
(2007) 09 AHC CK 0048
In the Allahabad High Court

Smt. Manju Lata Agarwal

APPELLANT

Vs

State of U.P. and Mathura Vrindaban Development Authority

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 300A
Land Acquisition Act, 1894 — Section 1, 12, 17, 4, 43

Citation : (2008) 1 UPLBEC 211

Hon'ble Judges : Rakesh Sharma, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—In all these writ petitions land acquisition proceedings, initiated under the provisions of Land Acquisition Act, 1894 (hereinafter called the Act), have been challenged on various grounds. As all the petitions raises same questions of facts and have been heard together, the same are being disposed of by a common judgment.

2. The facts and circumstances giving rise to these cases are that Notification u/s 4(1) of the Act was published in the official Gazette dated 13.07.2006 for planned development of land measuring 67.829 hectares in revenue estate of Surakhbanga, Pargana Vrindavan, District Mathura. The urgency powers u/s 17(1) and 17(4) were invoked. Inquiry envisaged u/s 5A of the Act was dispensed with. Declaration u/s 6 of the Act was made on 26.07.2007, and substance thereof was published in the local newspapers; subsequently, on 28.07.2007, in respect of the entire land notified u/s 4 of the Act, i.e., 67.829 hectare. Hence these petitions.

3. We have heard S/Shri R.N. Singh, Gaurav Banerji, S.M.A. Kazmi, learned Senior Counsel with S/Shri Anurag Khanna, M.K. Gupta, C.B. Yadav, Smt Manju R. Chauhan, Mukhtar Alam, Punit Kumar Gupta, for the petitioners, Shri Ravi Kant, Senior Advocate with Ms. Sunita Agrawal for the Development Authority, and S/Shri P.S. Chauhan and Ramesh Singh, learned Standing Counsel appearing

for the State.

4. It has been canvassed on behalf of the petitioners that the land has been notified for establishing a residential colony by the Mathura Vrindavan Development Authority (hereinafter called the Development Authority) which is not a public purpose. The land use of most of the lands under Notification and Declaration has been shown as reserved for Maths and Ashrams in the existing Master Plan, as prepared by the Development Authority, and duly approved and notified by the State Government. Therefore, acquisition for some other purpose is not permissible. There was no material before the State Government to show that it was a case of grave urgency and limited right of persons interested to file objections u/s 5A be dispensed with, particularly, when the Declaration u/s 6 has been made on the last date of limitation prescribed under the Act; Section 4 Notification had been issued after having correspondence and deliberations for about 2-3 years, and thus, there has been pre-notification and post-notification delay on the part of the State Government. Dispensation of the inquiry u/s 5A of the Act is a colourable exercise of power just to cover the lethargic attitude/inaction of the State Government. There is nothing on record to show that the Government had ever passed an order applying its mind and recording a finding that there was a grave urgency, and thus, inquiry u/s 5A be dispensed with. Thus, the proceedings are liable to be quashed. In one of the writ petitions (Writ Petition No. 40330 of 2007) additional grounds had been raised that all the petitioners therein are scheduled castes/scheduled tribes. There are government notifications exempting their land from acquisition and even their applications for releasing their land u/s 48 of the Act had been rejected. Thus, proceedings are liable to be quashed.

5. On the other hand, it has been contended by the respondent counsel that there is a urgent need for acquiring the land. Mathura being a religious city, there has been already a demand for accommodation for all purposes, i.e., for residences, Ashrams and Maths etc. The Development Authority had been demanding from the State Government that the land be acquired and given to it to cater the need of persons willing to settle in Mathura considering its religious and spiritual importance, Large number of public representatives made representations on behalf of the persons interested before the State Government that the land in dispute should not be acquired. State Authorities were bound to consider the said objections. Thus, Notification u/s 4(1) could be issued at a much belated stage. Declaration u/s 6 could be made only on the last date of limitation. Even if there is a pre or post-notification delay on the part of the Executive, the land acquisition proceedings do not stand vitiated. The pressure of demand was so high that urgency powers had to be invoked to avoid further delay. The Authorities had acted bona fide. The Development Authority deposited a huge sum of amount with the State Government for acquisition of the land. The District Collector has been writing to the State Authorities to invoke the urgency powers, as id as the State Government agreed with him and invoked the said power, without reciting that the said inquiry be dispensed with. Such a

technicality should not defeat the purpose of acquisition as it cannot be said to be a case of non-application of mind. Matter had been considered and re-considered by the Land Use Authority, the State level Committee headed by the Hon"ble Chief Minister. Acquisition proceedings should not be disturbed or interfered with at the behest of a few persons when the land belonging to a large number of persons is involved. Planned development of the area should not be hampered at the behest of a very few persons. The land is being acquired for public purpose, and it is too late to submit that establishment of a residential colony in the cities is not a public purpose. So far as displacing of persons belonging to scheduled caste and scheduled tribe is concerned, proper care shall be taken as per the policy decision taken by the Development Authority in spite of the fact that their applications for releasing their land u/s 48 of the Act have been rejected by the State Government. These very proceedings had already been subject matter of challenge in large number of cases and issue of dispensation of Section 5A inquiry was also agitated, but this Court granted a limited relief of consideration of their applications for release of their land u/s 48 of the Act, the issue does not require to be reconsidered at all. Petitions lack merit and are liable to be dismissed.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

7. The original records produced by Shri P.S. Chauhan, learned Standing Counsel as well as by Smt Sunita Agrawal on behalf of the development Authority have also been perused thoroughly.

8. The purpose of inquiry u/s 5A of the Act, 1894 is two fold. It enables the State Government to decide whether any part of the land is needed for a public purpose or for a company and it also provides a safeguard against any ill-informed action on the part of the Government. It also intends to serve a purpose i.e., to give an opportunity to the persons interested in the land to put forward their point of view, supported by some material as they may consider appropriate to show that the proceedings deserve to be dropped as it would not serve the purpose of acquisition and the land sought to be acquired may not be suitable for the said purpose.

9. In Delhi Administration Vs. Gurdip Singh Uban and Others, , the Hon"ble Supreme Court summarised that a person interested can file objections substantially on the following grounds:

(i) The purpose for which the land is acquired is not a public purpose;

(ii) That even if the purpose is a public purpose, the land of the objector

is not necessary to be taken as the purpose could be served by other land already proposed or some other land to which the objector may refer; or

(iii) in the special facts and circumstances in which the objector is placed, it is a fit case for omitting his land from acquisition.

10. Apart from the above, another objection that can be possibly raised is that the proposed acquisition of a particular land may not at all serve the exact purpose, i.e., not suitable for the purpose for which the land is sought to be acquired or the land is being acquired for some collateral purpose. Such objections can therefore form the basis of an inquiry u/s 5A of the Act.

11. In *Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors.* (2007) 1 SCC 641, the Hon'ble Supreme Court while considering the meaning and scope of the expression "public purpose" considered large number of its earlier judgments, particularly, *The State of Bombay Vs. Bhanji Munji and Another*; *The State of Bombay Vs. Ali Gulshan*, *The State of Bombay Vs. R.S. Nanji*, *Babu Barkya Thakur Vs. The State of Bombay and Others*, *Smt. Somavanti and Others Vs. The State of Punjab and Others*, and *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, and came to the conclusion that it is not possible to precisely define the expression "public purpose" as it would depend upon the facts and circumstances of each case. However, the Government is the best judge to decide as to whether the public purpose is served by issuing the Notification for acquisition of land. The public purpose must include an object in which the general interest of the community as opposed to the particular interest of individual, is directly and vitally concerned. Public purpose is bound to change with time and the prevailing conditions in the given area. Therefore, it cannot be defined within a particular framework. The declaration made by the Government in this regard is final. The Court has a limited scope of judicial review to interfere only if it is satisfied that it was a colourable exercise of power, on being challenged by the aggrieved party. The Court further held as under:

"Public purpose" is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.

The power of compulsory acquisition is described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as safety, security, health, welfare and prosperity of the community or public at large.

The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

12. It is also settled by now that once the original acquisition is valid and title has vested in the State/Authority then how it uses the excess land is not of any concern of the original owner and cannot be made a ground for invalidating the acquisition. A valid acquisition cannot be voided because long after, the Authority diverts its public purpose other than shown at the time of initial acquisition. The excess land can also be sold by public auction, the erstwhile owner cannot claim restitution of the part of the land as it vests in the State free from all encumbrances. Vide *Gulam Mustafa and Others Vs. The State of Maharashtra and*

Others, Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, ; C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, State of Kerala and others Vs. M. Bhaskaran Pillai and another, Tulsi Co-operative Housing Society, Hyderabad, Etc. Etc. Vs. State of Andhra Pradesh and Others Etc. Etc., and Govt. of A.P. and Another Vs. Syed Akbar,

13. Thus, in view of the above, the Court has to examine, as in the specific case on hand, whether the land is sought to be acquired for a public purpose.

14. In State of U.P. v. Smt. Pista Devi and Ors. AIR 198f SC 2025, the Hon''ble Supreme Court considered its earlier judgment in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , wherein it was held that the scheme relating to development of residential area in urban centres was not so urgent that it was necessary for eliminating the inquiry u/s 5A of the Act and came to the conclusion that because of the subsequent fast development of urbanisation, the situation has completely changed and the problem of housing accommodation has become a matter of national urgency. Taking judicial note of this kind of development, the Court held that the acquisition of land for providing housing sites can warrant dispensation of the inquiry u/s 5A of the Act. The Court further held that where a large area of land is sought to be acquired, the scheme of planned development should not be frustrated by judicial interference at the behest of few persons. On the issue that there was an omission in the notification issued u/s 17(1-A) of the Act regarding the agricultural land the Court held that it was not fatal for the reason that the Government had the power to acquire the land other than waste and arable land also by invoking urgency clause.

15. It is settled by a series of pronouncements that objections under Sector 5-A of the Act have to be filed within the period of 30 days from the date of publication of substance of Section 4 notification and opportunity of personal hearing is mandatory in case the persons interested file objections within the time stipulated therein and appear in person or through their representatives and ask for opportunity of hearing. Vide Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, ; Shyam Nandan Prasad and Others Vs. State of Bihar and Others, ; Rambhai Lakhbai Bhakt Vs. State of Gujarat and others, ; Tej Kaur and Others, etc. Vs. State of Punjab and Others, Pratibha Nema and Others Vs. State of M.P. and Others, Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, and Kanpur Development Authority v. Mahabir Sahkari Awas Samiti Ltd. (2005) 10 SCC 320. In Hindustan Petroleum Corporation (supra), the Hon''ble Supreme Court, while dealing with the issue observed as under:

It is not in dispute that Section 5A of the Ac; confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable

compensation therefore must be paid.

The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution it has been held to be akin to a fundamental right.

16. The "right to property is now considered to be not only a constitutional or statutory right but also a human right". Vide P.T. Munichikkanna Reddy and Others Vs. Revamma and Others,

17. Thus, in view of the above, it is evident that objections u/s 5A of the Act have to be dealt with in accordance with law by providing opportunity of effective hearing to every objector, as it cannot be held to be an empty formality and in case such a hearing is not provided, the subsequent proceedings would stand vitiated.

18. The inquiry required u/s 5A of the Act can be dispensed with in exercise of the power u/s 17(4) of the Act only in grave urgency and in exceptional circumstances and the decision of the authority must be based on materials on record to support the same (bearing in mind the objections u/s 5A of the Act), otherwise, it would amount to arbitrary exercise of power and denial of administrative fairness which may be a constitutional anathema. The exercise of power of "eminent domain" may interfere with a right of property of a person by acquiring the same, but it should be done only for public purpose and should not violate the constitutional rights guaranteed under Article 300A of the Constitution or India. Dispensation of an inquiry u/s 5A of the Act without any justifiable cause could be violative of Article 14 of the Constitution. In absence of real and

genuine urgency, it may not be appropriate to deprive an aggrieved person of a fair and just opportunity of putting forth his objections for due consideration of the Authority concerned. Vide Narayan Govind Gavate (supra); State of Punjab and Another Vs. Gurdial Singh and Others, Union of India and others Vs. Praveen Gupta and others, Union of India (UOI) and Others Vs. Mukesh Hans etc., and Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others,

19. In Munshi Singh and Others Vs. Union of India (UOI), the Apex Court held as under:

7. 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.... The legislature has therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections against the proposed acquisition. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5A.

20. In Dora Phaulauli Vs. State of Punjab and Others, , the Apex Court observed that "the right of a person having any interest in the property to file an objection u/s 5A of the Act should not be interfered with in a casual or cavalier manner".

21. In Mukesh Hans (supra) the Hon"ble Supreme Court considered as to whether in case of urgency u/s 17(1) or in case c emergency u/s 17(2), the powers u/s 17(4) could be automatically invoked for dispensing with the inquiry, required u/s 5A of the Act. The Court placing reliance upon its earlier judgment in Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, , came to the conclusion that 17 (4) carves out an exception to the normal mode of acquisition. Mere existence of urgency or unforeseen emergency may not necessarily compel the Government to dispense with 5-A inquiry. The appropriate Government has to apply its mind as to whether urgency u/s 17(1) r unforeseen emergency u/s 17(2) warrants dispensation of the enquiry u/s 5A and such an order is not automatic or consequential.

22. In Om Prakash and Another Vs. State of U.P. and Others, the Hon"ble Supreme Court considered a similar issue and explained as under what circumstances the inquiry u/s 5A of the Act could be dispensed with. The Supreme Court considered the delay on the part of the State at two different stages. The first was the delay caused from the date the demand was made by NOIDA to the date the State Government took the decision to notify the land u/s 4(1) of the Act along with Section 17(4) for dispensing with the inquiry u/s 5A of the Act; and the second was the delay in issuing the declaration u/s 6 of the Act. The Court also considered its earlier judgments in Narayan Govind Gavate and Pista Devi (supra). In the said case, NOIDA asked the Government to acquire the land by; letter dated 14.06.1988.; correspondence continued; again a reminder

was sent on 14.12.1989. The land was notified u/s 4(1) read with Section 17(1). Subsequently on 05.01.1991, but the substance thereof was published in the newspapers on 30.03.1991. The declaration u/s 5 of the Act was made on 07.01.1992. The Apex Court held that had there be in a case of grave urgency, the notification u/s 4(1) of the Act would have been issued at the earliest on receiving the demand for acquisition and the Section 6 declaration would also have been made in close vicinity to the notification u/s 4(1) of the Act, but the declaration was published after nine months from the date of the Section 4 notification. The Stat: Authorities miserably failed to explain the delay that had occurred at both the stages. Therefore, there could not be any real urgency underlying dispensing with Section 5-A inquiry despite NOIDA having suggested for acquiring the land urgently. The Supreme Court explained the Judgment in Pista Devi (supra) observing that in the said case as a corrigendum was issued for the notification u/s 4(1) of the Act and the State succeeded in explaining the delay satisfactorily, the Court took a view contrary to the view taken by the Court earlier in Narayan Govind Gavate (supra). The Court further observed as under:

It is no doubt true that the aforesaid decision of the three-Judge Bench of this Court was explained by a latter two-Judge Bench decision of this Court in State of U.P. v. Pista Devi as being confined to the fact situation in those days when it was rendered. However, it is trite to note that the latter Bench of two learned Judges of this Court could not have laid down any legal proposition by way of a ratio which was contrary to the earlier decision of the three-Judge Bench in Narayan Gaovind Gavate. In fact, both these decisions referred to the fact situations in the light of which they were rendered.

23. Thus, it appears that the Bench consisting two Hon"ble judges of the Hon"ble Supreme Court in Om Prakash (supra) distinguished the ratio of the earlier judgment in Smt. Pista Devi (supra) and held that the judgment in Govind Narayan Gavate (supra) being of a larger Bench could not have been overruled by a Bench of two Hon"ble Judges and as the delay that had occurred prior to issuance of Section 4 notification and the subsequent delay in making the declaration u/s 6 of the Act had not been explained, the dispensing with the inquiry u/s 5-A was bad.

24. The Hon"ble Apex Court, however, considering the fact that much delay had already been caused and the land acquisition proceeding had been challenged by a very few person, did not consider it proper to quash the acquisition proceedings, put merely gave an opportunity to the petitioners/appellants therein to file applications u/s 43 of the Act for releasing their land by the Government from acquisition. The State Government was directed to consider the applications, if filed by the said appellants, within stipulated period, and till then status quo as on that date regarding possession was directed to be maintained. In pursuance of the said judgment and order applications were filed u/s 48 before the State Government and the same stood rejected. Matter was again agitated before this Court as well as before the Hon"ble Supreme Court. In Ved

Prakash and Others Vs. Ministry of Industry, Lucknow and Another, the Hon''ble Supreme Court dismissed the appeal on the ground that in Om Prakash (supra) it had been contended that the land in dispute was an abadi area existing prior to the Notification fiat had been issued under the Act, and in that respect entries etc. had been made under the provisions of U.P. Land Revenue Act and the directions had been issued keeping in mind to protect the abadi area. The State Government considered the evidence placed on record after hearing the parties and recorded the finding that it was not feasible to release the land of the said appellants from acquisition. The Apex Court refused to interfere.

25. In Bhagat Singh Vs. State of U.P. and Others, the Hon''be Supreme Court considered the issue of urgency and dispensation of inquiry u/s 5-A of the Act and also considered the judgment in Om Prakash (supra) but refused to issue similar directions laying down clearly that the case of Om Prakash cannot be treated as precedent in all acquisition cases where Section 5-A inquiry is dispensed with. The Apex Court further observed that those directions had been issued in Om Prakash considering that the land in dispute was abadi land and the Government had taken a policy decision not to acquire the residential property for industrial use. It may also be necessary to point out that Hon''ble Mr. Justice S.B. Mazmoodar was a Member of the Bench in both the cases.

26. However, subsequent thereto, in First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, , the Hon''ble Supreme Court observed that the delay between the decision of the State Government to dispense with the enquiry u/s 5-A of the Act and the making of the declaration u/s 6 is not fatal. The Court observed as under:

The question of urgency of an acquisition u/s 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers u/s 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power u/s 17(4) is assailed, the Court may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post notification delay subsequent to the decision of the State Government dispensing with an inquiry u/s 5-A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the

matter or that action of the State Government is mala fide. Though the satisfaction u/s 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in *Jage Ram and Others Vs. State of Haryana and Others*, Even a mere allegation that power was (exercised malafide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing malafides is very heavy on the person who alleges it. When the Court is called upon to examine the question as to whether the acquisition is malafide or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage.

(Emphasis added).

27. The aforesaid legal propositions make it clear that the view regarding post notification delay has not been consistent. Undoubtedly the Hon'ble Supreme Court decided the case in *Nirodhi Prakash Gangoli (supra)* without taking note of *Om Prakash (supra)* and both the judgments are of two Hon'ble Judges.

28. A Bench of three Hon'ble Judges of the Apex Court in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, , rejected the argument that pre-notification delay would render the invocation of the urgent provisions void. The Court held as under:

The other ground of attack is that if regard s had to the considerable length of time spent on interdepartmental discussion before the notification und, Section 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause u/s 17(4) and dispensing with the inquiry u/s 5-A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to ha acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in if execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, net possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void. We however wish to say nothing about pos notification delay. In *Jage Jage Ram and Others Vs. State of Haryana and Others*, this Court pointed out the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether o the date on which the notification was issued, there was urgency or not. In *Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others*, , it was held, "...delay on the part of tardy officials to take the further action in the matter of acquisition is not sufficient to nullify the

urgency which existed at the time of the issue of the notification and to hold that there was never any urgency.

(Emphasis added).

29. The larger Bench had taken a view that pre-notification delay would not render the proceedings or order invoking urgency clause void. The Court did not lay down any law in respect of the post-notification delay.

30. A Bench of three Hon'ble Judges of the Supreme Court in Chameli Singh and others etc. Vs. State of U.P. and another, , reiterated the similar view observing as under:

It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry u/s 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency.... When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide.... The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

(emphasis added)

31. It is evident that while deciding Om Prakash and Nirodhi Prakash Gangoli (supra), the judgments of the larger Benches in Deepak Pahwa & Chameli Singh (supra) had not been brought to the notice of the Apex Court.

32. Undoubtedly, when there is a conflict or inconsistency in the judgments of the Apex Court, judgment of the larger Bench is to be followed Vide Union of India (UOI) and Another Vs. K.S. Subramanian, The State of U.P. Vs. Ram Chandra Trivedi, Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., N. Meera Rani Vs. Government of Tamil Nadu and Another, General Manager, Telecom Vs. A. Srinivasa Rao and Others, Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others, N.S. Giri Vs. The Corporation of City of Mangalore and Others, S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, S.H. Rangappa Vs. State of Karnataka and Another, P. Ramachandra Rao Vs. State of Karnataka, ; Union of India (UOI) and Another Vs. Hansoli Devi and Others, ; Babu Parasu Kaikadi (dead) by L.Rs. v. Babu (dead) by L.Rs. AIR 2004 SC 754; Commissioner of Central Excise, Ahmedabad v. Orient Fabrics Pvt. Ltd. AIR 2004 SC 956; Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, ; and Hardev Motor Transport Vs. State of M.P. and Others,

33. Thus, in view of the above, we reach the inescapable conclusion that any lethargy on the part of the State Authorities which causes pre or post-notification delay, shall not render the invoking of the urgency powers and

dispensation of inquiry u/s 5-A of the Act illegal or void.

34. In *Pista Devi (supra)*, Hon"ble Supreme Court recognised the right of the Authority for whom the land was sought to be acquired, to communicate with State Government and place the material before it as the Court observed that communication between the State Government and the Meerut Development Authority could explain as to whether there was any delay, or whether there was any need to invoke the urgency provisions. The Court further observed that the "letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification u/s 4(1) of the Act clearly demonstrated that at that time there was a great urgency felt by them regarding the provision of housing accommodation at Meerut. The State Government acted upon the said report, certificates and other material which were before it." The Court further held that in the circumstances of the case, it cannot be said that the decision of the State Government in resorting to the urgency provision was unwarranted. Similarly in *Krishna Lal Arneja (supra)* the Apex Court took note of the fact that the delay may be caused or occasioned by the land owners themselves and, thus, such a delay would not vitiate the order passed for invoking urgency powers.

35. In *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, , the Supreme Court explained what kind of material was required for forming an opinion for invoking the urgency powers. The Court observed that in case, on the basis of the material placed before it, the State Government comes to the conclusion on due verification that there was an acute scarcity of land and there was a very heavy pressure/demand of land for public purpose and the Authority for whom the land was sought to be acquired was willing to execute the Scheme and had made an arrangement for finance and wanted to proceed with the time bound programme, the Government may be justified in invoking the urgency powers. In the said case the Hon"ble Apex Court took note of the fact that the Housing Board had made arrangement for finance and had appointed large number of Engineers and other subordinate staff for carrying out the scheme, and therefore, observed that an inquiry u/s 5-A of the Act would have resulted in uncalled for delay endangering the entire scheme and time schedule of the Board, and so held that the powers had been rightly exercised.

36. In *Om Prakash (supra)* the Hon"ble Supreme Court had undertaken the exercise to find out the material available to the Government for forming an opinion about dispensation of inquiry u/s 5-A of the Act. The Apex Court did not find any material on record on the basis of which an opinion could be formed to invoke the urgency powers as the possibility of unauthorised construction or encroachment upon the said land could not be said to be sufficient for invoking such powers.

37. Thus, from the aforesaid settled legal propositions, it is apparent that the Government must be satisfied that demand of land by invoking urgency powers is bona fide and persons interested cannot be deprived of their legal right to file

objection just to avoid lethargy on the part of the officers of the State Government or for achieving some other ulterior purpose.

38. It is a settled legal proposition that the scope of judicial review is limited to the decision making procedure and not against the decision of the authority. The Court could review to correct errors of law or fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned order in exceptional circumstances. In judicial review, the Court cannot trench on the jurisdiction to appreciate the evidence and arrive at its own conclusion as it is not an appeal from a decision. Review of the decision is not permissible where the findings are recorded by an authority on the basis of legal evidence and the said findings are not based either on ipsi dixit or conjectures or surmises. The Court cannot interfere on the ground that the matter requires appraisal of evidence. "Between appraisal of evidence and total lack of evidence, there is an appreciable difference which could never be lost sight of".

39. The power of judicial review of the writ court is limited, but it has competence to examine as to whether there was material to form such an opinion as required by law or the findings recorded by the authority concerned are perverse. It is settled law that non-consideration of relevant material renders an order perverse. A finding is said to be perverse when the same is not supported by evidence brought on record or they are against the law or where they suffer from the vice of procedural irregularities. Vide *Purushottam Chandra Vs. State of Uttar Pradesh and Others*, *Mohar Singh v. President Notified Area Committee, Colonganj and Ors.* 1956 ALJ 759; *Gaya Din v. Hanuman Prasad* AIR 2001 SC 386; and *In the matter of Special Reference No. 1 of 2002 Gujrat Assembly Election Matter* reported in Ref. by President,

40. A Full Bench of this Court in *Nanha and Anr. v. Deputy Director of Consolidation, Kanpur and Ors.* 1975 AWC 1 considered as to whether an order or a finding of a Court or Tribunal, passed on evidence on the record, can be interfered with under Article 226 of the Constitution, if some material evidence to the contrary has been ignored from consideration by the COUP or Tribunal and held as under:

If it appears that a court of fact has in substance based its findings on no evidence or that its finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading to failure of justice can be said to be established. But if a court or a tribunal bases its finding on no consideration of all relevant evidence, but an appellate or a revisional court or tribunal while affirming the finding does not refer to some material or contrary evidence in its order it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution.

41. The Hon'ble Apex Court in *Cholan Roadways Limited Vs. G.*

Thirugnanasambandam, , has gone a step further by bringing "errors of facts" within the scope of judicial review. While deciding the said case, reliance was placed upon the judgment in *E. v. Secretary of State for the Home Department* (2004) 2 WLR 1351, wherein it has been held that a review of the merits of the decision making process is fundamental to the Court's jurisdiction. The power of review may even extend to a decision on a question of fact. The error sought to be corrected must be undeniably a significant factor in the decision making process.

42. The question whether inquiry u/s 5-A of the Act is necessary or not is a question of fact and it requires to be determined by the Government in the facts and circumstances of each case for the reason that no straight jacket formula can be evolved as under what circumstances the urgency clause should be invoked. The role of the Court is very limited and it can only see as to whether there was any material to form an opinion about invoking the urgency clause or whether the Government exercised the power in a mala fide manner. The question as to whether urgency exists or not, is primarily a matter for determination of the Government subject to the scope of judicial review by the courts of law.

In *Rajasthan Housing Board* (supra) the Hon'ble Supreme Court, while dealing with the issue involved herein, held as under:

It must be remembered that the satisfaction u/s 17(4) is a subjective one and so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not u/s 17(4) but also generally with respect to subjective satisfaction.

43. The adequacy and reliability of the material on the basis, of which the conclusion is reached, cannot be permitted to be canvassed before the Court in writ jurisdiction. Vide *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, *General Court Martial and Others Vs. Col. Aniltej Singh Dhaliwal*, and *R.S. Saini Vs. State of Punjab and Others*,

44. The truth or correctness of the material will not be questioned by the Court nor will it go into the adequacy of the material. Even if some of the materials on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the order. Vide Constitution Bench judgments in *Rameshwar Prasad and Others Vs. Union of India (UOI)* and *Another*, and *Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others*,

45. In *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*, the Apex Court considered the scope of judicial review in a case of urban development, maintaining the ecological balance and after considering all aspects of town planning, came to the conclusion that in case of an executive action, the Court can look into and consider several factors, namely:

- (i) whether the discretion conferred upon the statutory authority had been properly exercised;
- (ii) whether exercise of such discretion is in consonance with the provisions of the Act;
- (iii) whether while taking such action, the executive Government had taken into consideration the purport and object of the Act;
- (iv) whether the same subserved other relevant factors which would affect the public at large;
- (v) whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and
- (vi) whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.

46. In *Sawarn Singh and Another Vs. State of Punjab and Others*, while dealing with such a issue, the Court held as under:

In view of this, the deficiency or reference to some irrelevant matters in the order of the Commissioner, had not prejudiced the decision of the case on merit either at the appellate or revisional stage. There is authority for the proposition that where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent, the order will be sustained if the court is satisfied that the authority would have passed the order on the basis of the relevant and existing ground, and the exclusion of irrelevant or non-existing ground could not have affected the ultimate decision.

(Emphasis added).

47. A similar view has been reiterated by the Hon'ble Apex Court in *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, *State of Orissa Vs. Bidyabhushan Mohapatra*, ; *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, ; *Binny Ltd. Vs. Their Workmen*, and *P.D. Agrawal Vs. State Bank of India and Others*,

48. In view of the above, it is apparent that if the order assed by an Authority is based on a consideration of certain relevant material and some other irrelevant and non-existing material, the order can be sustained, provided the relevant existing material was sufficient for formation of such an opinion. Thus, if the order can be passed on relevant and existing grounds, the consideration of irrelevant or non-existent material becomes immaterial.

49. However, the aforesaid legal proposition applies only in a case where the Authority has to pass an order on objective satisfaction. It carves out an exception that such a proposition would not apply where the decision is to be taken by the Authority on subjective satisfaction.

50. In *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, the

Hon''ble Apex Court considered an argument that if the Authority had passed an order based upon its own imagination or surmises or conjectures though there was some other relevant and existing grounds also, the order would stand vitiated. The Court observed as under:

It is well established that when a Court of facts acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. So such a finding is vitiated because of the use of inadmissible material....

51. In Zora Singh, the Court considered a similar issue and held as under:

The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari, the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into question of the sufficiency of evidence.

(Emphasis added)

52. In Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, , the Hon''ble Supreme Court held as under:

It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstances. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

53. Thus, in case where the order is based on subjective satisfaction, consideration of irrelevant or non-existent material becomes fatal and vitiates the order itself. Such a view stands fortified by the judgments of the Hon''ble Supreme Court in Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others, Rameshwar Lal Patwari Vs. State of Bihar, Puspadevi v. M.L. Wadhavan : 1987CriLJ1888 ; and Vashisht Narain Karwaria Vs. State of U.P. and another,

54. Same remains the position where the Authority fails to consider the vital facts, for the reason that if the material or vital facts which would influence the mind of the Authority one way or the other, are not placed or are not considered

by the Authority, it would vitiate the subjective satisfaction. The Authority must exercise due care and caution and act fairly and justly in exercise of its powers. However what is a vital fact would depend on the facts of each case. Therefore, only those matters alone should be regarded as vital which are reasonably likely to affect the decision of the Authority. Non-consideration of the vital fact may taint the satisfaction of the Authority. Vide *Tusher Govindji Shah Vs. Union of India (UOI) and Others*, *Sita Ram Somani Vs. State of Rajasthan and Others*, and *Ahamed Nassar Vs. The State of Tamil Nadu and Others*,

55. In *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, a Constitution Bench of Hon''ble Supreme Court considered a case where forming the opinion after considering the material was not recited in the order and held as under:

...The validity of the order therefore does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence. It would therefore follow that if by inadvertence or otherwise the recital of the format on of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made.

...The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged and it is said that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied with....

(Emphasis added).

56. In *Praveen Gupta (supra)*, the Hon''ble Supreme Court considered the issue as to whether in a case of subjective satisfaction, it is necessary to record any reason and it came to the conclusion that there was no need to pass any reasoned order to reach the conclusion that there is urgency so; s to dispense with the enquiry u/s 5-A in exercise of power u/s 17(4).

57. The Hon''ble Apex Court reiterated and approved the said proposition in *Mukesh Hans (supra)*, the Court further held as under:

We make it dear that this consideration of facts by us is not for the purpose of finding out whether the stated public purpose is in reality a public purpose or not, nor is it for the purpose of finding out whether there was an urgency as contemplated u/s 17(1) of the Act but limited to the question of whether there was any material available before the Lt. Governor pursuant to whose order Section 4(1) notification stated that Section 5-A inquiry is dispensed with. Since

formation of an opinion and application of mind cannot be assessed except by looking into the proceedings which culminated in the impugned order, we intend considering only such facts as are necessary for this limited purpose...in almost all the notings in the file there is no reference to the need for invoking Section 17(4), indicates that the Lt. Governor was not apprised of all the necessary and relevant facts before he took the decision in question. Therefore, in our opinion, the findings of the High Court that the decision of the Lt. Governor to dispense with the Section 5-A inquiry suffered from the vice of non-application of mind has to be upheld.

58. Therefore, where the recital of a particular fact is not there on the face of the order, the order would not become illegal ab initio rather a further burden would be thrown on the authority passing the order to satisfy the Court by other means that the conditions precedent were complied with. In case of subjective satisfaction, Authority is not required to pass a reasoned order.

59. Undoubtedly, dispensing with the inquiry, required u/s 5-A of the Act, may be unwarranted on the facts of a particular case, but the question does arise as to whether the person interested could really raise any objection, for the reason that a decision of the Government to dispense with the inquiry is to be tested on the touchstone of doctrine of prejudice. Unless in a given situation the aggrieved party makes out a case of prejudice or justice, some infraction of law would not vitiate the order, or he has to satisfy that a mandatory provision has been violated. Vide *Jankinath Sarangi Vs. State of Orissa*, *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, ; *Major G.S. Sodhi Vs. Union of India (UOI)*, ; *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, ; *Krishan Lal Vs. State of Jammu & Kashmir*, *Rajendra Singh Vs. State of Madhya Pradesh and others*, *State Bank of Patiala and others Vs. S.K. Sharma*, *S.K. Singh Vs. Central Bank of India and Others*, *Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827)*, *State of U.P. Vs. Shatrughan Lal and Another*, ; *State of U.P. Vs. Harendra Arora and Another*, and *Debotosh Pal Choudhary Vs. Punjab National Bank and Others*,

60. In *Kashinath Dikshita Vs. Union of India (UOI) and Others*, a Bench consisting of two Hon'ble Judges of the Supreme Court, while dealing with a case of domestic inquiry, wherein, the copy of the documents relied upon by the Department had not been supplied to the delinquent, held that whether or not refusal to supply copies of documents has, resulted in prejudice to the delinquent, is immaterial, and the order would stand vitiated. It is the Department which has to explain that not furnishing the copies of such documents has not caused any prejudice to the delinquent.

61. The aforesaid view has been diluted subsequently by a larger Bench of the Supreme Court in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, wherein it observed as under:

But we are also aware that the principles of natural justice are not rigid or

immutable and hence they cannot be imprisoned in a straight jacket. They must yield to and change with exigencies of situation. They must be confined within their limits and cannot be allowed to run wild. It has been stated, "to do a great right" after all, it is permissible some times "to do a little wrong". Per Mukherjee, C.J. In *Charan Lal Sahu Vs. Union of India*, While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential."

(Emphasis added)

62. Similarly, in *P.D. Agrawal (supra)* the Apex Court dealing with such a issue held that principles of natural justice have in recent time BSO undergone a sea change. As the principles of law is that some real prejudice must have been caused to the complainant, the Court has shifted from its earlier concept that even a small violation shall result in order being rendered a nullity. While deciding the said case, the Apex Court placed reliance on and considered its earlier judgments, particularly, *S.L. Kapoor Vs. Jagmohan and Others*, *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others*, *State of U.P. Vs. Neeraj Awasthi and Others*, ; and *Mohd. Sartaj and Another Vs. State of U.P. and Others*,

63. The Court held that technicalities and irregularities which do not occasion failure of justice should not be allowed to defeat the ends of justice. The Court further held as under:

If no prejudice is established to have resulted there from it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases.

64. In view of the above, it is evident that person, who lodges the complaint, must establish that dispensation with the inquiry stipulated u/s 5-A has caused real prejudice to him.

65. The issue as to whether the acquisition of the land is permissible by the Government for a purpose which is not in conformity of the lane; use shown in the Master Plan, was considered by the Constitution Bench of the Hon"ble Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, wherein the Supreme Court held as under:

23. The planned development of Delhi had been decided upon by the Government before 1959,viz.; even before the Delhi Development Act came into force It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force but there was no inhibition in acquiring land for phoned development of Delhi under the Act before the Master Plan was ready See the decision in *Patna*

Improvement Trust Vs. Smt. Lakshmi Devi and Others, . In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority die not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property, acquisition generally precedes development. For phoned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3) The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority.

66. A Division Bench of this Court in Technical Associates Pvt. Ltd. v. State of U.P. and Ors. 1984 ALJ 1093, also took a similar view observing that where the land had partly been earmarked for industrial purpose and partly as greenbelt, it can be acquired for housing scheme as the Master Plan can be altered/amended by the State Government subsequent to the acquisition of the land. The only restriction in law is that the land should net be used in contravention of the Master Plan existing on the date of its use.

67. In Kendriya Karamchari Evam Mitra Sahkari Avas Samiti Ltd. and Anr. v. State of U.P. and Anr. 1988 UPLBEC 645, another Division Bench of this Court considered a similar issue and held that amendment of a Muster Plan is permissible with the approval of the State Government u/s 13 of the U.P. Urban Planning and Development Act, 1973 and the area shown as a greenbelt can be altered or modified by changing the Master Plan even subsequent to the acquisition of the land. The law does not require modification of the Master Plan prior to initiation of the proceedings for acquisition as acquisition generally precedes development and, therefore, the land can be acquired in anticipation of the approval of the State Government for change of land use in the Master Plan prepared by the Development Authority. The Court further observed as under:

...Where, therefore as here, the circumstances justify that possession should be taken immediately, that is, before it is too late, the Government could invoke the urgency clause even prior to according sanction to the proposed amendment of the Master Plan. Further, the authority competent to sanction the proposed amendments in the Master Plan is the same, namely, the Government which was to take the decision regarding acquisition of land as well for a housing scheme under a planned development covered by Section 17(1-A) of the Land Acquisition Act and consequently the Government could take the decision u/s 17(4) ever before sanctioning the proposed amendments to the Master Plan.

68. In view of the above, it is evident that there is no prohibition in law to acquire the land for the public purpose which is not in conformity or in consonance with the purpose shown in the Master Plan as the acquisition can be made in anticipation of amendment/modification of the Master Plan.

69. In view of the aforesaid settled legal propositions, it emerges that the land

can be acquired for public purpose; the expression "public purpose" cannot be defined by giving a specific definition as the same cannot be fitted in a straitjacket formula. The facts and circumstances of each case have to be examined to find out whether acquisition is for a public purpose. Right to property is a constitutional/statutory/human right of an individual person. A person interested has a right to file objections u/s 5-A of the Act though such a right is limited for pointing out that the purpose for which the land is acquired is not a public purpose or the land of the said person is not suitable for that purpose or the area of the land sought to be acquired would be excessive for serving the said purpose as the land cannot be acquired for some other collateral purpose. Such objections form the basis of an enquiry u/s 5-A of the Act. In exceptional circumstances where there is a grave urgency or unforeseen emergency, the Government is competent to invoke the urgency powers contained under Sections 17 of the Act and take possession before making the Award. In a case of urgency or emergency Government is also competent to take a decision that in order to avoid further delay, the enquiry envisaged u/s 5-A of the Act be dispensed with, but for taking such a decision, there must be existing and relevant material before the Government and it must apply its mind as to whether the urgency is such that persons interested are to be deprived of their right to file objections u/s 5-A of the Act. Invoking the provisions under Sections 17(1) or 17(2) of the Act would not automatically dispense with the enquiry u/s 5-A. There has to be an independent decision by the State Government for such dispensation. Section 17(4) itself indicates that the "Government may direct that the provisions of Section 5-A shall not apply." The recital of such an opinion in the order or in notification is not necessary. No reasons have to be recorded in this regard in the official records. It is a case of subjective satisfaction of the Government and once the Government forms the opinion and dispenses with the enquiry u/s 5-A of the Act, the Court, in its limited jurisdiction of judicial review, cannot declare the acquisition proceedings bad. Pre or post notification delay or lethargy on the part of the officials of the State Government is not fatal to acquisition proceedings. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. There is no prohibition in law for acquiring the land for a public purpose, which is not in conformity with the land use shown in the Master Plan, as the Master Plan can be amended/modified by the Government. Acquisition of the land for a use other than the one for which it had been earmarked in the Master Plan can be initiated in anticipation of approval to the proposed amendment/modification of the Master Plan by the State Government. Planned development proposed should not be installed at the behest of a few aggrieved persons, where a huge chunk of land belongs to a very large persons is involved.

70. The aforesaid cases require to be examined in the light of the aforesaid settled legal propositions. For convenience, Writ Petition No. 2251 of 2007 Smt Manju Lata Agrawal v. State of U.P. and Ors., is taken to be the leading case.

71. The facts of the said case reveal that petitioner vide Registered Sale Deeds dated 25.08.1999 and 11.06.2004 purchased the land from various persons, for the purpose of carving out the plots for establishment of a residential colony. Petitioner submitted an application dated 22.07.2004 for approval of the plan for establishment of a residential colony. The said application was rejected by the Development Authority vide order dated 31.07.2004 on the ground that the land in dispute was likely to be acquired by the State Government for planned development of Mathura and Vrindavan. Appeal against the said order of rejection of the said plan was dismissed by the Chairman of the Development Authority vide order dated 31.08.2005. Land along with other huge area of lands, stood notified u/s 4(1) and 1(4) of the Act on 13.07.2006, and subsequently, Section 6 Declaration was made on 26.07.2007.

72. The main thrust of the arguments on behalf of the petitioner has been that there are several Schemes in existence, wherein a huge area of land has been acquired for the use of the Development Authority, and most of lands/plots are lying vacant without any development. Rejection of the plan of the petitioner earlier in anticipation that the land would be needed for planned development was not justified and the Section 5-A inquiry had been dispensed with without there being any case of grave urgency and here was no subjective satisfaction in this regard. Issuance of the Section 6 Declaration on the last date of limitation is itself a proof that there was no urgency which could warrant dispensation of the inquiry u/s 5-A of the Act. More so, there is nothing on record to show that the Government had ever passed any order reciting that the inquiry should be dispensed with.

73. There is no dispute to the settled legal proposition that establishment of a residential colony is a public purpose. Where there is requirement of land for planned development, the State Government is free to seek information from the District Collector or Land Acquisition Collector, or any other source, including the Development Authority in all respects.

74. The Vice Chairman of the Development Authority vide letter dated 05th March, 2004 asked the State Government through the District Collector Land Acquisition that an area of 67.938 hectares was required for planned development as the twin cities of Mathura and Vrindavan are most important pilgrims' destination of historical heritage/religious importance having industrial and housing potentiality. Non-availability of suitable land had resulted in mushroom growth of unplanned development in and around the said twin cities.

75. The Development Authority in its 52nd meeting held on 29.03.2004 passed a resolution asking the State Government to acquire the land urgently. The Land Acquisition Collector sought further opinion from the Authority vide letters dated

29.07.2004 and 28.09.2004. The said letters were replied by the Development Authority on 11.11.2004 giving details of the persons interested and the number of persons belonging to scheduled caste and scheduled tribe and landless farmers likely to be uprooted and also gave assurance that a sum of Rs. 27,40,558.00 would be deposited for the rehabilitation of such persons. The Director of the Land Acquisition vide letter dated 10th of January, 2005 again sought certain clarification from the District Collector, Mathura regarding the said acquisition. The explanation to the issues raised by the Director Land Acquisition was given by the Development Authority by its letters dated 25.01.2005 and 15th of March, 2005, observing that total land required for planned development would be about 200 hectares. However, this land may be acquired urgently by issuance of Section 4 Notification. Minutes of the said Committee headed by the Chief Minister, dated 15.09.2005, reveal that there was dire need of residential houses, as old Vrindavan city was too much congested, and unless the land was acquired the problem of land development would not be solved. The non-agricultural land was not available upto the extent of 5, 1/2 kilometres in the area. Minutes of the meeting dated 04.05.2006 reveal that the said Authority considered large number of representations submitted by land owners, public representatives and others.

76. It appears that large number of letters had been received by the State Government opposing such acquisition as is evident from the letter of the Special Secretary of Urban Planning Development Department dated 14th February, 2006, wherein certain letters written by Dr. Yadu Raj Singh Yadav, Senior Worker of Samajvadi Party, Mathura, Shri Shyam Sunder Sharma, M.L.A. were sent to the Vice Chairman of the Urban Planning Development for comments. All such letters have been dealt with by the officers immediately thereafter. A letter was written by Shri Puran Lal Yadav to the State Government for not acquiring the said land. Another letter was written by Shri Gurudev Sharma, President of the District Unit of the Samajvadi Party, Mathura for not acquiring the said lands, and all such letters were also referred to Development Authority for comments.

77. Again several letters from the persons, including, Shri Tej Pal Singh, Shri Ram Singh Vaishya and Manvendra Singh, Member of Parliament were sent to the Hon'ble Chief Minister not to acquire the said land. Various representations in this regard were received in the office of the Prime Minister and were also given to Smt. Sonia Gandhi, the Chairperson of the UPA and all of them were sent to the Authorities concerned for consideration. All such letters were considered by the Authorities, and as there was no force, the Notification dated 13th July, 2006 was issued under Sections 4(1) and 17(4) of the Act. Even subsequent to that large number of letters had been written, a number of issues had been agitated by the persons interested, and representations etc, regarding the availability of plot/land in other Schemes were made.

78. Certificate dated 16th March, 2007 issued jointly by the District Collector, Special Land Acquisition Officer and the Vice Chairman of the Development

Authority is on record, which shows that the Development Authority has been sanctioned a loan of Rs. 19 crores by HUDCO for making payment of 70 percent of the estimated cost of the land sought to be acquired and the Development Authority has already deposited a sum of Rs. 27,40,558/- to meet its obligation under the Re-establishment and Rehabilitation Scheme.

79. There is sufficient material on record produced by the State as well as by the Development Authority that the displaced persons belonging to below poverty line and the Scheduled Castes and Scheduled Tribes would be provided facilities as provided for under the Re-establishment and Rehabilitation Scheme - 2003 framed by the Central Government, for their re-establishment and rehabilitation. The said Scheme provides that in case such a person is displaced from his residential accommodation, he shall be provided a plot having an area equivalent to the area from which he has been displaced, without charging any consideration for the same. They shall also be provided financial assistance of Rs. 25,000/- for construction of their houses. The Development Authority has also undertaken to implement the other facilities provided under the Scheme 2003 in letter and spirit.

80. The Development Authority had deposited a sum of Rs. 05,36,66,570.00 on 2nd May, 2005 as 10% of the estimated cost of the land. Thus, it had shown the bona fides and requirements of the urgency. The proceedings dated 4th May, 2006 reveal that the land was required urgently, therefore, the matter was placed for approval before the Land Acquisition Committee. The Committee considered the case and took note of the fact that there was a demand by the Land Acquisition Collector as well as by the Development Authority to invoke the urgency powers, as is evident from the proceedings dated 8th May, 2006. The proposal sent by the Land Acquisition Collector itself reveals that the land was required urgently, for the reason that unless the land was made available urgently it was not possible to have any planned development and nor was it possible to resolve the acute shortage of residential accommodation. It also reveals that under another Scheme, i.e., Chetna Vihar, most of the plots had already been allotted, and there was a demand of land for Dharmshala and other such purposes. Thus, the land was required urgently. There was similar recommendation by the District Collector vide his letter dated 27.05.2005 that the land was required urgently.

81. Various development Schemes have already been framed and one of them relates to the development of a hitech city. The purpose of establishment of that city was altogether different from the purpose likely to be served by the present acquisition and the said Scheme was subject matter of litigation before this Court as well as the Hon'ble Supreme Court. Vide letter dated 18.08.2005 the Secretary of the Urban Planning and Development submitted a report for acquiring the said land by invoking the urgency provisions. The matter was referred to Land Use Committee for consideration.

82. The Land Use Committee applied its mind to the documents submitted by the

District Collector as well as by the Development Authority, and also regarding the lands sought to be used for Ashrams, Maths, Dharmik Sthal and residential purposes. There was an assurance by the Development Authority that the provisions of the U.P. Urban Planning Development Act, 1973 would be complied with. The recommendations of the Land Acquisition Directorate were also there before the government. The State Government was made aware that if the land was not acquired urgently, the object and purpose of acquisition which was a bona fide demand of the Development Authority would be frustrated. The cities of Mathura and Vrindavan were densely populated cities and needed expansion to accommodate the growing population.

83. The original records produced by the learned Standing Counsel reveal that the entire material including the letter of District Collector dated 27.07.2005 referred to herein above, containing the recommendation that Section 5-A enquiry be dispensed with as the land was required urgently, was placed before the Government through proper channel wherein the comments/remarks made by the Land Use Committee and the Director of Land Acquisition, were taken note of and it also mentioned that for the acquisition purposes, the land was required urgently and there was no occasion for exemption of any land out of the total land for which proposal had been sent for acquisition. The records also reveal that a sum of Rs. 5,36,66,570 = 00 (Rupees five crores thirty six lacs sixty six thousand five hundred seventy only), being 10 percent of the estimated cost of compensation, had been deposited by the Development Authority. The recommendation for invoking the urgency provision was also made. The matter was approved by the Special Secretary (Housing and Urban Planning) vide order dated 12.06.2006. It was sent for approval before the Secretary of the Department and was approved by him with a note that the matter be placed before the Chief Minister for approval. Thereafter, the Hon'ble Chief Minister accorded approval on 10.07.2006. The record also reveals that earlier a similar proposal was sent for approval on 26th April, 2005 and again on 26th September, 2005. However, the matter was not referred to the higher authorities rather certain queries were raised and the Land Acquisition Collector as well as the Development Authority was asked to furnish explanation to the various queries within two days. This fact alone indicates that it could not be a case of non-application of mind. Recital of the formation of the opinion by the government in this regard is not necessary.

84. In the instant case, the records reveal that all the relevant materials had been placed before the State Government and the recommendation made by the authorities had been approved for dispensation of the inquiry u/s 5-A of the Act. Undoubtedly, there is no recital of formation of opinion but as explained above, it would not vitiate the order. Thus, it cannot be held that there was no material on the basis of which the Government formed the subjective satisfaction that there was urgency for dispensation of the inquiry u/s 5-A of the Act.

85. We find no force in the averment that the land, subject matter of acquisition,

would be used for the purpose other than shown in the Master Plan for the reason that even the land to the extent of 300 metres or both side of the road is earmarked for Maths. There is a demand of land for chat purpose also and up to that extent land can be allotted to such applicants. More so, the government is competent to modify the Master Plan.

86. Writ Petition No. 4469 of 2007, Harsh Bansal v. State of U.P. and Ors. was filed for quashing the same land acquisition proceedings on various grounds including dispensation of enquiry u/s 5-A of the Act, as paragraph 22 of the said writ petition reads as under:

That it is further submitted here that Section 6 notification has not been issued, though more than 6 months have elapsed. There was no material before the State Government for invoking Section 17(4) of the Land Acquisition Act and dispensing with the enquiry u/s 5-A of the Act. There was absolutely no urgency in the matter as there was no relevant material with the appropriate Government to enable it to arrive at its subjective satisfaction about dispensing with the enquiry u/s 5-A of the Land Acquisition Act. The law, in this regard, has been well settled by the Hon'ble Supreme Court in the case of Om Prakash and Another Vs. State of U.P. and Others,

87. The said writ petition was disposed of vide judgment and order dated 31.01.2007 only directing the State Government to consider the application of the petitioner u/s 48(1) of the Act for releasing the land from acquisition and till the application was decided, parties were directed to maintain status quo. This Court did not quash the proceedings.

88. Earlier Writ Petition No. 63724 of 2006 filed by Buddhi Ram and others, who are petitioners in Writ Petition No. 40330 of 2007, reveals that all these issues were raised. However, this Court did not quash the proceedings, nor considered it appropriate to hold that the acquisition was bad as the enquiry was dispensed but granted relief to the extent that their applications for exemption of land u/s 48(1) of the Act may be considered. Those orders were not challenged by the said petitioners and had attained finality. Thus, it is difficult for this Court to take a view contrary to the view taken in the aforesaid cases, for the reason that even if the relief sought had not been specifically rejected by the Court, it would be deemed to have been rejected as all the submissions made in the present writ petition were agitated therein. In the present writ petition, quashing of acquisition proceedings have been sought on the same ground which had been taken in earlier writ petition. In addition thereto, the order passed by the State Government rejecting their applications u/s 48(1) of the Act, for releasing the land is also challenged. This Court cannot sit in appeal against the said order passed by the State Government on their applications. These petitioners cannot be permitted to agitate the issues which had been agitated by them in earlier writ petition.

89. The facts and circumstances of the cases do not warrant any interference.

The petitions are accordingly dismissed.