

(2016) 04 KAR CK 0160

In the Karnataka High Court

Case No : Writ Petition Nos. 100395 of 2016, 100396 of 2016, 100398-100399 of 2016, 100400 of 2016, 100401-100402 of 2016, 100403 of 2016, 100404 of 2016, 100405 of 2016, 100408 of 2016, 100409 of 2016, 100397 of 2016, 107653 of 2015 and 108183 of 2015, 107663 of 2

Shivappa Shankarappa Vadagalla

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, Section 4, Section 5A, Section 6

Citation : (2016) AIRCC 3169 : (2016) 3 KCCR 2744

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri. S.M. Kalwad, Advocate, for the Petitioner; Sri Madhusudan R. Naik, Advocate General and Smt. K. Vidyavati, AGA, for the Respondent Nos. 1 to 3; Sri. G.K. Hiregoudar, Advocate, for the Respondent Nos. 4 to 5

Final Decision : Dismissed

Judgement

B. Veerappa, J. - In all these writ petitions, the petitioners have challenged the common preliminary and final notification's dated 29.12.2012, 16.2.2012, 17.3.2014 and 27.6.2013 issued to acquire the lands in various survey numbers in different villages of Haveri District for the purpose of Upper Thunga Project. Since common questions of law are involved, they are clubbed, heard together and the common order is passed.

2. All the petitioners, who claim that they are agriculturists and have different extent of lands in different survey numbers of Kallihal, Totada Yallapur, Nelogal and Kanakapur villages, Haveri Taluk and District are before this Court challenging the validity and legality of the notifications issued by the respondent Nos. 2 and 3 under the provisions of Sections 4(1) and 6(1) of the Land Acquisition Act (for short hereinafter referred to as "the Act") to acquire the lands for the purpose of Upper Tunga Project contending that respondent Nos. 2

and 3 issued notifications to acquire the lands dispensing with the enquiry under Section 5-A of the Act invoking the provisions of Section 17(1) & (4) of the Act. Based on the said notifications, no personal hearing/opportunity was afforded to them in opposing the proposed acquisition as required under the Land Acquisition Act. Further neither the physical possession of the lands in question is taken nor the award has been passed as required under the law. Even the compensation amount also is not paid to them. When the things stood thus, the respondents have illegally without any authority of law have commenced their digging work for the execution of the work order given by respondent Nos. 4 and 5 to their respective contractors.

3. The petitioners further contended that respondent Nos. 2 and 3 without compliance of mandatory provisions of Section 5-A of the Act have issued 6(1) notifications on 17.3.2014 and 27.6.2013 and have acquired their lands and the final notifications were issued after the expiry of one year from the date of publication of the preliminary notifications dated 29.12.2012 and 16.2.2012. Therefore time taken by the authority for making fresh declaration in respect of the lands notified for acquisition is also barred by limitation. Hence, the entire, proceedings have lapsed. The final notification dated 17.3.2014 was published in the Official Gazette on 3.4.2014 almost beyond the period of one year from the date of the preliminary notification dated 29.12.2012.

4. It is further case of the petitioners that as per the Government Order dated 4.6.2002, the emergency provisions of Section 17(1) and 17(4) of the Act were invoked to, dispense with the Section 5-A enquiry only to an extent of 3194 acres of land in respect of Upper Tunga Project but the respondents have already secured more than the prescribed limit in the said order and the award has been passed in respect of 3862.38 acres of land as on June, 2015 by virtue of the said Government Order. Therefore, the said reason dispensing Section 5-A enquiry to acquire the lands in question is bad in law. Accordingly, the declaration made under Section 6(1) notification based on the said Government Order is illegal and therefore, respondent Nos. 2 and 3 would not have exercised the powers under Section 17(4) of the Act to dispense with the enquiry under Section 5-A of the Act in respect of the acquired lands situated in Kallihal and other villages, Haveri District. Therefore, the petitioners are before this Court for the relief sought for.

5. The State Government filed statement of objections and additional statement of objections in W.P. Nos. 107653/2015, 108183/2015, 107663/2015, 108184-85/2015, 107662/2015, 107652/2015, 108071/2015, 109066/2015, 109507-509/2015, 109067/2015 and 109088/2015 and connected matters, contending that the lands in question are being acquired for the purpose of Upper Tunga Project which was conceived to ensure supply of water to the farmers for irrigation as well as drinking purpose through canal system in the region; that the lands being acquired for the irrigation of the canal system approved for an approximate length of 270 kilometers and in principal the approval has been granted to the whole project while the length of the canal has

been extended. Hence, initially calculating the tentative extent of lands required was 3194 acres and the project was approved and the emergency clause was invoked under the provisions of Section 17(1) and (4) of the Act and the notification under Section 4(1) of the Act in respect of the petitioners' lands was last published in the village chavadi on 28.3.2013 and thereafter, the notification under Section 6(1) of the Act was approved on 17.3.2014 by the Commissioner, Rehabilitation and Resettlement, and Ex-Officio Secretary of Government, Bagalkot. Therefore, the notification under Section 6(1) of the Act issued is well within the period of one year from the date of last publication of the preliminary notification. Therefore, there is no delay as alleged by the petitioners.

6. The respondents/State further contended that the notice issued under Section 4(1) of the Act was issued to the petitioners after following due procedure and in fact they have filed objections to the same. However, the acquiring authority invoking the emergency provision under Section 17(1) and (4) of the Act, Section 5-A enquiry was dispensed with. It is further stated that in pursuance of notification under Section 6(1) of the Act, individual notice was issued to the petitioners under Section 9 the said Act and the petitioners have not chosen to reply. However, the statements, contentions and objections of the petitioners furnished in their reply to Section 4(1) notification, were duly considered and discussed. The petitioners also having participated in the acquisition proceedings thereafter filed the present writ petitions on 20.7.2015 and the payment of compensation amount is in progress. However, digging work and other canal work in the petitioners' lands have not been started as on today. The acquisition of the lands for the project required under the new Land Acquisition Act and the lands being acquired through the impugned notifications are being compensated on par with the compensation being awarded for land looser under the New Land Acquisition Act, 2013 and the acquisition being done in the larger interest of the farmers and in accordance with law, no interference is called for by this Court.

7. The respondents/State Government while filing additional statement of objections contended that the Upper Tunga Project begins near Gajanur village 20 kilometers from Shivamogga City towards Teerthahalli and the project was commenced in the year 2002. At the initial stage, the date for completion of the project is 1st March, 2017 and the total cost of the project is 2561.88 crores and the said project is helpful for the areas called as Atchkat which is 1,98,906 acres including Shivamogga, Davangere and Haveri Districts. Among the said three districts, the area which comes under Shivamogga District is 4,463 acres, Davangere 13,088 acres and Haveri 1,81,355 acres. The total length of main canal is from 0 to 270 kilometers. The completed length of the main canal is 0 to 222.00 kilometers near Agadi village in Haveri Taluk. The Atchkat covered by the area up to completed length of main canal is 212 kilometers and water is allowed in the main canal since 2010 up to completed length of 212 kilometers. The total area irrigated in respect of three districts is 1,10,837 acres and the balance is in respect of Haveri Taluk which is about 81,147 acres and Hangal Taluk - 6,916 acres as per Annexure-R1 the chart enclosed along with additional statement of

objections.

8. The State Government further contended that the petitioners have questioned smaller extent of lands in the present writ petitions and the notification is issued under Section 4(1) of the Act on 29.12.2012 which was gazetted on 7.2.2013 and published in the Gram Chawadi on 28.3.2013. The final notification under Section 6(1) was issued on 17.3.2014 which was gazetted on 3.4.2014 and published in the Gram Chawadi on 30.5.2014. Therefore, the said notifications were issued within the prescribed limitation. Therefore, the contentions raised by the petitioners that the notifications issued are barred by limitation is not correct.

9. The respondents further contended that the respondents have not issued notice to the petitioners to file objections is not correct since, it is not necessary to issue notice to the owners while invoking emergency clause under Section 17(1) and (4) of the Act. Therefore, the enquiry under Section 5-A of the Act has been dispensed with and admittedly, the project is for the public purpose which is about to be completed and it should be completed on or before March, 2017. Therefore, the urgency clause was invoked for the public purpose. It is their further contention that the Government of India has written a letter to the 1st respondent on 9.12.2013 informing that the project shall be completed in the financial year 2014-15 and Plan accounts would be closed by 31st March, 2015. Thereafter, in the proceedings taken by the Secretary, Water Resources, River Development and Ganga Rejuvenation (WRRD) and Ground Water Recharge regarding completion of strategy on 9.11.2015, time was extended up to March, 2017. Therefore, it is very much necessary to complete the project work on or before March, 2017.

10. It is further contention of the State Government that the acquisition project is for the Upper Tunga Project meant for public purpose and the area people who will be benefited is 1,10,837 acres. The petitioners are having meagre extent of land in the acquisition notification, but it is for the larger extent of public to get benefit under this project which has to be completed on or before March, 2017. If the said project is not completed on or before March, 2017, the amount which is kept for the said purpose will get lapsed. Therefore, prayed for dismissal of the writ petitions.

11. I have heard the learned Counsel for the parties to the lis.

12. Sri. S.M. Kalwad, learned Counsel for the petitioners, mainly contended that the permission granted by the State Government to dispense with the enquiry under Section 5-A of the Act is about 3194 acres and therefore, the respondents cannot go beyond the said area of acquisition by invoking the urgency clause and invoking of Section 17(1) of the Act is only to protect the beneficiaries and hence, the acquisition itself is invalid. Admittedly, the notification issued by the State Government - Annexure-F dated 4.6.2002 granting permission to dispense the notice under Section 5-A of the Act, but the notification issued under Section 4(1) of the Act is only on 29.12.2012 nearly after a lapse of 10 years and no

urgency was shown for invoking the provisions of Section 17(1) and (4) of the Act and the same is unnecessary. He further contended that the notification issued under Section 6(1) of the Act was beyond one year from the date of issuance of 4(1) notification and the same is liable to be quashed. The State Government has not raised any defence in the statement of objections with regard to delay and laches and the same cannot be allowed to be urged by the respondents in the present writ petitions.

13. The learned Counsel for the petitioners further contended that even assuming in the case of urgency clause, Section 4(1) is mandatory and for issue of preliminary notification, the provisions of Section 17(1) of the Act is not followed, no award is passed in respect of the lands of the writ petitioners nor possession is taken, etc., and prayed to quash the impugned orders by allowing the above writ petitions. In support of his arguments, learned Counsel for the petitioners has relied upon the following judgments :

- a) The University of Agricultural Science Employees House Building Co-op. Society, Bangalore v. State of Karnataka [W.A. No. 2420 of 1997 (DB) DD 19.12.2002];
- (b) Madhya Pradesh Housing Board Etc. v. Mohd. Shafi and Ors. (1992) (2) SCC 168
- (c) Anand Singh v. State of U.P. (2010) (11) SCC 242.
- (d) D.V. Chandrashekharappa v. The State of Karnataka [W.P.No. 13410/2010 c/w. WP Nos. 16461-463/2010, D.D: 19.11.2011];
- (e) Sri. Yankappa v. The Special Land Acquisition Officer [W.P. No. 60044/2012, D.D. 20.03.2012];
- (f) Sanjeeva Nagar Medical & Health Employees Co-operative Housing Society v. Mohd. Abdul Wahab and others (1996) (3) SCC 600
- (g) Swarna Lata and others v. State of Haryana (2010) (4) SCC 532.
- (h) Essco Fabs Pvt. Ltd., and another v. State of Haryana and another, AIR 2009 SC 152.
- (i) Union of India and others v. Mukesh Hans [2004 (8) SCC 14.
- (j) Radhy Shyam (Dead) through LR"s and others v. State of Uttar Pradesh and others, (2011) (5) SCC 553.
- (k) State of West Bengal and others v. Prafulla Churan Law and others (2011) (4) SCC 537
- (1) State of West Bengal and others v. Prafulla Churan Law and others (2011) (4) SCC 769.
- (m) Shyman Nandan Prasad and others v. State of Bihar and others [1993 (4)

SCC 255.

14. Per contra, Sri. M.R. Naik, learned Advocate General for the State Government-respondent Nos. 1 to 3 contended that the preliminary notification under Section 4(1) r/w Section 17 of the Act was issued on 29-12-2012. After a lapse of 2? years, the writ petitions are filed and the delay has not been explained. The chart produced by the State in the additional statement of objections at para-4 discloses that the notification issued under Section 4(1) is on 29.12.2012 and the same was gazetted on 7.2.2013 and published in the Gram Chawadi on 28.3.2013 and the notification issued under Section 6(1) of the Act is on 17.3.2014 and gazetted on 3.4.2014 and published in the Gram Chawadi on 30.5.2014 is within one year. Once the award is passed, there cannot be any challenge to the notifications under Section 4(1) and 6(1) of the Act. Admittedly, the awards were passed on 16.5.2015 and 25.7.2014 in respect of the lands in question. Therefore, he contended that the very writ petitions are not maintainable.

15. The learned Advocate General further contended that all the petitioners are being benefited from the Upper Tunga Project and they cannot challenge the notifications issued by the State Government. Admittedly, the notifications are issued in respect of the three districts - Shivamogga, Davangere and Haveri, but the land owners from Shivamogga and Davangere have not challenged the acquisition proceedings and only the villagers of Haveri District are before this Court in the present writ petitions. The learned Advocate General further submitted that an extent of 5899 acres were acquired under different notifications for the Upper Tunga Project and the challenge is made by the four villagers for a meagre extent of 37 acres 21 guntas and already 80% of the work has been completed and therefore, the public interest is prevailing than the private interest of the petitioners and the petitioners also will be benefited under the project. He further contended that any post notification would delay the subsequent decision of the State Government dispensing with the enquiry under Section 5-A of the Act and by invoking powers under Section 17(1) of the Act would not invalidate the decision itself especially when there is no mala fides on the part of the State Government or its officers. Therefore, he sought to dismiss the writ petitions. In support of his contentions, he sought to rely upon the following decisions:

(a) Vishwasnagar Evacuees plot purchasers Association and another v. The Under Secretary, Delhi Administration and others (1990) 2 SCC 268.

(b) The State of Mysore and others v. V.K. Kangan and others (1976) (2) SCC 895.

(c) Swarnalata v. State of Haryana (2010) (4) SCC 532.

(d) State of Rajasthan v. Dr. D.R. Laxmi (1996) (6) SCC 445.

(e) Smt. Venkatalaxmamma and others v. Special Land Acquisition Officer and

others (2002) (3) KLJ 582: ILR 2002 Kar 2354.

(f) Srinivasa Ramanath Khatod v. State of Maharashtra [2002 (1) SCC 689.

(g) 1st Land Acquisition Collector v. Nirod Prakash Ganguli (2002) (4) SCC 160.

(h) Rajasthan Housing Board and others v. Srikishan & others (1993) (2) SCC 84.

(i) Deepak Pahwa and others v. Lt. Governor, Delhi and others (1984) (4) SCC 308.

(j) State of Uttar Pradesh v. Pistadevi (1986) (4) SCC 251.

(k) Chameli Singh and others v. State of Uttar Pradesh (1996) (2) SCC 549.

(l) Smt. Neelavva and others v. State of Karnataka in W.P. No. 64171/2009 (sic);

(m) Narayan Shetty v. State of Karnataka (ILR) 2003 Kar 3206.

(n) May George v. Special Tahasildar and others (2010) (13) SCC 98.

(o) Om Prakash and another v. State of Uttar Pradesh and others (1998) (6), SCC 1.

(p) Ramanikalal N. and another v. State of Maharashtra (1997) (1) SCC 134.

(q) Smt. Ratnadevi v. Chief Commissioner, Delhi (1975) (4) SCC 467.

(r) Bharat Singh and others v. State of Haryana and others, AIR 1988 SC 2181.;

(s) Raunaq International Ltd. v. IVR Constructions (1999) (1) SCC 492.

(t) P. Rajappa alias B.P Rajappa and others v. State of Karnataka & Ors., ILR 2004 (3) Kar 2969.

(u) Dayabai Ranchhodas Dhohi v. State of Gujarath, ILR 2010 SC 3006.

(v) Anand Singh and another v. State of Uttar Pradesh 2010 (11) SCC 242.

16. Sri Ramesh. N. Misale and Sri. G.K. Hiregowda, learned Counsel appearing for respondent Nos. 4 and 5 in some of the writ petitions while adopting the arguments advanced by the learned Advocate General sought to justify the impugned acquisition proceedings initiated by the respondents. They contended that no mala fides are attributed by the petitioners with regard to the public purpose. Therefore, they sought to dismiss the writ petitions.

17. I have given my anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record carefully.

18. In view of the rival contentions urged by both the parties, the points that arise for consideration in the present writ petitions are :

(i) Whether the impugned notifications issued under Section 4(1) read with Section 17(1) and (4) and Section 6(1) of the Land Acquisition Act are vitiated

for non compliance of the enquiry under the provisions of Section 5-A of the Land Acquisition Act?

(ii) Whether the writ petitions filed by the petitioners challenging the notifications impugned are liable to be dismissed on the ground of delay and laches?

(iii) Whether the final notification issued is beyond one year from the date of notification issued under Section 4(1) of the Act as contemplated?

(iv) Whether the impugned notifications issued are for the public purpose?

19. In view of the background stated supra, let me consider the rival contentions urged by the parties with regard to the points that arises for consideration in the present writ petitions.

Re: Point No.(i):

20. According to the petitioners, the impugned notifications issued by the State Government dispensing the enquiry under Section 5-A of the Act is bad in law and no urgency was shown for invoking the provisions of Section 4(1) read with Section 17(4) of the Act and the same was unnecessary. The learned Counsel for the petitioners sought reliance on a judgment of the Supreme Court in the case of *Essco Fabs Pvt. Ltd. v. State of Haryana*, reported in AIR 2009 SC 1552 especially para-47 to the effect that dispensing with inquiry under Section 5-A and issuance of final notification under sub-section (1) of Section 6 are to be quashed as they have lapsed. In the said case, the initiation of acquisition of land was taken as early as in 1982 but the proceedings lapsed. In 1991 when the Essco made an application praying for change of user of land, it was rejected on the ground that the land was likely to be required for public purpose. Nothing, however, was done for about a decade. It is only in the year 2001 again notification under Section 4(1) was issued and subsequently Section 6(1) was issued. In those circumstances, the Hon"ble Supreme Court held that there was no urgency. The said case has no application to the facts and circumstances of the present case.

21. The other judgment relied upon by the learned Counsel for the petitioners is *Union of India v. Mukesh Hans* (AIR 2004 SC 4307) to the effect that some existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct dispensation of Section 5-A inquiry. In the said case, the question arose before the Division Bench of the Delhi High Court which on facts came to the conclusion that the Lt. Governor of Delhi, who was the authority to pass order under Section 17(4) of the Act did not apply his mind so as to the existence of need for dispensation of Section 5-A inquiry and the Lt. Governor was not informed that there was an earlier attempt to acquire land measuring 40 bighas for the same public purpose and the said acquisition had lapsed by efflux of time, which was not considered while issuing subsequent notification. In those circumstances, the Hon"ble Supreme Court held excluding inquiry under Section 5-A was vitiated, The facts

of the said case and the facts of the present case are entirely different. Therefore, the said judgment has no application to the facts of the present case.

22. Yet in another judgment in the case of Radhy Shyam relied upon by the learned Counsel for the petitioners to the effect that there was no real and substantive urgency warranting invocation of urgency clause dispensing with 5-A inquiry and long time gap of one year three months between the acquisition and proposal from the Development Authority and issuance of notification in question is for the benefit of the private parties. The facts of the said case have no application for the facts and circumstances of the present.

23. In the case of Prafulla Churan Law relied by the counsel for the petitioners, it was a case where the State Government has not explained as to why appropriate steps could not be taken for acquisition of the premises by complying with the requirement of Section 5-A of the Act, the time gap of 3 years between quashing of the first notification and issue of the second notification was too long to justify invoking of the urgency clause. Therefore, the Hon''ble Supreme Court held that invoking of urgency clause was not permissible and the respondents could not be deprived of their legitimate right to raise objection and to be heard against the proposed acquisition of the premises. The law laid down by the Hon''ble Supreme Court with reference to the facts of the said case has no application to the facts and circumstances of the present case.

24. The other judgments relied upon by the learned Counsel for the petitioners with regard to facts and circumstances of the cases are entirely different to the facts and circumstances of the present case. Therefore, they have no application to the facts and circumstances of the present case.

25. The State Government issued notification under Section 4(1) r/w 17(1) and (4) of the Act on 29.12.2012 for extension/continuation of construction of Upper Tunga Canal/Project invoking urgency clause of the Act. Though the impugned notifications refer the Government Order dated. 4.6.2002 issued by the State Government dispensing the enquiry under Section 5-A of the Act, the impugned notifications cannot be quashed on the ground that the notification is issued after a lapse of 10 years as alleged in the writ petitions. Initially in the year 2002, the State Government granted permission to issue notifications under Section 4(1) r/w Section 17(1) and 17(4) of the Act to dispense with Section 5-A enquiry for the entire project. The work was commenced near Gajanur village and the Upper Tunga Project is meant to construct the canal. Therefore, the acquisition notifications are being issued where the work commenced and as and when required to continue the construction of canal. It was not practicable and just to acquire and take possession of all the (entire) stretch and to deprive all the land owners of lands at a three districts for construction of canal of about 270 kilometers length, and at the same time, there could not have been hearing under Section 5-A of the Act in respect of bits and pieces of lands, disrupting the execution of time bound project and it will be burden to the general public. Therefore, the acquisitions in phases necessitates invoking emergency clause

periodically and as and when the areas are covered and required, the acquisition notifications were being issued, as has occasioned under the impugned acquisition notifications for various lands having different survey numbers at different villages in three districts viz., Shivamogga, Davangere and Haveri from time to time.

26. Admittedly, the Upper Tunga Project commenced in the year 2002 at Gajanur Village 20 Kilometers from Shivamogga City towards Teerthahalli and the completed length of the main canal is 222 Kilometers near Agadi Village in Haveri Taluk and District, The impugned notifications were issued by the State Government under Section 4(1) r/w Section 17(1) and (4) of the Act on 29.12.2012 and final notification was issued in respect of Nelogal, Kallihalli, Totada Yallapur and Kanakapura villages, Haveri District measuring about 175 acres 6 guntas for further extension of the canal of Upper Tunga Project. Admittedly, the impugned notifications were issued to acquire the lands invoking the urgency clause dispensing enquiry under Section 5-A of the Act for the Upper Tunga Project which is for a public purpose mainly for construction of canal from 222 to 232 Kilometers. It is specifically stated in the notifications as to what was the urgency and there is a mention of earlier notification dated 4.6.2002. Therefore, post notification delays subsequent decision of the State Government in dispensing with an enquiry under Section 5-A of the Act by invoking powers under Section 17(1) of the Act and it would not invalidate the decision itself since the petitioners have not alleged any malafides on the part of the State Government or its officers in the writ petitions. The total length of main canal is 0.00 kilometer to 270 kilometers and present notification is issued to commence canal work from 222 kilometers from Haveri Taluk and District. Admittedly, the canal work was completed up to 222 kilometers. The total area acquired in the Haveri District is 175 acres 6 guntas and challenge made in respect of four villages in all these present writ petitions is about 37 acres, 21 guntas only.

27. It is a specific case of the State Government that the project is for the public purpose and project has to be completed on or before March, 2017 and the project work has to be completed within the time frame. The total cost of the project is about 2561.88 crores and already the expenditure spent up to November 2015 is about 2088.83 crores and balance required for completion of work is Rs.472.05 crores and the fund is provided by the Central Government Scheme called Accelerated Irrigation Benefit Programme (AIBP), under which, the project has to be completed before March, 2017 and the amount which is kept for the said purpose will lapse. The Upper Tunga Project is meant for the public purpose at large to an extent of 1,10,837 acres are benefited in the said project. The petitioners are having meagre extent of the lands in acquisition notifications to an extent of only 37 acres 21 guntas, but it is for the large extent of the public to get benefit under this project. Therefore, the respondents invoked the provisions of urgency clause under Section 4(1) r/w Section 17(1) and (4) of the Act by dispensing the enquiry under Section 5-A of the Act. The existence of urgency is a matter of subjective satisfaction of the appropriate

Government. The decision of the State Government taking all relevant considerations into account and being satisfied that there exists emergency to dispense with the enquiry under Section 5-A of the Act invoked the urgency provision, can be challenged only on the ground of non application of mind and mala fide and the burden is on the petitioners to prove the same.

28. Admittedly, in the present case, except questioning the acquisition on the ground that there was no urgency for issuing the notification, the petitioners have not made any mala fide allegations against the State Government in exercising the power under the provisions of Section 4(1) r/w 17(4) of the Act and the petitioners have not placed any material before the Court to prove the said allegations.

29. The Hon"ble Supreme Court while considering the provisions of Sections 17 and 5-A of the Land Acquisition Act in the case of First Land Acquisition Collector v. Nirod Prakash Ganguli, reported in (2002) 4 SCC 160 at para-5 has held under:

"5. 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 on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers 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 under Section 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 under Section 5-A by invoking powers under Section 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 under Section 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in Jage Ram v. The State of Haryana, AIR 1971 SC 1033. Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the

Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question were required for the students of National Medical College, Calcutta and the Notification issued in December 1982 had been quashed by the Court and the subsequent Notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the Notification was issued under Sections 4(1) and 17(4) of the Act on 29.11.1994, which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises were badly needed for the occupation by the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable."

(Emphasis supplied)

30. The Hon"ble Supreme Court while considering the provisions of Sections 17(4) and (1), 4 and 6 of the Rajasthan Land Acquisition Act, 1953 in the case of Rajasthan Housing Board v. Shri Kishan, reported in (1993) 2 SCC 84 at para-14 has held as under:

"14. Sri. Thakur further argued that the construction of houses by Housing Board is not of such urgency as to call for the invocation of the said power. We are not satisfied. Firstly, on this question the decision of the Rajasthan High Court is against the writ petitioners. The learned single Judge negatived it as well as Division Bench following the opinion of the third Judge. Secondly, we are satisfied that there was material before the government in this case upon which it could have and did form the requisite opinion that it was a case calling for exercise of power under Section 17(4). The learned single Judge has referred to the material upon which the government had formed the said opinion. The material placed before the Court disclosed that the government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs. 16 crores under a time-bound programme to construct and utilise the said amount by 31.3.1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the government had formed the said satisfaction viz., that in view of the time-bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have

resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. It must be remembered that the satisfaction under Section 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 this court not only under Section 17(4) but also generally with respect to subjective satisfaction"

31. Yet in another decision, a Larger Bench (3 Judges) of the Apex Court in the case *Deepak Pahwa and other v. Lt. Governor of Delhi and others*, reported in 1984 (4) SCC 308 while considering the provisions of Sections 4, 5-A and 17 of the Land Acquisition Act at para-8 it is held as under :

"8. The other ground of attack is that if regard is had to the considerable length of time spent on interdepartmental discussion before the notification under Section 4 (1) was published, it would be apparent that there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the enquiry under Section 5-A. 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 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. It is, therefore, not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void. We however wish to say nothing about post-notification delay. In *Jage Ram v. State of Haryana*, AIR 1971 SC 1033, this court pointed out "the fact that the State Government or the party concerned was lethargic at an 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." In *Kasi Reddy Papiiah v. Govt. of Andhra Pradesh*, AIR 1975 AP 269, it was held, "Delay on the part of the tardy officials to take further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency." In the result both the submissions of the learned counsel for the petitioners are rejected and the special leave petitions are dismissed."

32. The Hon"ble Apex Court in the case of *State of U.P. v. Smt. Pista Devi and others*, reported in (1986) 4 SCC 251 while considering the provisions of Section 17(1) and (4) of the Land Acquisition Act has held at para-5 as under :

5. The main ground on which the High Court set aside the impugned notification and the declaration was that the case of urgency put forward by the State Government for dispensing with the compliance with the provisions of section 5-A of the Act had been belied by the delay of nearly one year that had ensued between the date of the notification under section 4 and the date of declaration made under section 6 of the Act. It, however, rejected the contention of the

petitioners based on the delay that had preceded the issue of the notification under section 4 of the Act. The High Court observed that "if the Government were satisfied with the urgency it would have certainly issued declaration under section 6 of the Act immediately after the issue of the notification under section 4 of the Act." It found that the failure to issue declaration under section 6 of the Act immediately on the part of the State Government was fatal. That there was delay of nearly one year between the publication of the notification under section 4(1) of the Act containing the direction dispensing with the compliance with section 5-A of the Act and the date of publication of the declaration issued under section 6 of the Act is not disputed. It is seen from the record before us that after the publication of the notification under section 4(1) of the Act, the Collector after going through it found that there were some errors in the notification which needed to be corrected by issuing a corrigendum. Accordingly, he wrote a letter to the State Government on August 25, 1980 pointing out the errors and requesting the State Government to publish a corrigendum immediately. Both the corrigendum and the declaration under section 6 of the Act were issued on May 1, 1981. It is on account of some error on the part of the officials who were entrusted with the duty of processing of the case at the level of the Secretariat there was a delay of nearly one year between the publication of the notification under section 4(1) and the publication of the declaration under section 6 of the Act. The question for consideration is whether in the circumstances of the case it could be said that on account of the mere delay of nearly one year in the publication of the declaration it could be said that the order made by the State Government dispensing with the compliance with section 5-A of the Act at the time of the publication of the notification under section 4(1) of the Act would stand vitiated in the absence of any other material. In this case there is no allegation of any kind of mala fides on the part of either the Government or any of the officers, nor do the respondents contend that there was no urgent necessity for providing housing accommodation to a large number of people of Meerut city during the relevant time. The letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification under section 4(1) of the Act clearly demonstrated that at that time there was a great urgency felt by them regarding the provision of housing accommodation at Meerut. The State Government acted upon the said reports, certificates and other material which were before it. 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 5-A of the Act. Perhaps, at the time to which the decision in *Narayan Govind Gavate v. State of Maharashtra* [1977] (1) SCR 768 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 under section 5-A 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 up 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 under section 5-A of the Act". In *Kasireddy Papaiah (died) v. The Government of Andhra Pradesh*, AIR 1975 AP 269. Chinnappa Reddy, J. speaking for the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus :

"That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharging of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some Government officials."

33. The Hon"ble Supreme Court while, considering the urgency clause under the Land Acquisition Act in the case of *Chameli Singh and others v. State of U.P.* and another, reported in (1996) 2 SCC 549 at para-15 has held as follows:

15. The question, therefore, is whether invocation of urgency clause under Section 17(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In *Aflatoon v. Lt. Governor of Delhi* [1975 (4) SCC 285 (SCC at p. 290)], a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17(4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In *Pista Devi case* [1986 (4) SCC 251] this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which court should take judicial notice. The pre-notification and post-notification delay caused by the officer concerned does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till date

and is a fact of which courts are bound to take judicial notice. The ratio of Deepak Pahwa case 1984 (4) SCC 308 : 1985 (1) SCR 588 was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to inter-departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In Jage Ram v. State of Haryana [1971 (1) SCC 671 this Court upheld the exercise of the power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Pahwa case [1984 (4) SCC 308 : 1985 (1) SCR 588 this Court had that very often person interested in the land reposed to be acquired may make representations to the authorities concerned against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. In Rajasthan Housing Board v. Shri Kishan [1993 (2) SCC 84] (SCC at p. 91) this Court had held that it must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In State of U.P. v. Keshav Prasad Singh [1995 (5) SCC 587] (SCC at p. 590), this Court had held that the Government was entitled to exercise the power under section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the facts available on record. In Narayan Govind Gavate case a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A, inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasised that: (SCC p. 148, para 38) "... The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A which has to be considered."

34. The Hon"ble Supreme Court while considering the subjective satisfaction under the provisions of Sections 17(1) and (4) and 5-A of the Land Acquisition Act in the case of Nand Kishore Gupta and others v. State of Uttar-Pradesh and others, reported in (2010) 10 SCC 282 at paras-93 to 98 has held as under:

"93. We have deliberately quoted the above part of the High Court judgment only to show the meticulous care taken by the High Court in examining as to whether there was material before the State Government to dispense with the enquiry under Section 5-A of the Land Acquisition Act. We are completely convinced that there was necessity in this Project considering the various reasons like enormousness of the Project, likelihood of the encroachments, number of appellants who would have required to be heard and the time taken for that purpose, and the fact that the Project had lingered already from 2001 till 2008. We do not see any reason why we should take a different view than what is taken by the High Court.

94. The "law on this subject was thoroughly discussed in Tika Ram v. State of U.P. [(2009) 10 SCC 689 to which one of us (V.S. Sirpurkar) was a party. In that decision also, we had reiterated that the satisfaction required on the part of Executive in dispensing with the enquiry under Section 5-A is a matter subject to satisfaction and can be assailed only on the ground that there was no sufficient material to dispense with the enquiry or that the order suffered from malice.

95. It was also found on facts in Tika Ram v. State of U.P. (cited supra) that there was no charge of mala fide levelled against the exercise of power and there was material available in support of the satisfaction on the part of the Executive justifying the invocation of the provisions of Section 17. The position is no different in the present case. The High Court in the present matter went a step ahead and examined the bulky original record itself to find that there was full material available.

96. We are not impressed by the argument that the encroachment issue was not a relevant factor. This argument was based on the reported decision in Om Prakash v. State of U.P. (1998) 6 SCC 1. It must be said that the actual scenario in that case was different. In that case, the Court was considering the acquisition of area of about 500 acres comprising of 437 plots, whereas, in the present case, the area to be acquired for the Expressway alone was more than 1,600 hectares. This is apart from the 25 million square meters of land which was liable to be acquired for the purposes of development of 5 land parcels. There was interlinking between the acquisition of land for the highway and the acquisition of land for establishing the 5 townships.

97. In Om Prakash v. State of U.P. (AIR 1998 SC 2504) (cited supra), there was unexplained delay after issuance of Section 4 notification, which is not the case here. Therefore, we do not think that what has been said in Om Prakash v. State of U.P. (cited supra) would be apposite here. Every case has to be decided on its own facts. This is apart from the fact that it is not specifically laid down in Om

Prakash v. State of U.P. (cited supra) that the encroachment was never a relevant factor for dispensing with the enquiry under Section 5-A. Again we hasten to add that this was not the only factor considered by the State Government and even the High Court has not held the same to be the only factor for dispensing with the enquiry.

98. In view of the law laid down in the last judgment on this issue i.e. Tika Ram v. State of U.P. (cited supra), we are of the clear opinion that the challenge by the appellants on the ground that there was no urgency and, therefore, the enquiry under Section 5-A of the Act should not have been dispensed with, cannot be accepted. We hold accordingly."

35. It is not the case of the petitioners that though the State Government issued Government Notification dated 4.6.2002 for dispensation of enquiry under Section 5-A of the Land Acquisition Act, it has not issued any preliminary notification under Section 4(1) r/w Section 17(1) & (4) and final notifications under Section 6(1) of the Act till 2012. It is not in dispute that the State Government issued notifications invoking emergency clause for the purpose of Upper Tunga Project to ensure water supply to the farmers through the canal system to an approximate length of about 270 kilometers acquiring the lands of the owners of different survey numbers and different extents in various villages of three districts viz., Shivamogga, Davangere and Haveri. Admittedly, the Upper Tunga Project canal is completed up to 0.00 to 222 kilometers near Agadi Village in Haveri Taluk and District. In view of extension of the length of the canal, the impugned notifications are issued invoking emergency clause as contemplated in order to complete the project on or before March, 2017 and the project work has to be completed within the time frame. The Government of India has provided the fund to the project under the Accelerated Irrigation Benefit Programme (AIBP). In view of the reasons stated supra, point No. (i) is answered in the negative holding that the impugned notifications issued by the State Government under the provisions of Sections 4(1) r/w Section 17(1) and (4) and Section 6(1) of the Land Acquisition Act are not vitiated for dispensation of enquiry under Section 5-A of the Act.

Re: Point No. (ii):

36. In all these writ petitions the impugned notifications issued by the State Government for dispensing the compliance of the provisions of Section 5-A of the Act has been questioned by the present petitioners after a lapse of 2? years delay and admittedly, notification under Section 4(1) r/w 17(4) was issued on 29.12.2012 and the present writ petitions are filed on 21.7.2015 and subsequently, in January and February, 2016, absolutely no explanation is offered and the writ petitions filed by the petitioners are liable to be dismissed on the ground of delay and laches. While considering the delay and laches, the Hon"ble Supreme Court in the case of Sawaran Lata and others v. State, of Haryana and others, reported in (2010) 4 SCC 532 wherein it has been held as under:

"6. When a person challenges Section 4 Notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count. (Vide Hari Singh & Ors. v. State of U.P., AIR 1984 SC 1020).

7. A Constitution Bench of this Court, in Aflatoon v. Lt. Governor of Delhi, AIR 1974 SC 2077, while dealing with the issue, observed as under:-

"11. to have sat on the fence and allowed the government to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

8. Same view has been reiterated by this Court observing that acquisition proceedings should be challenged before the same attain finality, in State of Mysore v. V.K. Kangan, AIR 1975 SC 2190; Girdharan Prasad Missir v. State of Bihar (1980) 2 SCC 83; Bhoop Singh v. Union of India, AIR 1992 SC 1414; State of Orissa v. Dhobei Sethi & Anr. (1995) 5 SCC 583; State of Maharashtra v. Digambar, AIR 1995 SC 1991; State of Tamil Nadu v. L. Krishnan, AIR 1996 SC 497; and C. Padma v. Gov. of Tamil Nadu, (1997) 2 SCC 627.

9. In Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd., AIR 1997 SC 482, this Court observed as under:?

"19. ...If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vest in the State free from all encumbrances, the slumbered interested person would be told off the gates of the Court that his grievance should not be entertained

29. ...when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications." (Emphasis added)

10. Similar view has been reiterated in State of Rajasthan v. D.R. Laxmi (1996) 6 SCC 445, wherein this Court has held that even the void proceedings need not be set at naught if the party has not approached the Court within reasonable time, as judicial review is not permissible at a belated stage. This Court held as under:

"9 Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications.....

10. The order or action, if ultra vires the power, becomes void and it does not

confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances." (Emphasis Added)

Similar view has been reiterated by this Court in *Northern Indian Glass Industries v. Jaswant Singh*, AIR 2003 SC 234; and *Haryana State Handloom & Handicrafts Corporation Ltd. v. Jain School Society*, AIR 2004 SC 850.

11. In the instant case, it is not the case of the petitioners that they had not been aware of acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of Act 1894 had been published in the newspapers having no wide circulation. Even if, the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of acquisition proceedings for the reason that very huge chunk of land belonging to large number of tenure holders had been notified for acquisition. Therefore, it should have been a talk of the town. Thus, it cannot be presumed that petitioners could not have knowledge of the acquisition proceedings.

37. Admittedly in the present case, acquisition of lands in respect of 5899 acres (large extent) was acquired having several survey numbers of different extent, different village of three districts viz., Shivamogga, Davangere and Haveri and the acquisition commenced in the year 2002 at Gajanur village 20 kilometer; from Shivamogga District towards Teerthahall and the land owners of Shivamogga and Davangere Districts have not challenged the acquisition notifications issued from time to time, but only the petitioners, whose lands are meagre about 37 acres, 21 guntas have been acquired under the present impugned notifications for extension of the canal under the Upper Tunga Project, are before this Court. When the acquisition started in the year 2002 under different notifications for Upper Tunga Project and the project work of main canal is already completed up to 212.00 kilometers, the petitioners cannot now contend that they were not aware of the acquisition proceedings. Even assuming that the submission made by the petitioners is correct, it cannot be presumed that they were not aware of the acquisition proceedings for the reason that the very huge chunk of land belonging to a large number of tenure-holders of Shivamogga, Davangere and Haveri had been notified for acquisition from time to time and therefore, it should have been the talk of the town. Hence, it cannot be presumed that the petitioners have no knowledge of the acquisition proceedings. Accordingly, the Point No.(ii) is answered in affirmative holding that the writ petitions filed are barred by delay and laches. Therefore, the writ petitions filed by the petitioners are liable to be dismissed on the ground of delay

and laches.

Point No.(iii):

38. The respondents - State Government issued preliminary notification under Section 4(1) r/w Section 17(1) and (4) of the Act on 29.12.2012 and the same was gazetted on 7.2.2013 and published in the Gram Chavadi/Village Chavadi on 28.3.2013 and the final notification issued under Section 6(1) of the Act is on 17.3.2014 and the same was gazetted on 3.4.2014 and published in the Gram Chavadi/Village Chavadi on 30.5.2014 is within one year as contemplated under the provision of sub-clause (ii) of Clause (1) of Section 6 of the Act. The petitioners have not disputed the said fact made at paragraph 4 of the additional statement of objections filed by the Government nor filed any rejoinder to the said additional statement of objections. The material dates and the documents as per Annexures R-2, 3 and 4 stated supra are also not disputed by the petitioners. Therefore, the said issue has to be answered in the negative holding that the final notification issued is not beyond one year from the date of Section 4(1) notification issued as contemplated under the Act and the preliminary notifications under Section 4(1) and final notifications issued under Section 6(1) are within one year as contemplated under the provisions of the Land Acquisition Act.

Point No.(iv):

39. Admittedly in the present case, the respondents issued notifications to acquire the lands for the purpose of Upper Tunga Project in respect of various survey numbers, different extents and various villages of three, districts viz., Shivamogga, Davangere and Haveri, totalling an extent of 5899 acres to ensure supply of water to the farmers for irrigation and drinking purpose through canal system in the region and the Upper Tunga Project begins near Gajanur Village 20 kilometres from Shivamogga City towards Thirthahalli and the project was commenced in the year 2002 and the date of completion of the project is 1.3.2017 at the cost of Rs. 2561.88 crores and the said project is helpful to the areas called as Atchkat is Rs. 1,98,906 acres including Shivamogga, Davangere and Haveri Districts and total length of the main canal is from 0 to 270 kilometres and the completed length of the main canal is 0 to 222 kilometres near Agadi Village in Haveri Taluk. The Atchkat covered area up to completed length of main canal is 212 kilometres and water is allowed in the main canal since 2010 up to completed length of 212 kilometres. The total area irrigated in respect of three districts is 1,10,837 acres and the balance is in respect of Haveri District which is about 81.147 acres and Hangal Taluk is 6,916 acres as per Annexure-R1 - the chart produced along with the additional statement of objections.

40. Admittedly in the present case the impugned notification under Section 4(1) r/w Section 17(1) and (4) of the Act issued by the State Government on 29.12.2012 and final notification was issued on 17.3.2014 in respect of Nelogal

village, Kallihal village, Totada Yallapur village and Kanakapur village measuring about 175 acres 6 guntas and the challenge is made only in respect of 37 acres 21 guntas. It is the specific case of the State Government that it is a project for the public purpose and project has to be completed on or before March, 2017 and the cost of the project is about Rs. 2561.88 crores. As stated supra, already the respondents have spent up to November, 2015, a sum of Rs. 2088.83 crores and the fund is provided by the Central Government under the Accelerated Irrigation Benefit Programme (AIBP) which is a public purpose.

41. It is also not in dispute that the total land acquired in three districts is about 5,899 acres and the dispute in the present petitions is only in respect of 37 acres 21 guntas and the impugned notification was issued under the provisions of the New Act and the petitioners and others whose lands have been acquired under the impugned notifications are entitled to the compensation on par with the compensation awarded for the land users under the New Land Acquisition Act, 2013 and acquisition being made in the larger interest of the Turners including the petitioners. Therefore, the petitioners cannot challenge the said notifications which are issued on behalf of the public at large. On that ground alone the writ petitions are liable to be dismissed.

42. The material on record clearly indicates that the acquisition initiated by the State Government commenced in the year 2002 and the impugned notification is issued in the year 2012 for the purpose of extension of canal for Upper Tunga Project to supply water to the farmers for irrigation and drinking purpose of three districts is a public purpose. The Hon"ble Supreme Court while considering the provisions of Sections 4, 6, 9, 11 and 19 of the Act in the case of May George v. Special Tahsildar and Others reported in (2010) 13 SCC 98 held at paragraphs 8 to 11 as under:

"8. Land measuring 30.80 acres stood notified and acquired. The land consisted of large survey numbers and belonged to a large number of persons. It is not the case of the appellant that Notification under Section 4 and Declaration under Section 6 were not published or given publicity as mandatorily required under the law. Once, Award was made and possession had been taken, land stood vested in the State free from all encumbrances, it cannot be divested even if some irregularity is found in the Award. As huge area of land had been acquired for planned development of industrial town, the land of the appellant cannot be exempted on any ground whatsoever. More-so, appellant's land was of negligible area in comparison to the total land acquired and therefore, at the behest of only one person, the acquisition proceedings cannot be disturbed.

9. Admittedly, acquisition proceedings/Award have been challenged at a belated stage after a decade of taking possession of the land in dispute. In the facts and circumstances of this case, it is difficult to presume that the appellant had no knowledge of the acquisition proceedings.

10. While dealing with a similar case, this Court in Sawaran Lata v. State of

Haryana has held as under: (SCC P. 535 Para 11)

"11 the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even if, the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that petitioners could not have knowledge of the acquisition proceedings."

In Sawaran Lata this Court has held that acquisition proceedings cannot be challenged at a belated stage.

11. The only question remains for our consideration is as to whether the provisions, of Section 9(3) are mandatory in nature and non-compliance therewith, would vitiate the Award and subsequent proceedings under the Act."

43. The Hon'ble Supreme Court while considering the public purpose in the case of Ramniklal N. Bhutta and another v. State of Maharashtra and others, reported in (1997) 1 SCC 134 has held at paragraph 10 as under :

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an

interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

44. Yet another decision of the Hon"ble Supreme Court in the case of Bharat Singh and others v. State of Haryana and others, reported in AIR 1988 SC 2181, while considering public purpose has held at paragraph 12 as under:

"12. The "public purpose" in question, already noticed, is development and industrialisation of the acquired land. The appellants have not challenged the said "public purpose". In the absence of any such challenge, it does not lie in the mouth of the appellants to contend that the acquisition was merely a profiteering venture by the State Government through HUDA. The appellants will be awarded the market value of the land as compensation by the Collector. If they are dissatisfied with the award they may ask for references to the District Judge under section 18 of the Act. If they are still aggrieved, they can file appeals to the High Court and, ultimately, may also come to this Court regarding the amount of compensation. The appellants cannot claim compensation beyond the market value of the land. In such circumstances, we fail to understand how does the question of profiteering come in. Even assuming that HUDA has made some profit, that will not in any way affect the public purpose for which the land was acquired and the acquisition will not be liable for any challenge on that ground."

45. The Hon"ble Supreme Court in the case of Raunaq International Ltd. v. I.V.R. Constructions Ltd., reported in (1999) 1 SCC 492, while considering the public interest has held at paras 17 to 21 as under :

"17. Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and cost, effectiveness of the proposed project and offers received takes place at various levels in the Government, if there is a good reason why the project should not be undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the Court must be raised. We would expect that if such objection or material is placed before the Government the same would be considered before a final

decision is taken. It is common experience that considerable time is spent by the authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are not taken into account or ignored that the court may intervene. Even so, the Court should be moved at the earliest possible opportunity. Belated petitions should not be entertained.

18. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders, in appropriate cases should be asked to provide security for any increase in cost as a result of such delay, or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution.

19. A somewhat different approach may be required in the cases of award of a contract by the Government for the purchase of items for its use. Judicial review would be permissible only on the established grounds for such review including mala fides, arbitrariness or unreasonableness of the Wednesbury variety. Balance of convenience would play a major role in moulded interim relief.

20. There is a third variety of transactions entered into by the Government which come up for consideration before the courts. This is where the Government grants licences or permissions for a fee or consideration to private parties, enabling them to commercially exploit such a licence or permission. The principles of judicial review are no different in such a case. However, grant of stay or injunction in such cases may or may not result in prejudice to the public revenue, depending on the facts of the case. At times granting of a licence or permission may cause public harm e.g. in the case of damage to the ecology. Interim orders will have to be moulded in such cases on a consideration of all relevant factors, providing for restitution where required in public interest.

21. It is unfortunate that despite repeated observations of this Court in a number of cases, such petitions are being readily entertained by the High Courts without weighing the consequences. In the case of *Fertiliser Corporation Kamgar Union (Regd.) v. Union of India* (1981) 1 SCC 568, this Court observed that if the Government acts fairly, though falters in wisdom, the court should not interfere. The Court Observed: (SCC p. 584, para 35)

"35. A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangement emerges. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the

Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with norms of procedure set for it by rules of public administration."

46. The Hon"ble Supreme Court in the case of P. Rajappa alias B.P. Rajappa and others v. The State of Karnataka, by its Principal Secretary, Industrial Department, Bangalore and others, reported in ILR 2004 Kar 2969, while considering the public purpose has held at paragraphs 13 to 16 as under :

"13. A perusal of the definitions in Section 2 of the Act, reveals that Clause (6) deals with "Industrial Area", Section 2(7) deals with "Industrial estate", which means any site selected for factories and other buildings for the use of industries can be acquired. The said definition has been extended by adding Clause (7a) to Section 2 of the Act by Karnataka Act 11 of 1997, by a notification dated 18-8-1997. According to Section 2(7a) of the Act, "Industrial infrastructural facilities" means such facilities which contribute to the development of industries established in industrial area such as research and development, communication, transport, Banking, marketing, Technology parks and Townships for the purpose of establishing trade and tourism centres or any other purpose which the Government may specify by a notification. Under the circumstances, the scope of "Industrial Area" has been extended to industrial infrastructural facilities and other facilities as may be specified by a notification. The issuance of notification was within the competency of the Government. In compliance of the notification dated 10-12-2001 issued under Section 28(1) of the Act, the petitioner did not file his objections initially, but subsequently filed it and the same has been considered. In view of this, the acquisition proceedings cannot be vitiated merely on the ground that the specific public purpose was not mentioned and the argument that the land has been acquired for a public purpose other than the one mentioned in the notification, is not helpful in the facts of the given case. Ultimately, it is clear that as per Section 2(7a) of the Act, the "industrial infrastructural facilities and other facilities" are also for a public purpose. In other words, the argument is that the words "public purpose" to the extent of industrial infrastructural facility is missing and to our mind, it will not cause any prejudice to the appellant.

14. It is clear from the material on record that the petitioner had filed objections to the notification proposing acquisition of his land and filed W.P. No. 32251 of 2002 challenging the notifications under Sections 3(1) and 28(1) of the KIADB Act impleading Vikas Telecom Limited as respondent No. 9 and this Court by order dated 30-10-2002 held that the said writ petition was premature and permitted the petitioner to file additional objections and pursuant to such liberty, the petitioner has filed additional objections and written submission on 4-12-2002 and the same were considered in detail and rejected by the Land Acquisition Officer by order dated 31-12-2002 and therefore it cannot be said

that the notification was vague and prejudice was caused. Under the circumstances, there is also no merit in the contention of the learned Counsel for the petitioner that the entire proceeding has been initiated at the instance of Vikas Telecom Limited, as it had to overcome the provisions of the Land Reforms Act.

15. The material on record clearly shows that action under the Land Reforms Act was initiated subsequent to acquisition proceeding and action under the Land Reforms Act was dropped in favour of the petitioner and there is no specific allegation of mala fides and oblique motive against the authority or its officials. Mere alleging fraud is not sufficient in the absence of pleadings and proving the same by substantial material. The material on record also shows that there is no fraud or colourable exercise of power.

16. In the instant case as the facts reveal, for serving larger public interest to achieve industrial growth, notice has been issued for a public purpose. The acquisition has started on the recommendation of High Level Committee and acquisition would vest the land in favour of KIADB only and lease-cum-sale would be executed in favour of Vikas Telecom Limited and only after conditions are fulfilled, further conveyance would be executed and this has been done only to have effective control over industrial area and infrastructural facilities provided and the petitioner has miserably failed to prove fraud or colourable exercise of power. Therefore, the argument of fraud and colourable exercise is not accepted. The fact remains that the land has been acquired for a public purpose and the scope of public purpose was extended as per Section 2(7-a) and the Government after considering objections was satisfied that the acquisition is for a public purpose. Therefore, the same cannot be said to be vitiated on this ground. It is seen that Section 4(1-A) of the Land Acquisition Act is equal to Section 28(2) of the Act, which is not in dispute."

In view of the aforesaid reasons Point No. (iv) has to be answered in the "affirmative" holding that the impugned notifications were issued for the public purpose.

47. Admittedly in the present case, the awards came to be passed on 25.4.2015 and 16.5.2015 as contended by the learned Advocate General on instructions, is not disputed by the petitioners nor they have challenged the awards passed in respect of the lands in question. Therefore, the writ petitions filed by the petitioners are not maintainable.

48. Admittedly in the present case, the lands acquired is an extent of 5,899 acres for the Upper Tunga Project under various notifications from time to time in respect of large extent spread over to three districts and challenge is made only in respect of four villages of Haveri District to an extent of only 37 acres 21 guntas and 80% of the work has already been completed. Therefore, the public interest prevails over the private interest in view of the dictum of the Hon'ble Supreme Court in the case of M/s. Girias Investment Pvt. Ltd. v. State of

Karnataka, reported in (2008) 7 SCC 53 at para 27, which is held as under:

"27. The aforesaid paragraphs clearly reveal that the request for a personal hearing was conditional in that if a clarification or additional documents were required, time for that purpose be given. It is also significant that the objections filed by the appellants form (almost exclusively) the basis for the present writ petition inasmuch as the fact that there was no need for the change of the alignment of the trumpet interchange and the access road or that alternative land was available for that purpose, had been spelt out therein. The Collector in dealing with the objections had observed that several objections/documents had been filed by the appellants but were liable to rejection as the acquisition was necessary for the Bangalore Airport. We are also not unmindful of the fact that though the rights of an individual whose property is sought to be acquired must be scrupulously respected, an acquisition for the benefit of the public at large is not to be lightly quashed and extraordinary reasons must exist for doing so. This is the ratio of the judgment of this Court in *Ramniklal N.Bhutta v. State of Maharashtra* (1997) 1 SCC 134, wherein it has been held as under:

"10. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the person interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

Hence the petitioners are not entitled to any relief before this Court under Articles 226 and 227 of the Constitution of India. Hence, I pass the following

ORDER

- (i) All the writ petitions filed by the petitioners are dismissed.
- (ii) The impugned acquisition notifications issued by the respondents are upheld.

(iii) The respondents-State Government is directed to take steps immediately to pay the compensation to all the petitioners in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, immediately without driving the petitioners/farmers to any further litigation for payment of compensation and other benefits as contemplated under the Act.

(iv) The petitioners are at liberty to approach the appropriate authorities for higher compensation and other consequential benefits as contemplated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

No order as to costs.