
(1996) 08 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5459 of 1995

Swarna

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 21-08-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 5A

Citation : (1997) 115 PLR 151 : (1997) 1 RCR(Civil) 120

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Prem Nath Aggarwal, for the Appellant; A.G. Masih, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Challenge herein through present writ filed by petitioner under Article 226 of the Constitution of India is to the notification dated December 14, 1994, issued by the Government of Punjab, Department of Local Government (Annexure P-5), u/s 4 of the Land Acquisition Act by invoking the provisions of Section 17(2) of the said Act as also follow-up declaration issued u/s 6 of the Land Acquisition Act on March 27, 1995 (Annexure P-6) again invoking Section 17(2) of the said Act, this time, however, to proceed to take possession of the land. Brief facts, on which the challenge to the notification and declaration is sought to rest need a brief mention.

2. Petitioner is a small land-owner and cultivates land owned by him measuring 12 kanals 19 marlas in village Sargundi, Tehsil Phillaur, District Jalandhar. He has installed a tubewell in khasra No. 715 and it is pleaded that his entire land is irrigated through tubewell. He has raised a boundary wall of 4-5 feet on three sides of this khasra number. A few years ago, prior to his filing the present petition, he is stated to have taken loan of Rs. 85,000/- from the Union Bank of India for the purchase of a tractor by mortgaging his entire land and has still to pay some part of the loan. Adjoining to this land, on the Northern side, there is 8

kanal Banjar Qadim land owned by the Gram Panchayat and near the land of petitioner there is an other piece of land measuring 36 kanals 8 marlas in village Mahal which has depression of 8 to 10 feet. Notification, Annexure P-5, was issued by the Punjab Government u/s 4 of the Land Acquisition Act which was published on December 18, 1994 for acquisition 2 kanals 17 marlas of land of the petitioner comprised in khasra No. 715 for a public purpose, namely, construction of disposal work of sewerage scheme at Goraya. In the notification aforesaid it is mentioned that the provisions of Section 5-A of the Act were not complied on the ground of urgent importance of the public purpose. The petitioner is stated to have acquired knowledge of acquisition of his land on December 30, 1994 through the office of the Sub-Divisional Officer (Civil)-cum-Land Acquisition Officer. Follow-up declaration u/s 6 was issued on March 27, 1995 and it is on August 9, 1995 that the petitioner filed the present petition in this Court.

3. The cause of petitioner has been opposed and in the written statement that has been filed on behalf of the Land Acquisition Collector through Shri Nirbhay Singh, PCS, S.D.O. (Civil), it has been pleaded that the petitioner, besides land measuring 6 kanals 12 marlas, is also owner of an other piece of land measuring 8 kanals 7 marlas in the revenue estate of village Mahal as also that he had constructed boundary wall on three sides only after the issuance of notification u/s 4 of the Act. The existence of panchayat land is admitted but it is the care of the respondents that the said land was found technically unfit for the constructor of disposal work by the Site Selection Committee headed by the Chief Engineer (Head Office) Punjab Water Supply & Sewerage Division, Jalandhar vide report submitted on that behalf on May 5, 1995. Annexure R-3 and the width of the said panchayat land is less than the required width. Therefore, the disposal work could not be constructed in the said land of Gram Panchayat. Insofar as another piece of land, as has been referred to by the petitioner is concerned, it is pleaded in the written statement that the same is situated on Eastern side of Khasra Nos. 712 and 713 and the same is not suitable for the construction of the disposal system. The out-let for the disposal of water is immediately on the Western side of khasra No. 715 beneath the Railway line from where the waste water is to be passed further and in case disposal work is constructed on land measuring 36 kanals 8 marlas, then another piece of land was also required to be acquired which would require far more costs and compensation for construction of the disposal work. The urgency involved in the matter and dispensation of hearing of objections u/s 5-A is sought to be justified.

4. Petitioner filed replication on September 22, 1995 to which a rejoinder was filed by the respondents. The facts, as stated in the petition have been reiterated in the replication filed by the petitioner. Besides that, it has also been averred that the report dated May 5 1995 Annexure R-3 was prepared to make an excuse to show that no other land is suitable for construction of the disposal work of sewerage scheme at Goraya. Authenticity of the report to the effect that it is only the land of petitioner which is suitable for the purpose in question has also been denied. In the rejoinder filed on behalf of the respondents, it is again a case of

reiteration of facts mentioned in the written statement as also that the report Annexure R-3 is correct as per the facts at the site and the said report was duly given by the public officers in discharge of their official functions. It is further averred that the land sought to be acquired is best suited for the purpose.

5. Shri Nirbhai Singh PCS SDO (Civil), during the pendency of the writ petition, filed an additional affidavit wherein it has been averred that the sewerage work as per the approved scheme had been taken up by the Punjab Water Supply and Sewerage Board for Goraya as also that the sewerage water flowing through the sewerage tube has to cross the main railway line (Ludhiana-Jalandhar) and for that purpose a pumping station to pump out the sewerage water has to be installed near the railway PULLI already in existence and that in case arrangements for pumping out the sewerage water are not made, the sewerage would get choked and it will become ineffective and useless. It has also been pleaded that without pumping station the sewerage can not work. The work aforesaid comes under the HUDCO loan scheme and has to be completed within a fixed schedule of time. The laying of sewerage tube alongwith the G.T. Road has already been started and the pumping station is an integral part of the scheme. A copy of letter dated December 5, 1994 from the Managing Director, Punjab Water Supply and Sewerage Board has been annexed as Annexure R-1. It has also been pleaded that sewerage has partly been laid and it has to be completed according to the approved scheme and that it is essential for pumping out the sewerage water that pumping station is constructed so that the scheme may be completed and made functional. It has also been once again reiterated that there is no other land as suitable for the purpose as the one which has been provided in the scheme. In the letter, Annexure R-1, which is from the Managing Director Punjab Water Supply and Sewerage Board, it has been mentioned that the work comes under the HUDCO loan scheme and is to be completed within a fixed schedule of time and that for taking up this work in hand the acquisition of land is pre-condition and that if the land was acquired under general condition, then it would take long time, resulting into delay in execution of work. It is further mentioned that taking into consideration the importance of work, action for acquisition of the land should be taken by applying the provisions of Section 17(2) of the Act.

6. An affidavit to the additional affidavit, reference whereof has been given above, has also been filed by the petitioner generally disputing the facts contained in the additional affidavit. Yet another additional affidavit was filed by Shri Nirbhai Singh, PCS, S.D.O. (Civil), pleading therein that the providing sewerage facility to the Goraya Nagar Panchayat, loan of Rs. 15.19 lacs was obtained from the L.I.C. and a sum of Rs. 9.86 lacs was contributed by the Nagar Panchayat itself being its share. The total funds to the tune of Rs. 25.05 lacs had been arranged for laying of sewerage facilities in the town and that when the facilities was prepared the master plan for the whole town was not prepared. The master plan was prepared and adopted in the year 1988 and the funds awarded under LIC scheme were now being used under the Master plan. Under the IJC

scheme, a temporary pumping station at point "F" was proposed. In addition to above, a sum of Rs. 10 lacs had been provided by Goraya Nagar Panchayat and out of this entire amount a sum of Rs. 26.14 lacs had been spent upto March, 1996 on the scheme. The land was required to be acquired under the LIC scheme. As mentioned above, Master plan was prepared in the year 1988 for providing sewerage facilities in the Goraya Nagar Panchayat and the disposal point was proposed at the site which is under dispute. Due to paucity of funds a proposal was mooted that a loan be procured from the HUDCO so that the master plan formulated in 1988 could be completed and benefits of both the schemes could reach the residents of Goraya. In exercise of powers under the Land Acquisition Act, the Governor of Punjab was pleased to direct that action u/s 17(2) shall be taken on the ground of urgent importance of public purpose and that the provisions of Section 5-A shall not apply in regard to this acquisition. It is further the case of respondents that work had to be completed as per fixed schedule of time and a loan of Rs. 1.50 crore had to be obtained from HUDCO. The provision of pumping arrangement is an integral part of the scheme, without which the sewerage could not work. The matter was of urgent importance as the sewerage had to be laid along with the G.T. Road and internal area of Goraya town to avoid the traffic hazard and, therefore, the matter could not be kept hanging. The loan is to be released by HUDCO only after the entire scheme along with certainty of availability of land is provided with the scheme to HUDCO. The land required for the scheme has to be provided by the Goraya Nagar Panchayat free of costs i.e. the payment for the Land acquired has to be made by the Nagar Panchayat. After arrangement of loan from HUDCO authorities, the certainty of repayment to HUDCO by the Nagar Panchayat, Goraya is also essential. Repayment of HUDCO loan can only be assured if whole scheme is put functional and service charges are also obtained from inhabitants of vicinity of Goraya where facility for sewerage would be provided under the scheme. It is therefore pleaded that sewerage for Goraya is badly needed so that this industrial town may not get degenerated into a slum. Goraya is said to be a fast developing town and if sewerage is not laid at this stage, it would be very difficult to get space in future. Moreover, to attract foreign investment, the industrial town was required to be renovated. The plan has been annexed as Annexure P-1 showing the progress of work at different stages. To this additional affidavit, petitioner has chosen to file reply by way of his affidavit, however, once again generally denying the averments made in the additional affidavit.

7. On the pleadings, as have been fully detailed above, Mr. Aggarwal, learned counsel appear on behalf of the petitioner, in support of the writ contends that Notification, Annexure P-5, as also follow-up declaration, Annexure P-6, are arbitrary, mala fide and discriminatory as the alleged purpose of construction of disposal work of sewerage scheme could be carried out on the two pieces of alternative land which was available adjoining to the land of the petitioner and reference whereof has been given above, as also that the petitioner has been deprived of his right to file objections u/s 5-A of the Act as also that there was no

urgency at all involved in the matter nor it is a case of an exceptional nature. Resort, thus, could not be had to the provisions contained in Section 17 of the Act, contends the learned counsel. In support of the contention that there was no urgency in the matter at all, learned counsel endeavours to draw support from the fact that the master plan for sewerage system for Goraya town was prepared in 1986-87 and yet notification, Annexure P-5, came to be issued in 1994 after a period of about 7-8 years, clearly depicting that there was no urgency involved in the matter.

8. Learned counsel also contends that if in the notification issued u/s 4, there is no mention that the land is waste or are able nor it is stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act, this is itself would be enough to strike down such a notification as also that the very purpose, as stated in the notification issued u/s 4, on the face of it, is not of urgent nature, which could empower or enable the respondents to dispense with filing of objections u/s 5-A by those whose land was sought to be acquired.

9. Mr. Masih, learned Assistant Advocate General, Punjab, has joined issued with all the points raised by learned counsel for the petitioner, as have been noted above. He has taken the Court through various documents and site plans to show that the piece of land that has been acquired and for which notification and declaration have accordingly been issued, is the only site which is most appropriate to work out the scheme and any other place would not serve the purpose as effectively as the site in question. It is further his contention that selection of site for a particular purpose so as to work out a particular scheme can be best judged by the experts and unless in such a selection there is something wrong on the very face of it or there is a patent mistake, the Court should not interfere. He also contends that the notifications issued in this case answer or are in conformity with the provisions of law and that the purpose was of such emergent nature that provisions of Section 5-A of the Act were required to be dispensed with.

10. After hearing learned counsel appearing for the parties on various dates that were given in this case, and after carefully scrutinising the pleadings and entire documents that were placed on records of the case, this Court is of the confirmed view that the points raised by Mr. Aggarwal, in the context of the facts, as are available, have no substance, and, therefore, this petition must fail.

11. Legal contention raised by Mr. Aggarwal that in the notification in question it is neither mentioned that the land is waste or arable nor it is stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act, the impugned notification and declaration are required to be quashed may be dealt with first. Before, however, this question is answered, it shall be approximate to see as to what exactly has been mentioned in the notification, impugned in the present petition. In the notification issued u/s 4 on December 14, 1994, Annexure P-5, in the very first paragraph it is

mentioned that the land described below was needed for a public purpose, namely, for the construction of disposal work of sewerage scheme for Goraya town which was a HUDCO aided project by the Punjab Water and Sewerage Supply Board. It is further mentioned that the Punjab Water and Sewerage Supply Board had requested the State Government to acquire the land on payment by the Board. The last paragraph of the notification reads thus :-

"Further in exercise of the powers under the said Act, the Governor of Punjab is pleased to direct that action u/s 17(2) shall be taken in this case on the ground of urgent importance of the public purpose and provisions of Section 5-A shall not apply in regard this acquisition."

12. Mr. Aggarwal has sought support for his contention, as has been noted above, from a judgment of Apex Court in *Dora Phalauli Vs. State of Punjab and Others*, . The paragraph of notification that was involved in the said case, reads as follows :-

"Further in exercise of the powers under the said Act, the Governor of Punjab is pleased to direct that action u/s 17 shall be taken in this case on the grounds of urgency and provisions of Section 5-A will not apply in regard to this acquisition."

In the context of the language employed, as has been extracted above, the Supreme Court held that, "In the portion of the notification which we have extracted above, it is neither mentioned that the land was waste or arable nor has it been stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act." In the case aforesaid, notification was quashed. I have given my thoughtful consideration to the contention of the learned counsel but am of the opinion that the facts of this case are distinguishable and, therefore, the decision of Apex Court in *Dora Phalauti's* case (*supra*) can not successfully be applied to the facts of the case in hand. It may be recalled that only that portion of notification u/s 4 was extracted by the Supreme Court from where opinion of the Government that there was an urgency to take recourse to the provisions of Section 17 could be spelled out and in that particular portion, opinion of the Government had not been expressed. In the case in hand the very first paragraph mentions that it appears to the Governor of Punjab that the land described in the application below is needed for a public purpose, namely, for the construction of disposal work of sewerage scheme of Goraya, Tehsil Phillaur, District Jalandhar." This notification was issued on December 19, 1994, It is obvious that before the notification was issued under the orders of the Governor, whole case file was scrutinized. Reference at this stage may be made to letter dated December 5, 1994 written by the Managing Director, Punjab Water and Sewerage Supply Board to the Secretary, Government of Punjab, Local Government Department, Chandigarh, (Annexure R-1). The contents of the letter, in view of this Court, have great bearing upon the controversy involved in this case. The letter reads thus :-

"Subject:- Acquisition of land measuring 2 kanals, 17 marlas (For Goraya City).

For acquisition of land for construction of disposal work (Under HUDCO scheme).

The Land acquisition papers u/s 4 and 6 of the Land Acquisition Act, 1994 for the work cited as subject are submitted herewith is triplicate for Govt. Gazette notification. The ibid work comes under HUDCO loan Scheme and is to be completed within fixed schedule of time.

For taking up this work in hand the acquisition of land is precondition. If the land is acquired Under general conditions, then it will take long time, resulting into delay in execution of work.

Taking into consideration the importance of work, it is requested that action for acquisition of land under the Land Acquisition Act of 1894, Section 17(2) be taken.

It is certified that the Act of Pb.W/S Board, 1976, Section 19(2) has been taken into consideration.

No objection Certificate issued by the Land Acquisition Collector, Phillaur is enclosed herewith.

DA: Land Acquisition paper u/s 4 and 6 in triplicate complete. Endorsement No. PWSSB-W/44947 dt. 5.12.94 from the Managing Director, Pb.W/S Sew, Board Chandigarh to Superintending Engineer, Pb.W/S Sewerage Circle, Jalandhar in connection with his office letter No. 8115 dated 9.11.1994 for information."

A perusal of this letter would clearly show that the work undertaken was under the HUDCO scheme and had to be completed within a fixed schedule of time as also that as per the terms of the loan that was to be advanced by the HUDCO, acquisition of land was a pre-requisite and this is in that context that it has been clearly mentioned that if the land is acquired under the general condition, it would take long time resulting into delay in execution of the work. Further, it was clearly requested that considering the importance of the work, action u/s 17 of the Act should be taken. Reference was also made to Section 19(2) of the Punjab Water Supply and Sewerage Board Act, 1976. If notification, Annexure P-5 is read now in the context of letter, Annexure R-1, it would straight-away be clear that while issuing notification u/s 4 of the Act, urgency of the matter was very such in the knowledge of the concerned authorities and so as their opinion. Even though, therefore, opinion of the Government to dispense with the provisions of Section 5-A or to take action u/s 17 has not been clearly mentioned, the same is clearly decipherable from reading of notification, Annexure P-5. Mr. Aggarwal has also relied upon Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, for the same proposition but during the course of arguments he had to admit that these judgments have no parity with the facts of the case in hand.

13. Mr. Masih, with a view to controvert the contention of the learned counsel for the petitioner; has relied upon a very recent judgment of the Supreme Court in Jai Narain and Others Vs. Union of India and Others, . This was a case where

land was acquired for the public purpose, namely, setting up for Sewerage Treatment Plant and in the notification all that was mentioned was that the land was likely to be needed for the public purpose. The contention raised in the aforesaid case that likely to be needed would clearly manifest that there is no immediate need and no opinion was also recorded that there was need to dispense with notice u/s 5-A of the Land Acquisition Act. While rejecting the contention, Supreme Court held that "the power u/s 4 of the Act can be exercised when it appears to the Government that the " land in any locality is needed or is likely to be needed for any public purpose. It is no doubt correct that the expression "is needed" indicates the existing need whereas the expression "likely to be needed" refers to the future need. When the later expression is used in the notification u/s 4 of the Act it may be suggestive of the fact that there may not be emergency to acquire the land, but the question of urgency cannot be determined solely by the expression used in the notification u/s 4. The emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The Courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind. When a notification u/s 4 uses the expression "is likely to be needed" it may be necessary in a given case to examine the records or the attendant circumstances to satisfy that there was material before the Government justifying the Order u/s 17 dispensing with the provisions of Section 5-A of the Act. If the public purpose on the face of it shows that the land is needed urgently that by itself is a relevant circumstance for justifying the action u/s 17(4)". In yet another recent decision of the Supreme Court in Chameli Singh and others etc. Vs. State of U.P. and another, . It was observed as under :-

"It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power."

Mr. Masih also relies upon a DB judgment of this Court in Gulzar Singh v. State of Punjab (1972)74 P.L.R. 6 : 1972 P.L.J. 522. Paragraph 18 of the report that deals with the issue in controversy reads thus :-

"However, in fairness to Mr. Kaushal, we must notice an argument pressed by him as a last resort in this context. It was contended that both annexures "C and "D" to the petition which stand impugned and which are the Government notifications under Sections 4 and 6 read with Section 17, no express mention of the sub-clause under which the power was being exercised has been mentioned. It was, therefore, contended that in invoking Section 17(4), the appropriate Government must arrive at an opinion whether the provisions of sub-section (1) or sub-section (2) are applicable before excluding the valuable rights of the petitioner and other land-owners which accrued to them u/s 5-A. Counsel contended that because the relevant sub-section was not expressly mentioned in

the two notifications, therefore, they should be quashed as invalid and it be held that the acquisition proceedings are wholly vitiated on this score alone. I am of the view that the contention above said has hardly any merit other than that of hyper technicality. What is first worthy of notice is the fact that in the petition itself in para 5 thereof it has been expressly averred on behalf of the petitioner that the power in this case has been exercised u/s 6 read with Section 17(2) of the Act. Again, repeatedly in the written statement filed on behalf of the respondents it has been in categorical terms affirmed that the respondent-State was acting u/s 17(2)(c) thereof. It has been repeated in the written statement that because action was being taken under sub-section (2), therefore, the classification of "waste and arable land" would not apply. There is, therefore, no manner of doubt that in the present case the Government after applying its mind was expressly purporting to act u/s 17(2) and this is further evident from the language of annexure "D" which virtually repeats the terminology of sub-clause (c) of sub-section (2). Therefore, what remains is the technical objection that the particular sub-section (2) has not been expressly mentioned in the impugned notification. I am of the view that it is mentioned by necessary implication. Further, I do not think that the specification of each sub-section or sub-clause of the statute under which power is exercised is a mandatory requirement either of the statute or of the law generally. Nor is it such a matter which would vitiate proceedings on this score alone. The whole obviously includes the part thereof and when section 17 has been expressly and repeatedly mentioned in the notification and the language of subsection 2(c) is repeated therein, the intention is manifest that the power is being exercised u/s 17(2). I am of the confirmed view that mere omission of specific sub-sections or sub-clauses in the notification is not matter which could possibly lead to the vitiation of the whole proceedings."

Mr. Masih also contends that mere omission to refer expressly either provisions of Section 17 or for that matter the opinion of the Government can not and should not be fatal to the acquisition proceedings. Once it is shown to the Court that the power exists and the same has been exercised in a bona-fide manner, as also that urgency is involved in acquiring the land, then non-mention of either of the Section or opinion of the Government shall pale into insignificance. He further contends that it is not necessary that the Government may prove urgency of the matter only from the words contained in the notification and that it is always open to the Government to prove the same from the files and various documents and decisions, preceding the notification in question. For his aforesated contention, learned counsel relies upon a judgment of Supreme Court in State of U.P. Vs. Smt. Pista Devi and Others, . The matter has been dealt with by the Supreme Court in paragraph 8. The observations made by Supreme Court read thus :-

"It is no doubt true that in the notification issued u/s 4 of the Act while exempting the application of Section 5A of the Act to the proceedings, the State Govt. had stated that the land in question was arable land and it had not specifically referred to sub-sec. (1-A) of Section 17 of the Act under which it

could take possession of land other than waste and arable land by applying the urgency clause. The mere omission to refer expressly Section 17(1-A) of the Act in the notification can not be considered to be fatal in this case as long as the Government has the power in that sub-section to take lands other than waste and arable lands also by invoking the urgency clause. Whenever power u/s 17(1) is invoked the Government automatically become entitled to take possession of land other than waste and arable lands by virtue of sub-sec. (1-A) of Section 17 without further declaration where the acquisition is for sanitary improvement or planned development. In the present case the acquisition is for planned development. We do not, therefore, find any substance in the above contention."

Mr. Masih endeavours to strengthen his aforesaid contention by citing a converse example i.e. a case, where in the notification issued u/s 4, opinion of the Govt. that there is an urgency involved in the matter, is mentioned but the public purpose for which the land is sought to be acquired on the face of it shows that there is actually no urgency in the matter at all, for example the public purpose being to open a Book depot. By giving the aforesaid example, it is further contended that mere mention of the opinion of Government in the notification, would not validate the same and it shall always be open for a citizen to show that despite the opinion mentioned in the notification, the purpose was not and could not be of any urgent nature. In that case, despite the fact that opinion of the Government is expressed, it shall always be open for the Court to quash the notification. Mr. Masih, for the proposition canvassed by him that if the power exists and decision has been taken after applying mind being conscious of necessary requirements, and the same is decipherable from the earlier notings/orders etc. preceding the impugned decision, it shall be wholly immaterial if in the order under challenge such essential requirement or opinion etc. is not expressed, relies on decision of Constitutional Bench of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, . Relevant portion of paragraph 134 reads thus :-

"It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order."

14. At this stage, if once again, the judgment of Apex Court in *Dora Phalauti's* case (supra), relied upon by Mr. Aggarwal, is examined, it could straight away transpire that the authorities in the said case were totally unable to show to the Court that there was an opinion that there was an urgency in acquiring the land and, therefore, the authorities had to fall back upon the mere language reproduced in the notification. In the present case, not only that the first part of the notification, that has been reproduced above, shows expression of an opinion with regard to urgency involved in the matter, if not specifically, then by necessary intentment, but also that by independent evidence like Annexure R-1 it has been conclusively proved that the authorities were alive to the urgency involved in the matter and opinion, to that effect Was clearly expressed as also

that when impugned notification, Annexure P-5 came into being, this material was taken into consideration. The contention of the learned counsel with regard to invalidity of the notification on the legal ground, stated above, is thus repelled.

15. The second limb of the same contention i.e.-the very purpose for which the land has been acquired, is not suggestive of any urgency in the matter, need not detain us any further as even acquisition for sanitary improvement or planned development has been held to be involving urgency as per decision of the Supreme Court in Pista Devi's case (supra). The present case is on far better footing. It has been adequately explained in the written statement that Goraya town is fast developing into an industrial town and in case there is some let up in completing the sewerage work, the total town shall become a slum area. Further, in this case, a loan had been obtained, pre-condition whereof was to acquire land. It has, thus, been over-whelmingly proved on records of the case that it was a case of urgent public purpose for which land was acquired.

16. Coming now to the facts of the case that when alternative land was available, the petitioner, being a small land owner, should have been spared agony of parting with his land by acquiring the same, the pleadings contained in the written statement may be recalled. It is positive case of the respondents that the site of the petitioner, and it may be mentioned here that whole of his land is not being acquired, is the only land which would serve the purpose best. Respondents have annexed photographs of the site in question where from it is crystal clear that the land of the petitioner is located nearest to the Railway PULLI. It is from here that sewerage water has to be discharged. Any other place would necessary require the respondents either to acquire far more land or to make a PULLI under the railway line which may not be feasible. Reference at this stage may be made to Annexure R-3 wherein it is mentioned that the land was selected for disposal work by the Committee consisting of the Chief Engineer, Punjab Water Supply & Sewerage Board, Superintending Engineer and Executive Engineer, Punjab Water Supply and Sewerage Board, Jalandhar. It is pointed in the report aforesaid that it is suitable by taking into consideration the master sewerage scheme of Goraya town which was sanctioned during the year 1986-87. In this report it has also been mentioned that the land sought to be acquired is situated near the railway pulli of railway line, Ludhiana to Jalandhar and that the water would be pumped out from the disposal through this PULLI to cross the railway line and that it would be very difficult to cross the railway line at any other point. It is also mentioned that land belonging to Gram Panchayat, Sargundi is not suitable for disposal work because the width of the land is less than the required width for the construction of disposal work. There is absolutely nothing at all to doubt the authenticity of this report. On the other hand, from the attending circumstances and the evidence brought on records, this Court is also of the opinion that the land in question would be best suited for the purpose, it is sought to be acquired. The Court also accepts the contention of Mr. Masih, learned AAG, Punjab that unless there be something apparent on the records to discard the opinion of the experts, the Court should normally accept it.

17. There is no merit in the contention of learned counsel for the petitioner that the very fact that it took 6-7 years in executing the scheme is suggestive of there being no urgency in the matter either. It is in the additional affidavit filed by the petitioner on March 20, 1996 that it has been pleaded that the sewerage scheme, even according to the respondents, was sanctioned during the year 1986-87. It is from this fact that it is being argued by Mr. Aggarwal that if there was any urgency in the matter, the land ought to have been acquired far earlier but as is clear, the land of the petitioner was sought to be acquired by issuing notification u/s 4 in the year 1994. In reply to the additional affidavit that has been filed on behalf of respondents 1 and 2 it has been clearly stated that due to paucity of funds, a proposal was drawn that loan be obtained from HUDCO so that the benefits of both the schemes could reach to the residents of Goraya and master plan formulated in 1988 could be completed. It has further been mentioned that the loan was to be released by HUDCO only when certainty of availability of land was provided to it. From the pleadings of the parties, it is, therefore, clearly established that even though plan for sewerage was prepared earlier, the same could not be made functional and, therefore, could not be executed till such time there was finance available with the authorities. The funds could be made available as per terms of the loan, only when the entire land was acquired. Petitioner could not bring on record anything to suggest that there was any delay in executing the plan after the same became executable i.e., when the loan became available to the authorities to execute the scheme. That apart, it has been the same became executable i.e., when the loan became available to the authorities to execute the scheme. That apart, it has been held by Supreme Court in Chameli Singh's case (supra) that pre and post notification delay would not render exercise of power to invoke urgency clause invalid. While dealing with this aspect, this is what the Supreme Court observed :-

"It is true that there was pre notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry u/s 5-A. As held by this Court, the delay by itself accelerates the urgency. Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the Court conclusively finds the exercise of the power mala-fide."

18. Finding no merit in this writ, the same is dismissed leaving, however, the parties to bear their own costs.