

(2011) 05 AHC CK 0429

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 20156 of 2009, 14869 of 2008, 9418 of 2010, 15145, 15436, 15485, 15537, 15538, 15539, 15542, 15543, 15643, 15727, 15738, 15746, 15820, 15841, 15845, 15908, 15916, 16102, 16999, 17027, 17265, 17272, 18303, 18546, 18

Smt. Rajni and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 17(2), 17(4), 4
Uttar Pradesh Industrial Area Development Act, 1976 — Section 3, 9, 9(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2011) 6 ADJ 140 : (2011) 5 AWC 4633

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Judgement

1. We have heard Shri H.R. Mishra, Senior Advocate appearing for the Petitioners. Sri Zafar Naiyar, learned Additional Advocate General assisted by Sri M.C. Chaturvedi, learned Chief Standing Counsel and Sri M.C. Tripathi, learned Additional Chief Standing Counsel appearing for the State Respondents.

2. Sri Ramendra Pratap Singh has filed counter-affidavit on behalf of GNOIDA Industrial Development Authority (GNOIDA).

3. By these writ petitions, the Petitioners have challenged the notifications dated 5.9.2007 u/s 4 of the Land Acquisition Act and notification dated 27.2.2008 u/s 6 of the Land Acquisition Act issued by the State Government, by which the land in Village Gulistanpur, Pargana Dadri, Tehsil Sadar, Distt. Gautam Budh Nagar, has been acquired by the State Government for "planned industrial development" by GNOIDA Industrial Development Authority (GNOIDA), applying Section 17 (1) and (4), dispensing with enquiry and opportunity to the land owners to object to the acquisition, and authorising the State Authorities to take over possession though no compensation has been paid.

4. A counter-affidavit has been filed by the State Respondents stating in paragraphs 3 to 5 as follows:

3. That before giving parawise reply to the contents of the writ petition, a brief summary of the basic facts regarding the acquisition proceedings which is under challenge in the present writ petition and refers to the notification u/s 4(1)/17(4) and 6/17(1) of the Land Acquisition Act dated 5.9.2007 and 27.2.2008 respectively in respect of land in Village Gulistanpur Pargana Dadri and Tehsil Sadar District Gautam Budh Nagar is being submitted in the form of a chart as below:

A Number and date of Notification u/s 4(1) and 17(4) L.A. Act, 1894

2554/77-4-07-307N/06 LKO dated 5.9.2007

B Area under notification

170.097 hectare

C Date of publication in government gazette (extraordinary)

15.9.2007

D Date of publication in local newspapers for public notice

10.9.2007

E Issuance of public notice for general information

28.9.2007

F Number and date of notification u/s 6/17(1) L.A. Act 1894

622/77-3-2008-307N-06 LKO dated 27.2.2008

G Date of publication in government gazette (extraordinary)

27.2.2008

H Date of publication of declaration u/s 6/17(1) in 2 local newspapers for public notice

3.3.2008

I Issuance of notice u/s 9 L.A. Act 1894 fixing the date of hearing

18.3.2008

J Date of possession

19.3.2008

4. That the complete factual details with regard to the initiation of the acquisition proceedings are being submitted herein below:

(a) By Notification of Industrial Development Anubhag - 4 Government of U.P. a

development authority known as GNOIDA Industrial Development Authority was constituted in 1991 u/s 3 of U.P. Industrial Area Development Act 1976.

(b) The village Gulistanpur Pargana Dadri Tehsil Sadar of G.B. Nagar is the part of the notified area under the GNOIDA Industrial Development Authority. For the purpose of Planned Industrial Development in District Gautam Budh Nagar-A proposal for the Acquisition of 170.891 hectares of land in Gulistanpur Pargana Dadri Tehsil Sadar along with the note for justification for invocation of urgency clause u/s 17 Land Acquisition Act 1894 was submitted by the GNOIDA Authority vide letter No. bhulekh/bhu. P/2005 dated 24.9.2005 to the office of A.D.M (L.A)/ O.S.D Gautam Budh Nagar. True copy of the proposal of acquisition is filed herewith and marked Annexure 1 to this counter-affidavit.

(c) After reconciliation from the revenue records the aforementioned area was revised to 170.098 hectares and the same was submitted by GNOIDA Authority. The proposal was forwarded by Additional District Magistrate/ Collector G.B. Nagar together with his recommendation to the Directorate of Land Acquisition, Board of Revenue U.P. The directorate of land acquisition submitted the proposal to state government for consideration & issuance of notification u/s 4(1), 17(4) of Land Acquisition Act 1894 vide letter No. 2430/10(LA) 79v/05 dated 14.11.2006. True copy of the letter of ADM (LA) to the Director of Land Acquisition, Board of Revenue, U.P. is filed herewith and marked as Annexure 2 to the counter-affidavit.

(d) It is relevant to mention here that the request submitted by the GNOIDA Development Authority to ADM (LA) District G.B. Nagar for the purposes of initiating proceedings for acquisition of land of village Khanpur, it was specifically stated that the land in question was proposed to be acquired for planned industrial development in district Gautam Budh Nagar, through GNOIDA Development Authority. Upon receipt of the said request letter and the note containing justification for invocation of urgency, the ADM (LA)/Collector G.B. Nagar on being satisfied, recommended acquisition of 170.097 hectares of land in village Gulistanpur and also for invoking of the urgency provisions as contained in Section 17 of Land Acquisition Act. The complete records were placed before the state government through the Directorate of Land Acquisition and upon consideration of complete materials, the State Govt. recorded its subjective satisfaction for invoking of the urgency clause of Section 17 and approval was granted by state government for issuance of notification u/s 4(1)/17(4) and initiation of acquisition proceedings. True copy of note containing justification for invocation of Section 17 is being filed herewith and marked as Annexure 3 of this counter-affidavit respectively.

(e) The GNOIDA Development Authority deposited 70% of the compensation amount required as per the Rules before proposal was sent to the State Government and the State Government after being satisfied with the proposal issued declaration u/s 6(1), 17(4) on 27.2.20083. After declaration under 6/17 notice u/s 9 was issued to the land owners and after expiration of fifteen days

time as stipulated in the Act the possession of land was transferred to GNIDA Development Authority on 19.3.2008. A photo state copy of possession memo dated is being filed here with and marked as Annexure 1 to this affidavit.

5. That the Section 9 of the Act 1976 provides that no person shall erect or occupy any building in industrial development area in contravention of any building regulation made under Sub-Section 2 of the said act. As per the revenue records the land in dispute was agricultural land. Any abadi erected or constructed by the Petitioner was without any approval of the development authority. The Petitioner has not brought on record any document where by any permission given by u/s 9 of the said Act of 1976 or granted by the competent authority.

5. Sri Ramendra Pratap Singh has filed a counter-affidavit on behalf of GNIDA, stating in paragraphs 12, 16 and 17 as follows:

12. That the averments of paras 9, 10 and 11 of the writ petition are not admitted hence specifically denied. The acquisition of the land situated in Village Gulistanpur has been made by the State Government strictly in accordance with law and the State Government has examined the proposal report/joint survey report and collector's report thereafter, the State Government was subjectively satisfied and invoked the Urgency Clause u/s 17(4) of the Act in issuing the notification u/s 4(1)/17(1) of the Act dated 5.9.2007. Again the declaration notification has been issued by the State Government in exercising its power of Urgency on 27.2.2008 and notification u/s 6(1)/17(1) of the Act has been issued as per the procedure laid down by the Act. It is further submitted that the Government is fully competent to issue notifications u/s 4(1)/17(1) and 6(1)/17(1) of the Act, the land has acquired of the disputed notifications for Planned Industrial Development of GNIDA. The land in question is needed urgently for making the development in GNIDA area as per the Master Plan 2021. This acquisition is for public purpose and made strictly in accordance with law by the competent Government in exercising its power of Urgency Clause vested in it after subjective satisfaction. These notifications are just and correct notifications issued by the competent Government.

It is further submitted that the acquisition of the land has been made by the State Government on the recommendations of the subordinate authorities, who was subjectively satisfied on the objective appraisal of the fact and the State Government has taken the decision after considering the material then the State Government has invoked the Urgency Clause and issued the notifications as per the law accordingly. The decision of the State Government cannot be challenged by the Petitioners on the vague allegations without placing any material on record or without alleging any mala fide against the Respondent. The Urgency Clause has rightly been invoked by the State Government for Planned Industrial Development of GNIDA which is public purpose. Even, abadi land can also be acquired for public purpose.

16. That the averments of paras 17 and 18 of the writ petition are not submitted hence specifically denied. The acquisition of the land has been made by the State Government on the recommendations of the subordinate authorities, who was subjectively satisfied on the objective appraisal of the fact and the State Government has taken the decision after considering the material then the State Government has invoked the Urgency Clause and issued the notifications as per the law accordingly. The decision of the State Government cannot be challenged by the Petitioners on the vague allegations without placing any material on record or without alleging any mala fide against the Respondent. The Urgency Clause has rightly been invoked by the State Government for Planned Industrial Development of GNOIDA, which is public purpose. Due to globalization of economy, our country's economy has to compete with the other countries and for that requires progressing with fast speed. Therefore, in order to keep pace with the speed, invocation of Section 5-A has become imperative. It is further submitted for good infrastructure and to keep pace of progress, the urgent acquisition of land are called for that too without delay. The GNOIDA is near out National Capital Delhi, and the Residential Industrial, Institutional, Development of Roads, are required for which the land of Village Gulistanpur has been acquired. The land has been acquired for Public Purpose.

17. That the averments of paras 19 and 20 of the writ petition, it relates to the interim order passed in different writ petition, hence needs no reply.

6. In the counter-affidavit of Sri Man Mohan Chaudhary, ADM (LA), GNOIDA, Gautam Budh Nagar, filed on behalf of the State Respondents, the documents annexed would show that on 24.9.2005, the Special Officer, GNOIDA, submitted a proposal in response to the letter received from the Office of the ADM (LA), Gautam Budh Nagar, dated 22.9.2005, modifying the area of Gata Nos. 828,829 and 1044 and thereby amending the proposal for acquisition of 170.891 hectares of land with a request that the proposal may be sent to the Director, Land Acquisition, Directorate, Board of Revenue, U.P Lucknow to issue notifications u/s 4/17 of the Act. The District Magistrate by his letter dated 25.11.2005 forwarded the proposal to the Director, Land Acquisition, Directorate, Board of Revenue, U.P. Lucknow also intimating that 10% estimated compensation and 10% cost of acquisition at Rs. 11,76,83,692/- has been deposited. The proposal in prescribed proforma in three sets was forwarded for obtaining notifications u/s 4/17 of the Act. Alongwith this letter, the Collector also annexed the information on Form No. 10 for invoking Section 17 of the Act in acquiring the land. He certified that it is necessary to immediately complete the project and thus, it is also necessary to immediately take over the possession of the land. If Section 17 is applied, the rights of the land owners u/s 5-A of hearing are taken over of which he is satisfied with the justification. The justification for invoking Section 17 signed by the ADM (LA), GNOIDA, Gautam Budh Nagar (Page 11), states that according to the plan of GNOIDA, the development of the industrial area by constructing roads, sewerage, electricity, is accepted. The work of allotment has been held up in the area which is included in the industrial plan of the authority. The applicants

want allotment of the land which is not possible as the land has not been acquired. Amongst the applicants, there are several reputed industrial establishments who want to invest capital in the area in the State of U.P. and thus, according to the plan, it is absolutely necessary to make the land available to them. If land is not made available to these units according to their requirements, these units will establish their industrial units in other States and thus, an effort is being made to make the land available so that no unit goes to some other State and as such, the industrial development of the State may be possible in appropriate manner.

7. A supplementary counter-affidavit filed on behalf of the State by Sri. Sushil Kumar Chaubey, Tehsildar, (Land Acquisition), GNOIDA, District - Gautam Budh Nagar, has been filed stating therein in paragraph 3 to 13 as follows:

3. That the present writ petition has been filed for quashing the notification dated 5.9.2007, issued u/s 4(1) alongwith Section 17(4) of the Land Acquisition Act, 1894 as well as the notification dated 27.2.2008, issued u/s 6(1) alongwith Section 17(1) of the Land Acquisition Act, 1894.

4. That the present acquisition proceeding had started for acquiring total area of 170.097 hectare land situated at Village Gulistanpur, District Gautam Budh Nagar and the same was acquired for "Planned Industrial Development of GNOIDA." As per the provisions of Land Acquisition Act, 1894 (hereinafter referred as "Act" 1894), Section 9 notice had been issued to the tenure holders on 3.3.2008 and thereafter possession 156.145 hectare land had been taken over by the competent authority, therefore, the same had been vested in the State free from all encumbrances. It is also essential to mention here that area of 5.938 hectare land had been purchased by the GNOIDA Authority directly from the tenure holder; therefore, the possession was not required under the Act, 1894 of the said land.

5. That in the present acquisition, when the detail survey had been conducted at that point of time total 656 tenure holders were affected, out of which 31 tenure holders belong to SC/ST and 414 tenure holders were marginal/ small tenure holders.

6. That total compensation of the aforementioned tenure holders were calculated amounting to Rs. 1,31,97,73,575/-. Out of said amount Rs. 95,81,24,775/- had already been distributed/disbursed to the tenure holders, which comes around 72.60 percent of the total compensation.

7. That under the present acquisition, the area of 156.145 hectare land had already been transferred to the GNOIDA Authority on 19.3.2008 and out of them total 457 tenure holders which constitute 113.60 hectares land had received the compensation under the U.P. Land Acquisition (Determination of Compensation and Declaration of Award) Rules, 1997 (hereinafter referred as "Karar Niyamawali 1997"). The details of the tenure holders those have received the compensation under the Karar Niyamawali, 1997 is being filed and marked as

Annexure SCA-1 to the present affidavit.

8. That it is also necessary to inform this Hon''ble Court that total 199 tenure holders those have not received the compensation is being filed herewith and marked as Annexure SCA-2 to the present affidavit.

9. That it is highly important to mention here that there are about 44 tenure holders those have received the part compensation of some piece of land under the present acquisition but simultaneously filed the 20 writ petitions challenging the acquisition, therefore, it is apparent that once the tenure holder have received compensation for some part of the land under the present acquisition is only for planned industrial development, in fragmentation the land cannot be acquired, there should be continuity for integrated development. The detail of the tenure holder who have received compensation and simultaneously filed the writ petitions is being filed herewith and marked as Annexure SCA-3 to the present affidavit.

10. That it is highly important to mention that the Government Policy dated 24.4.2010 specifically states that the acquiring body can solve the abadi problems of the affected tenure-holders by allotting the land in the form of lease to the same tenure-holders if the land is not found ift from the point of planning in view of construction or existing abadi sites in the same way on the same terms and conditions with the payment of the amount equal to the value of the compensation amount as it leases out or sell the acquired land to different bodies and individuals for various development schemes in accordance with the Master Plan. Under the said policy the 23 writ Petitioners'' proposal had been accepted by the GNOIDA Authority. The total 14.9019 hectare land which is under the purview of the present acquisition constituting 23 Petitioners would be provided 81860 sq. meter land for leaseback for which those Petitioners have already submitted their affidavits to the authority with the condition that if the same is accepted then they would withdraw the writ petitions and would not challenge the acquisition. The present policy is beneficial to the tenure holders for rehabilitation in moreover in the same area. The details of the 23 writ Petitioners whose proposal have been accepted for lease-back, alongwith their affidavits is being filed herewith and marked as Annexure SCA-4 to the present affidavit.

11. That it is most respectfully submitted that there is approximately 16.5000 hectares of land involved in the 24 writ petitions for which no compensation has been received by the Petitioners and furthermore, they have not been considered for the lease back of the land as they do not fulfil the criteria of the lease back adopted by the GNOIDA Industrial Development Authority in consonance of the Government Order dated 24.4.2010. This includes the land of Khasra Nos. 19, 20, 21, 22, 23 for which the possession has not been taken and handed over due to the stay order of the Hon''ble High Court in the writ petition No. 13720/2008.

12. That it is highly important to mention that the present Village Gulistanpur is notified under the GNOIDA Authority and the State Government u/s 3 of the U.P.

Act No. 6 of 1976 had notified on 28.1.1991 for planned industrial development of the area. Under the present acquisition, the aforementioned facts would eventually prove that the Petitioners constitute very small portion of the area under the acquisition and that the larger public purpose may not be allowed to be defeated for small portion of the land owned by the Petitioners. The entire development of the GNOIDA area is going strictly in accordance with Master Plan 2021. The present acquisition area is situated in between whereas adjacent area had already been acquired successfully through various notifications and the details are as follows:

- (i) First phase acquisition on 13.10.1993 for an area of 84.3678 acres. Fully developed (Sector-Gama-2)
- (ii) Second phase acquisition dated 10.6.1997, total area 147 acres, Fully developed (Sector-Ecotech II)
- (iii) Third phase acquisition dated 19.7.1998, total area 56.63 acres, Fully developed (Sector-Delta 0 block, residential, and 60 meter road)
- (iv) Fourth phase under the present acquisition.

That it is highly important to mention that apart from the aforesaid notifications for the acquisition of the land, especially in the North, some area was acquired by the UPSIDC and the same acquired land has been utilized for setting up of more than 200 industrial units. The aforementioned facts and the Master Plan would eventually prove that for overall integrated development of the area the present acquisition is very much required for the planned industrial-development of the area. The list of the industrial units set up in the area acquired by the UPSIDC is being filed herewith and marked as Annexure SCA-5 to this affidavit.

13. That it is now well recognized that the infrastructure necessary for sustaining a pace of progress, by means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things are very essential for speedy sustained growth of the economy and that too without any delay. Therefore, under the aforementioned facts and circumstances, it is respectfully submitted that the Hon"ble Court have to weigh the public interest vis-a-vis the private interest. It is further submitted that the State Government and the GNOIDA Authority had carried out detail survey and had excluded the land covered with clusters of thick residential area and only acquired the land with some abadi constructions far and in between.

8. Sri Zafar Naiyar, learned Counsel appearing for the State submits that on the basis of the layout plan which has not been filed alongwith the affidavit prepared by GNOIDA stating that a freight corridor of the Railways is proposed through the land which has been acquired. The GNOIDA has entered into a MOU with the Railways alongwith the parties.

9. We do not find any reference of the MOU with the Railways in any of the affidavits filed on behalf of the State Government or GNOIDA. The State

Government has not referred to any such MOU even in the supplementary affidavit filed today. Sri Ravindra Kumar who ordinarily appears in all such matters along with Sri Ramendra Pratap Singh appearing for GNOIDA, have not made themselves available. No one had raised the point in writing in the Court that there is any MOU with the Railways. We also find that there is no amendment of the Master Plan for the alleged freight corridor, nor any permission of the State Government appears to have been taken. Further, we find from the map produced by Sri M.C. Tripathi that the freight corridor passes through a forest area for which no environmental clearance or permission of the State Government appears to have been taken. We are therefore satisfied that the plea that a freight corridor has to pass through the acquired area, has been taken only as red-herring argument, to divert from the main issue. There was no such proposal at the time of acquiring the land or thereafter, nor any such proposal has been placed before us.

10. These writ petitions were filed in the year 2008. The Petitioner's are awaiting for the outcome of the writ petitions for the last two years. The State Government and GNOIDA was making requests to decide the writ petitions. After decision in Anand Singh and Another Vs. State of Uttar Pradesh and Others, and Shri Radhey Shyam (dead) through L Rs. v. State of U.P., Civil Appeal No. 3261 of 2001 decided by the Supreme Court on 14.4.2011 in which similar notifications acquiring land for GNOIDA applying Section 17(1) and (4) were quashed, the counsel for State Government and the counsel for GNOIDA have changed their approach. On one hand, they are insisting for hearing, but on the other, they do not appear to be cooperating in the hearing of the writ petitions at all. It was on the insistence of the Court that they have filed a supplementary affidavit today.

11. It is submitted by Sri Zafar Naiyar that out of Rs. 131.97 acres, the compensation to the extent of Rs. 95 acres which is 72.60%, has been accepted by the tenure holders and that for only 30.603 acres of land, the compensation has not been accepted. He has relied upon the affidavits filed by the farmers who are Petitioners in these writ petitions. In these affidavits filed with the Chief Executive Officer, Gautam Budh Nagar, it is stated that their land has been acquired by notification dated 5.9.2007 u/s 4 of the Land Acquisition Act and notification dated 27.2.2008 u/s 6 of the Land Acquisition Act and possession has been taken, they have challenged the acquisition by filing a writ petition in the High Court in which an order has been passed to maintain status quo. In para 5, it is stated that GNOIDA will give to them land equal to the land acquired as residential land in return for the land acquired for which they will deposit the compensation in the development authority, but if they do not withdraw the writ petition, the agreement for giving residential plot will be treated to be cancelled and that they will accept the full compensation from the office of the acquiring body.

12. We have examined the affidavits of some of the farmers who have not

accepted the compensation and find that there is no agreement between the Petitioner-tenure holders and the various officials of GNOIDA. These documents appear to be given by those Petitioners-farmers who had no option but to succumb to the pressure of the authorities and the circumstances in which some of the farmers have accepted compensation. These affidavits affirmed on 15.9.2010 verify unilaterally that GNOIDA will give them land equal to the land acquired as residential land in return for the land acquired for which they will deposit the compensation in the development authority, if they do not withdraw the writ petition, the agreement for giving residential plots will be treated to be cancelled and they will accept full compensation from the office of the acquiring body.

13. The affidavits relied upon by the Additional Advocate General do not give the place where the land equal to the land acquired as residential land will be given, and the time within which the land will be handed over to them. The persons who have sworn the affidavits have not received any compensation and thus, there was no question of agreeing unilaterally and that they will deposit the compensation in the development authority. It is further stated in the affidavit that they will withdraw the writ petition, and, if they do not withdraw the writ petition, the agreement for giving residential plots will be treated to be cancelled. None of these Petitioners who had affirmed the affidavit on 15.9.2010 have withdrawn the writ petition and thus, the unilateral promise, stands cancelled. The reliance placed by Additional Advocate General on these affidavits for claiming acquiescence on the part of the Petitioners is thus misplaced.

14. We have perused the original records produced by Sri M.C. Chaturvedi, learned Chief Standing Counsel along with Sri M.C. Tripathi. The proposals and the justification for acquiring the land are exactly the same as in the case of Shri Radhey Shyam (*supra*). After referring to the proposals received from the District Magistrate on 1.8.2007 and the statement on 14 points recording the identification of the land, the deposit of the estimated compensation and acquisition cost, the proposals verify that the land does not belong to the State Government and the Gram Samiti or is affected by ceiling, and the extent of constructions on some of the plots, a proposal was submitted by the Under Secretary, Industrial Development Department, Government of U.P. on 8.8.2007 referring to the justification given by the District Magistrate to apply Section 17 dispensing with the provisions of Section 5-A of the Act. In the proposal dated 13.8.2007 of the same Under Secretary, Industrial Development Department, Government of U.P., it is stated that there is a provision for giving the compensation of the trees after getting them from the various department and also that some of the land after acquisition is developed by GNOIDA as green belt in which there is a provision for planting new trees. The GNOIDA acquires the land for planned industrial development and that the use of the land proposed to be acquired is industrial. The District Magistrate has given certificate for applying Section 17 and dispensing with the provisions of Section 5-A. The proposal has been forwarded on the basis of the justification given by the District

Magistrate for applying Section 17. The proposal was signed for approval by the Secretary, Industrial Development on 14.8.2007 and the Principal Secretary, Industrial Development Department on 17.8.2007. It was signed by Rehabilitation and Industrial Development Commissioner and Principal Secretary, Government of U.P. on 22.8.2007 and by the Secretary to the Chief Minister on 29.8.2007. The justification given by the District Magistrate, Gautam Budh Nagar, has been treated to be sufficient by the State Government for applying Section 17(1) of the Act and dispensing with the enquiry u/s 5-A of the Act.

15. Learned Counsel appearing for the Petitioners submit that for planned industrial development with no specific purpose of utilisation of land in mind or any proposals, the application of Sections 17(1) and (4) is arbitrary and violative of Article 14 and Article 300A of the Constitution of India. They submit that the State Government and the GNOIDA have not been able to demonstrate the purpose for which the land is to be utilised. The planned industrial development is a concept and not a purpose. They submit that in view of the judgment of the Supreme Court in *Anand Singh and Another Vs. State of Uttar Pradesh and Others*, *State of West Bengal v. Prafulla Churan Law*, 2011 (3) AD SC 296; *Dev Sharan v. State of U.P. and Ors.*, 2011 SCC L. Com 189 and *Shri Radhey Shyam (Dead) through L Rs. v. State of U.P.*, Civil Appeal No. 3261 of 2011 decided by the Supreme Court on 14.4.2011, the provisions of Section 17 (1) and (4) dispensing with requirement of objection u/s 5-A are not attracted in the case of planned industrial development. In *Shri Radhey Shyam's* case (*supra*) the Supreme Court allowed the appeal against the judgment of High Court and has struck down the acquisition of land by the State Government for planned industrial development by GNOIDA applying provisions of Section 17 (1) and (4) of the Act. The judgment in *Shri Radhey Shyam's* case is squarely applicable to the facts of the present case.

16. *Shri Jafer Naiyer*, Additional Advocate General submits that the facts of present case are different. The land in the judgment rendered by the Supreme Court in respect of Village Makora in *Shri Radhey Shyam's* case was a barren land. The land proposed to be acquired, lies very close to the land, which has been developed. The industrial development has to be carried out in phases. If the Court interferes with the acquisition the industrial growth of the area will stagnate. The planned industrial development means that the roads, sewer line and other infrastructural facilities have to be provided. The public money has also been spent on development of GNOIDA. The public interest cannot be crucified on the alter of private interest. After the notification of the Greater Noida Industrial Development Authority under the Industrial Planning and Development Act, there is no declaration u/s 143 of the U P. Zamindari Abolition & Land Reforms Act for the land in question to be abadi land.

17. In *Anand Singh* (*supra*) the Supreme Court held in paragraphs 29, 30 and 31 as follows:

29. "Eminent domain" is right or power of a sovereign State to appropriate the

private property within the territorial sovereignty to public uses or purposes. It is exercise of strong arm of government to take property for public uses without owner's consent. It requires no constitutional recognition; it is an attribute of sovereignty and essential to the sovereign government. (Words and Phrases, Permanent Edition, Volume 14, 1952 (West Publishing Co.,)).

30. The power of eminent domain, being inherent in the government, is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though right to property is no longer fundamental right but Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law. That Section 5-A of the Act confers a valuable right to an individual is beyond any doubt. As a matter of fact, this Court has time and again reiterated that Section 5-A confers an important right in favour of a person whose land is sought to be acquired. When the government proceeds for compulsory acquisition of particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time u/s 5-A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose etc. Moreover, right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice. The exceptional and extraordinary power of doing away with an enquiry u/s 5-A in a case where possession of the land is required urgently or in unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry u/s 5-A. Exceptional the power, the more circumspect the government must be in its exercise. The government obviously, therefore, has to apply its mind before it dispenses with enquiry u/s 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry u/s 5-A. A repetition of statutory phrase in the notification that the state government is satisfied that the land specified in the notification is urgently needed and provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the government that pre-requisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which power has been exercised. Upon challenge being made to the use of power u/s 17, the government must produce appropriate material before the Court that the opinion for dispensing with the enquiry u/s 5-A

has been formed by the government after due application of mind on the material placed before it. It is true that power conferred upon the government u/s 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency u/s 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated u/s 5-A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry u/s 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realizing that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously. The special provision has been made in Section 17 to eliminate enquiry u/s 5-A in deserving and cases of real urgency. The government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry u/s 5-A. We have already noticed few decisions of this Court. There is conflict of view in the two decisions of this Court viz.; Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that decision in Pista Devi must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate³. We agree. As regards the issue whether pre- notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact-situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry u/s 5-A.

31. In a country as big as ours, the roof over head is a distant dream for large number of people. The urban development continues to be haphazard. There is no doubt that planned development and housing are matters of priority in developing nation. The question is as to whether in all cases of "planned development of the city" or "for the development of residential area", the power of urgency may be invoked by the government and even where such power is invoked, should the enquiry contemplated u/s 5-A be dispensed with invariably. We do not think so. Whether "planned development of city" or "development of residential area" cannot brook delay of few months to complete the enquiry u/s 5-A? In our opinion, ordinarily it can. The government must, therefore, do a balancing Act and resort to the special power of urgency u/s 17 in the matters of

acquisition of land for the public purpose viz.; "planned development of city" or "for development of residential area" in exceptional situation. Use of the power by the government u/s 17 for "planned development of the city" or "the development of residential area" or for "housing" must not be as a Rule but by way of an exception. Such exceptional situation may be for the public purpose viz., rehabilitation of natural calamity affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation of persons affected by time bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for immediate possession of the land for carrying out the stated purpose, heavy onus lies on the government to justify exercise of such power. It must, therefore, be held that the use of the power of urgency and dispensation of enquiry u/s 5-A by the government in a routine manner for the "planned development of city" or "development of residential area" and thereby depriving the owner or person interested a very valuable right u/s 5-A may not meet the statutory test nor could be readily sustained.

18. On 14.4.2011 the Supreme Court has delivered a landmark judgment in Shri Radhey Shyam (Dead) through L Rs. v. State of U.P., Civil Appeal No. 3261 of 2011. In this case 205.0288 hectares of land in village Makora, Pargana Dankaur, Tehsil and District Gautam Budh Nagar was acquired by the State Government by issuing notification u/s 4/17 dated 12.3.2008 for planned industrial development of District Gautam Budh Nagar. GNOIDA. The High Court had upheld the notification under Sections 4/17 and 6/17 dispensing with the requirement of hearing u/s 5-A. The Supreme Court noticed all the previous judgments delivered by the Supreme Court in the past and laid down following principles:

53. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.,

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others, State of Maharashtra and Another Vs. B.E. Billimoria and Others, and Dev Sharan v. State of U.P., Civil Appeal No. 2334 of 2011 decided on 7.3.2011.

(iii) Though, in exercise of the power of eminent domain, the Government can

acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry u/s 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power u/s 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government u/s 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection.

The use of word "may" in Sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under Sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power u/s 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government u/s 17(1) and/or 17(4).

The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years.

Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the Rule of audi alteram partem embodied in Section 5-A (1) and - (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition.

19. The Supreme Court thereafter observed in the facts of that case, that there was no justification for the State Government to invoke the urgency provisions contained in Section 17(1) excluding the application of Section 5-A for the acquisition of land for planned industrial development of District Gautam Budh Nagar. Paragraphs 54 to 62 of the judgment are quoted:

54. The stage is now set for consideration of the issue whether the State Government was justified in invoking the urgency provision contained in Section 17(1) and excluding the application of Section 5-A for the acquisition of land for planned industrial development of District Gautam Budh Nagar. A recapitulation of the facts shows that upon receipt of proposal from the Development Authority, the State Government issued directions to the concerned authorities to take action for the acquisition of land in different villages including village Makora. The comments/certificate signed by three officers, which was submitted in the context of Government Order dated 21.12.2006 was accompanied by several documents including proposal for the acquisition of land, preliminary inquiry report submitted by the Amin, Land Acquisition, copies of khasra khatauni and lay out plan, 10 per cent of the estimated compensation and a host of other documents. In the note dated nil jointly signed by Deputy Chief Executive Officer, Greater Noida, Collector, Gautam Budh Nagar and four other officers/officials, the following factors were cited in justification of invoking the urgency provisions:

(a) The area was notified under Uttar Pradesh Industrial Areas Development Act, 1976 for planned industrial development.

(b) If there is any delay in the acquisition of land then the same is likely to be encroached and that will adversely affect the concept of planned industrial development of the district.

(c) Large tracts of land of the nearby villages have already been acquired and in respect of some villages, the acquisition proceedings are under progress.

(d) The Development Authority urgently requires land for overall development, i.e. construction of roads, laying of sewerages, providing electricity, etc. in the area.

(e) The development scheme has been duly approved by the State Government but the work has been stalled due to non- acquisition of land of village Makora.

(f) Numerous reputed and leading industrial units of the country want to invest in the State of Uttar Pradesh and, therefore, it is 70 extremely urgent and necessary that land is acquired immediately.

(g) If land is not made available to the incoming leading and reputed industrial concerns of the country, then they will definitely establish their units in other States and if this happens, then it will adversely affect employment opportunities in the State and will also go against the investment policy of the Government

(h) If written/oral objections are invited from the farmers and are scrutinized, then it will take unprecedented long time and disposal thereof will hamper planned development of the area.

(i) As per the provisions of the Act, there shall be at least one year's time gap between publication of the notifications under Sections 4 and 17 and Section 6.

55. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government u/s 17(1) because the acquisition is primarily meant to cater private interest in the name of industrial development of the district. It is neither the pleaded case of the Respondents nor any evidence has been produced before the Court to show that the State Government and/or agencies/instrumentalities of the State are intending to establish industrial 71 units on the acquired land either by itself or through its agencies/instrumentalities. The Respondents have justified the invoking of urgency provisions by making assertions, which are usually made in such cases by the executive authorities i.e. the inflow of funds in the State in the form of investment by private entrepreneurs and availability of larger employment opportunities to the people of the area.

However, we do not find any plausible reason to accept this tailor-made justification for approving the impugned action which has resulted in depriving the Appellants" of their constitutional right to property.

Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government u/s 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on computer screen. It needs lot of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investment in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/instrumentalities would give them two to three years" to put up their factories, establishments etc.

Therefore, time required for ensuring compliance of the provisions contained in Section 5-A cannot, by any stretch of imagination, be portrayed as delay which

will frustrate the purpose of 72 acquisition. In this context, it is apposite to note that the time limit for filing objection u/s 5-A(1) is only 30 days from the date of publication of the notification u/s 4(1). Of course, in terms of Sub-section (2), the Collector is required to give opportunity of hearing to the objector and submit report to the Government after making such further inquiry, as he thinks necessary. This procedure is likely to consume some time, but as has been well said, "Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the Rule of law."

56. In this case, the Development Authority sent proposal some time in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December, 2006 but it took one year and almost three months to the State Government to issue notification u/s 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under Sub-section (1) of Section 5-A and the time spent by the Collector in making inquiry under Sub-section (2) of Section 5-A would have defeated the object of acquisition.

57. The apprehension of the Respondents that delay in the acquisition of land will lead to enormous encroachment is totally unfounded. It is beyond the comprehension of any person of ordinary prudence to think that the land owners would encroach their own land with a view to frustrate the concept of planned industrial development of the district.

58. The perception of the Respondents that there should be atleast one year's time gap between the issue of notifications under Sections 4 and 6 is clearly misconceived. The time limit of one year specified in Clause (ii) of the proviso to Section 6(1) is the outer limit for issue of declaration. This necessarily means that the State Government can complete the exercise under Sections 5-A and 6 in a shorter period.

59. The only possible conclusion which can be drawn from the above discussion is that there was no real and substantive urgency which could justify invoking of the urgency provision u/s 17(1) and in any case, there was no warrant to exclude the application of Section 5-A which, as mentioned above, represent the statutory embodiment of the Rule of audi alteram partem.

60. We also find merit in the Appellants' plea that the acquisition of their land is vitiated due to violation of the doctrine of equality enshrined in Article 14 of the Constitution. A reading of the survey report shows that the committee constituted by the State Government had recommended release of land measuring 18.9725 hectares. Many parcels of land were released from acquisition because the land owners had already raised constructions and were using the same as dwelling units. A large chunk of land measuring 4.3840

hectares was not acquired apparently because the same belong to an ex-member of the legislative assembly. The Appellants had also raised constructions on their land and were using the same for residential and agricultural purposes. Why their land was not left out from acquisition has not been explained in the counter-affidavit filed by the Respondents. The High Court should have treated this as sufficient for recording a finding that the Respondents had adopted the policy of pick and choose in acquiring some parcels of land and this amounted to violation of Article 14 of the Constitution. Indeed it has not been pleaded by the Respondents that the Appellants cannot invoke the doctrine of equality because the other parcels of land were illegally left out from acquisition.

61. The argument of the learned Senior Counsel for the Respondents that the Court may not annul the impugned acquisition because land of other villages had already been acquired and other land owners of village Makora have not come forward to challenge the acquisition of their land cannot be entertained and the Court cannot refuse to protect the legal and constitutional rights of the Appellants" merely because the others have not come forward to challenge the illegitimate exercise of power by the State Government. It is quite possible that others may have, due to sheer poverty, ignorance and similar handicaps not been able to avail legal remedies for protection of their rights, but that cannot be made basis to deny what is due to the Appellants.

62. In the result, the appeal is allowed. The impugned order is set aside and the writ petition filed by the Appellants is allowed. Respondent No. 1 is directed to pay cost of Rs. 5,00,000/- to the Appellants for forcing unwarranted litigation on them. It is, however, made clear that the Respondents shall be free to proceed from the stage of Section 4 notification and take appropriate action after complying with Section 5-A(1) and (2) of the Act. It is needless to say if the Appellants" feel aggrieved by the fresh exercise undertaken by the State Government then they shall be free to avail appropriate legal remedy.

20. The facts in the present case are almost the same as in the case of Shri Radhey Shyam (supra). The same reasons has been given as in the present case for applying Sub-section (1) of Section 17 and to issue directions under Sub-section (4) of Section 17 of the Act, namely that the development authority urgently requires the land for planned industrial development; the development scheme has been duly approved by the State Government; if there is delay in acquisition of land, there is likelihood of encroachment, which will adversely affect the concept of planned industrial development and that numerous leading industrial units of the country who want to invest in the State of UP will establish their industries in other States, and therefore it is extremely urgent and necessary that the land be acquired immediately. The State Government was further of the view that the written and oral objections invited from the farmers will take unprecedented long time. The disposal thereof will hamper planned development of the area.

21. The observations of the Supreme Court, that there was no plausible reason

to accept the tiler made justification for approving the impugned action, which resulted in depriving the land owners' constitutional rights to property, even if planned industrial development of the District is treated as public purpose are equally applicable to the subject acquisition of land. There was no urgency which could justify the exercise of powers by the State Government under Sub-section (1) and (4) of Section 17 of the Act. The Supreme Court's observations that industrial development needs lots of deliberation and planning keeping in view of various scientific and technical parameters and environmental concerns, are also equally attracted in this case.

22. The facts and circumstances of the case and the material on record for applicability of Sub-section (1) and (4) of Section 17 of the Act, are thus the same as in Shri Radhey Shyam's case. No distinguishable feature has been brought to our notice to record a different finding. The fact and circumstances for applying the conclusions drawn by the Supreme Court on the legality of applicability of Sub-section (1) and (4) of Section 17 of the Act is the same.

23. The State Government has acquired 117.097 hectares of land by notifications u/s 4/17 and 6/17 published on 10.9.2007 and 27.2.2008. The possession of 156.145 hectares of land was taken on 19.3.2008 and handed over to GNOIDA. Out of 656 tenure holders, 457 constituting 113.60 hectares, representing 72.60% both in terms of land and compensation, have received their compensation under the U.P. Land Acquisition (Determination of compensation and declaration of surplus) Rules, 1997, the details of which have been given in Annexure SCA-1 to the supplementary affidavit. Out of the total number of affected land owners, 199 tenure holders representing 30.60 hectares of land have not received compensation.

24. The land owners can be divided in two categories, namely, those who have accepted the compensation in the first category, and those who have not accepted the compensation fall in the second category. We find substance in the contention of learned Counsel for the Petitioner that the first category of persons after having accepted the compensation, have acquiesced to their right to challenge the notifications and the applicability of Section 17. By accepting the compensation, they have given up their right to be heard for acquisition of the land. They are persons who, if the possession has been taken away and compensation has been accepted, may apply u/s 48(1) of the Act for release of their land. Those in the second category, have a right to be heard by following the procedure provided u/s 5-A of the Act.

25. We have allowed similar writ petitions in the case of Devendra Kumar and Ors. v. State of U.P. and Ors., W. P. No. 500 of 2010, decided on 12.5.2011 and M/s. R.P. Electronics and Anr. v. State of U.P. and Ors., W.P. No. 48204 of 2009 decided on 13.5.2011. In both the judgments, we followed Shri Radhey Shyam's case, which has changed the understanding of law with regard to the applicability of Section 17(1) and/or Section 17(4) of the Act.

26. In the result, all the writ petitions are partly allowed. The notification u/s 4/17(1) dated 5.9.2007 and notification u/s 6/17(1) dated 27.2.2008, under the Land Acquisition Act 1894, in respect of those persons who have not accepted compensation, or full compensation, are set aside to the effect that the application of Section 17(1) and (4) with the notification u/s 4, is set aside. The Respondents shall be free to take appropriate action after complying with Section 5-A(1) and (2) of the Act. If they feel aggrieved by the fresh exercise undertaken by the State Government, they shall be free to avail appropriate legal remedy.

27. So far as those persons who have accepted the compensation, since no significant development has been made on the land acquired by the State Government for GNOIDA, we give them liberty to apply to the State Government by making appropriate representations, for release of their land u/s 48(1) of the Land Acquisition Act 1894. The State Government will decide their representations, if made within a period of one month, very expeditiously, in accordance with law, without any discrimination. The GNOIDA shall not undertake any development work on the land of such Petitioners until their representations are decided.