
(2015) 06 JH CK 0049
In the Jharkhand High Court
Case No : Civil Review No. 95 of 2012

Swati Enterprises

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 49
Land Acquisition Act, 1894 — Section 11, 16, 17, 17(1), 17(2)

Citation : (2015) 4 AJR 222

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Sohail Anwar, Senior Advocate, Shivani Verma and Altaf Hussain, for the Appellant; Vikash Kishor Prasad, S.C. (Land Ceiling), Advocates for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J—This review application has been filed for review of the order dated 8.8.2012 passed by this Court in W.P.(C) No. 4566 of 2011 whereby and whereunder writ petition challenging notification dated 2.6.2011/4.6.2011 issued under Section 4 read with Section 17(4) of the Land Acquisition (Amendment) Act, 1984 for acquisition of the part of the land belonging to the petitioner for construction of Ranchi Ring Road was dismissed.

2. The case of the petitioner is that the petitioner after obtaining permission under Section 49 of the Chota Nagpur Tenancy Act from the Deputy Commissioner, Ranchi purchased 4.28 acres and 1.64 acres (total 5.92 acres), appertaining to plot Nos. 335 and 360 respectively, Khata No. 45 and Thana No. 335 situated at village Garke, P.S. Namkum in the year 1989 for establishing an industrial unit over the land.

3. Thereupon in the year 1991, industrial unit was established for manufacturing of "Crimping of fuse heads on PVC coated wires" (a component of electric detonator). The said product manufactured by the petitioner is used by Indian

Explosives Limited, Gomia for manufacturing of electric detonators which are being used by the Mining Companies, quarries, oil fields and also for other purposes. The petitioner unit is the only ancillary unit of IEL, Gomia and catering its entire requirement. For running the unit, eighty workers mostly women belonging to Scheduled Tribe community hailing from the same village where the factory situated and from adjoining villages have been employed.

4. Further case is that the Government in the year 2004-05, for the purpose of constructing Ring Road, got a preliminary survey done. According to survey, initially made Ring Road was supposed to intersect NH-33 (Ranchi-Tatisilwai Road) about 1 km away from the petitioner's factory and from there straight to Tatisilwai but subsequently, it was modified whereby point of intersection with NH-33 was shifted 1.4 km. before and thereby the road takes zig-zac way leading to Tatisilwai whereby length of road get increased by 5 km. which will entail additional cost of Rs. 165 crores more a sheer waste of public money. This was probably done with vested interest to favour someone. On account of its modified plan, when the petitioner did find that the Ring Road would now passing through some portion (1.28 acres) of its factory, the petitioner gave representation to the Chief Minister on 14.7.2011 praying therein to do needful in the matter of correction of the alignment of the proposed road. Representation was also given not only by the family members of the persons employed by the petitioner but also by the villagers. At the same time, representation was also given to the Secretary to the effect stated above but all these efforts taken by the petitioner and others went in vain as the respondent No. 3 issued a notification under Section 4 read with Section 17(4) of the Land Acquisition (Amendment) Act, 1984 on 2.6.2011 which was published in the Gazette on 4.6.2011 for acquisition of 14.43 acres of land situated at Garke, Thana No. 335 in different plots including 1.28 acres belonging to the petitioner. Simultaneously, respondent No. 3 also issued declaration under Section 6 of the Land Acquisition Act declaring therein that the land mentioned in the said notification was acquired by the respondent which acquisition was made by invoking Section 17(4) of the Land Acquisition Act.

5. Thereupon a writ application bearing W.P.(C) No. 4566 of 2011 was filed for quashing of those notifications wherein a plea was taken that though by the said notification 1.28 acres of land belonging to the petitioner had been sought to be acquired but in future, the land over which building of the factory situates would also be acquired on account of widening of the road, decision of which has already been taken by the Cabinet and thereby there would be no existence of the factory, though there was option for the respondent to stick to its original survey.

6. The stand which the respondent took in the writ application is that the land measuring an area of 14.43 acres including the land measuring 1.28 acres belonging to the petitioner was notified to be acquired for public purpose, i.e., for construction of Ranchi Ring Road by invoking urgency clause and thereby

resident of the villagers will have easy access to NH-33.

7. The Court having taken into account the fact which was placed before it that the distance of the proposed road is more than 200 ft. away from the boundary of the factory, the petitioner is not going to suffer in any manner dismissed the writ application.

8. That order was challenged by way of intra court appeal in LPA No. 338 of 2012 which was dismissed as withdrawn by order dated 29.11.2012 with a liberty to the appellant to file review petition challenging the invocation of the provision of Section 17(4) of the Land Acquisition (Amendment) Act, 1984. Pursuant to that order, the appellant has filed a review petition wherein plea has been taken that the respondent has been arbitrarily invoking urgency clause of the Act, though situation of urgency was never there as the Government had conceptualized the construction of the Ring Road in the year 2004-05 itself whereas notification was issued in the year 2011 and thereby the respondent by invoking urgency provision of the Act made the petitioner and others disentitled to take objection in terms of the provision as contained in Section 5-A of the Act.

9. Upon filing of the review application, a counter affidavit has been filed stating therein that the order passed by learned Single Bench is being sought to be reviewed/recalled on the same ground on which the impugned notifications had been challenged. That is to say on the ground that in the original survey the petitioner's land was not coming in the way and that the proposed road has become circuitous increasing cost of construction considerably which ground cannot be allowed to be agitated as the learned Single Judge by taking into account all those aspects of the matter dismissed the writ application.

10. When the matter was taken up for hearing, counsel appearing for the petitioner by referring to the statement made in the review application relating to invocation of the urgency clause i.e. Section 17(4) of the Land Acquisition (Amendment) Act pleaded that there was no existence of any situation bringing the case under the category of urgency as contemplated under the Act and thereby invocation of urgency provision for acquiring the land was quite bad and thereby the petitioner has been denied with a valuable right by raising objection in terms of the provision as contained in Section 5A of the Act. In such event, counsel appearing for the State was called upon, vide order dated 31.7.2014 to produce relevant file to find out the ground on which the provision relating to urgency has been invoked.

11. Pursuant to that order, a supplementary counter affidavit was filed wherein in paragraph 7 the reason on account of which urgency clause has been invoked has been assigned which reads as follows:

"(i) After creation of new State of Jharkhand in the capital city of Ranchi there has been enormous increase and addition of various types of vehicles which has resulted into traffic congestion.

(ii) The increase of numbers of vehicles in the capital city was a reason of constant and frequent traffic jam and congestion.

(iii) After the creation of new State of Jharkhand, Ranchi being the capital city a number of VIP's and VVIP's authorities of the State and Central Government regularly visit the capital city and to avoid unnecessary delay and also for their safety and security a smooth running traffic is necessary.

(iv) Therefore in order to provide smooth and fast mobility of vehicles an idea was mooted for construction of Ranchi Ring Road.

(v) It was decided that for the aforesaid construction of Ranchi Ring Road a detail project report shall be prepared.

(vi) It was decided that the length of the Ring Road will be 85.089 kilometers which will consist of six lanes and for the said purpose a recommendation was made and placed before the cabinet.

(vii) That the matter was approved by the cabinet and under the signature of Commissioner-cum-Secretary, Road Construction Division, Ranchi, a Memo bearing No. 4747 dated 22.11.2004 was issued."

12. Mr. Sohail Anwar, learned Sr. counsel appearing for the petitioner submits that the property of the 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 provision 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 provision and dispense with the requirement of hearing the land owner or other interested persons. Here, in the instant case, the purpose for which the land was acquired, i.e., for construction of the Ring Road did not justify invoking of the urgency provision and denial of opportunity to the petitioner and other land owners to file objection under Section 5-A(1) and to be heard by the Collector in terms of the mandate of sub-section (2) of Section 5-A as the process for acquiring the land got started in the year 2004-05 whereby initial survey for acquiring the land was undertaken but only in the year 2011, a notification in terms of Sections 4 and 6 of the Land Acquisition (Amendment) Act was issued and in that event, there was no justification for invoking urgency provision of the Act and hence, impugned notification issued in terms of Section 4(1) read with Section 17(4) of the Land Acquisition Act and also other notifications are fit to be quashed.

13. In this regard, it was submitted that no doubt 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 but this provision can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months and therefore, before excluding the application of Section 5A, the authority concerned must be fully satisfied that the time of few

weeks or months likely to be taken in conducting enquiry under Section 5A will in all probability frustrate the public purpose for which the land is proposed to be acquired but the grounds taken in the supplementary counter affidavit filed, pursuant to the order passed by this Court are something different which cannot be said to be germane to the aforesaid provision empowering the authority to invoke urgency clause and thereby the authority concerned may be said to have invoked the urgency clause without applying its mind.

14. Learned counsel in support of his submission has referred to a decision rendered in a case of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, (2011) 4 JT 524 : (2011) 3 RCR(Civil) 96 : (2011) 4 SCALE 677 : (2011) 5 SCC 553 : (2011) 8 SCR 359 ; Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, AIR 2004 SC 3582 : (2004) 5 SCALE 207 : (2004) 8 SCC 453 : (2004) 2 SCR 801 Supp : (2004) AIRSCW 3473 : (2004) 5 Supreme 366 ; Union of India (UOI) and Others Vs. Mukesh Hans etc., AIR 2004 SC 4307 : (2004) 7 JT 526 : (2004) 8 SCALE 1 : (2004) 8 SCC 14 : (2004) AIRSCW 5081 : (2004) 7 Supreme 407 ; Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, AIR 2009 SC 1552 : (2008) 12 JT 315 : (2009) 2 SCC 377 : (2009) AIRSCW 1074 ; Mahender Pal and Others Vs. State of Haryana and Others, AIR 2009 SC 3220 : (2009) 13 JT 670 : (2009) 8 SCALE 485 : (2009) 14 SCC 281 : (2009) 9 SCR 418 : (2009) 6 UJ 2549 : (2009) AIRSCW 5158 ; Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others, AIR 2012 SC 412 : (2012) 1 JT 20 : (2012) 1 SCALE 8 : (2012) 2 SCC 327 and Bharat Sewak Samaj Vs. LT. Governor and Others, (2012) 9 SCALE 3 : (2012) 12 SCC 675 .

15. As against this, Mr. V.K. Prasad, learned counsel for the respondent submits that satisfaction envisaged in Section 17(1) is purely subjective and the court cannot review the decision taken by the State Government to invoke the urgency clause. In the instant case, the land is being sought to be acquired by invoking urgency clause of the Act for the purpose of construction of Ring Road which would cater the need of public at large and in that event, the order passed by the learned Single Judge never warrants to be reviewed when the writ petition was dismissed after being satisfied that the petitioner is never going to suffer in any manner with the acquisition of the land in question.

16. Learned counsel in support of his stand has referred to a decision rendered in a case of Nand Kishore Gupta and Others Vs. State of U.P. and Others, AIR 2010 SC 3654 : (2010) 10 JT 521 : (2010) 10 SCC 282 : (2010) 8 UJ 4154 : (2010) AIRSCW 5660 : (2010) 7 Supreme 949 .

17. Before coming to the issue involved in this case, one may conveniently look to the provisions of the Land Acquisition (Amendment) Act, 1984. Section 4(1) lays down that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers having circulation in that locality of which one paper

is to be published in the regional language. The duty is also cast on the Collector to cause public notice of the substance of such notification to be given at convenient places in the said locality (the last dates of such publication and the giving of such public notice is treated as the date of publication of the notification). Section 4(2) lays down that after publication of the notification under Section 4(1) any officer authorized by the Government in this behalf or workmen can enter upon the land and take levels of any land in such locality or to dig or bore into the sub-soil or to do all other acts necessary to ascertain that the land is suitable for the purpose of acquisition. Section 5-A lays down that any person interested in any land notified under Section 4(1) may within thirty days of the publication of the notification, submit objection in writing against the proposed acquisition of land or to any land in the locality to the Collector. The Collector is required to give the objector an opportunity of being heard either in person or by any other person authorized by him or by pleader. After hearing objector(s) and making such further inquiry, as he may think necessary, the Collector has to make report in respect of the land notified under Section 4(1) with recommendation on the objection and forward the same to the Government along with record of the proceeding held by him. The Collector can make different reports in respect of different parcels of the land proposed by be acquired. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) which lays down that after considering the report, if any, made under Section 5-A(2), the appropriate Government is satisfied that any public land is needed for public purpose then declaration to that effect is required to be made under the signature of the Secretary to the Government or some officers duly authorized to certify its order. The declaration is to be made under Section 6(1) within one year from the date of publication of the notification under Section 4(1). In terms of Section 6(2) every declaration is required to be published in the Official Gazette and in two daily newspapers having circulation of the locality in which the land proposed to be acquired is situated. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places in the locality. Section 6(3) lays down that the declaration made under Section 6(1) shall be conclusive evidence of the fact that the land is needed for a public purpose. After publication of the declaration under Section 6, the Collector is required to take order from the State Government for acquisition of the land to be carved out and measured and planned (Sections 7 and 8). The next stage as envisaged is to issue of public notice and individual notice to the person interested in the land to file their claim for compensation. Section 11 envisaged holding of an enquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23.

18. Section 16 lays down that after making an award the Collector can take possession of the land which shall thereafter vest in the Government. Section 17(1) postulates taking of possession of the land without making an award. If the appropriate Government decides that the land proposed to be acquired is

urgently needed for a public purpose then it can authorize the competent authority to take possession. Section 17(2) contemplates different type of urgency in which, the State Government can authorize taking of possession even before expiry of 15 days" period specified in Section 17(1). Section 17(4) lays down that in cases where appropriate Government comes to the conclusion that there is existence of an urgency or unforeseen emergency, it can direct that the provision of Section 5-A shall not apply.

19. Having taken into account the provision of the Act, one can come to the conclusion that the opinion of the State Government which is a condition for exercise of power under Section 17(4) of the Act is subjective and a court cannot normally inquire whether there were sufficient ground or justification of the opinion formed by the State Government under Section 17(4) but in view of number of decisions rendered by the Hon"ble Supreme Court, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion, the State Government did not apply its mind to the relevant facts bearing on the question at issue.

20. In this regard, I may refer to a decision rendered in a case of Union of India v. Mukesh Hans (supra) whereby the Hon"ble Supreme Court while interpreting Sections 5-A and 17 has been pleased to observe as follows:

"A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency.

An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Section 17(1) and (2), the dispensation with inquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for

dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because sub-section (4) of Section 17 itself indicates that the "Government may direct that the provisions of Section 5-A shall not apply" which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry."

(emphasis supplied)

21. In *Union of India v. Krishan Lal Arneja and others* (supra), Their Lordships in reference to Sections 5 and 17 again observed which is as follows:

"Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid to Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property and wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

(emphasis supplied)

22. Their Lordships in case of *Essco Fabs Private Limited v. State* (supra) observed as follows when the question fell for consideration as to whether the State was justified in invoking Sections 17(1) and 17(4) dispensing with the

inquiry under Section 5-A.

"Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of "urgency" and unforeseen emergency. In case of "urgency", falling under sub-section (1) of Section 17 or of "unforeseen emergency" covered by sub-section (2) of Section 17. Special powers may be exercised by appropriate Government but as held by a three Judge Bench decision before more than four decades in Nandeshwar Prasad and reiterated by a three Judge Bench decision in Mukesh Hans even in such cases, inquiry and hearing of objections under Section 5-A cannot ipso facto be dispensed with unless a notification under sub-section (4) of Section 17 of the Act is issued. The legislative scheme is amply clear which merely enables the appropriate Government to issue such notification under sub-section (4) of Section 17 of the Act dispensing with inquiry under Section 5-A if the Government intends to exercise the said power. The use of the expression "may in sub-section (4) of Section 17 leaves no room for doubt that it is a discretionary power of the Government to direct that the provisions of Section 5-A would not apply to such cases covered by sub-sections (1) or (2) of Section 17 of the Act."

23. In course of time, when again the question cropped up regarding justification of invoking provision of Sections 17(1) and 17(4) in case of Radhey Shyam and others v. State of U.P. and others (supra), Their Lordships, after analyzing relevant statutory provisions and interpretations given thereof by the Hon'ble Supreme Court in different cases, has been pleased to cull out the following principles.

"(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 v. Sholapur Spg. and Wvg. Co. Ltd., Charanjit Lal Chowdhry v. Union of India and Jilubhai Nanbhai Khachar v. State of Gujarat.

(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 - DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana; State of Maharashtra v. B.E. Billimoria and Dev Sharan v. State of U.P.

(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 landowner is likely to become

landless and deprived of the only source of his livelihood and/or shelter.

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

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 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 authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 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 under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully

scrutinize the relevant record before adjudicating upon the legality of such acquisition."

24. After having regard to the principle laid down by the Hon"ble Supreme Court particularly in the context of the provision as contained in Section 17(1) read with Section 17(4) of the Act, it is to be considered as to whether the respondent was justified in invoking the urgency provision contained in Section 17(1) and debarring the petitioner and other land owners to raise objection in terms of Section 5-A of the Act?

25. I have already noticed of the fact that a notification was issued in terms of Section 17(1) read with Section 17(4) of the Act for acquisition of the land measuring an area of 14.43 acres including 1.28 acres belonging to the petitioner situated at village Garke for constructing road leading to NH-33.

26. In course of hearing when an order was passed for placing the record with the court to find out justification of invoking urgency clause, a supplementary counter affidavit was filed wherein following grounds were cited in justification of invoking the urgency provision.

"(i) After creation of new State of Jharkhand in the capital city of Ranchi there has been enormous increase and addition of various types of vehicles which has resulted into traffic congestion.

(ii) The increase of numbers of vehicles in the capital city was a reason of constant and frequent traffic jam and congestion.

(iii) After the creation of new State of Jharkhand, Ranchi being the capital city a number of VIP"s and VVIP"s authorities of the State and Central Government regularly visit the capital city and to avoid unnecessary delay and also for their safety and security a smooth running traffic is necessary.

(iv) Therefore, in order to provide smooth and fast mobility of vehicles an idea was mooted for construction of Ranchi Ring Road.

(v) It was decided that for the aforesaid construction of Ranchi Ring Road a detail project report shall be prepared.

(vi) It was decided that the length of the Ring Road will be 85.089 kilometers which will consist of six lanes and for the said purpose a recommendation was made and placed before the Cabinet.

(vii) That the matter was approved by the Cabinet and under the signature of Commissioner-cum-Secretary, Road Construction Division, Ranchi, a Memo bearing No. 4747 dated 22.11.2004 was issued."

27. In my view, none of the aforesaid grounds do furnish legally acceptable justification for the exercise of power by the State Government under Section 17(1) of the Act as the consideration should have been in terms of the law laid down by the Hon"ble Supreme Court, as referred to above, that even the delay

of few weeks or months in acquiring land the purpose of acquisition would have frustrated the public purpose for which the land is proposed to be acquired. In other words, consideration should have been as to whether there was an urgency of such nature that even the summary proceeding under Section 5-A of the Act should have been eliminated. Under the situation, the authority was absolutely not justified in invoking the urgency provision as contained in Section 17(1) of the Act and debarring the petitioner and other land owners to raise objection in terms of Section 5-A of the Act for acquisition of the land for the purpose of construction of the Ring Road.

28. So far the decision rendered in a case of Nand Kishore Gupta and others v. State of Uttar Pradesh and others (supra) as relied upon on behalf of the State is concerned, it be stated that Their Lordships have never differed from the law laid down by the Hon^{ble} Supreme Court in the cases referred to above, rather after coming to the conclusion that the State Government had sufficient material and had applied its mind to record its opinion that there was an urgency to acquire the land to dispense with the inquiry under Section 5-A of the Act dismissed the appeal in which acquisition of the land was under challenge.

29. Thus, having regard to the facts and circumstances of the case as noted above, it is evidently clear that the State Government/authority while invoking urgency clause as enshrined under Section 17(1)/17(4) of the Act did not apply its mind to the relevant facts pointed out above having bearing on the question at issue and hence, notification issued under Section 4 read with Section 17(4) of the Act can never be said to be justified.

30. However, the question does arise as to whether order passed by this Court dismissing the writ application warrants to be review?

31. It is well established principle that every court has inherent power to act as ex debito justitiae to prevent abuse of the process of the court. This power is inherent in a court which may be termed as "procedural review" to correct order passed under some misapprehension or inadvertently or in breach of principle of natural justice or on account of some false representation and/or to prevent abuse of the process of the court.

32. This is an ancillary and incidental power necessary to discharge court's function effectively and for the purpose of doing justice between the parties. In this regard, I may refer to a decision rendered in a case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, AIR 1981 SC 606 : (1981) 42 FLR 88 : (1981) 1 LLJ 327 : (1981) 2 SCR 341 : (1981) 1 SLJ 510 : (1981) 13 UJ 42 .

33. In view of the conclusion arrived at that notification issued under Section 4 read with Section 17(4) of the Act is not justified I find it a fit case for review as if order passed in the writ application is allowed to stand, there would be a great injustice to the parties. Accordingly, the order dated 8.8.2012 passed in writ application bearing W.P.(C) No. 4566 of 2011 by which writ application was

dismissed is hereby recalled and for the reason assigned above that part of the impugned notification dated 2.6.2011/4.6.2011 issued under Section 4 read with Section 17(4) of the Act by which part of the land belonging to the petitioner for construction of Ring Road was sought to be acquired is hereby quashed. However, it is made clear that the respondent shall be free to proceed from the stage of Section 4 notification and take appropriate action after complying with Section 5-A(1) and (2) of the Act.

34. Thus, this review application stands allowed.