
(2013) 11 AP CK 0160
In the Andhra Pradesh High Court
Case No : W.P. No. 10527 of 2006

Tadikonda Narmada

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2014) 2 ALD 454 : (2014) 4 ALT 479

Judgement

Akula Venkata Sesha Sai, J.—This writ petition, under Article 226 of the Constitution of India, has been filed for a writ of mandamus, declaring the Notification Ref.G2/1998/2006, dated 5.5.2006, issued by the District Collector, East Godavari District, Kakinada/1st respondent herein u/s 4(1) of the Land Acquisition Act (hereinafter called as "the Act"), as illegal, arbitrary and violative of Article 300A of the Constitution of India, and consequently to set aside the said Notification. The case of the petitioner, as per the affidavit filed in support of the writ petition, is as under:

Petitioner is the absolute owner of the land admeasuring Acs.2.20 cents, situated in Sy. No. 61 of Vulimeswaram Village, Peddapuram Mandal, East Godavari District. The subject property originally belonged to Talluri Seetharajyalakshmi, who is the maternal grandmother of the petitioner. The said Talluri Seetharajyalakshmi executed a Will dated 4.9.1995 bequeathing the subject property to the petitioner herein and she expired on 29.3.1996. After the death of her grandmother, petitioner came into possession of the property and enjoying the same. The respondent herein issued a Notification in "Andhra Bhoomi" Telugu Daily dated 11.5.2006 under the provisions of Section 4(1) of the Act, proposing to acquire the subject land for the purpose of providing house sites for weaker sections under Indiramma Programme. By invoking the provisions of sub-section (4) of Section 17 of the Act, the enquiry u/s 5A of the Act was dispensed with. The said action on the part of the respondent is contrary to various judgments of the Hon'ble Apex Court and this Court delivered in similar circumstances of the matter, wherein it is observed that the enquiry u/s 5A of the Act cannot be dispensed with. The impugned action is also in violation of the Article 300A of the

Constitution of India. Invoking the provisions of Section 17(4), dispensing with the enquiry u/s 5A of the Act, is not warranted in the circumstances of the case.

Contending in the manner indicated above, the present writ petition has been filed.

2. This Court, while admitting the writ petition on 31.5.2006, granted interim stay of all further proceedings, including dispossession of the petitioner from the subject property.

3. A vacate stay application has been filed by the respondent, supported by counter-affidavit contending, inter alia, that on verification, the authorities found that the wet land to an extent of Acs.2.20 cents in Sy. No. 61, adjacent to the village site, is very much suitable for acquisition and that there are no Government or poramboke lands available in the village. It is further contended that in view of the urgency, the enquiry u/s 5A of the Act was dispensed with by invoking the provisions of sub-section (4) of Section 17 of the Act. It is also contended that the draft notification was published in East Godavari District Gazette on 10.5.2005, in "Andhra Bhoomi" Telugu Daily and "Hindu" English Daily on 11.5.2006 and also made a tom-tom in the locality on 6.6.2006. It is also stated that in view of the stay orders granted by this Court, further proceedings could not be taken up by the Land Acquisition Officer. It is further submitted that it is open for the petitioner to establish the title to the land during the award enquiry, as the names of Talluri Krishnamurthy and Talluri Sriramam have been recorded as land owners. It is further submitted that the proceedings are initiated as per the provisions of law.

Pleading so, it is eventually prayed by the respondent herein to vacate the interim order and dismiss the writ petition.

4. It is contended by the learned Counsel for the petitioner while reiterating the contents of the writ affidavit that the respondent is not justified in invoking the provisions of sub-section (4) of Section 17 of the Act and that there is no urgency in the matter and that the said action is against the principles laid down by the Hon"ble Supreme Court In support of his submissions and contentions, the learned Counsel for the petitioner places reliance on the judgments in Garg Woollen Pvt. Ltd. Vs. State of U.P. and Others, and C. Venkataiah Vs. District Collector and Others, .

5. Per contra, it is contended by the learned Government Pleader for Land Acquisition that there is absolutely no merits in the writ petition and that the respondent is justified in invoking the provisions of subsection (4) of Section 17 of the Act, in view of the urgency involved in the matter.

6. In the instant case, it is the categorical case of the petitioner herein that she is the absolute owner of the subject land and she got the same by way of a Will dated 4.9.1995 executed by her grandmother who expired on 29.3.1996. The contentions advanced on behalf of the petitioner herein are required to be

examined in the light of the principles laid down by the Hon"ble Apex Court and this Court while dealing with the provisions of Section 5A of the Act. The purpose for acquisition in the present case is to provide house sites to the weaker sections under Indiramma Programme floated by the State Government.

7. In *Garg Woollen (P) Ltd. v. State of U.P.* (supra), the Hon"ble Supreme Court, at Paragraph 11, held as under:

11. This Court examined the scheme of the Act, referred to various judicial precedents including the judgments in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, ; *Munshi Singh and Others Vs. Union of India (UOI)*, ; *State of Punjab and Another Vs. Gurdial Singh and Others*, ; *Union of India v. Mukesh Hans*, (2004) 8 SCC 14; *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, and *Anand Singh and Another Vs. State of Uttar Pradesh and Others*, and laid down the following propositions:

(i) Eminent domain is a right inherent in every sovereign to take an 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 and Others Vs. State of U.P. and Others*, .

(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 land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even 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 u/s 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

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

(vii) The exercise of power by the Government u/s 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in subsection (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power u/s 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government u/s 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A(1) and (2) is not at all warranted in such matter.

(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.

8. In *C. Venkataiah v. District Collector, Ananthapur District* (supra), this Court, at Paragraph 9, held as under;

9. When the Legislature has prescribed a particular procedure, in the context of denying the only protection of a citizen to make a representation, the 1st respondent cannot be permitted to ignore the same, and act according to his whims. The A.P. State Legislature amended sub-section (2) of Section 17,

enabling the Government to invoke urgency clause, whenever any land is proposed to be acquired, for the purposes indicated therein. The provision does not suggest that the District Collector or the appropriate Government must invariably dispense with the enquiry u/s 5-A, while acquiring the lands for the purposes indicated therein. The urgency, in its true sense and spirit; must exist. For instance, where the proposal for acquiring the land was pending for years together, the urgency cannot be felt, only in the matter of maintaining a gap of 30 days, between the notification, u/s 4(1), on the one hand, and the one, u/s 6, on the other hand, for the purpose of conducting enquiry u/s 5-A. The insistence, u/s 17(4), by the Legislature, that urgency clause can be invoked only when directed by the appropriate Government, has its own significance, and is a protection against indiscriminate invocation of urgency clause. Therefore, the action of the respondents in dispensing with the enquiry u/s 5-A, without there being a direction by the appropriate Government, as provided for u/s 17(4) of the Act; cannot be sustained in law.

9. At this juncture, it is also relevant to refer to the judgments in *State of Punjab and Another Vs. Gurdial Singh and Others*, ; *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, ; *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, ; *Kyatham Yadagiri and Others Vs. Secretary to Government Energy (Power-I) Dept. and Others*, and *R. Veera Raghava Prasad and Others Vs. District Collector and Another*, .

10. In *State of Punjab v. Gurdial Singh* (supra), the Hon''ble Supreme Court, at Paragraph 16, held as under:

16. The fourth point about the use of emergency power is well taken. Without referring to supportive case-law it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing and acquisition authorities should not, having regard to Articles 14 and 19, burke an enquiry u/s 17 of the Act Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

11. In *Union of India v. Mukesh Hans* (supra), the Hon''ble Supreme Court, at Paragraphs 31, 32, 33, 35 and 36, held as under

31. Section 17(4) as noticed above provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub-section (1) or (2) of Section 17 it may direct that the provisions of Section 5A shall not apply and if such direction is given then 5A inquiry can be dispensed with and a declaration may be made u/s 6 on publication of 4(1) notification possession can be made.

32. A careful perusal of this provision which is an exception to the normal mode

of acquisition contemplated under the Act shows 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 5A inquiry. It requires an opinion to be formed by the concerned Government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate Government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature men the latter part of sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case when mere is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated u/s 17(1) and (2) of the Act.

33. 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 u/s 17(1) and (2), the dispensation of enquiry u/s 5A 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 u/s 5A. We are unable to agree with the above argument because sub-section (4) of Section 17 itself indicates that the "Government may direct that provisions of Section 5A 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 inquiry. For this we do find support from a judgment of this Court in the case of Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, , wherein considering the language of Section 17 of the Act which was then referable to waste or arable land and the U.P. Amendment to the said section held thus:

It will be seen that Section 17(1) gives power to the Government to direct the Collector, though no award has been made u/s 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken u/s 17(1), taking possession and vesting which are provided in Section 16 after the award u/s 11 are accelerated and can take place fifteen days after the publication of the notice u/s 9. Then comes Section 17(4) which provides that in case of any land to which the provisions of sub-section (1) are applicable, the Government may direct that the provisions of Section 5-A shall not apply and if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4(1). It will be seen that it is not necessary even where the Government makes a direction u/s 17(1) that it should also make a direction u/s 17(4). If the Government makes a direction only u/s 17(1) the procedure u/s 5-A would still have to be followed before a notification u/s 6 is issued, though after that procedure has been followed and a notification u/s 6 is issued the Collector gets the power to take possession of the land after the notice u/s 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration u/s 17(4) that it becomes unnecessary to take action u/s 5-A and make a report thereunder. It may be that generally where an order is made u/s 17(1), an order u/s 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order u/s 17(1) or Section 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand.

35. At this, stage, it is relevant to notice that the limited right given to an owner/ person interested u/s 5A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed u/s 17(4) of the Act. The object and importance of 5A inquiry was noticed by this Court in the case of "Munshi Singh and Others Vs. Union of India (UOI)", , where this Court held thus:

Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. The Legislature has made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A.

36. It is clear from the above observation of this Court that right of representation and hearing contemplated u/s 5A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned

that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5A.

12. The Hon"ble Supreme Court in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai* (supra), at Paragraphs 6 and 9, held as under:

6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution of India, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

13. In *Kyatham Yadagiri v. Secy, to Government Energy (Power-I) Dept., Hyd.* (supra), this Court, at Paragraphs 12, 13 and 14, held as under:

12. In the matter of compulsory acquisition of land, it is ultimately the decision of the Government that prevails. The only protection accorded to a citizen is, to put forward his grievance in an enquiry to be conducted u/s 5-A of the Act. Under sub-section (4) of Section 17 of the Act, a State is conferred with the power to dispense with the enquiry u/s 5-A of the Act, if it is of the opinion that the purpose, for which the land is proposed to be acquired, cannot brook the delay that is caused, on account of the enquiry, contemplated u/s 5-A of the Act. Sub-section (2) of Section 17 of the Act, provides ample guidance, in the matter of taking a decision to invoke the urgency clause. It reads as under:

Sec. 17(2): In the following cases, that is to say,

(a) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station,

(b) When in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land-

- (i) for the purpose of any library or educational institution, or
- (ii) for construction, extension or improvement of-
 - (a) any building or other structure in any village for the common use of the inhabitants of such village, or
 - (b) any godown for any society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or A.P. Co-operative Societies Act, 1952 (Act XVI of 1952);
 - (c) any dwelling house for the poor or
 - (d) any irrigation tank, irrigation or drainage channel or any well, or
 - (e) any; road, or
- (iii) for any purpose connected with the Nagarjunasagar Project in the area to which the Nagarjunasagar Project (Acquisition of Land) Act, 1956, extends, or
- (iv) for any purpose incidental to or connected with the Visakhapatnam Steel Project, in the area to which the Visakhapatnam Steel Project (Acquisition of Lands) Act, 1972 extends, or
- (v) for the execution of any housing scheme under the Andhra Pradesh Housing Board Act, 1956, or
- (vi) the appropriate Government or the District Collector as the case may be considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation water supply drainage, road communication or electricity the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, or the District Collector as the case may be enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

Insofar as it applies to the State of Andhra Pradesh, Section 17 of the Act was amended, and different purposes were enlisted under sub-section (2), for which the urgency clause can be invoked.

13. It needs to be noted that even in cases, where the land acquired for the purposes mentioned in sub-section (2)(b) of Section 17 of the Act, insofar as it applies to the State of Andhra Pradesh, dispensing with enquiry u/s 5-A, or taking possession of the land, even before the award is passed, is not a matter of course. If the circumstances disclose that the matter was pending at various

stages, for years together, the State cannot be conceded the prerogative, to invoke the urgency clause, only when it comes to the conducting of enquiry u/s 5-A of the Act, or passing the award. Be that as it may, acquisition of lands for the purpose of undertaking mining activity is not treated, as a purpose, for which the urgency clause can be invoked. In *State of Punjab v. Gurdial Singh (supra)*, the Supreme Court observed as under:

Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 and 19, burke an enquiry u/s 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

The said observation squarely applies to the facts of the present case. In *Om Prakash and Another Vs. State of U.P. and Others*, , the Supreme Court had undertaken an extensive review of the decided cases, touching on the circumstances, under which the enquiry u/s 5-A of the Act can be dispensed with. The discussion was summed up in Para 25 of the judgment as under:

In the light of the aforesaid discussion, therefore, the conclusion becomes inevitable that the action of dispensing with enquiry u/s 5-A of the Act in the present cases was not based on any real and genuine subjective satisfaction depending upon any relevant data available to the State authorities at the time when they issued the impugned notification u/s 4(1) of the Act and dispensed with Section 5-A inquiry by resorting to Section 17, subsection (4) thereof. The first point is, therefore, answered in the negative, in favour of the appellants and against the contesting respondents.

To the same effect are the judgments of the Supreme Court in *Union of India v. Mukesh Hans (supra)* and *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai (supra)*.

14. In the instant case, as observed in the preceding paragraphs, the notification u/s 4(1) of the Act was published, nearly 5 years after the proposals were mooted, and the declaration u/s 6 was published, on the next day, dispensing with the enquiry u/s 5-A. Having regard to the purpose for which the land was sought to be acquired, and the pace at which the matter was processed, it cannot be said that there was any justification for the respondents, in dispensing with enquiry u/s 5-A of the Act. As a result, the declaration u/s 6 of the Act becomes untenable.

14. In *R.V.R. Prasad v. District Collector, Krishna District at Machilipatnam (supra)*, this Court, at Paragraph 100, held as under:

100. Since the enquiry u/s 5-A is not yet closed, as held out by respondent No. 2, this writ petition is disposed of by permitting the petitioner to file his objections within a period of three weeks and directing respondent No. 2 to dispose of the same, after giving an opportunity of personal hearing to the

petitioner.

15. In the present case, the purpose of the acquisition cannot be said to be a purpose, which is imminently urgent. Taking possession by way of compulsory acquisition is a serious matter and unless there is imminent urgency and the purpose cannot wait, provisions of Section 17(4) of the Act cannot be pressed into service. Dispensing with the enquiry under the provisions of Section 5A of the Act by invoking subsection (4) of Section 17 of the Act is a departure from the normal way of acquisition under the Act. It is also a settled law that mere existence of urgency or unforeseen urgency though is a condition precedent for invoking the provisions of sub-section (4) of Section 17 of the Act, that by itself is not sufficient to direct dispensation of enquiry u/s 5A of the Act, and this right to object is not an empty formality, and on the other hand, it is a substantive valuable right, if tested on the touchstone of Article 300A of the Constitution of India. This is the only protection accorded under the legislation to a citizen to put forward his grievance in the enquiry u/s 5A of the Act. If the purpose of acquisition cannot brook the delay, then only the provisions of Section 5A can be invoked by pressing into service the provisions of Section 17(4) of the Act.

16. In the facts and circumstances of the case, this Court is of the considered opinion that the acquisition in the present case does not warrant invocation of urgency clause for dispensing with the enquiry u/s 5-A of the Act. This valuable right stipulated u/s 5A of the Act cannot be taken away in a routine and casual manner.

17. The Hon"ble Supreme Court, in the above referred judgments, categorically held that the right to object, as proved u/s 5A of the Act, is akin to the fundamental right. Such a right conferred by the Legislature on the persons who are sought to be deprived of their property by way of compulsory acquisition, by any stretch of imagination cannot be taken away in a casual manner.

18. In view of the above reasons, and having regard to the principles laid down by the Hon"ble Apex Court and this Court in the above referred judgments, this Court deems it appropriate to direct the respondent herein to hold enquiry under the provisions of Section 5A of the Act insofar as acquisition of the subject land is concerned. For the aforesaid reasons, this writ petition is disposed of, directing the respondent herein to hold enquiry under the provisions of Section 5A of the Act by giving opportunity to file objections and also by giving opportunity of being heard to the petitioner at the time of holding enquiry. The petitioner is directed to file his objections before the respondent within a period of 4 (four) weeks from the date of receipt of a copy of this order, and the respondent shall pass appropriate orders thereon, within a period of 8 (eight) weeks thereof and communicate the same to the petitioner. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.