

(2004) 09 SC CK 0133

In the Supreme Court Of India

Case No : Civil Appeal No. 6109 of 2004 (Arising out of S.L.P. (C) No. 15977 of 2002) , Civil Appeal No. 6110 of 2004 (Arising out of S.L.P. (C) No. 15978 of 2002) , Civil Appeal No. 6111 of 2004 (Arising out of S.L.P. (C) No. 15980 of 2002) , Civil Appeal No. 6112

Union of India (UOI) and Others

APPELLANT

Vs

Mukesh Hans etc.

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : AIR 2004 SC 4307 : (2004) AIRSCW 5081 : (2004) 5 ALLMR 1170 : (2004) 4 AWC 3318 Supp : (2004) 7 JT 526 : (2004) 3 KLT 462 : (2004) 8 SCALE 1 : (2004) 8 SCC 14 : (2004) 7 Supreme 407 : (2004) 3 UPLBEC 2908

Hon'ble Judges : N. Santosh Hedge, J;Ashok Bhan, J;A. K. Mathur, J

Bench : Full Bench

Advocate : P.P. Rao, Geeta Luthra, D.N. Goburdhan, Pinky Anand, Jhum Jhum Sarkar and Maha Lakshmi, for the Appellant; Ravindra Sethi Manoj Swarup, Som Dutt Sharma and Nidhi Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

N. Santosh Hegde, J.—Leave granted.

2. In these appeals, a short but an important question of law arises for our consideration as to the interpretation of Section 17(4) of the Land Acquisition Act, 1894 ('the Act') and the procedure to be followed by the appropriate Government while dispensing with the inquiry contemplated u/s 5A of the Act.

3. These question arose for consideration before the Division Bench of the High Court which on facts came to conclusion that the Lt.Governor of Delhi who was the authority to pass orders u/s 17(4) of the Act did not apply his mind as to the existence of need for the dispensation of 5A inquiry. High Court also held that the Lt.Governor was not informed that there was an earlier attempt to acquire land measuring 40 bighas for the same public purpose and said acquisition had lapsed

by afflux of time which also contributed to non-application of mind. Hence, the decision of the Lt. Governor to exclude the inquiry u/s 5A of the Act in the present acquisition proceedings was vitiated.

4. The acquiring authority namely the Union of India and others connected with the said acquisition are in appeal before us in the above appeals questioning the correctness of the said judgment

5. The facts necessary for the disposal of these appeals are as follows:- There is an annual festival called "Phool Walton Ki Sair", which was started during the Mughal regime. But over the period the same was discontinued. It is stated that in the year 1961 the then Prime Minister of India Pt. Jawahar Lal Nehru took the initiative to revive this age old festival to focus on the spirit of secularism. It is also stated that the festival has since been revived and is being organised by an organisation called Anjuman-Saire-e-Gul-Faroshan and this organisation has the President of India as its Chief Patron. From the records it is seen at present this festival which starts with a procession concludes with all its participants gathering in the village Mehrauli. The above mentioned organisation in the year 1987 felt that it required 4000 sq.yards of land in and around the place where this festival concludes, for a proper procession ceremony hence made a representation to the Lt.Governor on 19.10.1987 seeking acquisition of the said area of land in Mehrauli village. Based on the instructions issued by the Lt. Governor in this regard proceedings were initiated to acquire the earmarked land for the purpose of above festival of "Phool Walton Ki Sair". During the process of considering this acquisition proceedings it was noticed by the authorities that in and around the area required for the above acquisition, there were certain ancient monuments which were in dilapidated conditions, it was also noticed that certain areas of land which was sought to be acquired was in the unauthorised possession of some persons. Hence, to serve the larger public purpose a notification acquiring 72 bighas of land was mooted under the stated public purpose of Planned Development of Delhi. During the process of preparing the acquisition notification the recommending authorities felt that provisions of Section 17(1) of the Act should be utilised to facilitate urgent acquisition of the required land. Hence notings were put up on different levels that the draft notification may indicate the need for urgency for invoking Section 17(1) of the Act, Since, the usual bureaucratic procedure was not proceeding in the required pace the Delhi Administration wrote a letter to the Deputy Commissioner, Delhi dated 8.6.1988 calling upon the said officer to ensure that the concerned draft notification in regard to the said acquisition should be sent to that office without further delay. It is in the above background a notification dated 30.6.1988 u/s 4(1) of the Act came to be published. As stated above, the public purpose mentioned therein was "Planned Development of Delhi". This notification specifically stated that the Lt. Governor was of the opinion that provision of Sub-section (1) of Section 17 of the Act is applicable to this acquisition and that he was pleased under Sub-section (4) to direct the provisions of Section 5A of the Act should not apply. Simultaneously, a declaration u/s 6 of the Act as well as the

notice u/s 7 of the Act were also published.

6. Being aggrieved by this notification the owners of the land and persons interested filed Civil Writ Petitions before the High Court of Delhi primarily contending that there was no such urgency which require the invocation of Section 17(1) and (4) of the Act by deleting 5A inquiry. The basis of this argument was that the decision of the Lt. Governor in this regard was vitiated from the vice of non-application of mind and from procedural irregularities.

7. The High Court which heard the petition, noticed that during the course of arguments, the petitioners did not seriously press the argument based on Section 17(1) of the Act and confined their challenge to the question whether or not the provisions of Section 5A of the Act should have been dispensed with by the Lt. Governor.

8. During the course of hearing before the High Court the records of proceedings were summoned and the court examined whether there was any material to indicate the application of mind by the Lt. Governor for dispensing with the inquiry u/s 5A of the Act. The High Court after copiously referring to the notings in the file and considering the various judgments cited before it came to the conclusion that there was no application of mind by the Lt. Governor as to whether or not an inquiry u/s 5A of the Act ought to be dispensed with. Though the notification published u/s 4(1) of the Act specifically mentioned the dispensation of inquiry u/s 5A of the Act

9. The High Court on the material placed before it also noticed the fact that in regard to 40 bighas of land, out of the 72 bighas now sought to be acquired in the same Khasra, the Acquiring Authorities by a notification dated 24.7.1973 did try to acquire the said land for the same public purpose which acquisition came to be questioned before the High Court in a writ petition, and when the matter was pending before the Division Bench even though there was no interim order since no further steps were taken by the acquiring authorities, the said acquisition lapsed. Since the Lt. Governor was not made known of this earlier attempt having lapsed, it considered this also as a ground for coming to the conclusion that the decision to exclude 5A inquiry suffered from the vice of non-application of mind.

10. The High Court on the above finding flowed the writ petition in part and while setting aside the decision of the Lt. Governor to exclude 5A inquiry permitted the appellants to continue the acquisition proceedings afresh from the stage of 4(1) notification. Consequently, the declaration made u/s 6 of the Act came to be quashed. It directed that the acquiring authority should give an opportunity to the persons interested to file their objections and the same should be heard by the concerned authority and further acquisition proceedings should be proceeded with and concluded within the time and manner stipulated in the impugned judgment.

11. It is against the said judgment and order of the High Court the above

appeals are preferred.

12. Though, it is strictly not necessary for us to go into the subsequent events that had taken place after the impugned judgment of the High Court, it may be of some relevance to note that after the judgment of the High Court the authorities held the 5A inquiry and after considering the report of the Collector a fresh Section 6 declaration has already been issued but the same is pending fresh challenge before the High Court at present.

13. Mr. P.P. Rao, learned senior counsel appearing for the appellants, contended that the principal public purpose for which the land was sought to be acquired is of great public importance to the people of Delhi. The festival "Phool Walton Ki Sair" being a festival in which both Hindus and Muslims take part, any step taken towards furthering this objective would only benefit the society. Hence, the public purpose for which the land was sought to be acquired was of great importance in the present day context. He further submitted that Section 17 of the Act is a special provision which empowers the acquiring authorities when so directed by the appropriate Government to proceed to take possession of the land as contemplated in the said Section. He pointed out under Sub-section (4) of Section 17, a further wider power is bestowed on the appropriate Government to even exclude an inquiry u/s 5A of the Act and if so done, even a declaration u/s 6 of the Act becomes unnecessary and what is necessary was only a publication of Section 4(1) notification. According to the learned counsel a careful perusal of the provisions of Section 17 indicates that in case of urgency it is open to the appropriate Government as in the instant case to exclude the inquiry u/s 5A of the Act by invoking the power under Sub-section (4) of Section 17. He contended that the urgency contemplated under Sub-sections (1) and (2) of Section 17 by itself are sufficient for invoking Section 17(4) to exclude the inquiry and in the instant case the appellants themselves having given up their challenge as to the existence of the urgency u/s 17(1) they can not contend that there was no urgency to invoke Section 17(4) of the Act, therefore the Lt. Governor rightly entertained the said urgency u/s 17(1) invoking Section 17(4) and to exclude 5A inquiry. It is his contention that the High Court erroneously quashed the notification though partially. Mr. Rao submitted from the material on record it is clear that right from the time of initiation of acquisition proceedings there was application of mind in regard to the exclusion of inquiry u/s 5A at every stage. The learned counsel also submitted the degree or sufficiency of urgency is not a matter to be assessed by the High Court in a judicial scale. Hence, the High Court in the present case erred in making the impugned order. He placed strong reliance on the judgment of this Court in the case of *State of U.P. Vs. Smt. Pista Devi and Others*, wherein this Court held thus:-

"The provision for housing accommodation in these days has become a matter of national urgency and courts should take judicial notice of this fact. Having regard to the enormous growth of population in the country, the governmental schemes of development of residential areas, such as those of Development Authorities

constituted by the State Governments for cities, now demand emergent action criminalizing summary enquiry u/s 5A of the Land Acquisition Act".

14. Taking sustenance from the observations of this Court extracted hereinabove, Mr. Rao contended that the public purpose of the acquisition in the present case is to further religious amity between the various communities and to protect ancient monuments. Therefore, the High Court ought to have taken judicial notice of the urgency in the present case. He then relied upon the judgment of this Court in the case of Chameli Singh and others etc. Vs. State of U.P. and another, wherein this Court observed thus:-

"Very often the officials, due to apathy in implementation of the policy and programmes of the Government themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision u/s 17(4) to dispense with Section 5A inquiry."

15. On the basis of the above observations of this Court, learned counsel submitted in a given case the delay by itself could exhortate the urgency as in this case when an attempt to acquire the land for a genuine public purpose was for some reason or the other has remained unfulfilled from the year 1987 the High Court ought to have held the delay already occurred itself was sufficient evidence of the factum of urgency to exclude Section 5A.

16. Learned counsel then placed reliance on the judgment of this Court in the case of First Land Acquisition Collector and Ors. v. Nirodhi Prakash Gangoli and Anr. wherein this Court held thus :-

"The question of urgency of an acquisition u/s 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts."

17. Learned counsel also relied on another judgment of this Court in Bhagat Singh Vs. State of U.P. and Others, which supports the proposition as to the extent to which a judicial scrutiny of a subjective satisfaction in a land acquisition case could extend.

18. Nextly, the learned counsel relied on another judgment of this Court in Union of India and others Vs. Praveen Gupta and others, wherein this Court held thus :-

"Decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry u/s 5A in exercise of power u/s 17(4)."

19. Taking support from the above judgment, as stated above, Mr. Rao submitted the High Court exceeded its jurisdiction by reappraising the factual basis on

which the appropriate Government came to the conclusion that there was urgency requiring the exclusion of Section 5A inquiry, which is impermissible in law.

20. Before adverting to the arguments of learned counsel appearing on behalf of the respondents, we would like to refer to one of the grounds raised by way of preliminary objections by the respondents which is in regard to the maintainability of these appeals on the ground that pursuant to the directions issued by the High Court, the acquiring authorities have conducted a 5A inquiry and a fresh declaration u/s 6 has already been made, therefore, these appeals are not maintainable. Mr. Rao, learned senior counsel for the appellants, has rebutted this contention by relying on the judgment of this Court in the case of *State of Haryana and Others Vs. Rajindra Sareen*, . But in fairness, we must note that the learned counsel appearing for the respondents has not pressed this objection any further than raising the same in the pleadings. That apart since this objection may have some bearing on the pending writ petitions before the High Court and is not a necessary question to be decided in these appeals, we refrain from making any observation on this preliminary objection.

21. Mr. Ravindra Sethi, learned senior counsel appearing for the respondents, rebutted the arguments of learned counsel for the appellants. He submitted that under the Scheme of the Act, each and every section from Sections 4 to 17 has an independent role to play though there is an element of interaction between them. According to him, some of the sections also provide certain mandatory conditions to be fulfilled before the next steps is taken. Thus, in the Scheme of the Act learned counsel submitted, that Section 5A has its own role to play. It is his argument that the entire acquisition proceedings under the Act are based on the principle of eminent domain and the only protection given to a person whose land is sought to be acquired is an opportunity u/s 5A of the Act to convince the acquiring authority that the public purpose for which the land is sought to be acquired is in fact is not a public purpose and is only purported to be one in the guise of a public purpose. Therefore, according to the learned counsel excluding this inquiry can only be an exception where the urgency cannot brook any delay. He also submitted this inquiry provides an opportunity to the owner of the land to convince the authorities concerned that the land in question is not suitable for the purpose for which it is sought to be acquired or the same is sought to be acquired for collateral purpose. He also submitted that the report of the inquiry officer though not binding on the acquiring authority still it could open the mind of the acquiring authority as to the need or necessity to acquire the concerned land. Further analysing the Scheme of the Act and with particular reference to Section 17 of the Act the learned counsel submitted that Sub-sections (1) and (2) of Section 17 do provide a deviation from the normal scheme of the Act while acquiring the land depending upon the nature of urgency. It is his argument that Sub-sections (1) and (2) of Section 17 contemplates different types of urgency and procedure contemplated while exercising the power under each one of these sub-sections are also different from one and the other. He pointed out that

though for exercise of power u/s 17(4) of the Act existence of emergency contemplated under Sub-sections (1) or (2) is a condition precedent that urgency by itself would not empower the authority to dispense with the 5A inquiry u/s 17(4) of the Act without there being a further need to do so. In other words, the learned counsel contends that assuming that there is urgency for taking possession of the land as contemplated under Sub-sections (1) and (2) by excluding the operation of Section 6 and the time mentioned in Section 9(1) of the Act, the same would not by itself give rise to the required urgency to avoid an inquiry u/s 5A. He submitted that in the instant case the authorities have not understood this mandatory difference and have proceeded as if the existence of urgency required u/s 17(1) is by itself sufficient to exclude the inquiry u/s 5A.

22. Learned counsel also copiously referred to the various notings in the file and pointed out that this aspect of the urgency which is necessary for excluding an inquiry u/s 5A of the Act was not taken note of. He also pointed out that in almost all the notings on the file which were considered by the High Court there was actually no reference to Section 17(4) at all, much less any reference to the need for excluding the inquiry u/s 5A of the Act. It is also pointed out by the learned counsel from the records that even on the final noting of the Lt. Governor dated 23.6.1988 pursuant to which a preliminary notification was issued, there is no reference to the exclusion of the inquiry u/s 5A of the Act. While for the first time such an exclusion was specifically notified in Section 4(1) notification dated 30.6.1988 by the Delhi Administration, therefore, the High Court was justified in coming to the conclusion that the Lt. Governor did not apply his mind to the need for dispensing with the inquiry u/s 5A of the Act. He further submitted that the fact that the respondents have given up their challenge in regard to the urgency u/s 17(1) would not in any way affect the merit of their argument of non application of mind by the acquiring authority to exclude 5A inquiry.

23. Keeping in mind the arguments of the learned counsel for the parties, we will now examine certain relevant provisions of the Act to understand the scheme of the Act

24. Section 4(1) of the Act requires the Government to publish a preliminary notification declaring its intention to acquire the land in question as also the likely public purpose for which the land is sought to be acquired. This section itself provides for a procedure for publication of the notice and puts an embargo on the future dealings by the owners of the said property.

25. Section 5A contemplates a right of hearing to any person interested in the land and provides for filing of objections which objections will have to be heard by the authorised officer by providing an opportunity of hearing to such interested persons. As noted above, the reports submitted after this inquiry may not be binding on the appropriate Government but the same is necessary to be considered by appropriate Government at the same time the report can not be left out of consideration.

26. Section 6 contemplates the making of a declaration as to the requirement of the land for the public purpose. This declaration in the normal course will have to be made only after the report of the Inquiry Officer u/s 5A is considered by the appropriate Government. This declaration is required to be published in the official gazette.

27. Section 9 contemplates issuance of a notice to the interested persons after steps enumerated in Section 7 & 8 is completed.

28. Section 11 contemplates an inquiry and award being made by the Collector and Section 16 contemplates when an award is made u/s 11, the collector is entitled to take possession of the land which thereupon vests absolutely with the Government. The only exception to deviate from the above scheme of the Act is found u/s 17 of the Act. Said Section 17 to the extent required for our consideration is extracted hereinbelow:-

"17. Special powers in cases of urgency, - (1) In cases of urgency, whenever the Appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) 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, [or the appropriate Government 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, 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.

(3) In every case under either of preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding

compensation for the land under the provisions herein contained.

[(3A) xxx

(3-B) xxx

(4) In the case if any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1), or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A 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 date of the publication of the notification u/s 4, Sub-section (1):"

29. A careful perusal of the above Section shows that Sub-section (1) of Section 17 contemplates taking possession of the land in the case of an urgency without making an award but after the publication of Section 9(1) notice and after the expiration of 15 days of publication of Section 9(1) notice. Therefore it is seen that if the appropriate Government decides that there is an urgency to invoke Section 17(1) in the normal course Section 4(1) notice will have to be published, Section 6 declaration will have to be made and after completing the procedure contemplated under Sections 7 and 8, 9(1) notice will have to be given and on expiration of 15 days from the date of such notice the authorities can take possession of the land even before passing of an award.

30. Sub-section (2) of Section 17 contemplates a different type of urgency inasmuch as it should be an unforeseen emergency. Under this Section if the appropriate Government is satisfied that there is such unforeseen emergency the authorities can take possession of the land even without waiting for 15 days period contemplated u/s 9(1). Therefore, in cases, where Government is satisfied that there is an unforeseen emergency it will have to in the normal course, issue a Section 4(1) notification, hold 5A inquiry, make Section 6 declaration, and issue Section 9(1) notice and possession can be taken immediately thereafter without waiting for the period of 15 days prescribed u/s 9(1) of the Act

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-sections (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 then 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 every case when there 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 5A 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 5A 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 5A 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."

34. A careful reading of the above judgment shows that this Court in the said case of Nandeshwar Prasad's case (supra) has also held that there should be an application of mind to the facts of the case with special reference to this concession of 5A inquiry under the Act.

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 5A 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 5A."

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.

37. WE will now refer to the facts of the present case. We make it clear that this consideration of facts by us is not for the purpose of finding out whether the stated public purpose is in reality a public purpose or not, nor is it for the purpose of finding out whether there was an urgency as contemplated u/s 17(1) of the Act, but limited to the question of whether there was any material available before the Lt. Governor pursuant to whose order Section 4(1) notification stated that 5A inquiry is dispensed with. Since formation of an opinion and application of mind cannot be assessed except by looking into the proceedings which culminated in the impugned order, we intend considering only such facts as is necessary for this limited purpose. The facts of the present case as found from the records shows that the Anjuman-Saire-e-Gul-Faroshan the committee that organises this festival was using some land in village Mehrauli for conducting its concluding ceremony. It is for this purpose it sought 4000 sq. yards of land in Khasra No. 1151/3 (new) and 1665 (old) of said village. It is also found from the record ever since the revival of the festival the concluding programme was being continued in a piece of land situated in the said Khasra of Mehrauli village which is now sought to be acquired along with certain other lands. There is no material on record to show that either the said festival has been discontinued for want of land or the owners of the land where the festival has its concluding ceremony are preventing the utilisation of that land for the said purpose. We have also noticed hereinabove that an earlier attempt to acquire 40 bighas of the land for the very same purpose was allowed to be lapsed by the authorities concerned by afflux of time which is also a relevant factor to be taken note of by the Lt. Governor when he took the decision to dispense with the 5A inquiry but the same was not placed before him. These facts coupled with the findings of the High Court that in almost all the notings in the file there is no reference to the need for invoking Section 17(4) indicates that the Lt. Governor was not apprised of all the necessary and relevant facts before he took the decision in question. Therefore, in our opinion, the findings of the High Court that the decision of the Lt. Governor to dispense with the 5A inquiry suffered from the vice of non-application of mind has to be upheld. For the reasons stated above, these appeals fail and are dismissed.