have already referred to the material which was considered by the State Government before issuing the notification u/s 4(1) read with Section 17(4) of the Act. The State Government on the basis of the material placed before it formed an opinion that it was a case of urgency and thereafter issued the impugned notifications. The Petitioners have not raised any plea on the ground of mala fide. Since the State Government did not act mala fide or in bad faith and as the State Government was satisfied on the material placed before it that the case was one of urgency and a direction u/s 17(4) should be made, there is no ground for quashing the notification.

24. For the reasons mentioned above the writ petition fails and is accordingly dismissed. The stay order is vacated. There will be no order as to costs.