

(2011) 08 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 44470, 44520, 46167, 47626, 47627 and 49187 of 2008, 49145 of 2009 and 1815, 48981 and 67739 of 2010

Smt. Sarita Goel

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 300A
Land Acquisition Act, 1894 — Section 11(2), 17, 17(1), 17(2), 17(4)
Uttar Pradesh Land Acquisition Karar Niyamawali, 1997 — Section 11(2)
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 154(2)

Citation : (2011) 8 ADJ 539 : (2011) 6 AWC 5744

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Advocate : Kamini Pandey, N.P. Singh, Ravi Kant Agarwal and Tarun Agarwal, for the Appellant; Shashi Nandan, Sunita Agrawal, D.S. Chauhan and M.C. Tripathi, Addl. S.C. and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Smt. Kamini Pandey, Sri N.P. Singh, Sri Ravi Kant Agarwal, Senior Advocate assisted by Shri Tarun Agarwal for the Petitioners.

2. Shri M.C. Tripathi, Addl. Chief Standing Counsel appears for the Respondents. Shri Shashi Nandan, Sr. Advocate assisted by Smt. Sunita Agarwal appears for the Respondent-Development Authority.

3. The Petitioners have challenged the entire proceedings under the Land Acquisition Act, 1894 (in short "the Act") vide notifications dated 30.8.2007 u/s 4(1) read with 17(4) of the Act published in newspapers "Dainik Jagran" and "Amar Ujala" on 9.9.2007 and 10.9.2007 respectively and the notification dated 8.8.2008 u/s 6 read with Section 17(1) of the Act published in the daily newspaper "Amar Ujala" on 14.8.2008 acquiring a total area of 110.496 hecets. in

56 plots in Village Ajijpur, Pargana Chhata, Distt. Mathura, for residential and tourism development through Mathura Vrindavan Development Authority (MVDA).

4. In all the writ petitions this Court after noticing decision of the Supreme Court in *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, and *Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others*, directed the parties to maintain status quo with regard to land in dispute in Village Ajijpur, Pargana and Tehsil Chhata, Distt. Mathura.

5. (a) In Writ Petition No. 49145 of 2009, which was made the leading writ petition *Smt. Sarita Goel* has stated that Plot No. 44 in Village Ajijpur is a big plot out of which plot No. 44/3 was recorded in the name of Chand Vanaspati Ltd. through its Managing Director Dr. Chand Gupta. He had set up industrial unit in the plot. The Petitioner by way of registered sale-deed dated 7.1.2006 had purchased plot No. 44/3 for a sum of Rs. 26,50,000/- alongwith industrial unit. The plot measuring 14730 sq. mtr. is covered by boundary wall and has tin shed measuring 30 ? 30 and wastage machinery alongwith rooms for guards. The stamp duty was paid on the market value of the property at Rs. 60 lacs. The Petitioner's name was entered in the revenue records by the order of Tehsildar, Chhata dated 14.5.2007.

(b) In Writ Petition No. 44470 of 2008, *Govind Vanaspati (P) Ltd. and Ors. v. State of U.P. and Ors.* the Petitioner, a private limited company engaged in the business of manufacturing "Vanaspati Ghee" in its factory located in Village Azizpur, Tehsil Chhata, Distt. Mathura had purchased the land in Plot No. 42/1 through registered sale-deed dated 3.3.1992 in the name of Shri Tejpal Sharma, the father of Shri Shiv Dutta Sharma, the Director of the company. The Petitioner No. 3, the mother of the Petitioner had purchased remaining portion of Plot No. 42/1 totalling the purchased area to 0.656 hecets. The company purchased both these plots by sale-deed dated 26.9.1995 and another area of 376 sq. mtr. out of plot No. 42/1 through sale-deed dated 29.7.1993.

(c) In Writ Petition No. 44520 of 2008, *Naththi and 21 Ors. v. State of U.P. and Ors.* the Petitioners have stated that they had earlier filed Writ Petition No. 1159 of 2008 challenging the notification u/s 4. The writ petition was dismissed with liberty to the Petitioners to agitate the issue after declaration u/s 6 is made vide judgment dated 8.1.2008. It is stated that the Village Azizpur near Kosikalan about 5 kms. from U.P. Haryana border is at a distance of 45 kms. from Mathura-Vrindavan. The land of the area is best quality land situate at the site of a canal. The Petitioners are doing agricultural operations on their bhumidhari land on Gata Nos. 12, 13, 15, 16, 20/1, 22/1, 23, 24, 28, 29, 33/3, 38/3, 39, 40/1/1, 41/1, 42/2, 47, 48, 52/1 and 52/2 and are using the land for agriculture since times immemorial. There is a grave and a house on plot No. 22/3. On plot No. 24/1 there is grove and samadhi. On plot No. 35/2 there is house with 5 big rooms and one tube-well. There are house on plot No. 28 and a pond in which the Petitioner No. 8 is doing fisheries as his main source of livelihood.

(d) In Writ Petition No. 46167 of 2008, Modern Academy International and Ors. v. State of U.P. and Ors. filed by Prof. Dr. Gopal Mitra, it is stated in para 4 of the writ petition that the school owns 27 acres of land including international/Olympic standard sports complex duly sanctioned by MVDA by sanction dated 13.5.1999. A sports complex comprising of one international standard swimming pool and six tennis Courts, football field, athletic track with stadium, gymnasium, two hockey field and twelve basket ball and volleyball Courts are also situated. The school has complex with 2000 students" hostel accommodation.

(e) In Writ Petition No. 47626 of 2008, Urmila Devi and Ors. v. State of U.P. and Ors. the Petitioners claim to be owners and in possession of Khasra No. 44/2 area 1.473 hecets. It is stated that Khasra 144 has been partitioned in which plot No. 44/1 is recorded in the name of Sushma Agrawal and 44/3 in the name of ChandVanaspati Limited.

(f) In Writ Petition No. 47627 of 2008, Naresh Baliyan and Ors. v. State of U.P. and Ors. the Petitioners claim to be owners and in possession of Khasra No. 41/4 and 41/5 area 1.44 hecets. The Petitioners alongwith Smt. Kusum Sharma purchased Deepak Rice Mills Pvt. Ltd., a unit situated on plot No. 154, 158, 41/4 and 41/5 from the U.P. Financial Corporation.

(g) In Writ Petition No. 49187 of 2008, Subash Chandra Sharma v. State of U.P. and Ors. the Petitioner claims to be owner of plot No. 42/1 area 1.214 hecets, which he has purchased on 29.12.2004. He is utilising the land for the purposes of residence. The land has been declared as abadi land.

(h) In Writ Petition No. 1815 of 2010, Rabhumnandan Land Developers Pvt. Ltd. and Anr. v. State of U.P. and Ors. it is stated that the Petitioner had purchased plot No. 22/1/5 area 1.992 hecets and plot No. 24/1 area 4.043 hecets by sale-deeds dated 25.2.2006 and 3.4.2006. Both these properties are agricultural properties, which have been declared by the Sub Divisional Magistrate, Chhata Distt. Mathura as non-agricultural land u/s 143 of the U.P. Zamindari Abolition and Land Reforms Act by his order dated 3.4.2006 and 14.5.2007. The area is reserved in the master plan prepared by MVDA for heavy industries. The Petitioner purchased the land for developing IT Park.

(i) In Writ Petition No. 48981 of 2010, Ram Chandra and Ors. v. State of U.P. and Ors. the Petitioner came to be recorded as bhumidhars of Gata No. 16,17,18, 35/4, 52 and 22/2. Their families are using the land for agricultural purposes and their residence from the times immemorial as their ancestral land.

(j) In Writ Petition No. 67739 of 2010, Raman Lal v. State of U.P. and Ors. the Petitioner claims to be recorded as bhumidhar of Gata No. 40/1/2 area 4.6740 hecets. There are number of trees and fruit plants and is used for agricultural purposes.

6. The notifications u/s 4(1) read with Section 17(4) dated 30.8.2007 and notification u/s 6 read with Section 17(1) of the Act dated 8.8.2008 have been

challenged on the ground that there was no such urgency much less, extreme urgency to apply the provisions of Section 17(1) for compulsory acquisition of the land dispensing with the provisions of Section 5A of the Act. It is submitted that public purpose disclosed in the notification namely the planned housing and tourism development is neither public purpose in the real sense nor is a public purpose of such nature and urgency that the provisions of Section 17(1) and (4) were invoked. The land in dispute, which is house and industrial unit could not be acquired for the housing colonies and tourism acquired by the State Government for MVDA for housing colony and tourism as the escapable public purpose. There was no material with the State Government to invoke the provisions of urgency. The tourist destination of Mathura Vrindavan is about 45 kms. away and nearest human settlement of Kosi Kalan is about 5 kms. away from the land. The spot is at the distance of about 150 kms. from New Delhi.

7. During the course of argument it is submitted that the public purpose stated in the notification is not such for which the minimal opportunity of hearing u/s 5A could be dispensed with. The notifications seek to approve the large number of persons, settled in the area including the Petitioners. It is submitted that MVDA taking advantage of the closed proximity of the land from Delhi has planned to establish residential townships for making profits. The Petitioners have relied upon the judgments of the Supreme Court in Anand Singh and Another Vs. State of Uttar Pradesh and Others, State of West Bengal and Others Vs. Prafulla Churan Law and Others, Dev Sharan and Others Vs. State of U.P. and Others, and Radhey Shyam (dead) through its LRs v. State of U.P. Civil Appeal No. 3261 of 2011 decided by the Supreme Court on 14.4.2011 in support of their submissions that the power of eminent domain can be exercised in public interest for purpose purpose. Though right to property is not fundamental right but Article 300A mandates that no person shall be deprived of his property by authority of law, Section 5A of the Act confers a valuable right to an individual, whose land is sought to be acquired. When the Government proceeds for compulsory acquisition the only right that the owner has to submit his objection u/s 5A to persuade the state authorities to drop the acquisition. Many other objections such as unsuitability of land for public purpose, grave hardships that may be caused by such expropriation, availability of alternative land can be raised in the proceedings. The exceptional and extraordinary powers of doing away with the enquiry u/s 5A by applying Section 17 even in the State of U.P., where land can be acquired for planned development u/s 17(1)(a) cannot be exercised routinely. This power is reserved for extreme and unforeseen emergencies.

8. It is submitted that there is difference between the land, which is urgently required for public purpose and the circumstances warranting immediate possession and which may arise only in a case of urgency. Exceptional the power the more circumspect the Government should be in its exercise. The Government must exercise its mind on the material placed it before it forms an opinion, though subjective, to dispense with the enquiry u/s 5A of the Act. The State

Government must have produced the appropriate material before the Court on the basis of which its satisfaction was recorded, in dispensing with the enquiry u/s 5A. The development of an area for residential purpose, area for planned development of city takes many years, if not decades and therefore there can be no reason for summary enquiry u/s 5A cannot be held and objections considered. In Anand Singh's case the Supreme Court resolved the conflict between Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, and State of U.P. v. Smt. Pista Devi and Ors. JT 1986 SC 420. In Om Prakash and Anr. v. State of U.P. and Ors. JT 1998 (4) SC 601, the Court held that decision in Pista Devi must be confined to the fact situation of those days, when it was rendered and the two judge bench could not have laid down a proposition contrary to the decisions in Narayan Govind Gavate.

9. In Anand Singh's case the Supreme Court, thereafter, held that in a country as big as ours, the roof over head is a distant dream for large number of people. The urban development has to be planned and housing is a matter of priority. The power to dispense with the enquiry u/s 5A, however, cannot be invoked for such purpose. The Government must do balancing act and resort to the special power of urgency u/s 17 in the matters of acquisition for planned development of city or for development for residential area in exceptional situation. The Supreme Court has given illustration of such exceptional situation namely the rehabilitation of natural calamity affected persons, rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society, rehabilitation of persons affected by time bound projects etc., a heavy onus lies on the Government to exercise such powers.

10. The Supreme Court has in Radhey Shyam (Dead) through its L.Rs. v. State of U.P. decided on 14.4.2011 held that the satisfaction of the Government on the issue of urgency is subjective but is condition precedent to the exercise of power u/s 17(1) and same can be challenged, where private property is acquired not for public purpose at all or that exercise of power is vitiated due to mala fides or concerned authorities did not apply mind to the relevant factor on record. The Supreme Court, thereafter, went on to say that exercise of powers u/s 17(1) does not always results in exclusion of Section 5A of the Act, in terms of which any person interested can file objections and is entitled to be heard. The use of word "may" in Sub-section (4) of Section 17 makes it clear that it only enables the State Government to direct that the provisions of Section 5A would not apply in 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 the powers u/s 17(1). The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purpose within the meaning of Section 4 but that, by itself, does not justify exercise of powers by the State Government u/s 17(1) and/or Section 17(4). The Court, thereafter, held that it can take judicial notice of the fact that planning, execution and implementation of the schemes relating to the development of residential, commercial, industrial or institutional areas usually takes few years. Therefore,

the private property cannot be acquired for such purpose by invoking the urgency provisions contained in Section 17(1). In any case exclusion of the role of audi alteram partem embodied in Section 5A(1) and (2) is not at all warranted in such matters. The Supreme Court, thereafter, held that if the land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/ or Section 17(4) with suspicion and carefully scrutinise the relevant record after adjudicating upon the legality of such acquisition.

11. Smt. Sunita Agrawal has appeared for MVDA and has filed affidavit of Shri Devendra Kumar Maurya, Asstt. Engineer, MVDA, Mathura. He submits that the MVDA has been constituted under U.P. Urban Planning and Development Act, 1973 to permit and secure development of the development area to plan with powers to acquire, hold, manage and dispose of the land and other property. Various development activities have been undertaken including construction of houses in the development area. In para 4 to 43 of the counter-affidavit giving entire background of the acquisition including the situation of the acquired land,, the purpose for which the land was proposed to be acquired, recommendations of the Spot Selection Committee, its recommendations made for acquiring 103.596 hec. of land in Village Azizpur dated 7.7.2005, the removal of difficulties on 14.10.2005, on being pointed out by the Special Land Acquisition Officer vide its communication dated 22.7.2005, joint inspection carried out by the Special Land Acquisition Officer and the staff of the development authorities in December, 2005, deposit of 20% of the estimated compensation in December, 2005, objections of the Special Land Acquisition Officer for removing certain defects such as exclusion of total area of plot No. 35/5 of which 2.178 hec. is used as factory and small portion of plot No. 44, and exclusion of some other plots of Modern Academy International, Subhash Floor Mills, Gopal Rubber Factory and Gas Godown, communication of Director, Land Acquisition Directorate dated 5.4.2006, certificates of the District Magistrate, Mathura for proposal for acquisition dated 17.5.2006 and other details, relevant for the purposes of deciding the writ petition are quoted as below:

4. That Mathura and Vrindavan are historical and heritage towns having immense religious importance. The twin towns are important tourist/pilgrims destination and have added significance of it being situated close to Delhi-Agra highway which brings substantial tourists/pilgrims to the city of Taj i.e. Agra. On account of its special importance as a historical/heritage/religious town, substantial development has been witnessed in nearby agricultural areas much of which has not been as per desired extent of plan.

5. That in order to conserve the historical and heritage importance of the city of Agra being the city of the monuments like Taj Mahal, Agra, Hathras, Firozabad, Mathura and Vrindavan cities and nearby areas have been included and declared as Taj Trapezium Zone and heavy industries which may cause pollution in the area have been prohibited. As a result of it, such industries were closed and have been transferred to areas outside the Taj Trapezium Zone.

6. That Chhata and Kosi Kalan towns are situated on Kanpur-Agra-Delhi National Highway namely NH-2 and being outside the Taj Trapezium Zone, industrial activities have increased in this area. Several industries have been established. As a result of the industrial development of these two areas, and due to demand for other activities, services etc., speedy and haphazard development has occurred. In order to ensure the planned development of the area, Chhata, Kosi Kalan, Chaumuha, Nand Gaon Nagar and 37 nearby villages have been included in Mathura Development Area in the year 1997 by notifications dated 8.1.1987 and 6.12.1997. Master plan for the abovementioned area was prepared in the second phase and the revised Master Plan 2021 was approved by the State Government vide notification dated 12.7.2002. The proposal for the development of the areas included in the Mathura Vrindavan Development Area in the year 1997 has been included in "Part-Kha" of the Master Plan for Mathura and Vrindavan.

7. That it is submitted that looking to the rate of speedy and haphazard development which is not strictly in conformity with the development plan and in furtherance of the object of the Development Authority to provide accommodation and development of such important area, a proposal for acquisition of 110.496 hectares land of Village-Ajijpur, Pargana-Chhata, District-Mathura was made. A separate proposal for acquisition of 40.577 hectares of land of Village-Guheta Das Biswa besides the land under acquisition in question of Village-Ajijpur has been made. It may be stated that Village-Ajijpur being situated between Chhata and Kosi Kalan Nagar and being connected with NH-2 was found to be most appropriate place for planned development of the area in question and was proposed for acquisition looking to the problem of housing accommodation of lower income class and economically weaker class of the society.

8. That the land-in-question which is sought to be acquired and is proposed to be developed is situated in Village-Ajijpur, Pargana-Chhata, District-Mathura which forms part of the development area notified u/s 4 of the Development Act.

9. That it is pertinent to mention here that before placing the proposal for consideration/approval of the State Government, a "Sthal Chayan Samiti" was constituted to select the land for the purpose of acquisition in accordance with the Govt. Order dated 18.2.2000. A meeting of the "Sthal Chayan Samiti" was held on 28.5.2005. It consisted of Secretary, Mathura Vrindavan Development Authority as Chairman, Superintending Engineer, Agra Development Authority, Agra, Sahyukt Niyojak, Nagar Evam Gram Niyojan Vighag, U.R. Agra, Nodel Officer, Prabhari Adhikshan Abhiyants, Jal Nigam, Mathura and Special Land Acquisition Officer, Sanyukt Sangathan, Mathura as members. True copy of the Govt. Order dated 18.2.2000 is annexed and marked hereto as Annexure No. CA-1 to this affidavit.

10. That in its meeting held on 28.5.2005, Sthal Chayan Samiti has selected the land for planned development of the area. The committee has resolved that the

proposed industrial area in the Master Plan which is adjacent to the NH-2, is also required for acquisition for the purpose of permissible activities such as officers, Banks, shops, showrooms and Hotel (with special permission) under the Master Plan Zoning Regulations and for complete Planned Development of the area under acquisition. The committee was of the view that the industrial area which comes to about 7% of the land proposed for acquisition is also required in public interest and to check unauthorized and haphazard constructions at the road side so as to ensure planned development of the area. A photostat copy of the minutes of the meeting of Sthal Chayan Samiti dated 28.5.2005 is annexed and marked hereto as Annexure No. CA-2 to this affidavit.

11. That after the land was selected by the "Sthal Chayan Samiti" a proposal for acquisition of 103.596 hectares of land of Village-Ajijpur was prepared and submitted before the District Magistrate (Land Acquisition Anubhag), Mathura on 7.7.2005. The same was received in the office of Special Land Acquisition Officer, Mathura on 7.7.2005. Photostat copy of the communication dated 7.7.2005 sent by the Vice-Chairman, Development Authority to the District Magistrate (Land Acquisition Anubhag), Mathura as mentioned above is annexed and marked hereto as Annexure No. CA-3 to this affidavit.

12. That the Special Land Acquisition Officer vide communication dated 22.7.2005 pointed out certain defects in the proposal and asked to remove the same so that it may be submitted before the Land Acquisition Directorate for further proceedings. It was enquired as to why the Khasra No. 30, 31, 32, 33, 37 and 45 have not been included in the list of plots proposed for acquisition though they are within the boundaries of the scheme as per Sajra Map. A photostat copy of the communication dated 22.7.2005 as mentioned above is annexed and marked hereto as Annexure Nos. CA-4 to this affidavit.

13. That in reply thereto, a communication dated 14.10.2005 was sent by the Vice-Chairman of the Development Authority removing the defects pointed out by the Special Land Acquisition Officer. A photostat copy of communication dated 14.10.2005 is annexed and marked hereto as Annexure No. CA-5 to this affidavit.

14. That, again, in view of the above-mentioned objections/defects pointed out by the Special Land Acquisition Officer, a joint inspection was made by the Special Land Acquisition Officer and the staff of Development Authority for making an on the spot inspection of the proposal. After the said inspection, it was advised to add 6.900 hectares of land of Village-Ajijpur in the proposal. As a result of it, an amended proposal was prepared after completing the spot-inspection and collecting all the required documents/ certificates etc. and removing all the defects pointed out in the proposal sent on 7.7.2005. The same was received in the office of Special Land Acquisition Officer on 22.12.2005. A photostat copy of the communication dated 21.12.2005 sent by the Vice Chairman of the Development Authority to Special Land Acquisition Officer as mentioned above is annexed and marked hereto as Annexure No. CA-6 to this affidavit.

15. That after receipt of the proposal, the Special Land Acquisition Officer vide communication dated 28.12.2005 asked to deposit the amount of 11,41,000/- towards 20% besides 6, 86, 73, 643.00 which was deposited earlier in view of addition of land in the amended proposal.

16. That the Special Land Acquisition Officer with reference to the communication dated 21.12.2005 sent with amended proposal, again pointed out certain defects. It was further enquired as to why plot Nos. 35/1/3, 35/5, 35/6 and 44/1 have been kept out of acquisition. The objection was also that the total area of plot No. 35/5 is 2.178 hectare and the factory is existing only in a small portion of it and that some parts of plot No. 44, which has been left from acquisition, are situated at the main road and, therefore, the Vice Chairman was required to give reasons why these areas have been left from acquisition. A photostat copy of the communication dated 1.2.2006 is annexed and marked hereto as Annexure No. CA-7 to this affidavit.

17. That in reply thereto, a communication dated 9.2.2006 was sent. It was submitted that the plots on which constructions have been raised after approval of the map and the factories exist have been left from the proposal of acquisition and the proposal has been sent for minimum land required for the purpose of development. A photostat copy of the reply sent by the Vice-Chairman to the Special Land Acquisition Officer dated 9.2.2006 is annexed and marked hereto as Annexure No. CA-8 to this affidavit.

18. That at this stage it would be relevant to point out that Khasra Plot Nos. 30,31,32,33 and 37 are the plots of the school namely Modern Academy International. In plot No. 44/1, a factory namely Ankit Gramodyog Sansthan, Rubber Solution is existing. So far as plot Nos. 35/1/3, 35/5, 35/6 etc. are concerned, two running factories in the name of M/s Subhash Floor Mills and Gopal Rubber Factory as also a Gas Godown are existing. It is categorically submitted here that the answering Respondents took all precautions before sending the proposal for acquisition of the land of Village-Ajijpur to the effect that no existing and running industries in the area in question are uprooted.

19. That it is further submitted that the District Magistrate, Mathura by means of communication dated 23.3.2006, forwarded the proposal to the Director, Land Acquisition Directorate, Board of Revenue, U.P., for issuance of notification for acquisition of 110.496 hectares of Village Ajijpur, Tehsil Chhata, District Mathura. While forwarding proposal for acquisition, the District Magistrate, Mathura has recommended that notification u/s 4(1) read with Section 17 of the Land Acquisition Act, may be issued after permission of the "Bhu Upyog Parishad". It is submitted that "Bhu Upyog Parishad" has been constituted by the State Government for the purpose of monitoring the proposal for acquisition of the land in the State of U.P. A photostat copy of the communication dated 23.3.2006 is annexed and marked hereto as Annexure No. CA-9 to this affidavit.

20. That the Director, Land Acquisition Directorate after perusal of the proposal

forwarded the same to the Special Secretary, Housing and Urban Planning, Anubhag-3, Lucknow vide communication dated 5.4.2006 with its recommendation upon the same. While forwarding the same, it was pointed out that before issuance of notification u/s 4(1)/17 of the Act, the permission of Bhu Upyog Parishad be obtained on the same. The relevant certificates duly signed by the District Magistrate, Mathura be also obtained. A photostat copy of the communication dated 5.4.2006 is annexed and marked hereto as Annexure No. CA-10 to this affidavit.

21. That in continuation of communication dated 5.4.2006 sent by the Director, Land Acquisition Directorate, the Under Secretary, State of U.P. vide communications dated 13.4.2006, 9.5.2006 and 17.5.2006 asked the Vice Chairman, Development Authority to send the certificates duly signed by the District Magistrate, Mathura, required for the proposal for acquisition. A photostat copy of the communications dated 13.4.2006, 9.5.2006 and 17.5.2006 sent by the Under Secretary, State of U.P. to the Vice Chairman, Development Authority are annexed and marked hereto as Annexure No. CA-1, CA-12 and CA-13 respectively to this affidavit.

22. That in reply to the aforesaid communications dated 5.4.2006, 9.5.2006 and 17.5.2006, the Special Land Acquisition Officer forwarded the required certificates to the Special Secretary, Housing and Urban Planning, State of U.P., on 22.6.2006, with the request that the notification u/s 4(1) read with Section 17 be issued for acquisition of 110.496 hectares of land of Village-Ajijpur, Tehsil Chhata, District Mathura. Again the Special Land Acquisition Officer vide communications dated 3.8.2006 and 22.9.2006 requested the Special Secretary, Housing and Urban Planning, State of U.P. to provide the copy of the notification u/s 4(1)/17 of the Act, if issued, so that the matter may be proceeded further.

23. That vide communication dated 11.9.2006, received in the office of Vice-Chairman, Development Authority on 16.9.2006, the Undersecretary, Govt. of U.P. asked to provide further information regarding landless farmers with reference to the proposal for acquisition sent above in view of certain discrepancies pointed out by Bhu Udyog Parishad. A photostat copy of the communication dated 11.9.2006 is annexed and marked hereto as Annexure No. CA-14 to this affidavit.

24. That in reply thereto, the Vice-Chairman, Development Authority provided the required information vide communication dated 4.10.2006 sent to the Under Secretary, State of U.P. A photostat copy of the communication dated 4.10.2006 is annexed and marked hereto as Annexure No. CA-15 to this affidavit.

25. That the Director, Land Acquisition Directorate sent a reminder dated 7.11.2006 to the Special Secretary, State Government for issuance of the notification u/s 4/17 of the Act. A reminder dated 22.11.2006 was also sent by the Special Land Acquisition Officer to the State Govt. for issuance of the notification for acquisition of the land in question. Photostat copies of the

reminders dated 7.11.2006 and 22.11.2006 as received in the office of the Vice Chairman, Development Authority are annexed and marked hereto as Annexure No. CA-16 and CA-17 to this affidavit.

26. That the Special Secretary, State Government sent a letter dated 23.1.2007 with reference to the communication dated 4.10.2006 sent by the Vice-Chairman, Development Authority and asked him the reason as to why the opportunity of hearing as required under the Act should not be given to the land owners whose land has been proposed for acquisition. A copy of the said letter was also sent to the District Magistrate to reply after inspection. In reply thereto, the Vice Chairman, Development Authority sent a communication dated 25.1.2007. Photostat copies of the letters dated 23.1.2007 and 25.1.2007 are annexed and marked hereto as Annexure No. CA-18 and CA-19 to this affidavit.

27. That dissatisfied, the Special Secretary, State of U.P. vide another communication dated 13.3.2007 asked the Vice Chairman, Development Authority to provide a detailed report on the question of providing opportunity of hearing to the land holders affected by acquisition. A detailed reply/ information was provided vide letter dated 14.3.2007 sent by the Vice Chairman, Development Authority. Photostat copies of the communications dated 13.3.2007 and 14.3.2007 are annexed and marked hereto as Annexure No. CA-20 and CA-21 to this affidavit.

28. That however, again a communication dated 11.4.2007 was received in the office of the Vice-Chairman, Development Authority through fax. A reply thereto was sent on 11.4.2007 itself. It was submitted that the land in question is urgently required for construction of residential accommodation for Lower Income Class and Economically Weaker Class of the society. It was further clarified that the State Government has given a target to the Development Authority for construction of residential accommodation for the aforementioned classes of the society and the land proposed for acquisition is required to achieve the same. It was further submitted that the Mathura Vrindavan twin cities are of great religious importance and lots and lots of persons belonging to the Lower Income Class and Economically Weaker Class migrate every year to these cities and in order to meet the growing demand of the devotees of Lord Krishna, the land in question is urgently required. A photostat copy of the communications dated 11.4.2007 are annexed and marked hereto as Annexure No. CA-22 to this affidavit.

29. That thus, various queries raised by the Special Land Acquisition Officer as also the Land Acquisition Directorate and the State Govt. taking into consideration of all aspects of the proposal sent by the Development Authority including the invoking of urgency clause as recommended by the District Magistrate, Mathura. On account of queries/inquiries made from time to time the matter got delayed and, therefore, the Vice-Chairman of the Development Authority sent the letters/reminders dated 15.6.2007 and 7.8.2007 to the Principal Secretary, Housing and Urban Planning, Govt. of U.P. to expedite the

proceedings and issue the notification for acquisition at the earliest. Photostat copies of the above-mentioned communications dated 15.6.2007 and 7.8.2007 are annexed and marked hereto as Annexure Nos. CA-23 and CA-24 to this affidavit.

30. That the Special Land Acquisition Officer vide communications dated 22.5.2007, 4.7.2007 sent reminders to the Special Secretary, Housing and Urban Planning, State of U.P. to issue notification u/s 4(1)/17 of the Act for acquisition of land of Village-Ajijpur. Photostat copies of the above-mentioned communications dated 22.5.2007 and 4.7.2007 are annexed and marked hereto as Annexure Nos. CA-25 and CA-26 to this affidavit.

31. That after the proposal was approved by the Land Acquisition Directorate the same was submitted before the State Government. The State Government on the basis of records available with it, and on the facts placed before it, found acquisition imminently justified in public interest and thereby bona fide came to the opinion that invoking of urgency clause as well as dispensation of inquiry is a must in the instant case. Thereafter, a notification u/s 4(1) read with Section 17 of the Act was issued and published in the Official Gazette by the State Government on 30.8.2007.

32. That the information with regard to issuance of the notification u/s 4(1)/17 of the Land Acquisition Act was received in the office of the Secretary, Development Authority on 29.9.2007 vide communication dated 27.9.2007 sent by the Special Land Acquisition Officer. A photostate copy of the communication dated 27.9.2007 as mentioned above is annexe and marked hereto as Annexure No. CA-27 to this affidavit.

33. That the said notification was duly published in two newspapers namely "Dainik Jagaran" and "Amar Ujala" dated 9.9.2007 and 10.9.2007 for information of the public at large. The public notice of the aforesaid notification u/s 4(1) was also caused at convenient places in the locality on 31.10.2007 and Munadi was also done on 31.10.2007.

34. That as per the National Rehabilitation Scheme-2003, a detailed proposal/scheme for rehabilitation of the landless farmers, marginal farmers, small farmers and agricultural labourers/non-agricultural labourers, who would be affected by the acquisition, was placed vide communication dated 13th March, 2008 and an amount of Rs. 98,11,500.00 was deposited by the answering Respondent. A photostat copy of the complete rehabilitation scheme as also the certificate issued by the Special Land Acquisition Officer evidencing payment deposited under the said scheme is annexed and marked hereto as Annexure No. CA-28 to this affidavit.

35. That it was clearly stated in the notification dated 30.8.2007 that the land mentioned in the schedule is needed for a public purpose namely for planned housing development and tourism development of the area namely Village Ajijpur, Pargana Chhata, District Mathura by the Mathura Vrindavan Development

Authority, Mathura. It was further stated that since the land is urgently required for the construction of houses for planned housing development and tourism development by the Development Authority under the planned development scheme, it was, as well as necessary to eliminate the delay likely to be caused by an inquiry u/s 5A of the Act. And therefore, the Governor was pleased to direct u/s 17(4) of the Act that the provisions of Section 5A of the Act shall not apply. A photostat copy of the Gazette Notification dated 30.8.2007 u/s 4(1) read with Section 17(4) of the Act is annexed and marked hereto as Annexure No. CA-29 to this affidavit.

36. That it would not be out of place to mention here that the acquisition under challenge in the present writ petition is first acquisition made by the Development Authority in the area in question since it has been included in the jurisdiction of the Development Authority in the year 1997 under the Master Plan "Part-Kha", year 2021. The Development Authority owes a duty towards public at large for planned development of the area in question and provides proper residential accommodation and other facilities in the said area. It is further submitted that Mathura Vrindavan twin cities are of great tourist importance. The industrial area which comes only 10% of the entire scheme in question under challenge in the instant petition has been planned for development of the same for Tourism Industry.

37. That it is further pertinent to mention here that Tourism has been given the status of Industry in the State and is eligible for all the benefits available to the Industry. Under the Tourism Policy, 1998 framed by the Department of Tourism, Govt. of U.P., the following activities will be regarded as related to the development of Tourism and the units involved in these activities would be recognized as tourism units. Some of such activities are:

1. Creation of tourism related infrastructure, like approach road, drinking water and electricity facilities, landscaping etc.
2. Hotel and Restaurants.
3. Wayside amenities with restaurants and parking space on National and State highways... etc.

38. That the mission and objectives of the Tourism Policy, 1998 are to develop tourism as the major industry of Uttar Pradesh by providing leadership and organizational and strategic direction to improve the quality of Tourism product, to develop places of tourist interest, to provide necessary facilities for all categories of tourists and pilgrims, to market Uttar Pradesh Tourism products internationally and domestically so as to provide employment and for the economic, environmental, social and cultural benefits of the citizens. A photostat copy of the Tourism Policy, 1998 containing its mission, objective, strategy and action plan is annexed and marked hereto as Annexure No. CA-30 to this affidavit.

39. That it is further pertinent to mention here that out of the total area of 110.496 hectares of the land of Village-Ajijpur, Pargana-Chhata, District Mathura, as notified for acquisition vide notification u/s 4(1) of the Act dated 30.8.2008, only 11.458 hectares is industrial area which is a small fraction of about 10% of the total acquired area for the proposed scheme. The said area was very much required for the purpose of development because of its strategic importance and location which lies at the NH-2, Agra-Delhi-Mathura National Highway and is the only connecting main road for the scheme in question. The said area also required for connecting another proposed scheme of the Development Authority in Village-Guheta Das Biswa, for which the notifications u/s 4 and 6 and the notice u/s 9 of the Act have already been issued.

40. That the industrial area acquired under the proposed scheme which comes to about 10% of the total land acquired is very much required for viability of the scheme and to develop the same for tourism under the permissible uses in accordance with Master Plan Zoning Regulations as also the Tourism Policy, 1998. Moreover, the Sthal Chayan Samiti in its report dated 28.5.2005 has strongly recommended for acquisition of the area-in-question for connecting the proposed scheme with the main road i.e. NH-2 and in order to check unplanned and unauthorized development at the road side.

41. That so far as the viability of the scheme is concerned; the same cannot be questioned by the Petitioner for the reasons mentioned above. Moreover, all these factors have been considered right from the report of Sthal Chayan Samiti till the decision taken by the State Govt., on the basis of record/ materials placed before it.

42. That the instant writ petition has been filed challenging the notifications dated 30.8.2007 and 8.8.2008 issued u/s 4(1)/17 and Section 6; respectively, of the Act.

43. That the acquisition under challenge is for a public purpose and the benefit of the same would be available to the community at large and in view of the same, the Petitioner has no right to challenge the acquisition-in-question which is for definite purpose of providing housing accommodation to the public at large as also for Planned development of the area-in-question for Tourism.

58. That the contents of paragraph Nos. 25 and 26 of the petition are incorrect as stated. They are, therefore, denied. The plea taken that since there was a gap of one year between the two notifications u/s 4 and 6 of the Act as such, the enquiry u/s 5A of the Act was clearly warranted. In this regard, it is categorically submitted that formation of opinion with regard to dispensation of enquiry by the State Govt. is prior to the proposal of acquisition u/s 4 of the Act is prepared and published in the Official Gazette. The time elapsed between the two notifications i.e. Section 4(1) and Section 6(1) is due to various enquiries made by the competent authority before issuance of the declaration as per the provisions for acquisition. It is well settled that the post notification delay would not render the

notification invalid merely on the ground that the urgency clause has been invoked by the State Govt. while issuing notification u/s 4(1) of the Act. However, the detailed arguments in this regard shall be extended at the time of the hearing of the writ petition.

12. Smt. Sunita Agrawal submits that the Mathura Vrindavan are having historical and religious importance. The twin towns closed to Delhi Agra Highway brings substantial tourist, pilgrims to the city of Taj. Substantial development has been witnessed in nearby agricultural areas. Tehsils Chhata, Kosikalan, Chaumuha, Nand Gaon Nagar and 35 nearby villages were included in the development areas of MVDA by notification dated 8.1.1997 and 6.12.1997. The master plan was prepared in the second phase and revised Master Plan 2021 was approved by the State Government vide notification dated 12.7.2002. With the objection to development such an important area proposal of acquisition of 110.496 hecets. of land in village Azijpur was prepared. Since the Azizpur is situated between Chhata and Kosikalan and is connected with National Highway No. 2, it was found most suitable for housing of LIG and economically weaker class of the society. The proposals after rectification of certain defects was forwarded by the District Magistrate through Director, Land Acquisition Directorate to the Special Secretary, Housing and Urban Planning on 22.6.2006 with a request to apply Section 17 for acquisition of 110.496 hecets. of land. The State Government having considered the urgency for the acquisition, the importance of the area and the need of residential accommodation for lower income class and economically weaker class and on the basis of the records available with it, found acquisition imminently justified in public interest and thereby bona fide came to the opinion that invoking of urgency clause as well as dispensation of enquiry. As per the National Rehabilitation Scheme 2003 a detailed proposal/scheme for rehabilitation of the landless farmers, marginal farmers, small farmers and agricultural labourers/non-agricultural labourers was placed vide communication dated 13th March, 2008 and an amount of Rs. 98,11,500/- was deposited by the MVDA. He submits that there was no delay in making proposal for acquisition.

13. This batch of writ petitions filed in the year 2008 challenging notifications dated 30.8.2007 u/s 4(17)(4) and 8.8.2008 u/s 6(17)(1) were filed as soon as the notification u/s 6 was issued in the year 2008. The writ petitions filed in the year 2009 and 2010 were connected with these writ petitions. The MVDA filed counter-affidavit after several months.

14. In the counter-affidavits in Writ Petition Nos. 44470 of 2008; 44520 of 2008; 49187 of 2008 and 67739 of 2010 filed on behalf of the State of U.P. it is stated that the notifications u/s 4(1) and 6 were issued after consideration of entire facts and circumstances, and looking into the eminent necessity of planned housing and tourism development in the area of Village Azizpur Distt. Mathura under the planned development scheme. The District Collector Mathura, after receiving proposals from MVDA forwarded the proposals to the Director, Land

Acquisition, Directorate, U.P. Board of Revenue, Lucknow on 23.3.2006. By the same letter request was also made to the Collector Mathura to forward the certificate that there are no temple, mosque or graveyard on the proposed land and deposit of cost of acquisition. The District Collector sent these certificates on 23.6.2006. Again a query was made with regard to number of affected farmers of scheduled castes on which the Collector informed apart from other details that 133 farmers are going to be affected out of which 28 farmers belong to scheduled castes. The farmers belonging to scheduled castes will become totally landless after acquiring their land.

15. The Special Secretary by his letter dated 23.1.2007 inquired from the Vice Chairman, MVDA about the difficulty in providing opportunity of hearing to the affected tenure holders. In response he sent a letter stating that since the tenure holders are to be heard under Sub-section (2) of Section 11, and at the time of determining compensation under the Agreement Rules of 1997, there is no necessity to hear them. The State Government was not satisfied and again sent a letter on 13.3.2007 as to why the tenure holders cannot be heard and on this the Collector sent a letter on 14.3.2007 stating that the land in Village Guheta, which is behind the Village Azizpur from the main road, has been acquired and thus the land in Azizpur has to be immediately acquired, otherwise the land can be sold and unauthorised constructions may be raised on it. In para 2 of this letter the Vice Chairman, MVDA informed the State Government that the MVDA has completely exhausted the land available with it and thus in order to run the schemes of the authority and to complete the targets of the State Government for weaker sections and to make plots and houses available, the land is immediately required. He further stated that in order to provide the building and land to the pilgrims, who visits the city and further to provide necessary amenities like water supply, sewerage, electricity, traffic and other community services the land is immediately required. The State Government, thereafter, invoked the provisions of Section 17 and issued notifications u/s 4(1)/17 on 30.8.2007 dispensing with the provisions of Section 5A of the Act followed by notification u/s 6(1)/17 dated 8.8.2008.

16. The documents annexed with the counter-affidavit of MVDA and the State Government for acquiring the land and invoking the urgency clause and this material shows that the proposal for acquiring the land was initiated by the MVDA with the meeting of the "Sthal Chayan Samiti" consisting of Secretary, MVDA as Chairman; Superintending Engineer, Agra Development Authority, Agra; Sanyukt Niyojak, Nagar Evam Gram Niyojan Vighag, U.P., Agra; officer of Jal Nigam and Special Land Acquisition Officer, Mathura on 28.5.2005. The proposal was submitted to acquire 103.596 hec. of land in Village Azizpur selected by the Committee on 7.7.2005. The defects pointed out by the Special Land Acquisition Officer by his letter dated 22.7.2005 and 21.12.2005 were removed by reducing certain areas and adding more areas totaling 110.496 hec. to the District Magistrate to forward the proposals to the Director/Land Acquisition Officer after 10 months on 23.3.2006. The requisite certificates were sent by the

District Magistrate, Mathura to the State Government on 17.5.2006. The collection of further information regarding landless farmers with reference to the proposal of the acquisition called for by the State Government took six months" time and that on 4.10.2006 required information was communicated to the State Government.

17. The State Government was conscious on the exercise of its extraordinary powers for invoking Section 17(1) and (4) and thus wrote to the Vice Chairman, MVDA on 23.1.2007, asking him to give reasons as to why opportunity of hearing as required under the Act to the land owners, whose land was proposed for acquisition was not given. In reply the Vice Chairman sent communication dated 25.1.2007. In these communications for dispensing with the enquiry u/s 5A, the Vice Chairman, MVDA wrote to the State Government on 25th January, 2007 (Annex. 19, page 80 of the counter-affidavit) that after the notification u/s 4(1)/17 the concerned persons are heard under Sub-section (2) of Section 11 and under the U.P. Land Acquisition Karar Niyamawali Rules, 1997 as well as under the Government Order dated 29th September, 2001 and requested that the notification u/s 4/17 may be issued.

18. When Shri Surya Prakash Misra, Special Secretary, Government of U.P. again requested to provide the required report for hearing the land owners before acquisition of the land vide his letter dated 20.3.2007, the Vice Chairman, MVDA wrote to him on 14th March, 2007, giving reasons for immediate acquisition of the land. These reasons given in the letter dated 14th March, 2007 were as follows:

(1) By Government Order dated 3rd March, 2006 a target of acquiring 200 hec. of land for MVDA was fixed. Against this target the MVDA has made proposals for acquisition of 110.496 hec. of land in Village Azizpur; 40.577 hec. of land in Village Guheta (total area 151.073 hec.) and for issuing notifications u/s 4(1)/17.

(2) In respect of Village Guheta notification for acquiring 40.577 hec. of land has been issued by the State Government on 3.11.2006. Village Azizpur is situate on National Highway No. 2. The area acquired for Village Guheta is just behind the Village Aziapur. The road leading to land acquired in Village Gohita goes through the Village Azizpur and thus it is absolutely necessary to acquire the land in Village Aziapur. If notification u/s 4(1)/17 is not issued immediately, there is possibility of transfer of several land and of unauthorised construction.

(3) Almost the entire land with MVDA has exhausted and that in order to properly manage the authority and to achieve the target of the State Government for providing plots/houses to the weaker sections of the society, the land is immediately required.

(4) Mathura Vrindavan is a religious city. Lacs of pilgrims arrive in the city from out of and outside the country and many such pilgrims desire to settle and demand houses/plots. Taking into account the increasing demand of the pilgrims,

the availability of land and construction of houses is absolutely necessary and for that purpose his land is urgently required.

(5) Under the Urban Development Policy of the Government of U.P. necessary services like water, waste management, electricity supply, transportation and other community services are required to be provided in a clean environment by planned development and for providing houses for which land is immediately required.

(6) Under the 20 point programme of the Government, land is required for lower income class and economically weaker class and in these circumstances the land is urgently required and for which application of Section 17 is absolutely necessary.

19. Smt. Sunita Agrawal submits that on the basis of the aforesaid information, including reasons for invoking urgency clause u/s 17, the State Government issued notifications on 30.8.2007 u/s 4(1) followed by notification u/s 6(1) read with Section 17(4) for taking over possession within 15 days of notice u/s 9(1) of the Act. She submits that the land was urgently required to meet the targets in the policy of the State Government and to provide the land for both housing and tourism close to the city. The Government of U.P. had asked MVDA to prepare an action plan for development of various tourism project in "Vraj" (Agra-Mathura Circle). The land was acquired for preparing land bank by the Department of Tourism, to be earmarked with the assistance of travel, tourism entrepreneurs, by the Collectors in identified circuits, where tourism can be developed. The scheme also provided for transfer of land u/s 154(2) of the UPZA and LR Act, 1950, which permits purchase of land with excess of 12.5 acres of land for industrial purpose by Division Commissioner. She submits that as tourism has been given the status of industry, the acquisition of land also relates to the development of tourism industry.

20. We have anxiously considered the submissions made by learned Counsel for the Petitioner, counsels appearing for the State Government and learned Counsel appearing for the MVDA. We find that the provisions of Section 17 has been applied to the acquisition mechanically without application of mind to the relevant factors for applying Section 17(1) and dispensing with enquiry giving an opportunity of hearing to the persons, who own the land u/s 5A of the Act. The proposal to acquire the land and applying Section 17 dispensing with enquiry u/s 5A is stated to be a development of housing colonies and for, tourism industry. Although in the counter-affidavit justification is sought to be made that the land is being acquired for tourism industry, we do not find any mention of the word "tourism" in the entire correspondence for selection of the land and proposal for acquisition and the reasons given by the Vice Chairman, MVDA for invoking Section 17 of the Act. There is absolutely no mention of the development of tourism. The reference to the settlement of the pilgrims does not have any basis in as much as no such demand has either been reflected in the counter-affidavit nor any such material has been placed that the pilgrims, who want to settle in

the Mathura Vrindavan have made any request for settling in the highway at a distance of about 45 kms. from Mathura-Vrindavan and at a distance of 5 kms. from the nearest urban settlement at Kosi Kalan. There is no reference to any proposal made by tourism department, or by any entrepreneurs, who want to set up hotels or tourist facilities at Village Azizpur.

21. We further find from the letters of Shri Pramanshu, Vice Chairman, MVDA that firstly he had tried to rely upon the provisions of hearing before making an award under Sub-section (2) of Section 11 and under the Rules of 1997 for settlement of compensation and the Government Order dated 29th September, 2001, for giving opportunity of hearing to the persons, whose lands are acquired in complete ignorance of law of acquisition of land. The Vice Chairman appears to be labouring under the misconceived notion that the hearing of the persons before making an award under Sub-section (2) of Section 11 of the Act, for compensation will sufficiently comply with the requirement of Section 5A for giving opportunity of hearing as against the acquisition of land. In his subsequent letter dated 14th March, 2007 Shri Pramanshu, Vice Chairman, MVDA has come out with the correct facts that the authority wants to create land bank as total area of land with the authority has merely exhausted and that land in Village Azizpur is necessary to be acquired as the land in Village Guheta just behind the Village Azizpur was acquired on 3.11.2006. Further the reasons given by him that if the Plan is not urgently acquired, it may be transferred or may be subjected to unauthorised constructions, has no relevance to the application of Section 17(1) of the Act for urgent acquisition of the land.

22. We further find that there was no proposal nor any reference to the number of offer of the persons, who want to settle 45 kms. away from Mathura Vrindavan on Delhi Mathura Road, 5 kms. away from nearest townships, the number of applications by the persons or institutions or entrepreneurs, for plots/houses has not been given, a vague reference was made that there is great demand for plots/houses for such persons. The development of infrastructure under the Land Development Policy of the State Government and the achievements of targets under the 20 Point Programme for houses for economically weaker class also cannot have any justification for applying Section 17(1) of the Act.

23. In para 62 of the counter-affidavit the MVDA has tried to give clarification that out of total area of 110.49 hectrs. of Village Azizpur only 11.498 hectrs. is industry while the rest of the area has been shown as residential in the master plan. The plots of the Petitioners are in the area, which has been shown residential in the plan. The area in which plots of the Petitioner lies can be connected to the main road by developing a road of the scheme through 10% of the total acquired land. The plan to develop for tourism is reflected to 10% of the total acquired land. We do not find that there is any averment in the counter-affidavit that the possession of the land has been taken or that any development has started. In paragraph 70 of the counter-affidavit it is stated that a notice u/s 9 was issued on 4.6.2009, in daily newspapers calling upon tenure holders to put

up their claims for compensation. In all these writ petitions interim orders were granted to maintain status quo and not to dispossess the Petitioners, which are still operative.

24. In *Sri Radhey Shyam (Dead) through LR v. State of U.P.* Civil Appeal No. 3261 of 2011 decided on 18.4.2011 the Supreme Court noticed all the previous judgments delivered in the past in respect of acquisition of land for public purpose and applying the provisions for urgent acquisition of land u/s 17(1) and held as follows:

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, 5A 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

5A. 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 5A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry u/s 5A 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 5A 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 5A 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 5A(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.

25. The Supreme Court, thereafter, observed in the facts of that case, which are almost similar to the present case that there was no justification for the State Government to invoke urgency provisions u/s 17(1). It was further held:

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 5A 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 69 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 5A 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 5A(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 Section 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 5A and the time spent by the Collector in making inquiry under Sub-section (2) of Section 5A 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 5A 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 5A 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 5A(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.

26. In *Dev Sharan and Others Vs. State of U.P. and Others*, the acquisition of land for the construction of a new district Jail by invoking urgency provision u/s 17 was quashed on the ground that the Government machinery had functioned at very slow pace after issuance of the Notification u/s 4 in processing the acquisition proceedings which clearly evinces that there was no urgency to exclude the application of Section 5A of the LA Act. The Court observed:

35. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's Letter dated 4.6.2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of a suitable site for construction was held on 27.6.2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2.7.2008. This was in turn forwarded to the State Government by the Director on 22.7.2008. After due consideration of the forwarded proposal and documents, the State Government issued Section 4 notification, alongwith Section 17 notification on 21.8.2008. These notifications were published in local newspapers on 24.9.2008.

36. Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the landowners, alongwith 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Section 6 declaration was sent to the Director, Land Acquisition on 19.6.2009. The Director in turn forwarded all these to the State Government on 17.7.2009, and the State Government finally issued the Section 6 declaration on 10.8.2009. This declaration was published in the local dailies on 17.8.2009.

37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days i.e. almost one year. This slow pace at which the Government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the LA Act.

38. In Para 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the Petitioners their right u/s 5A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification

was about 11 months.

27. In these writ petitions the Land Selection Committee of MVDA made proposals to acquire the land on which proposals were submitted to District Magistrate (Land Acquisition) Mathura on 7.7.2005. Thereafter it took more than two years to issue Notifications dated 30.8.2007 u/s 4(1) read with Section 17(4) and another one year to issue Notification dated 8.8.2008 u/s 6(1) read with Section 17(1) of the Act. This delay of three years has completely defeated the plea of urgency for acquisition of land, dispensing with enquiry u/s 5A of the Act. The above series of the events amply exhibit the lethargically and lackadaisical attitude of the State Government. In the light of the above circumstances, the Respondents are not justified in invoking the urgency provisions u/s 17 of the Act, thereby, depriving the Petitioners of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

28. There was interim order operating in all the writ petitions directing the parties to maintain status quo. Though it is stated in the counter-affidavit that the Respondents tried to negotiate with the tenure holders for obtaining ownership and when it failed, it has chosen the path of acquisition for planned development of the area. The details regarding the persons with whom such negotiations were made and the reasons for which negotiations could not succeed have not been given. There is no averment in the counter-affidavit that the possession of the land has been taken.

29. On the aforesaid facts and circumstances, we are of the opinion based upon the law laid down by the Supreme Court in *Anand Singh v. State of U.P.* (Supra); *State of West Bengal and Ors. v. Prafulla Churan Law* (Supra); *Dev Sharan and Ors. v. State of U.P. and Ors.* (Supra) and *Radhey Shyam (dead) through its LRs v. State of U.P.* (Supra) that there was no urgency much less real urgency or any urgency to apply the provisions of Section 17(1) of the Act to the acquisition. There is no plan or any requirement for immediate possession of the land to apply Section 17. We also find that once notification u/s 6(1) read with Section 17(4) of the Act is set aside and application of provisions of Section 17(1) of the Act allowing Section 4(1) is set aside, in accordance with the Constitution Bench of the Supreme Court in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, notification u/s 4 for proposal to acquire the land would not independently survive and that the notification u/s 4 of the Act would not be of any use to proceed further for hearing the land owners as in such case even if the affected persons are heard, notification u/s 6(1) after expiry of period of one year cannot be issued. The notification u/s 4(1) thus cannot be utilised after the expiry of statutory period of one year under the First Proviso to Section 6(1) for publishing notification u/s 6.

30. In the result all the writ petitions are allowed. We set aside the notification u/s 4(1) read with Section 17 of the Act dated 30.8.2007 and the notification u/s 6 read with Section 17(1) of the Act dated 8.8.2008 for acquiring 110.496 hecets in

Village Azizpur, Pargana Chhata Distt. Mathura for the purposes of planned residential scheme and tourism development by MVDA, Mathura. We further direct that if the possession of any part of the land was taken, the same shall be returned to the land owners.