

(2006) 04 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11973 of 2005

Smt. Parkash Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 136

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 4(1)

Citation : AIR 2006 P&H 219 : (2006) 143 PLR 577 : (2006) 3 RCR(Civil) 464

Hon'ble Judges : S.S. Nijjar, J;Ranjit Singh, J

Bench : Division Bench

Advocate : Rajesh Garg, for the Appellant; Charu Tuli, D.A.G. for Respondent Nos. 1 and 4 and Jagdish Marwaha for U.O.I. Railways for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Aggrieved against the notification issued by the Government of Punjab dated 06/08/2004 seeking to acquire the land in villages of Tehsil Dasua and Mukerian of District Hoshiarpur for the purpose of doubling the railway line between Jalandhar Cantt. and Jammu Tawi, the petitioner has filed the present petition. Land measuring 1 kanal 12 marlas in khasra numbers 6851/5456 wherein the house of the petitioner is situated, is a negligible part of land sought to be acquired through the said notification. The petitioner complains that though 1 kanal 12 marlas of land being part of his house, is being acquired yet her neighbouring respondents have been favoured and only 4 marlas of land belonging to them has been acquired in khasra number 6864. The petitioner also alleges that the acquisition of this 4 marlas of land in khasra number 6864 does not cover the house of respondents 5 and 6 whereas the house of the petitioner is being completely covered under this acquisition.

2. Facts as pleaded in the writ petition show that Government of Punjab has issued notification No. 7/2/2004-1 B&R-I11/3029 dated 06/08/2004 (Annexure

P-4) u/s 4 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) giving notice for acquisition of land specified in the said notice for the public purposes of doubling the railway line between Jalandhar Cantt. and Jammu Tawi to be laid through villages of Tehsil Dasua and Mukerian of district Hoshiarpur. As per the said notification, exercising the powers, the Governor of Punjab had directed that action u/s 17(1) of the Act shall be taken on the ground of urgency and accordingly the provisions of Section 5-A of the Act shall not apply in regard to this acquisition. As per the averment made in the petition, total area of this abadi deh comprised in khasra No. 6841/5456 Khatouni No. 875 in abadi deh of village Khuda of Tehsil Dasua , District Hoshiarpur is 198 kanals and 4 marlas. Out of this, an area of 1 kanal and 12 marlas sought to be acquired vide impugned notification in khasra numbers 6851/5456 is that of the petitioner where she has a constructed house. The petitioner has also attached a site plan and has stated that the railway line is to be extended 30" inwards towards the house of the petitioner which is on the eastern side of the existing railway line. It is also stated that as a conscious citizen of the country, she has no objection to such extension of 30" inwards extension of the railway line which is likely to consume almost 1/3rd of the house of the petitioner. She has marked this as "red line" crossing the house of the petitioner in the site plan annexed as Annexure P-5. However, the grievance of the petitioner is that though her house is being completely acquired, yet the official respondents are not touching the house of private respondents 5 and 6. The petitioner claims that reasons for exempting the house of respondents 5 and 6 are oblique and action of the official respondents in acquiring the complete house of the petitioner is arbitrary and is actuated with mala fide.

3. In order to substantiate the allegation of favour made in respect of respondents numbers 5 and 6, the petitioner has stated that acquisition of 4 marlas of land in khasra number 6864 wherein lies the house of respondents 5 and 6 does not even touch their house in any manner. It appears from the pleadings that railway cabin exists at a place which is also required to be extended 30" inward of its existing position. The petitioner complains that instead of extending this to railway cabin 30" inwards of its existing position, it is being shifted diagonally into the house of the petitioner. Thus, the houses of respondents 5 and 6 are being exempted or are not being touched. Giving reason for the official respondents to favour the private respondents 5 and 6, the petitioner has stated that son of respondent No. 5, namely, Harjinder Singh is working as Patwari. Surinder Singh Saini who is son of respondent No. 6, is working as Assistant Law Officer at Railway Coach Factory and his daughter Pawan Saini is working in the Accounts Branch of department of Railways at Jalandhar. It is further stated that son-in-law of respondent No. 6 is posted as S.S.G. in the railways at Jalandhar. The petitioner claims that it is on account of influence of these persons that official respondents while re-constructing the existing railway cabin, has exempted respondents 5 and 6 and as a result thereof, the said railway cabin is being constructed in the house of the petitioner.

The petitioner has also alleged that technically or otherwise the construction of the existing railway cabin could not have been proposed in the house of the petitioner which has been left completely inhabitable. She has annexed photographs of the existing house which is appended with the petition as Annexure P-6.

4. The writ petition came up for hearing before this Court on 08/08/2005. While noticing the contention of the petitioner that notification u/s 4 of the Act was issued on 04/08/2004 but still notification u/s 6 had not been issued and the emergency provisions had been invoked, Court issued notice of motion and stayed dispossession of the petitioner. Respondents have put in appearance and have filed reply. One reply on behalf of respondent-Union of India has been filed. Separate reply in the form of short affidavit has been filed by the Executive Engineer, Central Works Division, P.W.D., B&R, Hoshiarpur. Private respondents 5 and 6 impleaded in person, have also filed separate replies which are on identically worded lines.

5. In the reply filed on behalf of respondents 2 and 3, the preliminary objection has been raised in regard to the maintainability of the writ petition. It is stated that the petitioner is guilty of concealment of material facts. It is also stated that the petitioner with malafide intention has not disclosed that corrigendum to the earlier notification issued u/s 4 of the Act had been subsequently issued on 09/10th June, 2005. As per the respondents No. 2 and 3, the petitioner though had annexed the earlier notification published on 06.08.2004 but had not brought on record or made reference to the corrigendum issued on 09/10th June, 2005. The said corrigendum has been annexed as Annexure R-2. Thus, the said respondents have sought dismissal of the writ petition on account of material concealment of this fact. The respondents have further pleaded that the petitioner had got the stay order in regard to her dispossession by misrepresentation of facts. It is maintained by the respondents that the entire process of making the provision of doubling the railway lines would get obstructed or has been obstructed by this stay order. It is also stated that the competent authority had started the process of issuance of notification u/s 6 of the Act. As already noticed during the pendency of the petition, a notification u/s 6 of the Act was issued on 30.01.2006. A copy of the same was handed over to the Court and has been kept on record. Referring to the averment made by the petitioner in para 4 of her petition, respondents have stated that the petitioner has herself stated that she has no objection to such extension of railway line by 30" which would consume 1/3rd of the house. Thus, the respondents have submitted that the public purpose for acquisition and its urgency are even justified as per the stand of the petitioner.

6. On merits, it is submitted that the respondents are executing the work of providing double railway line parallel to the existing railway line track of Pathankot-Jammu Tawi of northern railways. It is claimed that this is in the National as well as in the public interest and is aimed at facilitating smooth flow

of railway traffic. Consideration of national security has also been pleaded on the ground that the entire military of the western area travels through the said railway track." It is also urged by the respondents that being a Government institution, it has no individual interest or grudge against any person including the petitioner. The entire land/properties as notified, as per the respondents, are required for execution of the project. Consequently, it has been stated that the acquisition of the required land/property is being done as per the provisions of the Act in the National interest as well as in the larger public interest.

7. Denying the allegations made in the writ petition in regard to the location of the gate cabin, the respondents have submitted that the location of the gate cabin was planned in advance keeping in view the technical, operational and safe working in public interest. It is disclosed that existing gate cabin has been constructed on the southern side of the road which had to be dismantled for laying second railway line. It is accordingly submitted that the new cabin is to be constructed for operation of level crossing gate and that the existing cabin can only be dismantled after completing and making it operative. As per the respondents if the new cabin is constructed behind the existing cabin, then construction for operation of gate and rails/signals is not possible because connection rods and cables of the new cabin will pass through the existing cabin which will obstruct the way of signal etc. Justifying their action in not constructing this gate cabin behind the existing cabin, the respondents have disclosed that if the same is done, then the train movement and road traffic is required to be stopped/altered for the period which is required for dismantling the existing cabin as well as the time required for construction of the new cabin and connecting new cabin with the new cables which is not in public interest which is otherwise also not possible because the movements of trains to Jammu Tawi cannot be stopped on account of strategic National importance and for defence purposes. The plea of the petitioner as raised, in the petition for shifting the cabin diagonally towards the southern side has also been opposed on the ground that National highway is passing through at a short distance therefrom and that there is fully developed market-cum-residential area. It is also pleaded that no land has been acquired on the southern side and that location of the cabin on that side will not give proper visibility for the cabin man to watch and control the railway traffic in consonance with the required instructions and the rules of Ministry of Railways. Accordingly, laying down construction of the gate cabin on the northern side of the road has been justified on the technical grounds for safe train operation and uninterrupted movements of road track. The allegation of exempting the land or house of respondents 5 and 6 due to influence of their relatives posted in the railways as made in the writ petition, is stated to be a self assumption and illogical. Allegations regarding the exercise of influence on the railway authorities by respondents 5 and 6 and their relatives has been denied by stating that the project had been prepared and cleared at the highest level of the Ministry of Railways taking into consideration the National interest as well as the larger public interest. Accordingly, respondents 2 and 3

have prayed for dismissal of the writ petition.

8. A short affidavit has been filed by the State of Punjab on behalf of the Executive Engineer, Central Works Division, P.W.D. (B&R), Hoshiarpur in which it has been stated that the land has been acquired for extension of railway track and the proceedings of the land have been done at the level of Deputy Chief Engineer, Constructions, Northern Railways, Jalandhar City through SDM-cum-Land Acquisition Collector, Dasua and Land Acquisition Officer, Mukerian. It is also stated that nothing has been done by the Executive Engineer, Central Works Division, P.W.D. (B&R), Hoshiarpur.

9. Private respondents 5 and 6 have filed identically worded short written statement by way of affidavits. Both the private respondents have alleged that the petitioner is guilty of material concealment and misrepresentation. According to them, the petitioner had concealed this fact that the land being acquired i.e. 1 kanal 12 marlas in khasra number 6851 and 5456 is owned by four different owners and not only by the petitioner. They have further stated that the house of three more families are situated in this area which is being acquired and they are Sarvshri Naresh Kumar, Ram Singh and Avtar Singh. It is also disclosed that all these houses run parallel to the railway line next to the house of the petitioner. Both the private respondents have also denied the allegation of mala fide and influence alleged against them by the petitioner in the writ petition. Going further, the private respondents have submitted that this acquisition had been undertaken by the State Government for the work of making provision of doubling railway line parallel to the existing railway line track on Jalandhar Cantt.-Pathankot-Jammu Tawi section of northern railways. Relying upon the site plan Annexure P-5 submitted by the petitioner, respondents have pointed out that 30" wide line has been uniformly acquired by the State Government and apart from this 30" width, there was requirement of making gate cabin for which additional area of 8.76 metre x 8.76 metre (4 marlas) was required further on the eastern side of the railway line. Unfortunately, this 4 marla of land required for construction of cabin falls in the area where the house of the petitioner exists. They have also denied the averment in the petition that the cabin had been shifted diagonally and has submitted that the cabin had been sited by the authorities at a place which is considered best and suitable. Denying the allegation of mala fide on the part of son of respondent No. 5 who is working as Patwari, it is stated that he had never been posted in the village/s where the land acquired by the State Government for this purpose is situated. Even otherwise, he is stated to be low rank revenue officer and cannot be said to be in any position to influence the issuance of a notification by the State Government in any particular manner. Similarly, respondent No. 6 has also rebutted the allegation of bias levelled in the petition against his son who is working as Assistant Law Officer on the ground that his son is working in Rail Coach Factory, Kapurthala and so is the status of his son-in-law who is working as Assistant Financial Advisor in the said Railway Coach Factory. It is further stated that this Rail Coach Factory is under direct control of Railway Board and both his son and

son-in-law have got no connection whatsoever with the Construction Division of the Northern Railways; The daughter of respondent No. 6 who is working as Clerk in the Accounts Branch of Railways, Jalandhar and accordingly, as per respondent No. 6, she cannot be in any position to influence the exercise of duties by the railway authorities or the State Government. Both the private respondents have also denied the allegation that their houses have been left out. Both have stated that their houses do not fall in the 30" area being acquired by the government and hence question of leaving their houses from acquisition did not arise and is wrongly so stated by the petitioner.

10. We have heard Mr. Rajesh Garg, learned Counsel for the petitioner, Mr. Jagdish Marwaha, Standing Counsel for Union of India-Ministry of Railways and Ms. Charu Tuli, Senior D.A.G., Punjab representing State of Punjab.

11. The challenge raised by Mr. Rajesh Garg, learned Counsel for the petitioner to the acquisition proceedings, apparently is limited. The petitioner does not seem to be having any grouse about the acquisition as such but is mainly aggrieved against the location of cabin which has resulted in acquisition of house occupied by him. The petitioner has alleged that this action of dispensing with the requirement of Section 5-A is a colourable exercise of power on the ground, that the notification though had been issued almost a year ago, but no action has been taken by the respondents either towards issuing declaration u/s 6 of the Act or taking possession of the land. As per the petitioner, even statutory compensation of 80% has not been paid which clearly shows that there is no urgency involved in acquisition. Apparently, the petitioner has herself diluted her challenge to acquisition proceedings as can be seen from para 4 of the writ petition. In this regard, the petitioner has submitted that as a conscious citizen of the country, he. has no objection to such extension of 30 feet inward extension of the railway line which consumes almost 1/3rd of the house of the petitioner west of the red line running cross the house of the petitioner parallel to the railway line. However, the petitioner has felt aggrieved when the respondent authorities came to his house for carrying out the measurements and revealed that whole house is to be acquired but did not touch the houses of respondents 5 and 6 at all. It is at this moment that the petitioner came to know of the real reason for exempting the house of respondents 5 and 6. This she says is an arbitrarily act on the part of the respondents to acquire the whole of the house of the petitioner. It is thus clear that the main objection of the petitioner is not in regard to invoking the emergency provisions but that her house is being acquired. This aspect of challenge has been co-related by her in leaving the house of respondents 5 and 6 untouched by the authorities which according to the petitioner is arbitrary.

12. In the above noted background, we have to see if the action of the authorities in acquiring the house suffers from the vice of any mala fides or exercise of arbitrariness as alleged. Since the petitioner has raised a challenge to the power of the respondents to invoke the emergency provisions u/s 17 of the

Act, the same is also required to be gone into.

13. We have already noted the stand of the respondents in justifying this acquisition and also the reason for which the cabin is required to be located resulting in acquisition of the house of the petitioner. The allegation of mala fides have been denied by the private respondents as noticed above as well as by the Union of India. No replication has been filed by the petitioner to counter the stand taken by the respondents in their respective replies.

14. The counsel representing the petitioner has contended that dispensing with the requirement of filing objection u/s 5-A of the Act is a colourable exercise. The only ground taken to urge this stand is that nothing has been done by the official respondents after issuance of notification and almost a year has gone by which in itself is indicative of the fact that invoking the emergency provisions u/s 17 of the Act is rendered arbitrary and colourable exercise of powers. Some judgments have been cited at the bar in support of the respective stands by the parties which we will refer hereinafter.

15. Let us first examine the provisions of the Act. Section 4(1) provides for publication of preliminary notification and the powers that can be exercised thereupon by the various officers. As per Section 4(1), an appropriate Government is required to issue public notification declaring its intention to acquire the land so also likely purpose for which such land is required. This section also provides for procedure for publication of the notice. Thereafter, comes Section 5-A of the Act which contemplates right of hearing to any person interested in the land. This section further provides that every objection made shall be decided by the Collector by providing an opportunity of hearing. A report is then made to the appropriate Government containing recommendation of the Collector on the objection together with the record of the proceedings held by him. Section 6 of the Act contemplates the making of an adjudication as to the requirement of land for the public purpose. Section 9 provides for issuance of notice to the interested person after satisfying the requirements of Sections 7 and 8 of the Act. An exception is then made to the above said procedure in the form of Section 17 of the Act. The said section deals with subjective power in case of urgency. Provisions of Section 17(4) which is relevant is extracted hereunder:

17(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct a declaration may be made u/s 6 in the respect of the land at any time after the date of the publication of the notification u/s 4, Sub-section (1).

16. A perusal of Section 17 would reveal that it provides for taking possession of the land in case of urgency without making of an award but after publication of Section 9(1) notice and after the expiry of a period of 15 days of the publication

of such notice. Section 17(4) as reproduced above, also provides that in case where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency, it may direct that the provisions of Section 5-A shall not apply. In other words, if any such directions are issued by the appropriate Government, enquiry u/s 5A can be dispensed with and an adjudication u/s 6 after publication of a notification u/s 4(1) can be made. It is in this regard, direction of the respondents contained in notification Annexure P-4 invoking the urgency clause is also under challenge. The Governor of Punjab while issuing notification u/s 4 has clearly mentioned that action u/s 17(1) shall be taken in this case on the ground of urgency and the provision of Section 5A shall not apply to this acquisition. This notification u/s 4(1) was issued on 06/08/2004 and as urged by the learned Counsel for the petitioner, no action was subsequently taken to issue notification u/s 6 which would negate the aspect of urgency. Thus, the primary ground urged by the petitioner to challenge the action of the respondents in invoking the urgency clause is the delay on their part in issuance of subsequent notification u/s 6 of the Act. During the hearing of the petition, a notification dated 30.01.2006 issued under the provisions of Section 6 of the Act was produced. Written statement filed on behalf of the Union of India, Ministry of Railways, notification dated 9/10th June, 2005 was annexed as Annexure R-2 which shows that a corrigendum was issued by the Punjab Government u/s 4 of the Act.

17. Learned Counsel for the petitioner has first relied upon the decision of *Om Prakash and Another Vs. State of U.P. and Others*, . This was a case where the State of U.P. had issued a notification u/s 4 of the Act requiring acquisition of land for planned development in District Gaziabad/NOIDA. In exercise of powers u/s 17 of the Act, the provisions of Section 5-A of the Act had been dispensed with in the said case. The urgency provision had been invoked in case on the ground that there was an eminent possibility of unauthorised construction and/or encroachment upon the land. Challenge to the said notification for dispensing with the procedure u/s 5-A was rejected by the Allahabad High Court and that is how the matter reached the Supreme Court. The main ground of challenge was that there was no relevant material before the State authority to enable them to invoke Section 17(4) of the Act to dispense with the enquiry u/s 5-A. The Hon"ble Supreme Court after rival contentions noticed the issues which arose for determination in the said case and these were as follows:

1. Whether the State authorities were justified in invoking Section 17(4) of the Act for dispensing with inquiry u/s 5-A of the Act.
2. In any case, whether the appellants' lands have to be treated as immune from acquisition proceedings on the ground that they were having abadi thereon and were, therefore, governed by the policy decision of the State Govt. of U.P. not to acquire such lands.
3. Whether this Court should refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India in the facts and circumstances of

the case.

4. What final orders.

18. In this case, the Supreme Court found that the conduct of the respondents falsified their claim of urgency of acquisition mainly on the ground that the averment in the petition had almost remained unchallenged and nothing concrete could be pointed out by the respondents in the said case before the High Court to support their stand as noticed from their counter. Even after finding that there was no relevant material before the State authorities while invoking power under Sub-section 4 of Section 17 for dispensing with Section 5A, the Court still refused to set aside the notification u/s 4(1) read with Section 17(4) on the ground that the challenge in this regard was qua small pockets of land and that setting aside of the said notification would result in the entire development activity in the complex to a grinding halt. The observations of the Hon'ble supreme Court in this regard in the above noted case may require a notice and is as follows :

Out of 494.26 acres of land under acquisition, only the present appellants owning about 50 acres, making a grievance about acquisition of their lands have gone to the Court. Thus, almost 9/10th of the acquired lands have stood validly acquired under the land acquisition proceedings and the only dispute centres round 1/10th of these acquired lands owned by the present appellants. It is a comprehensive project for further planned development in the district. We are informed by the learned Senior counsel Shri Mohta for Noida that a lot of construction work has been done on the undisputed land under acquisition and pipelines and other infrastructure have been put up. That the disputed lands belonging to the appellants may have stray constructions spread over different pockets of this huge complex of lands sought to be acquired. That if notification u/s 4(1) read with Section 17(4) is set aside qua these pockets of lands, then the entire development activity in the complex will come to a grinding halt and that would not be in the interest of anyone. It was also contended by the learned Senior counsel for the respondents that it was not the appellants' contention that the proposed acquisition was not for public purpose nor any mala fides were alleged to be behind such acquisition. Learned Senior counsel, Shri Shanti Bhushan fairly stated that though the appellants might have mounted a challenge on the ground of mala fides, they have not done so before the High Court nor before this Court. Under these circumstances, we find considerable force in the contention of learned Senior counsel for the respondent that it is neither advisable nor feasible to interfere with the acquisition of such large tracts of lands when the occupants of 9/10th of the acquired lands have not thought it fit to challenge these acquisition proceedings and the occupants of only 1/10th of lands are agitating their grievance since more than 6 years, firstly before the High Court and then before this Court. The appellants' main grievance centres round the question whether their lands having alleged abadi could be acquired in the light of the State policy for not acquiring such lands." For such a contention, of course, grievance could have been made u/s 5-A inquiry if it was held.

19. The Supreme Court further found in this case that the grievance of the appellant in the said case could be vindicated before the State authorities themselves by relegating him to the appropriate remedy of filing representation u/s 48 of the Act and that remedy is available to the appellant and when that is the sole grievance of the appellant.

20. The Hon"ble Supreme Court further observed that no useful purpose will be served by striking down notification u/s 4(1) qua the appellant so far as notification u/s 17(4) is concerned. In this regard, the Supreme Court observed as follows:

We will show presently that this solitary grievance of the appellants could be vindicated before the State authorities themselves by relegating the appellants to proper remedy by way of representation u/s 48 of the Act and when that remedy is available to the appellants and when that is the whole grievance of the appellants, at this stage no useful purpose would be served by striking down the notification u/s 4(1) qua the appellants so far as invocation of Section 17(4) is concerned and the consequent notification u/s 6. That we cannot permit upsetting the entire apple-cart of acquisition of 500 acres only at the behest of 1/10th of land owners whose lands are sought to be acquired. We do not think this is a fit case to set aside the acquisition proceedings on the plea of the appellants about non compliance with Section 5-A at this late stage. It is also obvious that if on this point, the notifications are quashed for non-compliance of Section 5-A, that would open a Pandora's box and those occupants who are uptill now sitting on the fence may also get a hint to file further proceedings on the ground of discriminatory treatment by the State authorities. All these complications are required to be avoid and hence while considering the question of exercise of our discretionary jurisdiction under Article 136 of the Constitution of India, we do not think that this is a fit case for interference in the present proceedings with the impugned notifications.

21. Accordingly, the Supreme Court despite having found that emergency provisions u/s 17 was wrongly invoked, did not think it proper and fit to set aside the acquisition proceedings. The Supreme Court further observed that at that point of time, the notifications were to be quashed for non compliance of Section 5-A that will open a Pandora's box and those occupants who were uptil then sitting on the fence may also get a hint to file further proceedings on the ground of discriminatory treatment. Thus, even on the basis of the main judgment relied on by the petitioner, notification u/s 4 and invoking of urgency provision cannot be faulted.

22. The learned Counsel for the petitioner has also relied upon Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, which is to the effect that Section 5-A confers a valuable right in favour of the person whose lands are sought to be acquired. This proposition is not in dispute in the present case. The question before us is, whether the urgency provisions could be invoked in the present case or not or further if these were rightly invoked in the present

case. Hence, this judgment is not of much assistance in the present case. Similarly, judgment relied upon by the learned Counsel for the petitioner in Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, would also not be of much assistance for deciding the issue before us.

23. The other two judgments relied upon by the learned Counsel for the petitioner, namely, Bangalore Medical Trust Vs. B.S. Muddappa and others, and Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, are not relevant to the controversy in hand and appear to have been cited in support of the proposition that exercise of jurisdiction in administrative action affecting public interest and how the same should be exercised.

24. Before we proceed further, it would be appropriate to notice here that the petitioner has not seriously disputed the fact that this acquisition is for a public purpose. The petitioner even could not contend that the purpose for which the land was being acquired is not of national importance. Even as per own stand of the petitioner as noted above, she is prepared to leave the portion of her house for this acquisition. It is in this background that challenge to the exercise of urgency provisions is required to be seen. Her main grievance is that delay in issuance of subsequent notification or action by the respondents which as per her (petitioner) in itself would be enough to indicate that the urgency clause had been wrongly invoked vitiating the entire process of acquisition and the notification u/s 4(1).

25. It requires to be noticed that the acquisition is of a very larger chunk of area and the challenge by the petitioner is only to 1 kanal 12 marlas of land where her house is situated. The stand of the private respondents that even this 1 kanal 12 marlas of land does not exclusively belong to the petitioner and is rather owned by 3 other persons has gone unrebutted in any form by the petitioner. Those three persons have not challenged this acquisition. Accordingly, it is a very small chunk of land which is under challenge in the present proceedings. In this background, it would be totally unjustified to set aside the notification on the ground of invoking of urgency provisions. To similar effect were the observations of the Hon"ble Supreme Court in Om Parkash "s case (supra).

26. Let us now see if the ground of challenge on account of delay in issuance of subsequent notification could lead to a valid challenge. In this regard, learned Counsel for the State of Punjab has relied upon Chameli Singh and others etc. Vs. State of U.P. and another, . Noticing pre and post notification of delay in exercise of urgency provisions, the Hon"ble Supreme Court observed 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.

27. It may here require notice that power of the Court to interfere in invoking the

urgency provisions would be limited in nature. As was observed by the Hon'ble Supreme Court in *Jai Narain and Others Vs. Union of India and Others*, that "the question of urgency cannot be determined solely by the expression used in the notification u/s 4 of the Act. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Govt. The Courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind.... If the public purpose on the face of it shows that land is needed urgently, that by itself is a relevant circumstance for justifying the action u/s 17(4) of the Act. "Thus, existence of urgency is a matter which is entirely to the satisfaction of the Government. Further, emergency must be reflected in the need of the acquisition and if the public purpose on the face of it shows that the land is needed urgently, then that by itself is a relevant circumstance for justifying the action u/s 17(4) of the Act. The Hon'ble Supreme Court in *State of U.P. Vs. Smt. Pista Devi and Others*, held as under-

xx xx xx The question for consideration is whether in the circumstances of the case it could be said that on account of the mere delay of nearly one year in the publication of the declaration it could be said that the order made by the State Government dispensing with compliance of Section 5-A of the Act at the time of publication of notification u/s 4(1) of the Act would stand vitiated in the absence of any other material. In this case, there is no allegation of mala fides on the part of either the Government or any other Officers, nor do the respondents contend that there was no urgent necessity for providing housing accommodation to a large number of people of Meerut City during the, relevant time. The letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification 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 reports, certificates and other material which were before it. In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17 of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5-A of the Act.

28. Thus, mere delay in publication of declaration cannot lead to vitiation of notification u/s 4(1). The Courts can take judicial notice of need for acquisition. In the present case, the double railway line is the need which can be said to be urgent requirement. It has been specifically pleaded that this requirement is in the national interest as well as in the public interest. Petitioner has not disputed necessity of providing double Railway line. Delay in itself was not considered justified in interfering with the urgency provisions invoked by the Government in *A.P. Sareen and Ors. v. State of U.P.* 1997(6) S.C.C. 359. In this case the Supreme Court considered the question whether the need for urgent possession

underlying the acquisition proceedings could cease to exist only because of bureaucratic inadvertence. As held by the Supreme Court, urgency continued so long as the Scheme was not initiated, action taken and process completed. Accordingly, even if there is an inadvertent delay on the part of the authorities either to take possession or to take further action under the Act, this will not make urgency to cease and it will continue to exist in the project of nature in hand. In yet another case titled as First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, , the Hon"ble Supreme Court held as follows:

The question of urgency of an acquisition under Sections 17(1) and 17(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. Therefore, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and 17(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 taken by the appropriate authority was mala fide. Whether in a given situation, there existed urgency or not is left to the discretion and decision of the authorities concerned. If an order invoking power u/s 17(u) is assailed, the Courts may inquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by the 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. 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, 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 not conclusive, is entitled to great weight. A mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it.

29. Viewing in the background of aforementioned law laid down by the Supreme Court in various judgment, the conclusion is inescapable that the interference by the Court in regard to subjective satisfaction of the Government is limited and it is only on account of mala fides or non application of mind to the relevant factors. The allegation of mala fide as observed by the Hon"ble Supreme Court and as noticed above is not enough and in support of such allegation, specific material is required to be placed before the Court and that the burden to establish the mala fides is very high on the person who alleges it.

30. Having regard to the nature of project, the satisfaction of the Government in regard to the existence of urgency cannot be faulted. We can take judicial notice of the fact that the project is of national importance and is required to be completed without delay. The challenge by the petitioner on the ground of mala fides is just a bald assertion and has not found any support from any specific material on record. The petitioner has not discharged the heavy burden upon her to establish the mala fide especially so when the same were denied by the respondents against whom the allegation of mala fides were made and so also by the respondent Government. Allegations of mala fides are against private respondents whose land is being acquired and no such allegations have been made against the Government or officials. It may also need a notice that allegations of malafides are on the basis of position held by relatives of respondents 5 and 6 who may not be said to be that high official or otherwise that highly placed where they were in a position to influence the decisions of the appropriate Government or the authority. They have also not been impleaded in the petition. Seen in the context of the law laid down by the Supreme Court, we find it difficult to see any fault on the part of the respondent-Government in invoking the urgency provision. We are not convinced that the allegations of mala fides are established especially so in view of justification given by the official respondents in locating the cabin to place where it disturbs the house of the petitioner. We also cannot lose sight of the fact that the project is of National importance and is a time bound one. It has been pleaded by the respondents that this project has a strategic National importance for the defence purposes. These facts as pleaded in the reply have not been rebutted by the petitioner in any manner. We are conscious of the fact that the petitioner would suffer the consequences of urgency clause involved in this acquisition but so are the position of others. Laying of railway line is in public and national interest and individual interest cannot override this National public interest. While taking this view, we are persuaded to take notice of the fact that except for the petitioner, no one has come forward to challenge this acquisition and that the entire acquisition cannot be held bad. However, quashing of notification would bring the entire project to a grinding halt and that too for the acquisition of this small chunk of land. We, however, are inclined to permit the petitioner to vindicate her grievance before the State authorities and accordingly permit her to file the representation either under the Act or otherwise on the lines as permitted by the Hon'ble Supreme Court of India in Om Parkash's case (supra). This is also a case where only the petitioner, who is having a chunk of land, is challenging the notification and the entire process of this project, which is of National importance and cannot be allowed to be delayed. Our interference would certainly result in delay.

31. Accordingly, we dismiss the writ petition leaving it open to the petitioner to make a representation to the State Government on the grounds that may be available to her under law. We hope that the State Government shall give due consideration to the cause of the petitioner without affecting the progress of the

project in any manner. There shall, however, be no order as to costs.