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**(2014) 03 RAJ CK 0094**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 266 of 1985**

Takhat Puri

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 04-03-2014

**Acts Referred:**

Constitution of India, 1950 — Article 13

**Citation :** (2014) 3 CDR 1561 : (2014) 4 RLW 3133 : (2015) 3 WLN 161

**Hon'ble Judges :** Pratap Krishna Lohra, J

**Bench :** Single Bench

**Advocate :** M.R. Singhvi, Senior Advocate, Manish Shishodia, Mohit Singhvi and S.L. Sukhwal, Advocate for the Appellant; P.S. Bhati, Addl. Advocate General and Monit Bhatnagar, Advocate for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Lohra, J.—Quest for justice by the petitioners in the instant petition is aimed against the Notification and Declaration Annex. 11 & 12 respectively and for annulment of the acquisition proceedings in respect of these lands. The petitioners are the agriculturists of Chittorgarh. In the year 1972, Urban Improve Trust, Chittorgarh initiated land acquisition proceedings. It so happened that the land of the petitioners did not find mention in the Notification u/s 52(2) of the UIT Act 1959 but in the Notification u/s 52(1) the said land was mentioned. When objections were invited, on objective consideration of the same, the Addl. Collector, Chittorgarh declined to determine the compensation by citing the reason that omission of these lands in the fundamental notification giving the jurisdiction of acquisition, it is obviously not possible to do so in these proceedings. Finally, by order u/s 53(4) of the Act of 1959 passed on 19th of October 1981, the Additional Collector, Chittorgarh issued direction for maintaining status quo. It so happened that in the meanwhile UIT was abolished and Municipal Board stepped in its shoes. The Municipal Board, without appreciating the ground realities about the invalid action of acquisition, made an

attempt to dispossess the petitioners from the land in question. Therefore, in these circumstances, a civil suit was instituted in the name of Hanskanwar and others against the Municipal Board, Chittorgarh, wherein status quo order was passed on 8th of August 1983. When the suit was proceeding, efforts were made for taking land by negotiation/compromise between the parties. It seems that the proceedings u/s 52 were dropped and a Notification dated 30th of November 1984 (Annex. 11) was issued under the provisions of Rajasthan Land Acquisition Act 1953 (for short, "Act of 1953") u/s 4(1) of the Act of 1953, whereby land situated in Khasra No. 1605/1/KB measuring 6 Biswa and 10 Biswasi, Khasra No. 1606, 2 bigha 15 biswas and Khasra No. 1605/1/AB 4 bighas and 18 biswas was requisitioned. Subsequent to the Notification Annex.11, a declaration was made u/s 6 read with Section 17 of the Act of 1953 on 4th December 1984 and the requisite enquiry u/s 5A was also dispensed with while exercising power u/s 17(4) of the Act of 1953. Although the Notification u/s 4(1) and the declaration u/s 6 were concerning three different pieces of land owned by three different persons, all of them preferred a joint writ petition before this Court for quashment of the Notification u/s 4(1) dated 30th of November 1984 (Annex.11) and declaration u/s 6 dated 4th of December 1984 (Annex.12). In the prayer clause quashment of Annex.11 & 12 was also sought pertaining to other lands of the area. The writ petition was thereafter amended by the petitioners and an amendment was incorporated that the notification u/s 4(1) as well as declaration u/s 6 read with Section 17 have been published in the Rajasthan Patrika on the same day i.e. 13th of December 1984 and where placed on record as Annex. 13 & 14.

2. Assailing the entire acquisition proceedings, the petitioners have ventilated their grievances that no notice u/s 4(1) was served on them and further no notice u/s 4(5) of the Act of 1953 was served upon them. Taking serious exception against the haste shown by the respondent in completing acquisition proceedings, the petitioners have pleaded in the writ petition that there existed no urgency and therefore resort to Section 17 of the Act of 1953 is unjust and improper and therefore nonest in the eye of law. The Notification u/s 4 and Declaration u/s 6 were also assailed on the ground that both were published in the Gazette on the same day i.e. on 13th of December 1984 and as such both are bad in law.

3. The writ petition is contested by the respondents. On behalf of State, it is submitted in the reply that the acquisition proceedings have been initiated by taking note of the facts and circumstances which were relevant and germane to the matter. It is also pleaded in the return that in respect of the land situated in Khasra No. 1605-1-AB Notification dated 31st of July 1989 has already been issued. Joining the issue with the petitioners the respondents have submitted in the reply that Araj No. 1605-1-AB stood in the name of Mukat Bihari, and therefore, it is incorrect to say that the land belonged to the petitioners as well as respondents No. 5 & 6. That apart, various other objections were incorporated in the reply including the objection that the petitioners are not residing on the

land in question. Stoutly defending the proceedings, the State has submitted in the reply that there is no illegality in the impugned action.

4. The Municipal Board submitted its separate reply wherein objection for maintainability of joint writ petition was raised. While referring to the notifications Annex. 11 & 12, it is pleaded in the return that land situated at Khasra No. 1605-AH is not going to be acquired and as such plea raised in the writ petition pertaining to the said land is misplaced and this sort of conduct of the petitioners is an affirmative attempt to mislead the Court to save other land in the guise of challenge to Annex. 11 & 12. Buttressing its submissions, the Municipal Board has averred in the reply that the petitioners Mohan Puri, Prakash Puri and Ramesh Puri have realized the public interest and therefore they have expressed their desire not to pursue the writ petition. It is also averred in the reply that this fact has not been disputed by the petitioners in their rejoinder. In the return, the respondent Municipal Board has pleaded that the petitioners are liable to be non-suited solely on the ground of their conduct inasmuch as they have violated the status quo order passed by the Court by misusing the same to their advantage and dismissal of the writ petition is sought on that count. Placing heavy reliance on declaration Annex. 12, the respondents have submitted in the return that declaration is conclusive proof that land stands vested in the respondents. While referring to a pending civil suit, the respondent Municipal Board has averred in the reply that it is not proper to adjudicate the matter in exercise of writ jurisdiction. Refuting the allegations made by the petitioners about malafide, the respondent has submitted that allegations are vague, bald and mellow, therefore, are of no significance. The respondent Municipal Board has also stated in the reply that survey was conducted and therefore merely because declaration was issued within a short span, it cannot be said that the action of the respondents is illegal in any manner.

5. The writ petition came up before the Court on 20th of July 1999 and after hearing the rival parties, the learned Single Judge dismissed the writ petition. Feeling aggrieved from the order passed by the learned Single Judge, the petitioners preferred intra-Court appeal before the Division Bench, which was registered as Special Appeal No. 1039 of 1999. The Division Bench, after hearing the arguments for the parties, allowed the appeal and has also allowed the application for amendment of the writ petition which was rejected by the learned Single Judge. The operative portion of the judgment passed by the Division Bench is reproduced as under:

"The appeal is, therefore, allowed. The impugned order is set aside, and the matter is sent back to the learned Single Judge for deciding the writ petition on merits after hearing the parties concerned. Since the writ petition is of the year 1985, the Registry is directed to list it for hearing in the priority available to the matters of 1985. The parties are directed to appear before the learned Single Judge on 17.08.2009."

6. The learned Senior Counsel Mr. M.R. Singhvi has argued that the Notification

Annex.11 issued u/s 4(1) of the Act of 1953 was published on 30th of November 1984 and since initiation of acquisition proceedings almost 42 years have elapsed and from Notification Annex.11 more than 30 years have passed, the acquisition proceedings have lost its significance and sanctity by afflux of time. Buttressing his submissions in this behalf, Mr. Singhvi submits that the subsequent events are also of great significance to upset the acquisition proceedings as according to Mr. Singhvi, now the so called public purpose has also gone in oblivion after construction of the Town Hall at a different place in the city. Mr. Singhvi has also argued that as per Section 48 of the Rajasthan General Clauses Act 1955, a notification can come into force only when it is published in official gazette. For substantiating this plea, learned Senior Counsel has argued that declaration u/s 6 was issued on 04.12.1984 preceded by Notification u/s 4(1) on 30th of November 1984 and as per Scheme of the Act both notifications required publication in the official gazette which has been rendered an empty formality in the instant case for the simple reason that both notification u/s 4(1) and declaration u/s 6 have been published in the official gazette simultaneously i.e. on 13th of December 1984. Mr. Singhvi has strenuously urged that simultaneous publication of the notification u/s 4(1) and declaration u/s 6 is de hors the Act of 1953 which has vitiated the entire acquisition proceedings. In support of this contention, learned counsel has placed reliance on a judgment of Hon''ble Apex Court in case of State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others, wherein the Hon''ble Supreme Court made following observations in this behalf in the verdict:

14. It is true that the expression "after the date of the publication of the notification" introduced in Section 17(4) can be explained away as making no change from the provisions of law by reading it along with the amendment made in Section 4 whereby in different situation in Section 4, the last date of publication of the notice has been determined as the date of the publication of the notification and similarly in Section 6 a date of the publication of the notice has been provided for. But the words "after the date of the publication of the notification" in sub-section (4) of Section 17 read simpliciter clearly indicate that declaration u/s 6 had to be made after the publication of the notification meaning thereby subsequent to the date of the publication of the notification. It appears to us that there is nothing in the scheme of the Act which militates against such a construction. At times where emergency provisions are invoked emergent action may be taken but in such a situation in view of the state of law that was before it, the legislature has made a conscious change which cannot be explained away merely because this is as a consequence of the changes in Sections 4 and 6 of the Act.

15. Reliance was placed on behalf of the appellant on Lord Howard de Walden vs. IRC for the proposition that no alteration in meaning by alteration of language can result unless the requirement of the English language demand it or those requirements permit it and the sense of the section demands it. In our opinion, in this case in view of the alteration of the language and meaning and the

meaning of the language used and the sense will be in consonance with the interpretation that the change was intended. Similarly, in *Hopes vs. Hopes* it was the proposition that changes in the word may be because the draftsman wanted to improve the style. But in this case the style is not improved and the expression "after the date" as indicated above, becomes otiose. It is job of the court to interpret the intention of the legislature by the words used. The fairest and the most rational method to interpret the will of the legislature is by exploring its intentions at the time when the law was made by signs, the most natural and probable, says Blackstone in his *Commentaries on the Laws of England* (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979 Vol. I, p. 59.) And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. The words have to be understood in their usual and most known signification. If that be so, then the legislature must have had some intention in choosing the expression "after" before "date of publication of the notification" in sub-section (4) of Section 17 of the Act while making amendment by Amending Act 68 of 1984. It is true that there were some changes giving the meaning of the date of the publication in Section 4(1) and (2) as well as Section 6(2) of the Act. But for that, there was no need for the use of the expression "after the date". If that be the position, then we must accept the interpretation put upon the amended clause by the High Court in the judgment under appeal. It will, however, be up to the appellants to issue a fresh declaration u/s 6, if so advised, within the period contemplated in the proviso to Section 6(1) of the Act read with its first explanation.

7. Learned Senior Counsel Mr. Singhvi has also placed reliance on yet another decision of Hon'ble Supreme Court in this behalf in case of *Mohan Singh and Others Vs. International Airport Authority of India and Others*, In this verdict, Hon'ble Supreme Court while reiterating the principles laid down in *Radhey Shyam Nigam's* case (supra) has made following observations:

"It is true that in *Radhey Shyam Nigam* case several notifications u/s 4(1) and declaration u/s 6 simultaneously published had come up for consideration before the Division Bench of the Allahabad High Court and were upheld, but on appeal, this Court considered the effect of the simultaneous publication after Amendment Act 68 of 1984. In one of the cases, notification u/s 4(1) was of 6-5-1985 and declaration u/s 6 was published on 22-5-1985. Power u/s 17(1-A) as amended by the State Legislature and Section 17(4) was exercised for taking possession immediately. The question arose whether such publication of the declaration was valid in law? This Court had held at p. 106 that the words "after the publication of the notification" under sub-section (4) of Section 17 read simpliciter, clearly indicate that the declaration u/s 6 had to be made after the publication of the notification, meaning thereby subsequent to the date of the publication of the notification. The question at what gap of time declaration can be published, did not arise for consideration in that case. It is seen that in this case, the notification u/s 4(1) was published on 23-12-1986 and declaration u/s 6 was published on 24-12-1986, i.e., within a gap of one day. Making of the declaration

u/s 6 is not merely signing by the officials; the official is empowered to sign at any time before its actual publication. What is material is that the declaration u/s 6 should be published in the Gazette after the notification u/s 4(1) was published, i.e., after a gap of at least one day. Therefore, declaration is required to be published though signed earlier, after the publication of notification u/s 4(1) in the Gazette."

8. Learned Senior Counsel Mr. Singhvi has vehemently argued that as the acquisition proceedings were initiated under the Act of 1953, it was imperative for the respondents to serve notice u/s 4(5) of the Act of 1953 and due to non-compliance of the mandatory provisions contained u/s 4(5) of the Act of 1953 the entire proceedings are void and illegal. For this proposition, learned counsel has placed reliance on a Division Bench decision of this Court in case of Rajasthan Udyog Vs. State of Rajasthan and Others, The Division Bench, while considering the true purport of Notification u/s 4(5) of the Act of 1953 has made following observations:

14. A close reading of the above-mentioned sections reveals that prior to the Amendment of 1966, there was no provision in the old Act corresponding to Section 4(5) of the new section substituted by Section 2 of Act No. XXII of 1906. The word "thereupon" appearing in sub-section (2) of Section 4 in the old section has also been omitted in the new section. By adding Clause (g) in Sub-section (1) of Section 4 a duty has been cast upon the Authorised Officer to enquire into and ascertain the particulars of the person interested in the land intended to be acquired. The purpose of Sub-section (1) of the amended Section 4 is to give a notice to the owner of the land that the Authorised Officer along with his servants and workmen shall enter his premises for performing the functions mentioned in Sub-section (1) of Section 4. Indeed the functions are of exploratory character and an order passed under this sub-section discloses a tentative intention that the lands specified may be ultimately acquired after service of public notice in the manner provided in Section 4(5). Prior to the issuance of the notice u/s 4(5) the Authorised Officer making an entry under Sub-section (1) is required to submit a report to the Collector on the result of his survey and the enquiry made thereunder. The purpose of such a report is to determine the suitability of the land for the purpose for which it is intended to be acquired. Thereafter, a notice under Sub-section (5) of Section 4 is required to be given to the persons mentioned in that sub-section. The purpose of such a notice is to afford an opportunity to the person interested in the land to be acquired to file objections u/s 5-A within 30 days of the service of the notice envisaged by Sub-section (5) of Section 4. Under the amended section it is the publication of the notice u/s 4(5) which affords an opportunity to the owner of the land, to be acquired to file objections envisaged by Section 5-A and not the order issued and published u/s 4(1). The effect of the amendment in Section 4 is that the limitation for filing objections which used to commence from the publication of the notification issued under the old Section 4(1) now commences from giving and publication of the notice u/s 4(5) of the Amended Section. The

public purpose which was required to be particularised under Sub-section (1) of Section 4 is now required to be particularised in a notice to be given under Sub-section (5) of Section 4 in the prescribed form of the proposed acquisition. Thus the effect of the amendment in Section 4 of Act No. XXIV of 1953 is that the provisions of Section 4(1) are directory and the provisions of Section 4(5) are mandatory. Thus it can be safely said that the appellant cannot succeed on the ground of defect in the impugned notification issued under Sub-section (1) of Section 4, unless it is proved that the defect had the effect of causing prejudice to the case of the appellant.

9. For strengthening this contention, the learned counsel has further placed reliance on a decision of this Court in *Birma Ram Vs. State of Rajasthan*, wherein while reiterating the law laid down by the Division Bench in case of *Rajasthan Udyog's case* (supra), the learned Single Judge annulled the entire acquisition proceedings.

10. Mr. Singhvi has also assailed the action of the respondents in invoking Section 17(4) of the Act of 1953 by urging that the impugned action is per-se illegal and arbitrary without application of mind. Mr. Singhvi would contend, that the urgency shown by the respondents to acquire land for construction of Town Hall is unthinkable and therefore the respondents" have acted to petitioners" detriment in invoking these emergent powers by taking into account certain facts and circumstances which were wholly irrelevant and extraneous to the matter and for resorting to Section 17(4) they have not taken into account the facts and circumstances which were relevant and germane to the matter. Mr. Singhvi has further submitted that now since inception of proceedings almost thirty years have elapsed and therefore the so called urgency has lost its significance for all practical purposes. Taking serious exception against the action of respondents in invoking Section 17(4) of the Act of 1953, Mr. Singhvi submits that it was not a bonafide act rather it was an ingenuity to thwart the valuable right of the land owners to hear their objections u/s 5-A. In support of this contention, learned counsel has placed reliance on the judgment of Hon"ble Supreme Court in case of *Dev Sharan and Others Vs. State of U.P. and Others*, wherein following observations are made in 14 to 19 of verdict:

14. In connection with land acquisition proceeding whenever the provision of Section 17 and its various Sub-sections including Section 17(4) are used in the name of taking urgent or emergent action and the right of hearing of the land holder u/s 5A is dispensed with, the Court is called upon to consider a few fundamentals in the exercise of such powers.

15. Admittedly, the Land Acquisition Act, a preconstitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person"s property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is considering these questions,

especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

16. The concept of "public purpose" cannot remain static for all time to come. The concept, even though sought to be defined u/s 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one.

17. It must be accepted that in construing "public purpose", a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by preconstitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under fundamental rights and also the directive principles.

18. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any preconstitutional law cannot in any way take away or abridge rights conferred under Part III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of "public purpose" in acquisition of land must be judged on the touchstone of this expanded view of Part III rights. The open ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

19. Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power u/s 17 with the consequential dispensation of right of hearing u/s 5-A of the said Act. The courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering the common man homeless and by exploring other avenues of acquisition, the court, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

11. Learned counsel submits that the said view is further reiterated by the Hon"ble Apex Court in case of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, . In this verdict, the Hon"ble Supreme Court made following observations:

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

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is



entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*,

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriators 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 vs. State of U.P.*, Civil Appeal No. 2334 of 2011 decided on 7.3.2011.

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

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

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

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

(vii) The exercise of power by the Government u/s 17(1) does not necessarily

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

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

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

12. Learned counsel in support of this contention has also relied upon following decisions of Hon'ble Supreme Court wherein this view was further reiterated and explained with clarity and precision:

- ? Greater Noida Indusl. Devt. Auth. Vs. Devendra Kumar and Others,
- ? Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,
- ? Ram Dhari Jindal Memorial Trust Vs. Union of India (UOI) and Others,
- ? Garg Woollen Pvt. Ltd. Vs. State of U.P. and Others,

13. Per contra, learned Additional Advocate General for the respondents has strenuously argued that the entire acquisition proceedings are just and proper being in consonance and in conformity with the Act of 1953 and are not assailable on the strength of grounds urged by the petitioners. Dr. Bhati, learned Additional Advocate General, submits that Notification u/s 4(1) of the Act of 1953 was issued and thereafter invoking special powers in the matter of urgency u/s 17 of the Act of 1953, the State Government has rightly dispensed with the requirement of enquiry and hearing of objections envisaged u/s 5-A to facilitate the issuance of declaration u/s 6 of the Act of 1953. Dr. Bhati would contend that the power of State Government under sub-section (4) of Section 17 of the Act of 1953 are wide in amplitude and in the instant case said power has been exercised bonafide to meet the urgency which cannot be made subject matter of judicial scrutiny in want of cogent and convincing material. Dr. Bhati has urged that once the State Government has resorted to Section 17 of the Act of 1953, it

is well within its right to utilize the land proposed to be acquired for any other public purpose other than mentioned in the Notification u/s 4(1) of the Act of 1953. Submission of the Additional Advocate General is that the State Government as a welfare State is carrying out many developmental activities of public interest and therefore the land which is sought to be acquired can be put to use for any other public purpose in the welfare of public at large. Dr. Bhati would urge that construction of Town Hall during the interregnum period at some other place can neither frustrate the public purpose, as urged by the petitioners, nor pendency of this litigation can vitiate the acquisition proceedings by afflux of time. Countering the arguments of the learned counsel for the petitioners, Dr. Bhati has submitted with full vehemence that the grounds urged by the petitioners are not substantial and convincing to annul the impugned notification u/s 4(1) and subsequent declaration u/s 6 of the Act of 1953 and as such challenge laid by the petitioners against the acquisition proceedings cannot be sustained.

14. I have heard the learned counsel for the parties and perused the materials on record.

15. Undisputed facts are that the State Government has initiated the acquisition proceedings under the Act of 1953 by issuing Notification u/s 4(1) of the Act of 1953 on 30th of November 1984 (Annex. 11). The subsequent declaration u/s 6 was also issued under the Act of 1953 while invoking powers u/s 17 of the Act of 1953 for dispensing with enquiry and hearing of objections u/s 5-A of the Act of 1953. Thus, when the land acquisition proceedings were initiated under the Act of 1953 the respondents were obviously bound to adhere to the requisite provisions contained under the Act of 1953. Section 4(5) of the Act of 1953 envisages with clarity and precision that the Collector on receipt of the report of survey under sub-sec.(4) is required to carry out certain obligations. Section 4(5) of the Act of 1953 is reproduced as under:

(5) The Collector shall, upon receipt of such report, cause to be given--

(i) to the head of the Government Department at whose instance the order under Sub-section (i) shall have been made and to all persons reported under Clause (g) of sub-section (1) to be interested in the land proposed thereby to be acquired as being suitable for the public purpose, a notice in the prescribed form of the proposed acquisition, and

(ii) a public notice to the like effect at convenient places on or near about the land proposed to be acquired.

16. A bare perusal of sub-sec.(5) of Section 4 of the Act of 1953 makes it amply dear that it has given additional safeguard to the landowners against the proposed acquisition. The Division Bench of this Court in Rajasthan Udyog's case (supra), while examining the true purport of sub-sec.(5) of Section 4 of the Act of 1953, has held in clear and unequivocal terms that the provision is mandatory and the said view was further reiterated by the learned Single Judge in a

subsequent judgment. On examining the record of the case and the facts pleaded by the rival parties, there remains no quarrel that the mandatory provision contained under sub-sec.(5) of Section 4 of the Act of 1953 has not been adhered to in the acquisition proceedings. Therefore, in my considered opinion, it is obviously not possible to approve And uphold the impugned Notification u/s 4(1) as well as declaration u/s 6 of the Act of 1953 so also the consequential acquisition proceedings which are precisely under challenge in the petition.

17. Although the conclusion of this Court *supra*, based on the Division Bench judgment of this Court, has left no room to examine other arguments advanced by the learned counsel for the parties, but taking into account the fact that the parties have joined the issue on some other aspect of the matter, I propose to deal with those arguments with brevity hereinafter.

18. The inherent snag in the acquisition proceedings as canvassed by the learned counsel for the petitioners, viz., simultaneous publication of notification u/s 4(1) and declaration u/s 6 has also brought the entire acquisition proceedings under cloud, and on the strength of decisions rendered by Hon''ble Apex Court in cases of State of U.P. and Mohan Singh (*supra*) the infraction of the law is clearly apparent rendering the proceedings vulnerable. Therefore, the acquisition proceedings are clearly vitiated being *dehors* the mandate of Hon''ble Supreme Court and the Act of 1953. The argument of the learned counsel for the respondents categorizing the powers of the State Government under sub-sec.(4) of Section 17 to be sacrosanct, appears to be quite alluring but in the backdrop of facts and circumstances of the instant case, in the considered opinion of this Court, there was no genuine urgency to invoke such extraordinary powers because construction of Town Hall *per-se* cannot be presumed to be in larger public interest at the cost of depriving poor agriculturists from their livelihood. Moreover, admittedly during the pendency of this litigation, Town Hall has already been constructed, is yet another mitigating circumstance to conclude that now by afflux of time the whole purpose of acquisition has gone redundant and permitting the respondents to go ahead with the acquisition proceedings would not serve the public purpose. While examining the public purpose and exercising emergent powers under sub-sec.(4) of Section 17 for dispensing with the requirement of Section 5-A, Hon''ble Apex Court has given new dimensions in Dev Sharan''s case (*supra*) and other judgments relied upon by the learned counsel for the petitioners. The Hon''ble Apex Court, while examining the Land Acquisition Act, has observed that in construing the concept of public purpose the mandate of Article 13 of the Constitution, that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part III of the Constitution, must be kept in mind. Issuing a word of caution to the Courts while examining the emergency powers u/s 17, the Hon''ble Apex Court has held that the Court is required to examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. Once again taking into account the factual gamut of the

instant case in light of the law laid down by the Apex Court, in my considered opinion, invoking extraordinary powers under sub-sec.(4) of Section 17 was per-se not bonafide as founded on the facts and circumstances which were relevant and germane to the matter. That apart, the checkered history of the litigation and passage of time of almost three decades has further mitigated the situation tilting equity in favour of the poor agriculturists.

19. Thus, viewed from any angle, the impugned Notification Annex. 11 and declaration Annex.12, which were published in the newspaper as Annex.13 & 14 respectively, cannot be sustained and the consequential acquisition proceedings are also not sustainable, and the petition deserves acceptance. Upshot of above discussion is that the writ petition is allowed, impugned Notifications Annex.11 & 12 are quashed and set aside, and the entire acquisition proceedings are annulled.

No orders as to costs.