

(2005) 03 DEL CK 0188

In the Delhi High Court

Case No : Writ Petition (C) No. 424 of 1987

Smt. Chatro Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 120 DLT 9

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : P.N. Lekhi, Subhash Mittal, S. Vaidyalingam and Arvind Minocha, for the Appellant; Geeta Luthra, Sujata Kashyap, Jhumjhum Sarkar, Sanjiv Sahay and Amit Sharma, for the Respondent

Judgement

Swatanter Kumar, J.—This bunch of writ petitions clearly demonstrate the unfair results of, delay in administrative actions as well as inordinate delay in dispensation of justice/Proper administration of justice imposes an obligation upon the Courts to expeditiously deal with the cases so that a party to a lis entitled to the relief in accordance with law, should be able to enjoy the fruits of favorable order or decree, may it be a private party or the State. Administration of justice requires all the organs of the State including judiciary to ensure speedy justice, as long delays can more than often lead to divergent views and thus create multiplicity of litigation. The principle of consistency and judicial discipline can be effectively adhered to, provided there is proper Court management by the Registry, the parties to the lis take such administrative measures and extend full cooperation to the Court by giving complete list of cases based on similar facts, where common question of law and fact arise for consideration, from the same notifications. Non-cooperation by the petitioners and the careless attitude of the State has primarily led to state of affairs as are exhibited by these cases where notification by the Delhi Administration were issued in the year 1980 and some of the writ petitions await their final disposal even as of today. During this interregnum period various judgments in the connected cases or somewhat similar cases have been pronounced, which to some extent, took divergent views

and rendering the determination of the matters in issue in the present writ petition more complex. In this background, it is necessary for us not only to refer the facts giving rise to the present petition but the judicial pronouncements by the Supreme Court and this Court, in matters arising from the same notifications and in regard to the same villages.

2. By this judgment, I would dispose of above referred 81 writ petitions as they arise from the same notification and the facts and grounds pleaded in the writ petitions are similar. However, for the purpose of brevity, I would be referring to the facts and grounds taken in the cases of Smt. Chatro Devi v. Union of India and Ors. CW 424/1987 and Rati Ram v. Union of India and Ors. CW No. 1941/1985, as with the consent of parties appearing in all these petitions, they were taken as lead cases.

3. Smt. Chatro Devi, claimed to be owner of land measuring 0 bigha 4 bids was out of Khasra No. 1676/1, 0 bigha 12 bids was out of Khasra No. 1676/2, 0 bigha 12 biswa out of Khasra No. 1676/3, Obigha 4 bids was out of Khasra No. 1676/4, Obigha 12 bids was out of Khasra Nos. 1676/5, 0 bigha 12 bids was out of Khasra No. 1676/ 6, 4 bigha 7 bids was out of Khasra No. 1669 min, 4 bigha 16 bids was out of Khasra No. 1670, 4 bigha 16 bids was out of Khasra No. 1671, 4 bigha 16 bids was out of Khasra No. 1677, 4 bigha 16 bids was out of Khasra No. 1678 and 1 bigha 3 bids was out of Khasra No. 1679 total measuring 27 bigha 10 bids was in the revenue estate of Village Chattarpur, Tehsil Mehrauli, New Delhi. According to the petitioner, it was an agricultural land and she had been in actual physical cultivatory possession of the same for the last more than 25 years even till the filing of the petition in the year 1987. The Land & Building Department of Delhi Administration issued a notification u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act") bearing No. F.9(16)/80-L&B dated 25th November, 1980 stating that the entire land in the revenue estate of Villages Chattarpur, Satbari, Maidangarhi, Shayoorpur and Rajpur Khurd was intended to be acquired by the Government at public expense and for a public purpose namely "Planned Development of Delhi". The lands which were excluded from the acquisition were specifically mentioned in the notification itself. There is no averment, in this petition whether the petitioner filed an objection before the Collector in terms of Section 5A of the Act. A declaration u/s 6 of the Act was published by the respondents on 7th June, 1985 being No. F.9(26)/85-L&B making a reference to the previous notification dated 25th November, 1980 and acquiring 7142.80 acres of land in Village Chattarpur, details of which were duly mentioned in the said notification. According to the petitioners, they were not aware about the publication of the said declaration and came to know of the said declaration as well as the acquisition of their lands when they received notices u/s 9(1) of the Act directing them to appear either personally or through Counsel to file claims/recording measurement/title of the land and for compliance of the proceedings u/s 10(1) of the Act. These notices are stated to have been received by the petitioners somewhere in the year 1987 and where after the present petitioner filed this writ petition in February, 1987 itself. On 17th February, 1987,

Division Bench of this Court passed the following orders in that writ petition:

"Present: Mr. D.K. Goel for the petitioner.

CW No. 424/87

Rule.

CM No. 709/87

Notice to the respondents for 26th March, 1987. Dispossession of the petitioner is stayed in the meanwhile.

Sd/- Yogeshwar Dayal, J. February 17, 1987. Sd/- Mahinder Narain, J.

4. In this writ petition, the petitioner challenges both the notifications issued by the respondents under Sections 4 as well as 6 dated 25th May, 1980 and 7th June, 1985 respectively and also prays that the respondents should be restrained from taking any proceedings in furtherance to the notices issued under Sections 9 and 10 of the Act. The grounds of challenge primarily are that the declaration u/s 6 has been issued beyond the period of three years from the date of notification u/s 4 and as such the notification has lapsed and the declaration u/s 6 having been published beyond the prescribed period, is inconsequential, and does not affect the right of the petitioner. Further it is the contention that no report as contemplated u/s 5A of the Act has been submitted to the authorities concerned, thus, the very issuance of the declaration u/s 6 is invalid. In the writ petition, petitioner also raised a plea that the declaration u/s 6 has been issued arbitrarily and without considering the relevant provisions of law. No other ground has been pleaded in this writ petition and even number of other connected writ petitions like the present petition.

5. In the case of Rati Ram (CWP 1941/85) -- petitioner, Rati Ram along with Raj Birbal had approached the Court under Article 226 of the Constitution of India praying only for quashing of the notification dated 6th June, 1985 issued u/s 6 of the Act as above noted and had further prayed that the respondents should be restrained from taking any further action in furtherance to the notification issued u/s 4 dated 25.11.80 in regard to the lands belonging to the petitioners. Their case is that they are owners of the land measuring about 24 bighas and 12 bids was situated in the revenue estate of Village Deoli, Tehsil Mehrauli, New Delhi. They claimed to be in cultivatory possession as owners of the land which is agricultural land for considerable period, vide notification dated 5th November, 1980 issued u/s 4 of the Land Acquisition Act, the village of the petitioners was one of the villages of which the entire land in the revenue estate of that village was sought to be acquired. It has been vaguely averred in this petition that petitioners had filed objections, but no details thereof have been stated in the petition. According to these petitioners, notification u/s 4 of the Land Acquisition Act had been challenged in various writ petitions before this Court where interim stay was granted. Interim orders were also granted in favor of the petitioners in CW 426/81, Munni Lal, Etc. v. Lt. Governor and Ors. which was finally disposed

of and the writ petitions were dismissed, thus the validity of notification u/s 4 was upheld by the Court. It is averred by these petitioners that they have not filed any such petition challenging the notification dated 5.11.80. The respondents began to issue notices u/s 5A of the Act intimating the date of hearing on receipt of which various writ petitions were again filed challenging the notification u/s 4. These proceedings were being taken despite the fact that the period of three years for issuance of declaration u/s 6 had already lapsed. This is specifically pleaded in this writ petition and some of the connected writ petitions that again certain persons had filed writ petitions challenging the notification issued by the respondents u/s 4 of the Act. Before issuance of declaration u/s 6, some writ petitions were filed again by some of the petitioners, but one of such petitions being CW 199/84 titled Pt. Jai Ram Singh v. Union of India, which was dismissed by a Division Bench of this Court on 5th March, 1985 holding that the petitions were premature. The order reads as under:

The next point that learned Counsel for the petitioner urged was that stay order in Muni Lal's case and other similar cases cannot operate in rem and must be regarded as operating only in personam. Therefore, there was nothing to prevent the appropriate Government from proceeding with the acquisition within three years of the land of the petitioner. We are not required, at this stage, to answer whether the stay orders in various cases operated in personam or in rem. That question may be relevant in an individual case and where if the declaration u/s 6 is made or the petitioner is sought to be deprived of the possession of his land. The answer to this query will depend upon diverse circumstances. We have no material at the moment before us to adjudge this question in the abstract.

The result is that we find that the petition is premature and the petitioner cannot be allowed to stultify Administrative Action in fear of something which may or may not be done.

6. As already noticed, on 6th June, 1985 a declaration u/s 6 was published in continuation to the notification issued u/s 4 of the Act. The petitioners question the validity of this notification in this writ petition, primarily on the ground that the declaration had been made after the expiry of three years from the date of notification issued u/s 4 of the Act. The main emphasis of the petitioners was that the misunderstanding of any law or facts by the respondents cannot be treated as a valid Explanation for excluding the period under the provisions of Section 6, and the declaration u/s 6 is liable to be quashed. Resultantly, or even otherwise the notification u/s 4 of the Act would automatically lapse.

7. I may notice here that no counter-affidavit was filed by the Government in any of these writ petitions for all these years, vide our orders dated 6th January, 2005, we had granted last opportunity to the respondents to file counter-affidavit before the next date of hearing. A short counter affidavit dated 12th January, 2005 was filed on behalf of the respondents and thereafter another additional affidavit was filed in regard to non-availability of records which we had allowed to be taken on record.

8. The stand of the respondents which has been taken in these affidavits is that the notification dated 25.11.80 was issued for acquisition of 50,000 bighas of land in various revenue estates of different villages. The lands were acquired for public purpose, namely, "Planned Development of Delhi". The notification issued u/s 4 was upheld by the Court in the case of Munni Lal and Ors. v. Lt. Governor of Delhi, 2nd 1984 (1) 289 vide judgment dated 15th November, 1983. The declaration u/s 6 of the Act could not be issued within a period of three years as the Department treated the stay order granted by the Court in relation to the same acquisition in some of the cases, as an order of stay in rem and there was a bona fide delay in issuing the said declaration u/s 6 of the Act. This was accepted by a Full Bench of this Court in the case of Balak Ram Gupta Vs. Union of India (UOI), which was also upheld by the Supreme Court in the case of Abhey Ram (dead) by LRs. and others Vs. Union of India and others, . It is conceded that a Division Bench of this Court in another case titled as Balak Ram Gupta v. Union of India, CW 1639/1985 reported as 38 (1999) DLT 243 had quashed the notification u/s 4 to the extent of the petitioners in that case and the present writ petitions were an abuse of the process of law as in the meanwhile vide award No. 15/87-88, the Collector had even awarded the compensation to the owners and possession had been taken, free from all encumbrances in terms of Section 15 of the Act. According to the respondents, objections were filed in relation to different villages and duly considered by the competent authorities and the report u/s 5A of the Act was filed, which was considered before issuance of a declaration u/s 6 of the Act and in accordance with law.

9. Chatro Devi is stated to have received a notice and in fact appeared through her husband before the Collector on 19.2.81 and even on subsequent date, but on the adjourned dated i.e. 12th March, 1981, she did not appear. However, her objections were considered and report prepared in accordance with the prescribed procedure. The respondents also contend that the judgment of the Division Bench in Balak Ram Gupta's case (supra) was not accepted to be a good law by the Supreme Court in Abhey Ram's case as well as in Anil Hada Vs. Indian Acrylic Limited, . The respondents also stated that in Gurdeep Singh's case, petitioners therein had filed a review petition taking up all the pleas which was dismissed by the Supreme Court with the same title and reported as Delhi Administration Vs. Gurdip Singh Uban and Others, . In the additional affidavit, it has been specifically stated that objections u/s 5A were received and after hearing the objectors, the Land Acquisition Collector made his report as provided u/s 5A, Sub-Clause (ii) of the Act and the Lt. Governor after perusing the report of the Land Acquisition Collector and satisfying himself from the record, accorded approval to the declaration u/s 6 of the Act. During the hearing of Balak Ram Gupta's case, it is stated that Court had called for all the records and the same were produced. Along with this affidavit, respondents have filed report of the Land Acquisition Collector in relation to Villages Deoli, Khanpur, Satbari, Naib Sarai, Tughlakabad, Rajpur Khurd, Khirki, Said-ul-Ajaib. It is also stated that a report u/s 5A in relation to Chattarpur was filed in the case of Balak Ram Gupta,

a copy whereof was produced before the Court during the course of hearing. According to the respondents thus there is no occasion for the petitioners to challenge the validity of acquisition, acquisition proceedings and issuance of declaration u/s 6 of the Act on any ground whatsoever, and they pray for dismissal of the writ petitions.

10. Before I proceed to examine various aspect of these writ petitions in light of the pleadings and submissions of the parties as afore-referred, it will be helpful to clarify certain ancillary issues arising in the present writ petitions. No doubt that petitioners have not taken many of the grounds in the writ petitions which were urged before the Court during the course of hearing. The thrust of the writ petitions is mainly on the setting aside of the declaration u/s 6 of the Act on the ground that it was published beyond the prescribed period of three years. Despite the fact that there is no specific pleading in the writ petition, the petitioners also contended the grounds of non-consideration, improper consideration and violation of natural justice in relation to the conduct of inquiry and their objections u/s 5A of the Act. The acquisition proceedings relate to the year 1980 and were pending before the Court. Thus, it was felt during the course of hearing, that petitioners may be granted liberty to address the arguments, but without prejudice to the objections of the respondents, that no such pleadings has been raised in the writ petition. The records were produced before the Court.

11. There are two notifications issued on 25th November, 1980 by the Administration. One notification No. F.9(16)/80-L&B relate to five villages as referred above while the other notification No. F.9(26)/85-L&B was issued in regard to entire land in the revenue estate of Villages Tughlakhabad, Tigri, Deoli, Khanpur, Said-ul-Ajaib, Neb Sarai, Hauz Rani and Khirkee. The petitioners in the writ petitions before the Court have lands in these villages in some of the writ petitions. The petitioners have not challenged the validity, correctness or otherwise of the notification issued u/s 4 of the Act and have only challenged the declaration issued by the State u/s 6 of the Act, that too on the limited grounds afore-referred. While in other writ petitions, petitioners have challenged both the notifications issued under Sections 4 and 6 of the Act, though again on limited grounds and no reference has been made to the proceedings taken by the respondents for compliance of provisions of Section 5A of the Act. I may also notice here that in some of the writ petitions, there is no averment that the petitioners had filed objections u/s 5A while in some of the other writ petitions there is an averment to the effect that objections u/s 5A were filed, but no particulars thereof have been given. The respondents even admit in their counter-affidavit and the records produced before the Court that objections were received from some owners of the land in various villages and reports u/s 5A of the Act had been submitted to the Competent Authority for consideration and orders. It also cannot be disputed and bare perusal of the objections as well as report u/s 5A of the Act shows that the objections raised by various persons including some of the petitioners are of general nature. They relate to challenge to notification u/s 4 on the ground that Planned Development of Delhi is no public purpose, it is

not contemplated outside the urban limit and there is no plan for development of Delhi. The public notice of the notifications in question was not duly publicised at the convenient places and the acquisition would amount to forfeiture of livelihood of the claimants as they are primarily agriculturists. In some of the objections, reference was also made to the provisions of the Delhi Development Act.

12. Another aspect of the case which require clarification is that in the affidavit filed by the respondents, it has been stated that possession has been taken free of all encumbrances and in compliance to the provisions of Section 16 of the Act. During the course of hearing, Counsel appearing for the petitioners argued that respondents have not taken possession and in fact in the case of petitioners, the interim stay was granted and in some of the cases even after possession was taken by the respondents, the same had been restored back to the owners. These facts were controverted and certain reports Kabza Karbai were produced before the Court to show that in some parcels of land, the State has taken possession and even handed over the same to the DDA. It was then not disputed that in some parcels of the land, no possession had been taken because of stay orders or the notification u/s 4 had been quashed and the Department did not prefer, appeals. The obvious consequences of the above submissions would be that in some parcels of land, the possession has been taken and handed over to the DDA while in others where there are stay orders or even the acquisition proceedings have been quashed, the possession might not have been taken, but to say that the Government has not taken possession of the entire acquired land, again would not be correct. This fact has to be taken as partially correct. This I am recording on the basis of the records produced and affidavits filed before the Court by the parties. The petitioners have also filed statement showing the abstract of "survey of villages" of GNCT of Delhi. Even in this statement, it has been reflected that possession of some of the lands in different villages varying from "Nil" to 2692.16 acres, has been handed over to the DDA. This is the alleged status of land shown as on 31st August, 2000 where after according to the respondents in different Kabza Karbai, possession has been taken and even handed over to DDA.

(A) What is the affect of contentions raised by the parties on the validity of the notifications dated 25th November, 1980 issued u/s 4 of the Act:

13. I have already noticed that in some of the petitions, petitioners have not even challenged validity, legality or otherwise of these notifications. Thus, those petitioners are estopped from challenging the notification u/s 4 of the Act on any ground, whatsoever. The writ petitions relate to different villages and in some of them if the notification is to be upheld, that by itself to some extent would be a relevant factor to be taken into consideration by the Courts for deciding the same ground in other writ petitions. In the writ petitions wherever there is a challenge to the notification u/s 4 of the Act, it is primarily on two grounds i.e. firstly the Planned Development of Delhi is not a public purpose and secondly there is no plan in existence which could objectively satisfy the reasons for acquiring the

land. Both these grounds are of general nature and would be applicable to the cases in hand uniformly. This very notification dated 25th November, 1980 was subject matter of writ petition before this Court in the case of Munni Lal (supra). The Division Bench, after a detailed discussion and reference to various provisions of the Act as well as the concept of "Planned Development of Delhi", dismissed the writ petitions vide its judgment dated 15th November, 1983. It will be useful to refer to the relevant extracts of the said judgment rather than proceed to reappreciate the contentions raised by the petitioner in that behalf, which read as under:

"11. In the present case the public purpose indicated in the notification u/s 4 is Planned Development of Delhi. The questions as to whether Planned Development of Delhi can be regarded as a public purpose or whether land can be acquired for Planned Development of Delhi only in the manner as envisaged by the Master Plan, which was drawn up in 1962, are as far as this Court is concerned, no longer rest Integra. These questions arose for consideration before a Division Bench of this Court in the case of P.S. Gill and Ors. v. Union of India and Ors., (1979) I Del 601 (1). In that case land was sought to be acquired, which was situated in the Cantonment area, for the public purpose, namely, Planned Development of Delhi. Notifications were issued u/s 4 and also u/s 6 of the Act. As in the present case, reference was made to a number of decisions of the Supreme Court, especially to the cases of Arnold Rodricks and Another Vs. State of Maharashtra and Others, , Munshi Singh and Others Vs. Union of India (UOI), . Aflatoon and Others Vs. Lt. Governor of Delhi and Others, it was observed by this Court as follows--

"As we shall discuss later in relation to another contention of the petitioners, the concept of planned development of Delhi is of a much wider amplitude and deeper content plan mere realignment of roads, restriction on construction and provision of civil amenities. Metropolitan cities all over the world had grown so rapidly and enormously beyond their original boundaries as to call for large scale planning of not only the cities proper but of contiguous areas as well as their proper development. Planning bodies have been charged with the task of planning layouts for suburban areas in accordance with modern standards. Such a gargantuan task of development needs a paten-statutory sanction or its implementation and the 1957 Act, the provisions of which we shall discuss later in detail, is the instrument by means of which the ideal of a mere beautiful and well planned greater Delhi is to be translated into reality. It contemplates wholesale acquisition and distribution of land, with or without development, in such manner as to ensure the desired objectives."

At page 658 of the report this Court had the occasion to deal with the question as to whether a notification would be valid even if the Master Plan did not actually cover the Cantonment area, the land in which area was the subject matter of the acquisition in that case. This Court dealt with this question in the following words--

"But we think that the purpose of acquisition would be a public purpose, even if we assume that the plans did not actually cover the Cantt. Area but left plans for the development of this area to be drawn up in future. In considering this aspect, the crucial point for determination is the meaning that should be assigned to the words planned development of Delhi used in the notifications. This expression ordinarily connotes the development of Delhi according to plan. It does not necessarily mean development in accordance with a plan already in existence but also takes in development in accordance with a plan that may be drawn up. It is a very wide expression. The public purpose to be achieved is that certain areas in Delhi are likely to grow rapidly in an unsystematic manner resulting in several problems and that this can be prevented only by the Government acquiring those lands developing them, or getting them developed and then reorganizing and redistributing them in a systematic and organized manner. There is no justification to restrict this comprehensive purpose by confining it to the four corners of the plans actually drawn up. It only requires that the proposed development should not be haphazard or unsystematic but should be according to plan. It seems to us that the attempt to restrict the content of the wide concept of planned development merely because actual blue-prints of I.G.P. and M.P. are available and to construe the words planned development of Delhi as referable to development within the four corners of these plans would not be correct. We do not think that the concept of public purpose requires that, even at the stage when the lands are proposed to be acquired, there should be ready a complete comprehensive or detailed scheme or plan as to the manner in which they are proposed to be put. In Redricks case (AIR 1966 SC 1788) it was held that the existence of a scheme or plan at the stage of proposed acquisition is not necessary. At the same time, it should not be entirely something in the air, not even conceived of in the mind of the Government. What is necessary is that there should be an indication of the broad lines of development for which it will be acquired and that is there in this case."

The aforesaid observations clearly bring out that at the stage when land is proposed to be acquired there need not be any detailed or comprehensive scheme or plan which should be drawn up. In other words, if there is a decision that a particular area is to be acquired for the purposes of development, utilisation and disposal then that would be sufficient for acquiring the land for Planned Development of Delhi."

"22. It is not for this Court to go into the question as to whether the facts which existed were sufficient to enable the Lt. Governor to form an opinion that land should be acquired or not. As long as some material exists on the basis of which such opinion can be formed and the material is relevant and has a nexus with the object sought to be achieved then the said opinion, which in its very nature has to be subjective, cannot be challenged on the ground of insufficiency of material or facts.

23. It was then contended that the petitioners did not have sufficient information

on the basis of which an effective representation or objections u/s 5A could be filed. It was urged that it was not made known to the public at the time when the impugned notifications u/s 4 were issued that there was going to be an amendment of the Master Plan. It was also not made known as to how the land which was proposed to be acquired would be used. The submission was that, in the absence of such particulars being made known, no effective representation or objections u/s 5A could be filed. We are unable to agree with this submission. The expression "Planned Development of Delhi" is not a vague or an indefinite term. With the passage of time, and in view of the various decisions of this Court, it is clear to every one in Delhi that acquisition for "Planned Development of Delhi" means that the land which is proposed to be acquired will be developed and then utilised or disposed of by the D.D. A. In Munshi Singh's case (supra) there was no plan in existence at the time when the notification u/s 4 was issued. Moreover, at that time the concept of "Planned Development", as it now exists in Delhi, was not known. The expression "Planned Development of Delhi" was first used when, prior to the coming into force of the Master Plan, large areas were notified for acquisition u/s 4 of the Act in November, 1959. When the Master Plan came into existence, the land use in the Union Territory of Delhi was indicated. Under the provisions of the Land Acquisition Act only these areas were acquired for "Planned Development of Delhi" which fall within the urbanizable limits of Delhi. The areas which were shown as reserved for green belt and agricultural rural areas, though covered by the Master Plan, were not touched or affected. In a period of 20 years from 1961 to 1981 it has become clear that "Planned Development of Delhi" means development of Delhi according to a plan, and simultaneously preventing construction and other activities taking place in an unplanned and haphazard manner. The public purpose for which the land is to be acquired is, Therefore, development of land. It is not important as to what use the land will be put after it has been developed. In a metropolitan city like Delhi land is put to different uses. What is important is that land is put to use after it has been systematically developed."

"26. It is evident from the aforesaid newspaper reports that the public was certainly made aware about the proposed second Master Plan which was being prepared and also the reasons as to why the notifications u/s 4 had been issued. This was the additional material which was available to the petitioners with regard to which they could file objections u/s 5A of the Act."

The idea of exempting lands in regard to which building plans have been sanctioned by the Municipal Corporation of Delhi appears to be that such areas cannot be regarded as unplanned areas and, Therefore, it will not be necessary to acquire that land. Even if these lands have been exempted from the operation of Section 4 notification at this stage but if, at a later stage, the Government feels that the exemption to such pockets is not conducive to the Planned Development of an area then there is nothing to prevent the authorities from acquiring the said land at a later date.

14. It is commonly conceded before the Court that judgment in Munni Lal's case (supra) had already attained finality even before filing of the present writ petitions. The correctness of the said judgments was not questioned before the Court and in fact the parties to that judgment have already acted thereupon and Government took further steps in terms of that notification. Once the judgment had attained finality and relates to same subject matter, it will only be proper for this Bench to follow the said principle and the reasoning particularly when it has already been referred and approved in some of the other judgments in relation to the connected matters. I do not find any need to discuss the two submissions raised on behalf of the petitioner in any greater detail as they have already been considered in some elucidation and rejected as back as in the year 1983. Thus, I have no hesitation in rejecting the contentions of the petitioners and stating as a matter of fact and law that the notification u/s 4 does not suffer from any infirmity and in fact has already attained finality as a result of judicial pronouncement.

(B) Whether the declaration issued by the respondents u/s 6 of the Act is invalid and honest in law:

15. There is no dispute to the fact that the declaration u/s 6 has been published/ issued by the respondents after the expiry of a period of three years from the date of notification u/s 4 of the Act. The notification u/s 4 was issued on 25th November, 1980 while the declaration u/s 6 has been published on 7th June, 1985. Apparently, the act of the respondent offends the provisions of Section 6 of the Act. The only question that requires consideration by the Court is whether the Explanation given by the State would fall squarely within the purview and scope of Explanation to Section 6 and resultantly some period would be liable to be excluded from this period. The stand taken before the Court is identical to what had been taken by the State in Balak Ram's case (supra) before the Full Bench. There were admittedly stay orders granted in different cases relating to all these villages from dispossessing the petitioners from the acquired land. The notifications u/s 4 as well as u/s 6 of the Act had been subjudice before the Courts in large number of cases. Few of them had been decided in favor of the petitioners while most of them were decided against the petitioners in those writ petitions. As far as the Explanation of the Government for exclusion of the period is concerned, it is again not necessary for the Court to discuss the respective pleas in any greater detail, as they have been squarely answered by the Full Bench of the Court in the case of Balak Ram Gupta's case (supra) where the Court held as under:

The second limb of the argument is, in our view, unacceptable. The observations in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, relied on by learned Counsel are actually to the effect that ".....a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express

words or necessary implication. In our opinion, reading together the words used in the proviso and the Explanation, the conclusion is inescapable that the exclusion envisaged in the Explanation is available in respect of all notifications issued between 29.1.1967 and 24.9.1984. We have given elaborately our reasons for coming to this conclusion and, hence, we overrule this contention urged on behalf of the petitioners."

16. In regard to the third step in the argument, the cases cited by Counsel do not help them. The cardinal principle of these decisions is only that, in construing a statute, particularly an amending one, Courts should prefer that interpretation of it which would further the object and policy of the amendments and remove or mitigate what the legislature presumably regarded as a mischief which ought to be remedied. If a statute is intended to confer benefit on any class of persons, clearly a beneficial interpretation would subserve its object. But here, as we have pointed out earlier, the Amendment Act had a twin object in view. One was no doubt beneficial to land owners, viz., to curtail the period for a Section 6 declaration in future from 3 years to one year. But there was another object which was equally important, viz., to remove certain hurdles faced by the State viz. Inability to issue a Section 6 declaration because of stay orders.

18. We do not think much help can be derived from the provisions referred to in the present context. Sections 30(2) and 30(3) are transitional provisions, resulting from a situation created by the fact that an Amendment Bill of 1982 had to be withdrawn and a fresh Bill introduced in 1984. These transitional provisions have been considered by the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, but it is stated at the Bar that the issues have been referred to a larger Bench. We may only point out that Section 11A carves out a new period of limitation and, in respect of declarations made before 1984, it starts running only from 25.9.1984. The retrospective effect of the Explanation is thus very limited. Section 23(1A) creates a right in an owner of land to receive interest on the market value of land from the date of the Section 4 notification to the date of award or date of taking possession whichever is earlier and there can be nothing unjust, in principle, if the Explanation seeks to avoid payment of interest by Government for periods of delay for which it is not responsible. We do not, however, think that it will be relevant or useful to discuss the scope and effect of those other provisions here. We would only like to repeat that the setting and language of the proviso and Explanation to Section 6(1) are totally different and lend themselves only to one possible interpretation.

19. We now come to a consideration of the real difficulty in the case which is in regard to the interpretation of the words, "the period during which any action or proceeding to be taken in pursuance of the notification u/s 4, Sub-section (1), is stayed by an order of Court." The respondents' contention is that they were not able to take any action or proceeding in pursuance of the notifications u/s 4 dated 5.11.1980 and 25.11.1980 because such action or proceedings were

stayed by certain orders passed by this Court. The answer of the petitioners is that no such stay orders were passed in any writ petition filed by any of the petitioners. It appears that there are some writ petitions pending in this Court where a challenge to the Section 6 declarations has been put up by the very petitioners who had asked for and obtained stay of further proceedings in writ petitions challenging the Section 4 notification but those writ petitions, it seems, are not listed before us. The petitioners here urge that, whatever may be the position in the case of such petitioners, none of the present petitioners can be prejudicially affected by any stay order that may have been passed in suits or petitions to which they were not parties."

"27.In other words, in many of the present day notifications, the acquisition scheme is an integral one and the stay or quashing of any part thereof is a stay or quashing of the whole. This aspect should not be lost sight of."

31. We have, Therefore, to give full effect to the language of the section and the stay orders in question, in the above context and background. The use of the word any in the Explanation considerably amplifies its scope and shows clearly that the Explanation can be invoked in any case if some action or proceeding is stayed. It may be a complete stay of the operation of the entire notification or may even be a partial stay -- partial in degree or in regard to persons or lands in respect of whom it will operate. The words used in the Explanation are of the widest amplitude and there is no justification whatever to confine its terms and operation only to the cases in which the stay order is actually obtained."

"39. We have, for the reasons stated above, come to the conclusion that the period during which stay orders were in force should be excluded in computing the validity of the declaration u/s 6. So far as the notification dated 25.11.1980 is concerned, we find that the latest of the Section 6 declarations was on 26.2.1986. The stay order (in C.M.P. 668/1981) was in operation from 18.2.1981 to 15.11.1983 i.e. for a period of 2 years, 7 months and 27 days. They are Therefore in time having been issued within three years plus 2 years 3 months, i.e., 5 years 3 months of the Section 4 notification. So far as the notification dated 5.11.1980 is concerned, we find that the latest of the Section 6 declaration was issued on 7.6.1985, i.e., 4 years 7 months after the Section 4 notification. They stay order (in CMP No. 4226/ 81) was operative from 30.9.1981 to 15.11.1983, i.e., for 2 years and 1 1/2 months. If this period is excluded the declaration is within time. We answer the principal issue debated before us accordingly."

16. The conclusion of the Full Bench would help in dealing with the contentions raised by the petitioners in regard to this aspect of the case.

17. Various contentions raised on behalf of the petitioners now, in fact and in substance, are only repetitive of what was addressed before the Full Bench. Therefore, they must meet the same fate in terms of the judgment of the Full

Bench. Explanation rendered before the Court by the respondents is identical to what was offered before the Full Bench and thus the same cannot be distinguished even on facts. The judgment of the Full Bench of this Court has been upheld by the Supreme Court in the case of Abhey Ram (*supra*) and in any case the Full Bench is binding on this Bench and with respect 1 follow the view taken therein and reject the contention raised on behalf of the petitioners that the period during which stays were in operation cannot be excluded from the total afore referred period in terms of the Explanation to Section 6. I may hasten to add here that most of these writ petitions were filed in the year 1985, and from 1985 to 1997, the interim orders were in force even in these writ petitions and have continued till date. In other words, there has been interim orders passed by the Courts right from the case of Munni Lal (*supra*) filed in the year 1981, thereafter in other writ petitions, which were filed during the year 1984 where again interim orders were granted and then the present bunch of writ petitions where interim orders are in force. The similar Explanation offered by the respondents having been already accepted by the Full Bench, it will neither be just nor proper for this Court to reject the same. The period during which different stay orders passed by the Court were in force would have to be essentially excluded from the period of three years specified u/s 6 of the Act. As such the bona fide Explanation and view taken taken by the respondents does not appear to be suffering from any error or so as to deny the benefit of exclusion, as notifications involved in the present case were subject matter before the Full Bench as well.

(C) What is the effect of various judgments on the merits of the contention raised by the parties to this petition with particular reference to the consideration by the respondents and resultant fate of objections filed u/s 5A of the Act:

18. I have already noticed that most of the petitioners in the petitions before the Court claimed that they had not filed the objections u/s 5A before the Land Acquisition Collector. However, in some of the writ petitions there are no averments even to the effect that the petitioners had filed objections under these provisions. The respondents have produced the record to show that a number of petitioners had not filed objections u/s 5A of the Act as such the question of consideration begun, proper or otherwise of such objections does not arise. For example in the case of Village Deoli, there are 24 petitions, out of which in 20 petitions, petitioners have not filed objections; while petitioners in remaining four petitions have filed objections. In the case of Village Satbari, there are six petitions three had filed objections while three chose not to file objections. In the case of Tughlakabad, there are six writ petitions out of which five filed objections and one petitioner did not file objection. In Village Chattarpur, as per the reports filed by the authorities in pursuance to the decision of Section 5A of the Act, it was stated that more than 380 objections were received which were considered and report filed in accordance with law. Out of these cases, there are 20 petitions before this Court in relation to Chattarpur, out of which 12 had filed objections and petitioners in 8 petitions did not file objections. Compete records in regard to

Villages Tuglakabad and Maidangarhi were not available with the respondents, however, some records were produced showing contents of report u/s 5 by the Lt. Governor, during the course of hearing.

19. The cumulative effect of the above factual matrix is that some of the petitioners had filed objections u/s 5A of the Act while others had not even taken recourse to that remedy and thus waiving objections, if at all they had to the acquisition of the land in question. In terms of the judgment of the Supreme Court in the cases of *Abhey Ram v. Union of India* (supra) and *Delhi Administration v. Gurdeep Singh Uban and Ors.* (supra) the persons who had not filed objections u/s 5A of the Act could not be allowed to contend that Section 5A inquiry was bad or that Section 6 declaration is vitiated on that ground itself. Following the law enunciated in these judgments of the Supreme Court which squarely apply to the facts and circumstances of the case particularly where the petitioners did not file objections u/s 5A, the question of granting them any relief would not arise. The Court will not go into the merits of such contentions because the petitioners have obviously waived their rights before the Land Acquisition Collector as well as before this Court as no specific averments have even been made in the writ petition that they had filed objections and the right of hearing or consideration of their objections was denied by the competent authorities. They are estopped from challenging the issuance of the declaration u/s 6 as well as the process of the decision making by the respondents in arriving at that conclusion. Therefore, the writ petitions of the petitioners covered under this category are in any case liable to be dismissed. However, it was vehemently contended on behalf of the petitioners that the objections raised by various persons were of a general nature and thus the persons who did not file objections u/s 5A would still be entitled to the benefits which may accrue to the persons who had filed objections u/s 5A. In view of the judgment of the Supreme Court referred above, it may not be really necessary but still I will proceed to discuss the merit or otherwise of this contention. There is no doubt that the objections taken by the objectors in response to the notification issued u/s 4 of the Act were of a general nature. They related to the validity of public purpose, Planned Development of Delhi, not being a public purpose, there being no Master Plan in terms of which the development is to be carried out, other and better lands are available for carrying out activity and exemption of land on the grounds of non-sanctioned farm houses and constructed areas, and that it was a colourable exercise of power. The objections are really in that sense of the term are not personal to the owners and are general to the land owned by the owners. *Stricto sensu*, the objections are not individualistic in their character and that is why they have been dealt with collectively by authorities.

20. This act on the part of the competent authority is questioned on the ground that large number of objections were filed in all villages, with particular reference to Village Chattarpur where 380 objections were filed, that it was not possible to submit a common report and particularly without hearing the land owners. It is further the contention of the petitioners that non-filing of objections would be

immaterial as the objections are of general nature. The report submitted even in relation to Village Chattarpur has blanks i.e. in front of same Serial number nothing has been mentioned and in some cases there is duplication of the names in the list of the objectors. These blanks, vacant places and duplication of names has not been noticed by the Lt. Governor which shows the total non-application of mind and the proceedings are Therefore vitiated.

21. In order to substantiate this plea of non-application of mind, the learned Counsel appearing for the petitioner heavily relied upon the judgment of the Division Bench of this Court in the case of Balak Ram Gupta v. Union of India (supra) on the following decisions:

"The obvious reason for making the provisions mandatory is that valuable property of the objector is taken by Government without his consent and right of eminent domain conceded to the Government should not be arbitrarily exercised by Government. Mr. R.K. Anand admitted that on perusal of original files he did not find any notes maintained by the L.A.C. who heard the objectors which could have been looked into by the other L.A.C. who actually made the report. It is an admitted position that the L.A.Cs who actually made the report for the seven villages did not themselves give any hearing to the objectors. We have, Therefore, no alternative but to hold that the entire land acquisition proceedings in relation to the said seven villages are vitiated and notifications u/s 6 deserve to be quashed."

22. It is also contended that the objectors were heard by one Officer while the report has been submitted by another, as such the notifications in question are liable to be set aside.

23. I have perused all the reports placed on record by the respondents in compliance with the provisions of Section 5A of the Act. There is no doubt that the report in relation to Village Chattarpur contains certain blanks, and certain names have been repeated like at Serial number 36, Smt. Neeru Nanda has been shown and again at Serial number 355 her name has been shown. Serial number 363 is stated to be vacant. These mistakes or errors, whether intentional or otherwise, would not be of much significance, unless it shown what prejudice the objectors have suffered as a result of such errors. In the main report, it has been stated that 380 objections were received by interested persons and which is true in terms of the Serial number stated in the list with these duplications or the vacant names. In the report produced in Court, detailed objections by all these persons have been noticed and as many as 14 heads of objections, which at the face of it are general in nature, were prepared. Reference to the inclusion of constructed areas, religious places, action of the Government being arbitrary and there being no development plan, have been duly noticed in these objections. Even reference to the proceedings pending before the High Court in different writ petitions was made in this report. The Land Acquisition Collector then recommended acquisition of the land measuring 7142 bighas and 18 bids was for the public purpose. This report was discussed by the Lt. Governor in his note

dated 5.6.1985 and confirmed that the area of 7142 bighas and 18 bids was in the Revenue Estate of Village Chattarpur should be acquired by the Collector and directed issuance of appropriate directions. Similarly, reports of other villages have been placed on record showing consideration of objections filed by the objectors in those acquisition proceedings. The general objections raised in this regard were duly considered by the Land Acquisition Collector in his reports submitted to the Competent Authority, particularly with reference to the Village Chattarpur where largest number of objections were received. It was noticed in that report that afterwards many petitioners have also filed writ petitions on the same lines, the main contention of the petitioners were that there is no master plan for land in question. Besides this objection, the petitioners have also raised a bogie of objections mentioned at Serial Nos. 1 to 14 as stated above "..... The Hon"ble High Court dismissed all the petitions filed by the petitioner as the test at Flag "A"..... There is specific scheme for development for this area under Second Master Plan".

24. The above observations were recorded by the Collector after granting opportunities to the objectors of being heard and who had appeared before the Collector at different dates. Reports were put up to the Lt. Governor who in turn had directed acquisition of land in accordance with law.

There is no doubt that a valuable right is available to a land owner/objector u/s 5A of the Act. This right has to be dealt with in accordance with the prescribed procedure. Principles of natural justice is in-built element of such procedure. The violations of principles of natural justice should normally be coupled with element of prejudice. If no prejudice is caused, the Courts would be reluctant to set aside the action merely on the ground that it is vocative of procedure or practice particularly when provisions of sections are silent in that regard. In the present case, admittedly, objections were filed, objectors were called for hearing on different occasions, some of them appeared and some of them even did not appear. Even if they were heard by a different Officer who found no substance in the grounds taken by the Objector so as to make a favorable report u/s 5A of the Act, and subsequently, another Officer duly considered the entire record including large number of objections which were filed before the authorities during the acquisition proceedings and gave a detailed and reasoned report directly relatable to such records and documents produced. The petitioners even before this Court, has taken no specific grounds with definite pleadings showing that they have suffered any prejudice or violation of any established procedure as a result of the action of the respondents. Thus, the petitioners cannot take any advantage from the principle afore-indicated. Firstly, the judgment of the Division Bench in the case of Balak Ram Gupta (supra) was stated to be not laying down a correct law by the Supreme Court in the case of Abhey Ram (supra) and Delhi Administration v. Gurdeep Singh Uban and Ors. (supra). Furthermore, the Supreme Court in the case of Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another, while discussing the scope of administrative law in relation to adherence of principles of natural

justice held as under:

"On the issue of natural justice, we are satisfied that no prejudice has been caused to the appellant by any of the circumstances pointed out by the appellant. It is true that the order has been passed by an officer different from the one who heard the parties. However, the proceedings were not in the nature of formal judicial hearings. They were in the nature of meetings and full minutes were recorded of all the points discussed at each meeting. It has not been brought to our notice that any salient point urged by the petitioners has been missed. On the contrary, the order itself summarises and deals with all the important objections of the petitioners. This circumstance has not, Therefore, caused any prejudice to the petitioners. The delay in the passing of the order also does not, in the above circumstances, vitiate the order in the absence of any suggestion that there has been a change of circumstances in the interregnum brought to the notice of the authorities or that the authority passing the order has forgotten to deal with any particular aspect by reason of such delay. The argument that the application of the Modis had referred to bone meal as the raw material used and this was later changed to crushed bones is pointless because it is not disputed "that all along the petitioners were aware that the reference to bone meal was incorrect and that the Modis were going to use crushed bones in their project. The last contention that some documents were produced at the hearing by the Modis which the petitioners could not deal with effectively is also without force as, admittedly, the assessee's representatives were shown those documents but did not seek any time for considering them and countering their effect. There has, Therefore, been, in fact, no prejudice to the petitioners. They have had a fair hearing and the government's decision has been reached after considering all the pros and cons. We are unable to find any ground to interfere therewith."

25. Furthermore, in the case of Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, , again Their Lordships of the Supreme Court while discussing the aspect of "Planned Development" or "Sanctioned Plan" being a condition precedent to acquisition of the land under the provisions of the Act held as under:

"6. In view of the diverse contentions, the first question that arises for consideration is whether the land in question is needed for a public purpose? If the finding is held against the State, it would not be necessary to go into the second question. Public purpose has been defined in Section 3(f) of the Act with an inclusive purpose of various developments and extension, planned development and improvement of the village etc. The controversy is no longer rest integra. In Aflatoon and Others Vs. Lt. Governor of Delhi and Others, a Constitution Bench of this Court, (Mathew, J. speaking for the Court) after an elaborate consideration, held that the acquisition for planned development of Delhi is a public purpose. In the case of an acquisition of a large extent of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in

the case of an acquisition of a small area, it might be practically difficult to specify the particular purpose for which every item of land comprised in the area is needed. Under those circumstances, the acquisition of planned development was held to be for public purpose. It is not necessary to burden the judgment with the development of the law in this behalf. Relevant decisions in this behalf are Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others, , Pt. Lila Ram Vs. The Union of India and Others, , Om Prakash Vs. Union of India (UOI) and Others, , Ram Chand and Others Vs. Union of India (UOI) and Others, , State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., and Jai Narain and Others Vs. Union of India and Others, . Suffice it to state that when an authority constituted under the Act has initiated the action for acquisition of a large area of land comprising several plots for planned development, the specification of a particular land needed for a specified purpose intended to be undertaken for the development ultimately to be taken up, is not a condition precedent to initiate the action for acquisition and publication of the notification u/s 4(1) of the Act in the Gazette does not get vitiated on account thereof. The reasons are not far to seek. In drawing details, the scheme required detailed examination consistent with plans and ecological balance.

7. Mr. Lekhi sought to place reliance on the judgments of this Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, and Khub Chand and Others Vs. State of Rajasthan and Others, was considered and distinguished in T.N. case. Khub Chand case relates to compliance of Section 491. So it is not necessary to deal with these cases in detail. Suffice it to state that each case has to be considered on the facts and circumstances of each case. The planned development of Delhi was held to be a public purpose in Aflatoon case followed by several judgments including the latest judgment of this Court in Jai Narain case. The question then is whether the Interim General Plan, 1956, the Master Plan under the Development Act brought on statute in 1962 w.e.f. 1.9.1962 and further amended plan in 1990 are required to necessarily specify the purpose for which land is needed vis-a-vis the provisions of the Cantonments Act, 1924. It is true that when acquisition of the land was within the limits specified u/s 4 and declaration u/s 5 of the Cantonments Act, 1924 was published, the Cantonment Board and the authorities constituted there under get the power and jurisdiction to deal with the lands within its jurisdiction for the development. None of their representatives finds berth in Planning Council under the Development Act. Equally, under the Development Act the Delhi Development Authority and the various authorities constituted there under are required to prepare the Master Plan, the Zonal Plan and the Area Development Plan as required for planned development of the land. But one fact that needs to be emphasised and always kept in mind is that all these are developmental activities to be undertaken subsequent to the acquisition after the land is available. The harping and insistence on compliance of details by Mr. Lekhi from several provisions in various Acts do not need elaborate consideration As a fact the High Court had done the exercise and in our view in correct perspective. They need reiteration. Once a

public purpose has been specified by the Governor in the notification and on specification obviously on presumptive satisfaction thereof the Governor issued the notification as required u/s 4(1); the absence of the specification and further elaboration of the development do not have the effect of rendering the satisfaction reached by the Governor illegal and the notification u/s 4(1) published by the Governor in exercise of the power of eminent domain is not rendered void. Therefore, it is not necessary to elaborately deal in detail with the manner in which the development has to be undertaken when the land is situated within the cantonment area. In fact, Section 12(3)(ii) of the Development Act takes care of the development in cantonment area when there would be a conflict between the authorities under the Development Act and the need for prior approval in that behalf of the cantonment, which is a local authority, for developing land under the Development Act. As a fact, except the land in question, the land in Naraina was developed as per plan. Under those circumstances, since the High Court has elaborately dealt with this aspect of the matter in the judgment running into 129 pages, we feel it unnecessary to burden this judgment with further discussion in that behalf. Accordingly, we hold that the notification u/s 4(1) is not vitiated on account of the fact that planned development was not specified with particularisation of the land in question needed for the public purpose."

26. It is a settled principle of law that satisfaction of the authorities in these proceedings is a subjective satisfaction and is open to judicial review within a very narrow compass. From the material before the Court and the law afore-referred, I have no hesitation in coming to the conclusion that the decision of the Lt. Governor in regard to acquisition of the land in question do not suffer from the vice of arbitrariness, unfairness or non-application of mind particularly in regard to objections filed by the objectors u/s 5A of the Act. The delay on the part of the authorities again is not, in any way, fatal to the decision taken. I cannot escape but to note that the Planned Development of Delhi is a multi-dimensional object with varied ramifications. This process itself is obstructed by certain interested persons and the records of the respondents do indicate that such an observation would not be uncalled for. Some records are not available, some originals reports are missing and intentional default in pursuing cases seen, in light of the fact that there is unnecessary delay. Unnecessary delay in submission of files, keeping the proceedings even after issuance of Section 4 notification pending, do certainly demonstrate non-adherence to accept administrative norms of functioning in Government hierarchy. Such administrative decisions have far-reaching consequences and Therefore they should be taken not only with proper application of mind but as expeditiously as possible. "Planned Development of Delhi" has repeatedly been held to be a public purpose and reference in this regard can be made amongst others to the judgment in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, and *P.S. Gill and Others Vs. Union of India and Others*, , *Bhagat Singh Vs. State of U.P. and Others*, , *Roshanara Begum Vs. Union of India*, and *Gandhi Grah Nirman*

Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others, .

27. Administrative action can be subjected to control by judicial review on the ground of illegality, irrationality and procedural improprieties of serious and prejudicial consequences. In the case of Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, , the Court held that an act administrative or legislative can be vitiated if there is non-application of mind to the relevant factors or his exercise on the basis of non-existent facts or is patently so erroneous or suffers from manifest error of law, facts or procedure. None of these ingredients can be traced in the present case to the extent that the power of judicial review of administrative action would require the Court to invalidate the notifications in question. Undoubtedly, objections were invited from the record. It is clear that the objectors were heard, records based reports were submitted u/s 5A to the Lt. Governor who after applying his mind approved the acquisition and directed the issuance of declaration u/s 6 of the Act. This can safely be concluded on the basis of the record produced before the Court.

28. For quashing of an administrative decision, based upon exercise of legislative power, it is necessary that the order or decision of the concerned authority should suffers from lack of propriety or procedural impropriety or at the face of it, it should be illegal. The authorities might have acted with some lack of administrative propriety and did not maintain the records meticulously so as to invite some criticism, but this by itself would not be sufficient ground for judicial intervention by the Courts. Reliance placed by the petitioners upon the judgment of the Supreme Court in Raja Anand Brahma Shah v. The State of Uttar Pradesh and Ors., AIR 1967 SC 1081 is again of no help to them. In that case the Court had held that 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 virus 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 was mala fide. None of the stated ingredients are satisfied in the present case. We have already noticed that the Lt. Governor had passed orders and the order in Chattarpur runs into three paragraphs on the recommendations made by the LAC u/s 5A of the Act.

29. While relying upon the judgment of the Supreme Court in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, , it was contended that the expression of public purpose being planned development of Delhi is not a purpose which is definite in terms and as such because of absence of details of the purpose, the notification is liable to be quashed. I have already referred to various judgments of this Court as well as the Supreme Court that "Planned Development of Delhi" has been held to be not only a public purpose but in terms "an urgent public purpose" which would even justify invoking of the provisions of Section 17(1) of the Act. In the case relied upon by the petitioners, the word "residential" was used in its vague sense and as such Their Lordships took the view that notification would be liable to be set aside. In the present

case, reference is made to the entire development which would obviously include industrial, residential and other complexes. As a matter of fact, it cannot even be disputed that initial Master Plan of Delhi incorporates specific developments and notification issued u/s 4 of the Act in relation to the revenue estate of the villages which are subject matter of these writ petitions, has already been upheld by a Division Bench of this Court which has attained finality. The reliance by the petitioners upon the case of *Tulsi Co-operative Housing Society, Hyderabad, Etc. Etc. Vs. State of Andhra Pradesh and Others Etc. Etc.*, is also of no consequence in the facts and circumstances of the present case as the land is being used for the purpose for which it was acquired that is, "Planned Development of Delhi". The Planned Development of Delhi is a continuing process and has been held to be an emergent public purpose more particularly with reference to development of residential schemes, keeping in view the dire need for accommodation for the incoming massive population as well as for industrial and commercial development of Delhi. In the case of *Bhagat Singh (supra)*, the Supreme Court clearly enunciated the principle that the land can even be put to a use other than for which it was acquired, provided sanction of the competent authority is taken and such purpose is in conformity to the Planned Development of Delhi. It was also held by the Supreme Court that absence of a pre-existing plan by itself would not vitiate the notification for acquisition of the land particularly when the land has been acquired apparently for public purpose namely "Planned Development of Delhi". It may also be noticed here that to the counter affidavits filed on behalf of the respondents, no rejoinders were filed controverting the stated facts. Furthermore, during the course of hearing, records were produced before the Court which substantially support, what has been pleaded on behalf of the respondents. The learned Counsel appearing for the petitioner placed reliance upon a Division Bench judgment of this Court in the case of *Hari Ram Kakkar Vs. Union of India and others*, to contend that there was violation of principles of natural justice and the notification was liable to be quashed. In this judgment, the Division Bench observed that no records were produced before the Court to show that hearing was granted to the objectors and that the report was based on any relevant material. I have already noticed above that records were produced before the Court to show that hearings were attended by the objectors including by *Chatro Devi* and *Rati Ram* or their duly authorised representative and thereafter the report was submitted to the Lt. Governor. It may be relevant to notice here that the Division Bench of this Court in paragraph 9 of the judgment noticed the contention of the respondent that *Balak Ram Gupta (supra)* had been over ruled by the Supreme Court in *Commissioner of Income Tax, Madras Vs. M/s. Rambal Private Ltd. etc.*, on the point of sanction of the Lt. Governor u/s 6 of the Act, but the Division Bench left the point open by mentioning we need not go into this aspect. Thus, in my view, the petitioners cannot avail much advantage by referring to this judgment.

30. Again with some vehemence, it was contended on behalf of the petitioners that number of writ petitions have been allowed by the Court while following the

Division Bench judgment in Balak Ram Gupta's case (supra) and keeping in view this judgment and the judgment in Delhi Development Authority Vs. Sudan Singh and Others, , petitioners in accordance with the principle of judicial uniformity should be granted the same relief. Reliance was placed in this regard, upon the judgments of the Supreme Court in Bir Bajrang Kumar v. State of Bihar and Ors. AIR 1987 SC 1345 , Vishnu Traders v. State of Haryana and Ors. , Commissioner of Customs, Chennai v. Adani Exports Ltd. and Anr. . This argument prima facie appears to be of some substance but when examined with regard to the law applicable with back drop of the facts and circumstances of the case, the argument is void of any merits. The Division Bench judgment in the case of Balak Ram Gupta (supra) no longer can be stated to be a good law in view of the judgment of the Supreme Court in Abhey Ram's case, Gurdip Singh's case as well as a recent Division Bench judgment of this Court in the case of Sunil Nagpal v. Union of India 117 (2005) DLT 7=CW 838/86 decided on 17.12.2004 wherein similar writ petitions were dismissed. The judgment of Sudan Singh (supra) was not approved by a Larger Bench of Supreme Court in Abhey Ram's case (supra). Thus, none of these two judgments can tilt either the equity or the law in favor of the petitioners.

31. In the case of Abhey Ram, a Bench of three-Judges of the Supreme Court considered the contention, which is as under:

"He further contends that after the Full Bench judgment was rendered, the matter was remitted to the Division Bench which quashed the declaration u/s 6 of the ground that the objections filed u/s 5A were not properly considered and that Therefore publication of the declaration u/s 6 was quashed in respect of the petitioners therein. The same benefit should ensure to the appellants as well. In support thereof, he placed reliance on the judgment of this Court in Delhi Development Authority v. Sudan Singh....."

32. Of course, the above contention was disputed by Counsel for respondent in that case that objections have not been filed, but after discussing the entire controversies raised by the parties, Their Lordships accepted the view expressed by the Full Bench in B.R. Gupta v. Union of India (supra) and upheld the declaration issued u/s 6 of the Act and dismissed the appeals preferred by the land owners. In this judgment, Their Lordships of the Supreme Court observed that ratio of that judgment had no application to these cases and also that unless Section 6 is quashed in toto, it would not operate as if the entire declaration requires to be quashed and held as under:

"But it is seen that the Division Bench confined the controversy to the quashing of the declaration u/s 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration u/s 66 by the Division Bench does not ensure to the appellants."

33. The above view was reiterated by the Supreme Court in the case of Delhi Administration v. Gurdip Singh Uban (supra) as well as in the second judgment

of the Supreme Court with the same title reported as *Delhi Administration v. Gurdip Singh Uban* (Review Application) (supra). In the first judgment, it was stated that the persons who have filed no objections u/s 5A, during the acquisition proceedings they could not even be allowed to contend that Section 5A inquiry was bad and Therefore declaration u/s 6 must be struck down. Further it was also held that petitioners cannot be permitted to contend that in some other cases the notifications were quashed and that such quashing would also ensure to the benefit of the petitioners. In the second judgment which was necessitated as a result of review applications being filed by the petitioners/ review applicants taking up all the grounds which have been urged before us, of course, without pleading the same in the writ petition. The Supreme Court while reiterating, its earlier view in *Abhey Ram and Kuldip Singh Uban* cases further noticed in its judgments the fact that the Supreme Court was told that among the writ petitions which were more than 70, there were some, where petitioners had not filed objections which obviously means some others had filed objections. Declining to hold that the order of the Division Bench in *Balak Ram Gupta's* case would effect the entire notification, the view expressed in *Abhey Ram* (supra) was followed and accepted in preference to *Sudan Singh* (supra). In paragraph 48 of *Gurdip Singh Uban's* case, Their Lordships of the Supreme Court referred to the plea taken in relation to the non-application of mind by the Lt. Governor regarding objections filed by the objectors u/s 5A and particularly of Village Chattarpur, referred to the following observations of the Division Bench judgment in *Balak Ram Gupta's* case (supra):

"Similar orders are passed in relation to all the eleven villages as if there was a prescribed pre forma. Section 6(1) requires that the appropriate Government, in this case Administrator/Lt. Governor of Delhi should consider the report u/s 5A. After consideration he has to satisfy himself that particular land is needed for the public purpose. The consideration of the report including the objections of the objectors must be based on facts disclosed in the order."

34. It may also be noticed here that the very noting of the Lt. Governor in the present cases was referred to by the Supreme Court in the case of *Gurdip Singh* (supra) and the finding of the Division Bench that "satisfaction without stating any reason will be mindless exercise of power u/s 6 of the Act" was also noticed by Their Lordships and where after they held as under:

"In our view, the above observations of the Division Bench do not lay down the law correctly and in fact run counter to earlier decisions of this Court. In *Ganga Bishnu Swaika v. Calcutta Pinjrapole Society* the words used were that the Governor is satisfied that the land is needed for a public purpose. It was argued that the said words did not ex facie show satisfaction of the Government which was a condition precedent. It was argued that the amendment by Act 38 of 1923 omitted the word appears and used the word satisfied instead. Even so, this Court held that the law before the amendment, and thereafter was the same. It was held that Section 6 specified the manner in which the declaration should be

made and if it was so made, it was conclusive. It was held that it was not necessary that the notification should even refer to the satisfaction. If the satisfaction was challenged, it would be sufficient if such satisfaction is proved by producing the record on the basis of which the Section 6 declaration was issued. Therefore, the argument that Section 6 declaration must contain reasons or refer to the objections for every particular land, is not correct. Again in *Ratilal Shakarabhai v. State of Gujarat* the plea that the Government had not applied its mind was rejected by this Court in the following circumstances. The Court observed (SCC p.226, para 9)--

"Before issuing that notification (i.e. Section 6), there was an inquiry u/s 5A. The Government had issued that notification after examining the record submitted by the officer concerned. There is no material on record from which we can reasonably come to the conclusion that the Government had acted blindly in issuing that notification."

50. No reasons or other facts need be mentioned in the Section 6 declaration on its face. If the satisfaction is challenged in the Court, the Government can show the record upon which the Government acted and justify the satisfaction expressed in Section 6 declaration."

35. In addition to the above, their Lordships of the Supreme Court also noticed and concluded that observations made in *Balak Ram Gupta's* case (supra) cannot be accepted and further that the rest of the land not covered by 73 writ petitioners (*Balak Ram Gupta's* case --Division Bench judgment) or even where no objections are filed u/s 5A could not be said to be vitiated because the objections filed in certain other cases were not properly considered by the Officer and relief was granted to these petitioners.

36. It is evident from the above discussion that larger number of writ petitions have been dismissed by the Courts and particularly after pronouncement of the judgment of the Supreme Court in the cases of *Gurdip Singh* and *Abhey Ram* (supra) even recently in the *Sunil Nagpal's* case (supra) number of writ petitions were dismissed by another Division Bench of this Court. Wherever the petitioners have been granted relief by different Division Bench of this Court, it has been primarily by following the judgment of the Division Bench in *Balak Ram Gupta's* case (supra) and prior to the pronouncement of the judgment of the Supreme Court in the above referred cases. Even if one was to accept the contentions raised on behalf of the petitioners, in my opinion, the petitioners are not entitled to any relief in the facts and circumstances of the present case.

37. On the basis of the additional affidavit filed by the respondents as well as the records produced subsequent thereto, but during the course of hearing following facts were brought to the notice of the Court in relation to the status of the objections filed by the objectors in different villages. I may also notice here that some of the petitions in relation to the same villages might have been subject matter of other cases as well. For instance, in the case of *Chattarpur*, there are

only 20 petitions before the Court, while as per report of the respondents 380 objections have been received in regard to the acquisition of the land from the revenue estate of Village Chattarpur. It will be appropriate at this stage to refer to the table giving details of number of petitions, objections filed or not in those petitions by the petitioners, so as to appreciate the worth of the contentions raised before us and also to show that bifurcation on any plausible basis may not prove to be in accordance with law.

Village Total No. of OBJECTIONS petitions. Not filed Filed Devli 24 20 4 Khanpur 6 3 3 Satbari 6 3 3 Neb Sarai 3 3 0 Tuglakhabad 6 1 5 Rajpur Khurd 1 0 1 Shayoorpur 1 0 1 Khirki 2 2 0 Chattarpur 20 8 12 Maidangarhi -- no record --

38. In my humble, but considered view, petitioners cannot claim any advantage of the Division Bench judgment rendered in the case of Balak Ram Gupta's (supra) amongst others for the following reasons:

A. The correctness of the Division Bench judgment in Balak Ram Gupta's case was specifically doubted by the Supreme Court in the case of Abhey Ram (supra) in regard to the inquiry and consideration of objections u/s 5-A. Furthermore in the case of Gurdip Singh (supra), the Supreme Court clearly held as under:

"Hence the wide observation made in Balak Ram Gupta's case cannot be accepted."

Faced with these observations of the Supreme Court, it may not be appropriate to hold that the case of Balak Ram Gupta (supra) holds the field as good law particularly applicable to the facts and circumstances of the present case. More so "judicial posterior a sunt in lege fortiori --Maxim."

B. The records produced before the Court do not show that there was no application of mind by the Lt. Governor to the reports submitted to him by the Collector u/s 5A of the Act. The order of the Lt. Governor as afore-referred clearly shows that he had applied his mind to the material placed before him. The satisfaction to be recorded by the Lt. Governor is again a subjective satisfaction and the High Court in exercise of its powers under Article 226 of the Constitution of India would not sit as a Court of appeal over such subjective satisfaction recorded by the Lt. Governor.

C. There is no pleading whatsoever in the writ petitions challenging the procedural or other infirmities in the inquiries conducted by the Land Acquisition collector u/s 5A of the Act except a bald statement that petitioners had filed objections. It is nowhere stated in the petition as to how there was violation of principle of natural justice; or that the objectors were denied right of hearing and to what extent, if any, prejudice has been caused to the petitioners. Such pleas essentially must be taken up with specific averments in the writ petitions as one who wishes to claim a benefit, must also carry the burden.

D. In the reports submitted by the Collector u/s 5A of the Act, the objections raised by the objectors have been discussed. The objections are primarily of a

general nature and are not personal to person or land. Thus, in any case, the distinction between the petitioners where the persons who have not filed objections u/s 5A are debarred from questioning the correctness of the inquiry proceedings while in the ones who have filed objections, their case has no substance whatsoever particularly in face of the record produced before the Court during the course of hearing. This, in fact, was even contended on behalf of the petitioners as aforementioned that the benefit, if any available to the class of persons who have filed objections should ensure to the benefits of the persons who did not file objections. If it is true than the converse would also be true, as the objections are of a general nature in regard to public purpose, Planned Development of Delhi, Master Plan and deprivation of livelihood and no benefit would accrue to any person once largest section of them, have failed on one ground or the other.

E. It is a settled canon of law that public interest normally should get precedence over the private interest. Now number of petitions have been dismissed in relation to the same notifications and there are large number of persons who have not filed objections u/s 5A of the Act. Acceptance of objections, which as already stated, are without any substance, would even further frustrate or cause impediments in achieving of the public purpose namely Planned Development of Delhi. The fine distinction drawn between two classes based on niceties of imagination of the objectors are apparently contrary to the records which reasonably demonstrate the adherence to principles of natural justice and statutory provisions including Section 5A of the Act.

39. Though at the cost of repetition, but concise reference to the case law may be more helpful in concluding this judgment. The challenge of the petitioners to Section 4 notification acquiring the vast parcels of lands in number of villages was rejected by the Division Bench of this Court in Munni Lal Jain's case, still a further challenge to the declaration u/s 6 on various grounds including delay was not accepted by the Full Bench of this Court in Balak Ram Gupta's case (supra). The Division Bench judgment in Balak Ram Gupta's case was held to be a law correctness of which was opened to question and the general application of the judgment was held to be not proper by the Supreme Court in Abhey Ram's case (supra) and in both the judgments of Supreme Court in the case of Gurdip Singh Uban (supra). Mr. Lekhi, learned Senior Advocate, appearing on behalf of the petitioner vehemently submitted that judgment of the Supreme Court in the case of Gurdip Singh Uban was not laying down the correct law and in fact the said judgment was not in consonance with the basic principles of law. While relying upon the judgment of the Calcutta High Court in the case of Gujju Lall v. Fatteh Lall, 6 Cal. 172, it was further argued that the distinction between short order, rule absolute and rule nisi as discussed in Gurdip Singh's case was not correct even in terms of P. Ramanatha Aiyar's The Law Lexicon and as such the reliance should not be placed by this Court upon those judgments. It is not for this Court to entertain any of such submissions. Suffice it to note that the judgment of the Supreme Court does not, apparently, fall in any of the exceptions to the principle

of precedence. The judgment is neither per incuriam nor can be said to be not applicable to the facts and circumstances of the present case on the basis of ratio desendie. The judgments afore indicated relate to the same notifications, villages and persons of the same villages. Laying a law, contrary to the judgments afore referred, would certainly be offending the basic principles of judicial discipline and propriety.

40. Lastly, it was contended that the judgment of the Supreme Court by the five-Judges Bench in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, alters the entire legal principles enunciated by the Supreme Court in Gurdip Singh and Abhey Ram's cases and various other judgments of this Court which have relied thereupon. This argument is certainly without any merit. In Padma Sundara Rao (Dead) & Ors. (supra), the Court was not concerned with the validity of the acquisition much less acquisition of land arising from the present notification. In fact, this argument need not detain me any further as I would fully endorse and abide by the view taken by another Division Bench of this Court in the case of Sunil Nagpal's case (supra) in relation to this issue wherein the Court held as under:

"The next question is whether the five judge decision of the Supreme Court in Padma Sundara Rao has impacted the law on the issue. In that decision, the issue considered was formulated thus--

The controversy involved lies within a very narrow compass, that is whether after quashing of notification u/s 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) fresh period of one year is available to the State Government to issue another notification u/s 6."

It would be immediately apparent that the Court was not concerned with the validity of the declaration u/s 6, in the context of the proviso, and applicability of the Explanation. The Court was seized of a situation where the declaration itself was quashed, and the question was whether a fresh period of one year was permissible from the date of quashing of the declaration. The Court (at pages 541-42, SCC reports) concluded that:

"14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd., 14). The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case. In Nanjudaiah case the period was further stretched to have the time period run from date of service of the High Court order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only Clause (i) and/or Clause (ii) of the proviso to Section 6, but also by a non-prescribed period. Same can never be the legislative intent.

15. Two principles of construction one relating to *casus omissus* and the other in regard to reading the statute as a whole, appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole " statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. An intention to produce an unreasonable result, said Danckwerts, L.J., in *Artemiou v. Procopiou* (at All ER pp.(?) 544-I), is not to be imputed to a statute if there is some other construction available. Where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result, we must do some violence to the words and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC*, 16 where at AC p.(?) 577 he also observed: (All ER p.664-I) This is not a new problem, though our standard of drafting is such that it rarely emerges.]

16. The plea relating to applicability of the *stare decisis* principles is clearly unacceptable. The decision in *K. Chinnathambi Gounder* was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration u/s 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the Legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim *act us curiae neminem gravabit* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case."

A careful analysis of the above extracts, which constitute the reasoning for the decision disclose that the Court kept in mind that judicial interventions in acquisition proceedings were provided for expressly in some situations, as in the case of the Explanation, where the periods of stay were to be excluded while reckoning the time u/s 6. However, the absence of any mention of such intervention in such cases, specifically ruled out the extension of the logic of the Explanation to other situations. In other words, the Court held that the situation where a declaration was quashed and the issue of whether a fresh declaration could be made within one year, was a deliberate *casus omissus* which the Courts could not fill through the interpretative process. The overruling of the previous decision in the *Narasimhaiah* case was in that context. The Court was not interpreting the effect of the Explanation and construing whether interim orders in one case could apply to the entire acquisition. The Court was concerned with a

situation arising after Section 6 declaration was quashed.

In view of the above, we are of the opinion that the over ruling of the Narasimhaiah case or the Nanjudaiah case (which were referred to in Uban-I) in Padma Sundara Rao cannot lead to the conclusion that those two decisions, dealing with the same notifications and declarations, were impliedly overruled. As noted earlier, the decision of the Full Bench, as well as the judgments in Abhey Ram, Uban-I and Uban-II constitute law under Article 141, which cannot be ignored by us. In a somewhat similar situation, when a High Court chose to ignore the decision of its Full Bench, which had been endorsed by the Supreme Court, preferring to follow a later judgment of the Supreme Court, it was held (in *Shyamaraju Hegde v. U. Venkatesha Bhat*, 12) that:

"Judicial propriety warrants that decisions of this Court must be taken as wholly binding on the High Courts. That is the necessary outcome of the tier system. We may briefly refer to the observations of the Lord Chancellor in *Cassell & Co. Ltd. v. Broome*, 1972 (1) All ER 801, where the Lord Chancellor administered a warning by saying--

"... I hope it will never be necessary to say so again, that, in the hierarchical system of Courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers."

This has been approved by this Court on more than one occasion. Added to the above is the provision of Article 141 of the Constitution which unequivocally states that the law declared by this Court shall be binding on all Courts within the territory of India. In the facts and circumstances of the case, the High Court should not have taken onto itself, the responsibility of saying that its earlier Full Bench judgment based upon a decision of this Court in the circumstances indicated above had lost its binding authority in view of two other judgments rendered in different situations and setting."

For the same reasons, we do not agree with the contention that the declaration in Balak Ram-II amounted to judgment in rem and enured in favor of the petitioners.

41. Having dealt with the merits of the various contentions raised on behalf of the petitioners at great length, I dismiss all these petitions, while leaving the parties to bear their own costs.

42. Before parting with these files, I consider it to be the duty of the Court to direct that the facts should be brought to the notice of Hon"ble the Chief Justice for directing the Registry to take such appropriate measure which would help in better management of the Court and would further the cause of justice.

43. A copy of this judgment shall also be sent to the Chief Secretary, GNCT of Delhi with a direction that a Committee should be constituted to streamline the administrative functioning of the concerned departments under the provisions of the Land Acquisition Act. A time-bound schedule should be provided for dealing

with acquisition matters particularly where the emergency clauses are invoked by the Government and also for proper prosecution of cases before the Courts. The Chief Secretary shall also direct the Secretaries of the concerned departments to ensure that all the cases referred to in this judgment and the record pertaining thereto (including losses of some records) is scrutinised by the competent authority, responsibility is fixed on the erring officer/official and action be taken against them in accordance with law.

44. The Chief Secretary shall submit the report to the Registry of this Court within a period of one month from the date of receipt of copy of this judgment. The same shall be placed by the Registry before the Court, for compliance.

Madan B. Lokur, J.—I have had the benefit of going through the draft judgment prepared by my learned brother and am in respectful agreement with him on all issues, except one.

2. The divergence of views is in respect of the question whether the inquiry conducted u/s 5A of the Land Acquisition Act, 1984 (the Act) in respect of villages Chattarpur, Khanpur, Satbari, Tughlakabad, Deoli and Khirkee was in accordance with the principles of natural justice. A Division Bench of this Court in B.R. Gupta Vs. Union of India and Others, (hereinafter referred to as Balak Ram-III) held that the inquiry conducted u/s 5A of the Act in respect of these villages (and also village Tigri) was vitiated. I am of opinion that this view still holds the field. Since there is no case before us in respect of village Tigri, I am not making any comment about the inquiry held in respect of this village.

3. With respect to villages Shayoorpur, Khirkee, Maidan Garhi and Rajpur Khurd, I agree with my learned brother, though for different reasons, that the inquiry u/s 5A of the Act was valid.

4. As regards the cases pertaining to village Neb Sarai, I agree with my learned brother that these cases have to be dismissed because the petitioners in these cases did not file any objections u/s 5A of the Act. Similarly, I agree that all cases, in respect of other villages also, where objections were not filed u/s 5A of the Act should all be dismissed.

5. The primary reason for my respectful disagreement is the way I read and understand three important judgments extensively referred to by learned Counsels for the parties, namely, Abhey Ram (dead) by LRs. and others Vs. Union of India and others, , Delhi Administration v. Gurdip Singh Uban and Ors. (supra), (hereinafter referred to as Uban-I) and Delhi Administration v. Gurdip Singh Uban and Ors. (supra), (hereinafter referred to as Uban-II). I am of the view that the validity or otherwise of the inquiry u/s 5A of the Act in respect of the above six (or even seven) villages was not all in issue in either of these cases and so was not dealt with by the Supreme Court. In fact, neither Abhey Ram nor Gurdip Singh Uban had filed objections u/s 5A of the Act and so the question of examining the validity of the inquiry in respect of their objections could not even arise for consideration before the Supreme Court.

6. Moreover, another Division Bench of this Court in Hari Ram Kakkar Vs. Union of India and others, once again came to the same conclusion as in Balak Ram-III and held that the inquiry u/s 5A of the Act in respect of village Satbari (one of the above seven villages) was vitiated. I find no reason to take a view different from that expressed by two different Division Benches of this Court in Balak Ram-III and Hari Ram Kakkar.

7. On 5th November, 1980 and 25th November, 1980, the respondents issued two Notifications u/s 4 of the Act seeking to acquire almost 50,000 bighas of land in 13 villages in Delhi, The Notification dated 5th November, 1980 pertained to villages Tughlakabad, Tigri, Deoli, Khanpur, Saidul Ajaib, Neb Sarai, Hauz Rani and Khirkee. The Notification dated 25th November, 1980 pertained to villages Chhatarpur, Satbari, Maidan Garhi, Shayoorpur and Rajpur Khurd.

8. Declarations u/s 6 of the Act were made in respect of these lands on 27th May, 1985, 6th June, 1985, 7th June, 1985 and 26th June, 1985. Of course, the declarations were made after inviting objections u/s 5A of the Act.

9. A large number of writ petitions were filed in this Court challenging the validity of the Notifications issued u/s 4 of the Act. These writ petitions were dismissed by a Division Bench of this Court in Munni Lal v. Union of India (supra). The decision rendered by the Division Bench in Munni Lal was not challenged by anybody and it is common ground that this decision has become final. Therefore, I am proceeding on the basis that the Notifications dated 5th November, 1980 and 25th November, 1980, both issued u/s 4 of the Act are valid in law and final.

10. After the Notifications u/s 6 of the Act were issued, a large number of writ petitions were filed in which the principal contention urged was that the Notifications u/s 6 of the Act were bad in law because they were issued beyond a period of three years specified under the Act.

11. A Full Bench of this Court in Balak Ram Gupta v. Union of India (supra), (hereinafter referred to as Balak Ram-I) dealt with the contentions urged in those writ petitions and negated the challenge. It was held by the Full Bench that the Notifications issued u/s 6 of the Act were not made beyond time and to this extent they were not bad in law. The decision of the Full Bench was not challenged by anybody and has attained finality. However, there is a discussion about the decision of the Full Bench in Abhey Ram in which the Supreme Court upheld the view taken in Balak Ram-I. This issue, Therefore, is also no longer rest integra and in any case was not agitated by any of the learned Counsels appearing for the parties.

12. It may be mentioned, en passant, that the correctness of Balak Ram-I was sought to be challenged recently, based on a Constitution Bench decision in Padma Sunder Rao v. State of Tamil Nadu (supra). But a Division Bench of this Court hearing the challenge negated it in Sunil Nagpal v. Union of India [WP (C) No. 838/1986 decided on 17th December, 2004]. It may also be mentioned that neither Sunil Nagpal nor any of the other petitioners whose cases were heard by

the Division Bench had filed objections u/s 5A of the Act.

13. After the decision of the Full Bench, the merits of the issues raised in writ petitions challenging the issuance of Notifications u/s 6 of the Act were heard by a Division Bench which disposed of a batch of 73 writ petitions.

14. Upon hearing arguments, the Division Bench passed a short order on 14th August, 1988. This is reported as B.R. Gupta Vs. Union of India and Others, (hereinafter referred to as Balak Ram-II) and reads as follows:

"The orders of Land Acquisition Collectors u/s 5A and the notifications issued by the Lt. Governor u/s 6 of the Land Acquisition Act together with further land acquisition proceedings in all the above writ petitions are quashed and set aside with costs. There shall be two set of Counsel's fees only at Rs. 1,500/- each as the group of petitions were heard mainly in the two writ petitions. The respondents have also not filed the counter affidavits in all the petitions as it was agreed to complete two sets of petitions with counter affidavits. The rule is made absolute. Reasons to follow."

15. The Division Bench thereafter gave reasons in support of its short order passed on 14th August, 1988. The reasons are contained in Balak Ram-III.

16. The conclusions arrived at and directions given in Balak Ram-III in so far as they are material to these cases are:

(a) The inquiry conducted by the Land Acquisition Collector (the Collector) u/s 5A of the Act, in respect of seven villages, is vitiated due to non-compliance with the principles of natural justice, inter alia, because the Collector who heard the objections-was not the Collector who gave the report. These villages are Chhatarpur, Khanpur, Satbari, Tigri, Tughlakabad, Deoli and Khirkee.

(b) The Lt. Governor issued declarations u/s 6 of the Act in respect of eleven villages without proper application of mind and his satisfaction in this regard was not real but mechanical. He failed to disclose any reason for rejecting all objections filed u/s 5A of the Act.

(c) The entire acquisition in respect of eleven villages was quashed. This was even with regard to those persons who had not filed objections and had also not filed any writ petition. Since no objections were filed relating to village Hauz Rani, the acquisition of land in that village was not disturbed. Village Saidul Ajaib was not the subject matter of discussion.

17. It is significant to note that no one challenged the short order passed by the Division Bench nor did any one challenge the reasons given and conclusions arrived at and consequent directions of the Division Bench. In other words, Balak Ram-II and Balak Ram-III attained finality and the acquisition of land in eleven villages was held to be contrary to law.

18. Some other writ petitions were then sporadically taken up for disposal by this Court in accordance with the decision rendered in Balak Ram-II and Balak Ram-

III. These writ petitions were allowed in view of the above and the decisions rendered therein were also not challenged by anybody.

19. However, in one set of cases, being Balbir Singh Vs. Union of India and Others, the respondents, through the Delhi Development Authority (DDA) approached the Supreme Court challenging the decision rendered by this Court. By a judgment and order dated 20th September, 1991 (although it is reported much later) the Supreme Court upheld Balak Ram-III. The decision of the Supreme Court is reported as Delhi Development Authority v. Sudan Singh and Ors. (supra). This decision related to village Saidul Ajaib also.

20. Following the decision in Sudan Singh, several writ petitions were intermittently taken up and allowed by various Benches of this Court. In fact, after the decision in Sudan Singh, it appears that all parties assumed that the acquisition proceedings in respect of 12 villages (other than Hauz Rani) were quashed and that nothing further was required to be done except to dispose of the pending writ petitions.

21. One Abhey Ram had also filed a writ petition in this Court challenging the acquisition of his land pursuant to the Notifications mentioned above. However, since the only point urged by him was covered by Balak Ram-I, his writ petition was dismissed by this Court.

22. Feeling aggrieved, Abhey Ram approached the Supreme Court and the decision rendered in his case is reported as Abhey Ram (dead) by LRs. and others Vs. Union of India and others, . While disposing of Abhey Ram, the Supreme Court upheld Balak Ram-I, overruled Sudan Singh and expressed some doubt with regard to the earlier direction given in Balak Ram-III. This is what the Supreme Court had to say in respect of Balak Ram-III in paragraph 9 of the Report:

"We are not concerned with the correctness of the earlier direction with regard to Section 5A inquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt."

23. A reading of Abhey Ram suggests to me that the above extract has reference to the second conclusion/direction given in Balak Ram-III. This is because the first conclusion arrived at in Balak Ram-III was not at all in issue in Abhey Ram (who had not filed objections u/s 5A of the Act) while the third conclusion was set aside in Abhey Ram which clarified that the effect of Balak Ram-III would be limited only to those 73 writ petitions that were the subject matter of Balak Ram-II. I am of the view that the above extract from Abhey Ram has to be read and understood in this context.

24. Consequently, insofar as the present controversy is concerned, it was held in Abhey Ram that:

(a) Balak Ram-II only quashed the declarations u/s 6 of the Act in respect of the

writ petitioners before the Division Bench. The benefit of quashing those declarations did not inure to the benefit of other persons such as Abhey Ram who were not petitioners in Balak Ram-II. To this extent, Balak Ram-III was wrongly decided.

(b) Since Abhey Ram did not file any objections u/s 5A of the Act, there was no need to consider his "objections". Consequently, the declarations u/s 6 of the Act were valid insofar as Abhey Ram and all those who had not filed objections u/s 5A of the Act were concerned.

25. Some time in 1996, the case of one Gurdip Singh Uban came up for hearing before this Court. By an order dated 17th December, 1996, the writ petition filed by Gurdip Singh Uban was allowed on the ground that Balak Ram-III had quashed the declarations issued u/s 6 of the Act and so Gurdip Singh Uban was entitled to the benefit of that judgment even though he had not filed any objections u/s 5A of the Act.

26. The Delhi Administration approached the Supreme Court against the decision of this Court in Gurdip Singh Uban. The Supreme Court agreed in principle with the view rendered in Abhey Ram to the effect that those who have not filed objections u/s 5A of the Act cannot be allowed to contend that the Section 5A inquiry was bad in law or that the declarations issued u/s 6 of the Act ought to be struck down. Therefore, it was held that in respect of persons who had not filed objections u/s 5 of the Act, the declarations u/s 6 of the Act must be deemed to be in force insofar as they are concerned. (Paragraph 8 of the Report). Since Gurdip Singh Uban had not filed objections u/s 5A of the Act, the appeal filed by the Delhi Administration was allowed and his writ petition was dismissed. The decision of the Supreme Court is reported as Delhi Administration Vs. Gurdip Singh Uban and Others etc., (hereinafter referred to as Uban-I).

27. Subsequently, an application for review was filed in Uban-I and this was decided by a detailed judgment being Delhi Administration Vs. Gurdip Singh Uban and Others, (hereinafter referred to as Uban-II).

28. In Uban-II, the Supreme Court formulated as many as eight points for consideration but I am really concerned with Point No. 3 (Point Nos. 2 and 3 were dealt with together) and Point Nos. 4 and 5 which were dealt with collectively. These points are as follows:

(2) Whether, in any event, the judgment of this Court dated 20.8.1999 allowing the appeals of the Delhi Administration and Delhi Development Authority was liable to be set aside on merits, treating this as the first review petition, and whether such a relief could be granted on the ground that the two-Judge Bench of this Court in these civil appeals which followed Abhey Ram (decided by three learned Judges) should have referred Abhey Ram to a larger Bench?

(3) Whether the order of the Division Bench in Balak Ram Gupta case, where there are two orders, the order dated 14-10-1988 allowing the writ petitions in

73 civil writ petitions (reasons to follow) controlled the subsequent order passed in those cases on 18.11.1988 containing the reasons and whether in the latter order, the High Court could have quashed land acquisition proceedings in writ petitions which were not before them?

(4) Whether u/s 6 of the Land Acquisition Act, while dealing with an inquiry report u/s 5A, the Government (here the Lt. Governor) is required to give elaborate reasons?

(5) To what extent could a person who had not filed objection in Section 5A inquiry challenge the Section 6 declaration?

29. In so far as Point Nos. 2 and 3 are concerned, the Supreme Court noted that in Uban-I, it had agreed with Abhey Ram that a land owner who did not file any objections u/s 5A of the Act cannot be allowed to challenge a declaration u/s 6 of the Act, except where it is a colourable exercise of power or if the challenge that goes to the root of the acquisition such as where it is contended that there is no public purpose involved in the acquisition. The Supreme Court also made it clear that Balak Ram-II and Balak Ram-III must be confined only to those 73 writ petitions that were decided in Balak Ram-II because the objections filed were personal to each case and there was no argument that there was no public purpose in issuing the declarations or that there was a colourable exercise of power while issuing the declarations u/s 6 of the Act. Consequently, in respect of cases not before it, the High Court could not have (in Balak Ram-III) quashed the Section 5A inquiry and Section 6 declarations, particularly when no question was raised that went to the root of the matter. (Paragraphs 41, 42 and 45 of the Report). Summarizing its view in Paragraph 45 of the Report, the Supreme Court said as follows:

"The appellant's contention was however repelled in Abhey Ram holding that notwithstanding the broad language used in the latter reasoned order dated 18.11.1988 [Balak Ram-III], its area of operation was to be confined to what was stated by the same Division Bench earlier on 14.10.1988 [Balak Ram-II] when a brief operative order was passed in the 73 cases allowing the writ petitions. We have already held that the writ absolute dated 14.10.1988 in each case was based on non-consideration of objections and not on the basis of there being no public purpose and that the decision in each case must, Therefore, be confined to the land covered therein. The three-Judge Bench in Abhey Ram held that the reasoned order dated 18.11.1988 of the Division Bench could not travel beyond the earlier operative order dated 14.10.1988 and could not have covered land other than the land involved in the said batch of writ petitions."

30. While dealing with Point Nos. 4 and 5, the Supreme Court held that some of the observations made by the Division Bench, which have been extracted in paragraph 48 of the Report, do not lay down the law correctly. These observations related to the manner in which the Lt. Governor had exercised his power while issuing declarations u/s 6 of the Act. The Supreme Court reiterated

the principle that it was not necessary for a declaration u/s 6 of the Act to contain reasons or refer to the objections for every parcel of land. It was held that it was sufficient if the authority, which conducts an inquiry u/s 5A of the Act, has considered the objections and if the appropriate Government accepts the report u/s 5A of the Act, then the declaration that follows u/s 6 of the Act need not advert to the reasons or facts concerning each piece of land. To this extent, the contrary observations in Balak Ram-III could not be accepted and the doubt expressed in Abhey Ram was set at rest.

31. In the above context, the Supreme Court held in paragraphs 50 and 51 of the Report that:

"50. No reasons or other facts need be mentioned in the Section 6 declaration on its face. If the satisfaction is challenged in the Court, the Government can show the record upon which the Government acted and justify the satisfaction expressed in the Section 6 declaration.

51. It is true that Section 6 uses the words particular land but in our view while referring to its satisfaction in regard to the need to acquire the entire land, the Government need not refer to every piece of particular land. It is sufficient if the authority which conducts the Section 5A inquiry has considered the objections raised in relation to any particular land. Even where the said authority accepts the objections, that is not binding on the Government which can take a different view for good reasons. Where the Government agrees with the report u/s 5A, the declaration u/s 6 need not advert to the reasons or facts concerning each piece of land. Hence, the wide observations made in Balak Ram Gupta case cannot be accepted."

32. The Supreme Court thereafter clarified that objections u/s 5A of the Act can be generic in the sense that the land sought to be acquired is not required for a public purpose. The objections can also be specific in the sense that particular land of a particular individual is not required for a public purpose. Insofar as the issues raised in Balak Ram-III are concerned, apart from holding that the Lt. Governor had expressed his satisfaction in accordance with law, the Supreme Court noted that his satisfaction regarding public purpose was not in issue before the Division Bench because there was no dispute that the purpose for which the land is required is a public purpose. (Paragraphs 42, 56 and 59 of the Report). The Supreme Court, Therefore, reaffirmed its view that land owners who had not filed any objection u/s 5A of the Act were not entitled to the benefit of Balak Ram-III. The Supreme Court was not concerned in Uban-II with the cases of those who had filed objections u/s 5A of the Act, except to the extent of clarifying that their objections did not relate to the public purpose for which land was sought to be acquired.

33. A reading of all these judgments would go to show the following:

(i) The Supreme Court categorized land owners into those who filed objections u/s 5A of the Act and those who did not. In respect of those who did not file any

objections, the Supreme Court held in *Abhey Ram, Uban-I* and *Uban-II* that they were not entitled to any relief.

(ii) None of the decisions rendered by the Supreme Court, either in *Abhey Ram* or in *Uban-I* and *Uban-II* dealt with, or were even concerned with, the rights of land owners who had filed objections u/s 5A of the Act.

(iii) There was no generic challenge to the Notifications u/s 6 of the Act, namely, that the land was not required for a public purpose. To this extent, Therefore, the Notifications u/s 6 of the Act were valid and there was a public purpose in acquiring the land.

(iv) The writ petitioners who had filed objections u/s 5A of the Act and whose writ petitions were allowed by *Balak Ram-II* and *Balak Ram-III* are entitled to continue to say that the declarations u/s 6 of the Act, insofar as they are concerned, are not valid in view of the decisions of this Court which still hold the field and which decisions have not been considered, let alone upset by the Supreme Court.

34. In view of the above, the question that survives for consideration is what benefit, if any, are the present petitioners entitled to under the Act? Clearly those petitioners who did not file any objections u/s 5A of the Act are not entitled to any relief. But, what about those who did file objections? Obviously, each case will have to be considered individually, but the broad facts mentioned above suggest that at least some writ petitioners would be entitled to the benefit of a part of the reasoning given in *Balak Ram-III*.

35. In *Balak Ram-III*, the Division Bench noted that in respect of seven villages, that is, *Chhatarpur, Khanpur, Satbari, Tigri, Tughlakabad, Deoli* and *Khirkkee*, objections u/s 5A of the Act were heard by one Collector but the consequent report was given by another Collector. On these facts, it was conceded by the learned Government Counsel that he could not support the Section 6 declarations in respect of these villages. Nevertheless, the Division Bench looked into the matter (ignoring the concession made by learned Counsel) and independently examined the requirements under Sections 5A and 6 of the Act as well as the facts disclosed from the original record. In paragraph 8 of *Balak Ram-III*, the Division Bench noted that in respect of these seven villages, the following stood out:

(i) No effective and real opportunity of being heard was given to the petitioners / objectors and, Therefore, the acquisition proceedings could not be sustained in law.

(ii) Implicit in the provisions of Section 5A of the Act is the requirement that a person hearing the objections and the person making the report thereon, must be one and the same. This is because valuable property of a land owner/objector is sought to be taken by the Government, which cannot be permitted to exercise its power arbitrarily.

(iii) On a perusal of the original files, it was clear that notes were not maintained by the Collector who heard the objectors. As such, the succeeding Collector who actually made the report did not have the benefit of the hearing given by his predecessor. Admittedly, the Collector who made the report did not give any hearing to the objectors.

36. I am of the view that the conclusions arrived at by the Division Bench in Balak Ram-III are valid even today, and in fact have not been doubted or disputed by anybody till today.

37. It was submitted by learned Counsel for the respondents that the fact that objections u/s 5A of the Act were heard by one Collector and the report given by another Collector would not vitiate the inquiry because, according to her, it was merely an administrative exercise of power by the Collector and so the principle that "the one who decides must hear" would not be applicable. On the other hand, it was submitted by learned Counsel for the petitioners that the proceedings before the Collector are quasi-judicial, or judicial proceedings and, Therefore, the Collector who heard the objections ought to have submitted his report or else his successor ought to have heard the objections afresh before giving his report. This argument is, of course, material in so far as seven villages are concerned, namely, Chhatarpur, Khanpur, Deoli, Satbari, Khirkee, Tughlakabad and Tigri, out of which, I am not concerned with Tigri.

38. While there was much debate on the question whether an inquiry held u/s 5A of the Act is a quasi-judicial or an administrative inquiry, there was no discussion on the second aspect of this issue, namely, whether a report prepared by the Collector is an administrative report or not. Consequently, I think it would be appropriate to proceed on the basis that a report prepared by the Collector u/s 5A of the Act is an administrative report. Such a report may be administratively accepted, rejected or modified by the appropriate Government, and so it cannot be said that it is a quasi-judicial or a judicial report even if the inquiry is required to be held in a quasi-judicial manner.

39. In any case, this issue is not a live one because a Constitution Bench of the Supreme Court held in Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, that a report prepared by a Collector u/s 5A of the Act is an administrative report. The Constitution Bench also held in paragraph 19 and 20 of the Report that the Collector does not make a judicial or a quasi-judicial inquiry.

40. Frankly, I would have thought that this should have been the end of the matter, but learned Counsel for the petitioners drew attention to Section 14 of the Act to contend that an inquiry u/s 5A is nothing but a quasi-judicial inquiry that has to be conducted, by and large, on the principles laid down in the CPC (CPC). It was submitted that it is for this reason that power has been vested in the Collector to summon and enforce the attendance of witnesses and to compel the production of documents in the manner provided for in the CPC. It was submitted that the Constitution Bench had overlooked Section 14 of the Act

which clearly postulates that an inquiry u/s 5A of the Act is not an administrative, but a quasi-judicial inquiry.

41. The question whether a Collector holds a quasi-judicial inquiry or an administrative inquiry is really academic today because of the development in the law over the last 40 years (particularly since *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, , which is to the effect that even if such an inquiry is an administrative inquiry, it does not preclude the principles of natural justice and fair play, given the nature and consequence of the inquiry.

42. Nevertheless, learned Counsel for the petitioners wanted to emphasize that the decision of the Constitution Bench requires to be reconsidered by the Supreme Court. To reinforce his submission, learned Counsel relied upon *Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another*, to contend that a judgment of the Court on a particular aspect of a question is not to be read as a Holy Book covering all aspects of every question whether such questions and facets of such questions arise for consideration or not in that case. Reliance was also placed on *Assam Sillimanite Ltd. and Anr. v. Union of India and Ors.*, (1977) 1 Del 272 to contend that it is well known that when authority is wanting, Courts decide a case for a point of principle. It was submitted that it has been held in *State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others*, that where a judgment is rendered by a Court, including the Supreme Court, in ignorance of the terms of a statute, the judgment can be said to have been rendered per incuriam or even per ignoratium and as such would not be binding. *Fagu Shaw and Others Vs. The State of West Bengal*, was relied upon (paragraph 38 of the Report) to suggest that where there is no discussion on any point and no reasons are given in support of that point, it would merely amount to an expression of the ipse dixit of the Court which cannot bind anybody. *Quinn v. Leathem*, 1900 All ER 1 was cited to contend that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. It has also been held in that decision (page 7 of the Report) that a case is only an authority for what it actually decides and cannot be quoted for a proposition that may seem to follow logically from it.

43. Reference was also made to *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, wherein it has been held (paragraphs 21 to 24 of the Report) that the State Governments order u/s 68-D of the Motor Vehicles Act, 1939 as amended in 1956 is a judicial act and the State Government acts judicially while framing a scheme u/s 68-C of the said Act. It was, Therefore, held that if the Secretary in the Department hears objections u/s 68-D of the said Act and the Minister adjudicates upon them, then there is a violation of the principles of natural justice and the hearing granted to an objector is only an empty formality.

44. Learned Counsel for the respondents cited *Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another*, , but since that does not relate to the Land Acquisition Act, I do not think it necessary to discuss the conclusion arrived at by the Supreme Court in that case. But, in *Sam Haring Co. Vs. A.R. Bhujbal and others*, it has been held that the Collector is not a judicial or a quasi-judicial authority; he exercises his power u/s 5A of the Act as an administrative authority. However, in *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, there is an observation in paragraph 17 of the Report that the Collector is required to hold a quasi-judicial inquiry u/s 5A of the Act. Reference may also be made to *State of Mysore and Others Vs. V.K. Kangan and Others*, where it has been held in paragraph 8 of the Report that the proceedings of the Collector u/s 5A of the Act are quasi-judicial.

45. I do not think it is really necessary for this case to decide whether an inquiry conducted u/s 5A of the Act is a quasi-judicial inquiry or an administrative inquiry or even whether a report submitted by the Collector to the appropriate Government u/s 5A is a quasi-judicial report or an administrative report. In any event, the Constitution Bench in *Jayantilal* has already settled these issues.

46. However, regardless of anything, it cannot be said that an inquiry u/s 5A of the Act should not be given its due importance.

47. In *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, , it has been held in paragraph 35 of the Report that the right conferred by Section 5A of the Act is a substantive right and is not an empty formality. In the same decision, the Supreme Court has quoted with approval the observations rendered in *Munshi Singh and Others Vs. Union of India (UOI)*, wherein it has been said that:

Section 5A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.

48. Thereafter, in paragraph 36 of the Report, it has been reiterated that the right of representation and hearing contemplated u/s 5A of the Act is a very valuable right of a person whose property is sought to be acquired and that he should have an appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of his property should not be made.

49. In *Shyam Nandan Prasad*, the Supreme Court reiterated that affording an opportunity of being heard to an objector u/s 5A of the Act is a must and that the provision embodies a just and wholesome principle as mentioned above. In *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, , it has been held by the Supreme Court that the right of hearing u/s 5A of the Act is a substantial right.

50. In *Farid Ahmed v. Municipal Corporation* AIR 1976 SC 1095 it has been noted

in paragraph 18 of the Report that the heart of Section 5A of the Act is the hearing of objections and that Sub-section (2) of Section 5A of the Act mandatorily provides for a personal hearing. It is quite another matter that the right of personal hearing may be abandoned, but it is quite clear that a personal hearing must be offered by the Collector (and does not rest on a person's demand for it) and if the offer is accepted by the objector then a personal hearing must be given in accordance with law.

51. What is the consequence of not giving a proper hearing to an objector u/s 5A of the Act? If a proper hearing is not given to an objector then the Supreme Court recognises this to be an empty formality or merely going through the motions. This is because an objector has the power to persuade the Collector to suggest modifications in the order of acquisition and based upon those objections, the Collector may make an appropriate report to the appropriate Government. The report of the Collector may be confirmed by the appropriate Government or rejected, but it is certainly a factor that has to be considered by the appropriate Government while issuing a declaration u/s 6 of the Act. This is where the hearing u/s 5A of the Act takes on some meaning and substance as postulated in *Mukesh Hans*. In this context, it must not be forgotten that the right to be heard u/s 5A of the Act is a statutory right and the Collector under any circumstances cannot circumvent that.

52. It must be said, as observed in *Hanuman Prasad Gupta and Others Vs. Lt. Governor Union Territory of Delhi and Others*, (as reported in *Raj Kumar and Anr. v. The Union of India and Ors.*, (1972) 2 Del 81 that--

"The only opportunity which the objectors have, is to appear and present their point of view before the Collector, that it is not as if the Collector is merely to act as a Post Office for receiving objections and transmitting them to the appropriate Government and that he has to apply his own mind to the objections and, if necessary, to supplement the material placed before him by the objectors, by making his own inquiry, and then to submit a report which must contain his recommendation on the objections."

53. In *Indian National Congress (I) Vs. Institute of Social Welfare and Others*, , the Supreme Court indicated the principles when a statutory authority acts quasi-judicially (paragraph 24 of the Report). The Supreme Court held that this would be so when:

- (i) The statute requires a statutory authority to do an act,
- (ii) Where an action of the statutory authority prejudicially affects a subject,
- (iii) Where there is a lis between two parties or a contest between the statutory authority proposing to do an act and a subject opposing it, and
- (iv) Where the authority is required to act judicially.

54. All these attributes may not be present in an inquiry u/s 5A of the Act, but

given the importance of such an inquiry and the serious impact that it would have on a citizen, it cannot be said by any stretch of imagination that requisite significance is not required to be given to such an inquiry. The statutory right of a citizen conferred by Section 5A of the Act, must be treated as sacrosanct and must be given due value and weightage. Once this is realised, it is very difficult to exclude the principles of natural justice and fair play from such an inquiry.

55. Learned Counsel for the petitioners sought to elevate the statutory right conferred on a citizen by Section 5A of the Act to a fundamental right on the ground that such a right has the flavour of a fundamental right. For doing so, learned Counsel relied upon *Om Prakash and Another Vs. State of U.P. and Others*, which has been cited in *Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others*, . Since this question does not arise in this case, I do not think it necessary to adjudicate upon this issue.

56. From the above discussion, it appears to me that the following propositions of law are quite well settled:

The right of hearing u/s 5A of the Act is a substantial right. (See *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, . It is not empty formality but is a substantive right (See *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, .

The right u/s 5A can be taken away for good and valid reason. (See *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, . But, it cannot be taken away as if by a side-wind (See *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, .

57. This being the legal position, I do not think that proceedings u/s 5A of the Act should have been conducted in such a casual manner as the Respondents have done in respect of village Chhatarpur, Khanpur, Satbari, Tughlakabad, Khirkee and Deoli. Consequently, I would, with respect, follow the view taken in *Balak Ram-III* and hold that the inquiry u/s 5A of the Act held in respect of the Petitioners in the present batch of cases who had filed objections is vitiated since it was held contrary to the principles of natural justice. Of course, this would not apply to the inquiry held in respect of Tigri village because no case from that village is listed in this batch of cases.

58. In addition to the above, it is also necessary to mention a decision of another Division Bench of this Court in *Hari Ram Kakkar Vs. Union of India and others*, . The petitioner therein had filed objections u/s 5A of the Act. The Division Bench fully endorsed the reasoning given in *Balak Ram-III* in respect of the inquiry u/s 5A of the Act pertaining to village Satbari. The Division Bench noted in paragraph 4 of the Report that the facts of the case show that there is no record of any hearing conducted by the previous Collector u/s 5A of the Act or by the Collector who submitted the report to the appropriate Government. There was, Therefore, a complete negation of the right conferred on land owners u/s 5A of the Act. On the issue whether the inquiry u/s 5A of the Act is administrative or quasi-judicial

or judicial, the Division Bench held (in paragraph 6 of the Report) that:

"It is a basic principle of natural justice that when a hearing is required to be given under a mandatory provision in a statute, it cannot be allowed to be reduced to a farce in the sense that hearing is provided by one officer and decision is taken by another officer. The very argument is reprehensible."

59. Nothing has been shown by learned Counsel for the respondents to persuade me to disagree with the view rendered by two Division Benches of this Court both of which essentially follow a long line of decisions rendered by the Supreme Court that a hearing u/s 5A of the Act has to be an effective hearing and that an inquiry u/s 5A is a valuable right given to a land owner which must be given some meaning and substance.

60. As far as the inquiry in respect of villages Shayoorpur, Maidan Garhi and Rajpur Khurd is concerned, the Division Bench in Balak Ram-III set aside that report on merits and not on the ground that there was any violation of the principles of natural justice which would go to the root of the validity of the inquiry. The reason given by this Court in Balak Ram-III for holding the inquiry to be vitiated is that the report was a non-speaking report which did not deal with all the objections and, Therefore, the satisfaction of the Lt. Governor suffered from non-application of mind. This reasoning has been found to be incorrect by the Supreme Court in Uban-I and Uban-II and, Therefore, to this extent, Balak Ram-III must be deemed to be overruled. Additionally, I am of the view that while dealing with a report u/s 5A of the Act the appropriate Government is not required to write a judgment, as it were, nor is this Court while exercising its jurisdiction under Article 226 of the Constitution, sitting in appeal over the satisfaction of the appropriate Government. Consequently, the inquiry u/s 5A of the Act in respect of village Shayoorpur, Maidan Garhi and Rajpur Khurd must be held to be valid as also the satisfaction of the Lt. Governor based on the report submitted by the Collector in respect of these villages. The writ petitions in respect of these three villages must be dismissed.

61. Insofar as the writ petitions in respect of village Neb Sarai are concerned, since the petitioners did not file any objections u/s 5A of the Act, their writ petitions must be dismissed in view of Abhey Ram, Uban-I and Uban-II.

62. Insofar as the present writ petition is concerned, Chatro Devi filed objections u/s 5A of the Act. Her land is in village Chhatarpur. For the reasons given above, her writ petition must be allowed since the inquiry u/s 5A of the Act has been held to be vitiated by two Division Benches of this Court. Consequently, the declaration u/s 6 of the Act in respect of her land must also be set aside.

63. Finally, I fully endorse the directions given by my learned brother which relate to the better administration of justice.

64. The writ petition is disposed of as above. No costs.

1. By separate two judgments, we have dealt with, at length, the contentions

raised on behalf of the petitioners in the above and other 80 connected writ petitions. With the exception noticed hereinafter, there is unanimity of view. The cases falling in the category specified by Madan B. Lokur, J. in the separate judgment would have to be referred to a Third Judge, in accordance with rules and practice of this Court. The cases which would require reference to the Third Judge in regard to question and villages, should fall in the following category :-

41. This being the legal position, I do not think that proceedings u/s 5A of the Act can be taken in such a casual manner as the respondents have done in respect of village Chhatarpur, Khanpur, Satbari, Tughlakabad, Khirkee and Deoli. Consequently, I would, with respect, follow the view taken in Balak Ram-III and hold that the inquiry u/s 5A of the Act conducted in respect of the petitioners in the present batch of cases who had filed objections is vitiated since it was held contrary to the principles of natural justice. Of course, this would not apply to the inquiry held in respect of Tigri village because no case from that village is listed in this batch of cases.

2. Only, the cases which fall in the ambit of the directions contained above, shall be placed before Hon"ble the Chief Justice for reference to the Third Judge in accordance with law.

3. Except the cases specifically saved by the above paragraph, all writ petitions are dismissed, while leaving the parties to bear their own costs. The respondents including the Registry of the High Court shall comply with all the directions stated in the judgment without any delay. A copy of this order may also be sent to the Chief Secretary, Government of NCT of Delhi.