
(2012) 02 MP CK 0149

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6478 of 2006

Vijay Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 11, 11A, 17, 17(1), 17(4)

Citation : (2012) 5 MPHT 39

Hon'ble Judges : Keshav Kumar Trivedi, J

Bench : Single Bench

Advocate : Nidhesh Gupta and Mr. M.K. Verma, for the Appellant; Samdarshi Tiwari, Govt. Advocate for the Respondents/Stale, for the Respondent

Final Decision : Allowed

Judgement

Keshav Kumar Trivedi, J.—The petitioners have sought to challenge the award passed pursuant to the notification dated 15-6-1990 and the entire proceedings of acquisition of lands bearing Khusra No. 119, situated at Village Kolua Kalan of Tehsil Huzur, District Bhopal, and other lands description of which has been given in the writ petition. It is mainly contended that the entire proceedings of acquisition are vitiated on the ground that the award was not passed within two years from the date of publication of the notification and declaration under Sections 4 and 6 of the Land Acquisition Act. 1894 (herein after referred to as "Act") and that there was no case made out to exercise power u/s 17 of the Act. It is contended that appropriate opportunity of hearing was not granted to the petitioners and, therefore, such award was bad in law. Briefly stated facts as given in the writ petition by the petitioners, for the purposes of deciding the controversy, are, that certain lands belonging to the petitioners were situated at Village Kolua Kalan. It is contended that the use of lands in Village Kolua Kalan, Narela Shakari, Damkheda of Tehsil Huzur, District Bhopal was agriculture. The villages are situated near about Bhopal City and are part of the Bhopal Urban Agglomeration. Sometime before 1995, land use of Village Kolua Kalan was

changed to industrial and that of Village Narela Shankari to residential, but in the revised plan of Bhopal Urban Agglomeration, the land use of Village Kolua Kalan has been changed to be residential. It is contended that certain colonies have been developed in the said area not only by the State Government but by the Madhya Pradesh Housing Board also.

2. The respondent No. 2, the Industries Department, made an application for acquisition of the land of Village Samrakala, Narela Shankari, Damkheda and Kolua Kalan for the purposes of establishing the industrial area on the said land. Case No. 4/A-82/89-90 was, thus, registered and the respondent No. 2 was required to make an application for obtaining No Objection Certificate from the Directorate of Town & Country Planning, Bhopal. Though prior to making of the application for acquisition of the land, such No Objection Certificate was applied for by the respondent No. 2, but same was not issued. Even when the matter was considered by the respondent No. 3, for initiating the proceedings for acquisition of the land aforesaid for the purpose of making it available to respondent No. 2, No Objection Certificate from the Directorate of Town & Country Planning, Bhopal was not produced, Even when a peremptory order was issued directing respondent No. 2 to obtain such a No Objection Certificate, the Land Acquisition Officer, the Collector, Bhopal, inspected the spot, took a complete somersault and made a reference to the Commissioner, Bhopal Division, seeking permission to invoke emergency powers u/s 17(1) of the Act for the purposes of acquisition of the land in dispute.

3. Consequently, the notifications were issued in the Gazette of Madhya Pradesh dated 15-6-1990, vide Annexures P-9 and P-10, under Sections 4 and 6 of the Act. Though the notifications so issued were in complete violation of provisions of Section 17 (4) of the Act, yet without granting any opportunity of hearing to the persons concerned, conducting any enquiry in respect of any such objection proceedings were done and land was said to be acquired. It is said that the proceedings so done were placed in the office of Commissioner, Bhopal Division, where certain defects were pointed out and it was said that draft award was not signed by Competent Authority. The draft proposal was finalized and thus the award was passed. It is contended that such action was not completed within the time prescribed u/s 11A of the Act and, therefore, the award was a nullity. At the same time since there was no such compliance of provisions of Section 17 of the Act nor there was any case made out to exercise emergent power u/s 17 of the Act. therefore, such an award was bad in law. The proprietary rights conferred under Article 300A of the Constitution of India are not to be taken away in an illegal manner. Therefore, it is claimed that entire proceedings are liable to be quashed and the lands of the petitioners are to be restored in their possession. It is the submission made by the learned Senior Counsel for the petitioners that even for the industrial purposes, the land in residential area was not to be acquired and since the purposes for which the land was acquired have not been achieved by establishing any industries, not a single brick has been laid down establishing any industry on the land in question till now, such action of the

respondents was bad in law and the Sands of the petitioners are required to be restored in their possession.

4. In response to the notice of writ petition, a return has been filed by the respondents contending that the award passed was called in question by certain persons in a writ petition filed before this Court being W.P. No. 2986/2002. It is contended that such submissions were taken into consideration and this Court by order dated 1-7-2002 has dismissed the writ petition. It is contended that once such an issue has already been adjudicated by this Court in a writ petition, it is not open to the petitioners to challenge the validity of the award. It is also submitted by the respondents that since a proposal was made for establishing an industrial area, the State Government was intending to acquire the lands in the particular villages. For the said purposes, looking to the need and emergent requirement of the land, the power under sub-section (1) of Section 17 of the Act was exercised and the notification was published u/s 4 of the Act on 25-5-1990, giving complete description of the lands along with corresponding area situated in the village. A declaratory notification u/s 6 of the Act was also published in the Gazette on 15-6-1990. It is contended that No Objection Certificate from the Housing & Environment Department was not necessary as the same is not the requirement of law for initiating acquisition proceedings. It is contended that after completing the proceedings in terms of provisions of Sections 4, 6 and 17 of the Act, the award was passed and, therefore, it cannot be said that illegality was committed in the manner alleged against the respondents and thus, it cannot be said that the entire acquisition proceedings were bad. It is contended that the claim made by the petitioners is identical to that of the claim of Charan Singh and others (*supra*), who have filed W.P. No. 2986/2002, and since the said writ petition has been dismissed, the present petition is also liable to be dismissed.

5. The petitioners have filed their rejoinder categorically contending that such submissions made by the respondents are not justified in view of the fact that the order passed by this Court in case of Charan Singh and others (*supra*), is not an order on merits touching all the issues, which the petitioners have raised in the present writ petition. Further, it is contended that the award could not have been passed in such a proceeding, where the notification itself had lapsed on expiry of period of two years from the date of publication. It is contended that the correspondence was done indicating that even the draft award was not signed by the Competent Authority and this fact was brought to the notice of the concerning authority and thereafter since approval was granted later on, the award was passed much after lapse of two years from the date of notification and declaration. It is submitted that in view of the law laid down by the Apex Court, such an award is a nullity in the eye of law. It is contended that because of lapses on the part of the respondents themselves, the entire proceedings lapsed. These questions were not subject matter of the writ petition of Charan Singh and others (*supra*), and, therefore, there is no adjudication of these grounds in the order of this Court. Therefore, there is no bar if such a ground is raised as the

principles of res judicata would not be attracted at all in such circumstances. It is further contended that lame excuses have been raised by the respondents in their return and they have not justified the action initiated by the respondents. In such a case, where there was no emergent need of acquisition, the power u/s 17(1) of the Act was exercised malafidely. Thus, it is contended that ignoring the entire stand taken by the respondents in their return, the petitioners deserve to be granted the relief claimed in the writ petition.

6. Heard learned Counsel for the parties at length and perused the records.

7. For the purposes of adjudication of this petition, it would be appropriate to formulate the questions so as to examine whether such questions were raised in the writ petition of Outran Singh and others (supra), or not and whether there was any adjudication of these issues or not. For the convenience the questions are formulated as under:--

(i) Whether the award was rightly passed by the Land Acquisition Officer within the prescribed period under the Act or not and if not, the effect?

(ii) Whether there was any requirement of invoking the emergent power u/s 17 of the Act for acquisition of the land in dispute or not?

(iii) Whether the land acquired for the purposes of establishing an industrial area is still to be retained by the respondents-State though no industries have been established on the said disputed land after such long lapse of time?

8. The main question, which is to be considered in the writ petition, is whether the award passed by the respondents acquiring the land in dispute was just and proper and was within the provisions of the Act or not? Addressing this Court on first question, learned Senior Counsel for the petitioners vehemently contended that the documentary evidence indicates that the notifications were issued on one day and not on different dates. It is submitted by the learned Senior Counsel for the petitioners that such notifications placed on record as Annexure P-10, were published only on one day i.e., on 15-6-1990 in the Gazette of Madhya Pradesh. If any other date is mentioned in the notification the same will not be material because the date of publication of the notification in the Gazette is to be taken into consideration and not the date, which is mentioned in the proposal sent for publication. It is submitted by the learned Senior Counsel for the petitioners that the first notification said to be issued u/s 4 of the Act was also published on 15-6-1990 as is clear from the note-sheet placed on record as Annexure P-11. Thus, it is contended that since both the notifications were issued on one day, in fact the provisions of the Act were violated. It is further contended by the learned Senior Counsel for the petitioners that the proceedings were thereafter initiated and since there was a notification issued by the State Government as back as in the year 1985 conferring the powers on the Divisional Commissioner to accord sanction of awards of more than Rs. 10 lacs and every award made by Collectors as a Land Acquisition Officer were required to be approved in the like manner, unless the approval is granted, the draft award

would not be treated as an award under the provisions of the Act. It is contended that since such a notification was issued in exercise of powers under sub-section (1) of Section 11 of the Act, it was necessary that compliance of such a notification be done. Pointing out the proceedings recorded in Annexure P-13, it is emphatically contended by the learned Senior Counsel for the petitioners that the declaration was made that on 13-7-1992, the draft award was prepared and was sent for approval but the same was not signed by the concerned authority. In absence of any signature, the draft was not to be approved and after obtaining the signature when the same was sent, the period of two years had already completed from the date of notification and thereafter on the basis of approval, the award was passed, therefore, it is clear that the award was passed after the period of two years as prescribed under subsection (1) of Section 11 of the Act. Taking this Court to the various documents, it is contended by learned Senior Counsel for the petitioners that if this particular aspect is examined, neither such a ground was raised in the writ petition of Charan Singh and others (supra), nor there was any adjudication on this point. It is contended that the said writ petition was with respect to a limited prayer. It is pointed out that the initial writ petition filed being W.P. No. 398/1997 was in fact decided on 10-10-2000 and only since a prayer was made confining it to the claim of a direction to the State Government to decide the representation submitted by the petitioners in that case to denotify the land u/s 48 (I) of the Act, the earlier petition was disposed of with a direction to decide such a representation by the month of December, 2000. The period was extended by this Court by passing an order in M.C.C. No. 726/2001. Since the representation was rejected, only this much was the issue, which was raised before this Court in the writ petition filed by Charan Singh and others (supra), which was decided on 1-7-2002. Neither the grounds as have been raised in this writ petition were raised in the writ petition of Charan Singh and others (supra), nor there was any adjudication of such grounds, therefore, it is contended by the learned Senior Counsel for the petitioners that the issues were not identical, though the award was the same and, therefore, the present petition is still maintainable and it is to be adjudicated on merits. It is contended that no satisfactory answer was given to the fact that the award was not passed within limitation prescribed under the Act and, therefore, such an award is nullity.

9. Learned Senior Counsel appearing for the petitioner has further pointed out that in fact the documentary evidence has been placed on record along with the rejoinder of the petitioner to indicate the exact date on which proceedings were ultimately culminated in award. Taking this Court to document (RJ-3) filed along with the rejoinder, learned Senior Counsel for the petitioners contended that Commissioner, Bhopal Division, Bhopal has returned back the draft proposal, vide his memo dated 15-7-1992 stating therein that the draft award was not signed by any Competent Officer and there was calculation error of area of the land, which is sought to be acquired. There was no calculation of total amount required to be paid as compensation in the proposed valuation form. Since the award

itself was returned back, vide memo dated 15-7-1992, that itself was beyond the period of two years from the date of publication of the notification of acquisition, it is clear that the award was signed and passed after this date and thus as has been alleged, the award has been passed on 6-9-1993. These facts have not been rebutted by the respondents by filing any additional return and, therefore, the contentions raised by the petitioners are to be accepted. For the purpose of showing the procedure of effective making of award, learned Senior Counsel for the petitioners has placed his reliance in the case of Kaliyappan Vs. State of Kerala and Others, Further placing the reliance in case of State of U.P. and Others Vs. Rajiv Gupta and Another, , it is contended that in case the proceedings are not completed within the period prescribed u/s 11A of the Act, the same lapse automatically. It is further contended that the similar view has been expressed by the Apex Court in the recent decision rendered in case of Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, , wherein it has been categorically held by the Apex Court that there is no survival of proceedings after the lapse of such period of two years. It is contended that since there was lapses on the part of the respondents, the proceedings are not to be saved. Thus, it is contended that the proceedings were to be dropped and no award was required to be passed.

10. In reply to these submissions, Shri Samdarshi Tiwari, learned Government Advocate, contended that as a whole the proceedings will not go only because the acquisition of land was not completed within the period of two years from the date of notification by passing an award. It is contended that the reason for such delay was explained though it was nothing but a technical objection, therefore after such a long period, specially, when the award has been affirmed by this Court in the writ petition filed by some of the persons aggrieved by the award, it will not be justified by this Court to quash the proceedings. Placing reliance in case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , learned Government Advocate contended that in somewhat similar circumstances, the Apex Court has held that once the acquisition proceedings are completed, the land vests in the State Government free from all encumbrances, proceeding becomes final and thus are not opened to challenge under Article 226 of the Constitution of India on the ground of non-compliance with any statutory requirement. It is contended that in such circumstances, a writ petition filed after such a long period was not maintainable. It is, thus, submitted that on this ground, the petition is liable to be dismissed. Placing reliance in the case of Mohan and Another Vs. State of Maharashtra and Others, it is contended that if the publication of notification/declaration u/s 6 of the Act is taken into account, limitation prescribed u/s 11A of the Act would start running from the said date of publication. Accordingly, it is contended that if it is taken into account, if a formal approval was necessary and for that some time is consumed, it cannot be said that said period is not to be excluded from the limitation prescribed. Thus, it is contended that in view of the aforesaid enunciation of law by the Apex Court, there is no justified claim made out in the

writ petition and merely on technical objection of limitation as prescribed the petitioners cannot claim that the proceedings of acquisition of land in question were bad in law. Thus, it is contended that the petition being devoid of any merit deserves dismissal.

11. To appreciate these rival submissions, it would be appropriate to reproduce the provisions of Section 11A of the Act, which read thus:--

11-A. Period within which an award shall be made.--(1) The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case, where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act. 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation:-- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

The opening words of this Section makes it emphatically clear that the period prescribed for completing the process of acquisition under the Act is two years and a consequence of not completing the process within the aforesaid period is also prescribed in clear words. The intention of the Legislature is to be inferred from the words used in this Section. The Legislature has specifically prescribed a period for completing the process of acquisition and has kept in mind that unlimited period should not be allowed for keeping such proceedings pending, which may result in loss to both ways. On one hand, the purpose for which the land is sought to be acquired will not be achieved unless the proceedings are expeditiously concluded and on other hand the land losers will not get the monetary benefit of compensation in lieu of taking away of right of property expeditiously unless an award is passed. To put a caution on this, the Legislature has specifically prescribed that in case no award is made within the period of two years as prescribed, the entire proceeding for acquisition of the land shall lapse. Here, the use of word shall makes it abundantly clear that it was never intended by the Legislature to extend the period of acquisition proceedings. However, certain safeguards are provided, such as the time consumed in ascertainment of the land, preparing a notification, which is required to be published under the Act and, therefore, it is provided that the period of limitation will commence from the date the notification/declaration has been published in the Gazette. Another safeguard is provided by way of explanation where it is specifically provided that the period, which is spent on account of any stay by an order of the Court of the declaration made pursuant to Sections 4 and 6 of the Act will be excluded while computing the period of two years. Thus, in sufficient ways protection has also been granted to such proceedings, which are required to be lapsed in case the same are not concluded within the period of 2 years. The Apex Court in the case

of State of U.P. and others (supra), has earlier examined this aspect and the nature of provisions of Section 11A of the Act. In Paragraph 5 of the report, the Apex Court has very categorically held that in case the proceedings are not completed/concluded by way of passing an award within the period prescribed u/s 11A of the Act, the entire proceedings of acquisition are to lapse. It will be appropriate to reproduce the specific findings of the Apex Court in this respect contained in Paragraph 5 of the report, which reads as under:--

5. Its bare reading indicates and emphasises the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration: It is common knowledge that after declaration was published, years used to roll by to make the award and the owners of the lands were put to great hardship. Parliament intended to relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of Section 4(1) notification. It is, therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation u/s 11A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from, the date of the publication of the declaration unless the proviso is attracted, if no award is made in the meantime, in the eye of law the proceedings initiated u/s 4 (1) of the Act culminated in the declaration made u/s 6 shall stand lapsed and no proceedings, in the eye of law, thereafter do exist, to take further action.

Recently, the Apex Court in the case of Delhi Airtech Services Private Limited and another (supra), has considered this provision specifically, and has categorically held in Paragraph 161 of the report thus:--

161. A bare reading of the above provision shows that the Legislature places an obligation upon the Collector to make an award at the earliest. Wherever the award u/s 11 of the Act has not been made within two years from the date of publication of the declaration, the entire proceedings for acquisition of land shall lapse. The Explanation to Section 11A of the Act further excludes from this period, any period during which any action or proceeding, to be taken in pursuance of the said declaration, is stayed by an order of a Court, which had been in force. Exclusion of no other period is contemplated under this provision. Thus, a definite intention of the framers of law is clear that the award should be made at the earliest and, in any case, within a maximum period of two years from the declaration u/s 6 of the Act, if the acquisition proceedings are to survive.

In view of the law laid down by the Apex Court in the cases aforesaid, it is clear that there is no safeguard of the proceedings in case the same are not concluded within a period of two years from the date of publication, except those prescribed in Section 11A of the Act.

12. Now the only question remains as to on what date the award would be said

to be passed. It is not disputed that notification was issued on 15-6-1990. It is also not disputed that on 15-7-1992 the draft award was sent back for signing of the authorities because the Commissioner was not prepared to approve a draft award if it was not signed by the authority concerned. If an award is required to be passed even with the approval, the period of approval is one part, which is also included in the period prescribed u/s 11A of the Act. It is nowhere said in this Section that the period required for seeking approval of the draft award is to be excluded from the period prescribed under the aforesaid Section. In specific words used in Section 11A of the Act, it is said that the award should be made within a period of two years. What would be the meaning of "making of award", has been considered by the Apex Court in the case of Kaliyappan Vs. State of Kerala and others (supra). The Apex Court has categorically held that "to make an award" in this Section means "sign the award". That is the ordinary meaning to be ascribed to the words "to make an award". It is further held by the Apex Court that the extended or different meaning assigned to the word "the date of the award" by the Apex Court in Raja Harish Chandra case (supra), cannot be applied in the case of land acquisition, since an extended or different meaning is neither warranted by equity nor it will advance the object of the statute. The distinction between the two provisions of the Act namely, Section 11A and Section 18, were also considered by the Apex Court. In view of the enunciation of law by the Apex Court in the aforesaid cases, the stand as taken by the respondents cannot be accepted. Firstly, the reliance placed by the respondents in the case of Mohan and another (supra), is totally misconceived. There the only question under consideration was, what is the meaning of declaration and whether a notification issued u/s 6 of the Act is relevant or not. Since in the case in hand, the notification u/s 4 and the declaration u/s 6 were published on one day in the Gazette, the law laid down by the Apex Court in the aforesaid case would not be attracted at all. Similar is the position with respect to the law laid down by the Apex Court in the case of Municipal Corporation of Greater Bombay (supra). The issue before the Apex Court was with respect to the change of requirement of public purposes. Such is not the case in hand. Here the entire case taken up by the petitioners is that the land was being sought to be acquired for the purposes of establishing an industrial area and not a single brick has been placed on it till now. No use of the land has been made for the purposes for which the land was sought to be acquired. The reliance placed by the learned Government Advocate for the respondents is, thus, totally misconceived looking to the controversy involved in this case.

13. In view of the law laid down by the Apex Court and in view of the facts as have come on record, which could not be disputed or dislodged by the respondents, it is clear that the award was passed after expiry of period of two years prescribed under the provisions of Section 11A of the Act and in terms of unequivocal provisions made in the Section, the entire proceedings for acquisition of the land lapsed on expiry of the period of two years. The land of the petitioners could not be said to be acquired under the impugned notification

by virtue of the impugned award because of the said bar.

14. Another question raised by the learned Senior Counsel for the petitioners as formulated is whether there was any occasion for invoking power u/s 17 of the Act. Section 17 of the Act specifically prescribed special powers in case of emergency to be exercised by the Land Acquisition Authorities. For the purposes of convenience, the provisions of Section 17 are reproduced herein below:--

17. Special powers in cases of urgency.-- (1) In cases of urgency, whenever the appropriate Government so desires, 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 the 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.

(3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies

mentioned in Section 31, sub-section (2), and where the Collector is so prevented, the provisions of Section 31, sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation required to be tendered u/s 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector u/s 11, the excess may/unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue.

(4) In the case of 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 subsection (1).

15. Learned Senior Counsel for the petitioners has emphatically contended that the law is well settled in this respect, where it has been specifically provided that in the given circumstances the power should be exercised as an exception and not generally. It is contended by the learned Senior Counsel for the petitioners that the notification nowhere depicts the reasons as to why emergent powers were being exercised. As have been quoted herein above, it was stated by the petitioners that in the year 1986 the application was made by respondent No. 2 for grant of a No Objection Certificate for the purposes of establishing the industrial area within the Urban Agglomeration before the Competent Authority of Directorate, Housing and Environment Department. In 1988, even when no Objection Certificate was issued by the Housing and Environment Department, only on the basis of No Objection Certificate granted by the Director of Town & Country Planning. Bhopal, an application was submitted proposing acquisition of land in dispute. The proceedings were not immediately initiated on such a request and the respondent No. 2 was called upon to submit the No Objection Certificate. There were certain discrepancies with respect to mentioning of the land, boundary of Khasra numbers and the partition lines of land, which were not available on the plan so submitted for acquisition of the land. The proceedings in that respect were done and on 15-6-1990 only the notification was published in the Gazette for the purposes of acquisition of land. It is contended by the learned Senior Counsel that looking to necessity and need of respondent No. 2, there was no reason to invoke emergent powers prescribed u/s 17 of the Act. Further, such an action of the respondents was not justified in view of the fact that there was no such declaration made in the notification so issued u/s 6 of the Act, as was required to be done in view of the provisions of sub-section (4) of Section 17 of the Act. Thus, there was a fault on the part of the respondents in issuing the notification/declaration and that there was no justified reason shown as to how

and why emergent powers were being exercised.

16. Drawing attention of this Court to the specific pleadings in Paragraphs 5.4, 5.5, 5.6 and 5.7 of the writ petition, learned Senior Counsel for the petitioners contended that if these facts are taken into account, it will be clear that there was no requirement of exercise of emergent powers conferred u/s 17 of the Act. To this extent, there is no specific reply except that there was no requirement of seeking No Objection Certificate from Housing and Environment Department. It is contended on the basis of the pleadings of the respondents with respect to aforesaid paras in their return that nothing satisfactorily was explained as to why such a matter was kept pending and if that was the period required for making up the mind for initiating the process of acquisition of land, why not the sufficient time was provided for raising objection as prescribed u/s 5A of the Act as was necessary. Further, it is contended by the learned Senior Counsel that since the proceedings were not completed within the stipulated period described u/s 11A of the Act, it is clear that there was no need of invoking emergent power u/s 17 of the Act. Placing reliance on the case of Dev Sharan and Others Vs. State of U.P. and Others, it is contended that in view of the law laid down by the Apex Court, the slow process of action taken by the respondents itself was enough to show that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act. Had it not been done, the petitioners would have raised their objections, which were required to be considered in appropriate manner. Further, placing reliance in the case of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, learned Senior Counsel for the petitioners contended that the latest view expressed by the Apex Court is that even fast action of development in any case cannot be said to be a sufficient cause or reason or satisfaction of the Government for invoking the powers u/s 17(1) of the Act. If the private property is sought to be acquired, not for genuine purpose at all, the said exercise of power is vitiated due to malafides or the authorities concerned did not apply their mind to the relevant facts and the records. Thus, it is contended that looking to such conduct of the respondents in taking steps for acquisition all of a sudden, the power u/s 17(1) of the Act was not required to be invoked. Lastly, learned Senior Counsel has placed his reliance in the case of Devendra Singh and Others Vs. State of U.P. and Others, , and has contended that the latest enunciation of law by the Apex Court makes it clear that the public purpose by itself shall not justify the exercise of power of eliminating an enquiry u/s 5A of the Act in terms of Section 17(1) and Section 17(4) of the Act. These facts are to be taken note of, the conduct is required to be examined and then it is to be held whether such a power was rightly exercised or not. It is contended that in the given circumstances, as have come on record of this case, there was no purpose of acquiring the land by invoking emergent power u/s 17 of the Act.

17. To this, learned Government Advocate has contended that the purpose for which acquisition has been done is paramount and it is demonstrated that such a purpose would be defeated in case emergent powers are not exercised. Placing

again reliance in the case of Municipal Corporation of Greater Bombay (supra), it is contended that for the purpose of acquisition of land for industrial development, if such power is exercised, it cannot be said that act done by the respondents, power exercised by them, was unjustified. Again it is contended that because of the lapses, the judicial review under Article 226 of the Constitution of India is not warranted.

18. Such a submission of learned Government Advocate is liable to be rejected outrightly. First of all, it was to be demonstrated by the respondents that there was acute need of exercising the emergent power u/s 17 of the Act. True it is that the official machinery takes its own time in moving the files from one place to another but that official function is to carry out the provisions of law as well. It was to be kept in mind by the respondent-State that if the land of private individuals are required to be acquired for any purpose of industrial development, the State was required to take appropriate steps speedily. It was not open to the respondent-State to say that whatever time was required for making up the mind for issuance of notification, has to be ignored and since they have made up the mind, the State is free to exercise powers u/s 17 of the Act. It is to be seen that when the emergent powers are exercised u/s 17 of the Act, raising an objection and hearing on the said objection is required to be taken away on a cogent and germane ground. If reasons are spelled in such manner as has been done in the present case, this Court is afraid that if such actions are given stamp of approval, it will confer dictatorship and dictatorial powers on the State ignoring the provisions of the law. This cannot be done by a Court of law.

19. The Apex Court has considered these aspects in the case of Deo Sharan and others (supra), and has very categorically, after examining each and every fact, has held that lapses on this ground cannot be permitted to go on. It is rightly said by the Apex Court that the manner in which decisions were taken for publication of notifications u/s 4(1) and Section 6 and a notification u/s 17 of the Act, were in gross negligence of the respondents-authorities and on account of such a reason, it could not be said that the right of hearing was rightly taken away as per the provisions of Section 17(4) of the Act. The Apex Court in case of Radhy Shyam (dead) through L.Rs. and others (supra), has categorically culled out the principles, which are required to be followed in case of exercise of emergent powers as have been mentioned in Paragraph 77 of the report, which reads thus:--

77. 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 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 Vs.

Sholapur Spg. and Wvg. Co. Ltd., Charanjit Lal Chowdhury Vs. Union of India and Jilubhai Nanbhai Vs. State of Gujarat.

(ii) The legislations, which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly-- DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana, State of Maharashtra Vs. B.E. Billimoria and Dev Sharan Vs. State of U.P.

(iii) Though, in exercise of the power 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 scrutinise 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, 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 landowner or other interested persons.

(v) Section. 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5A. 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 5A, the authority concerned 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 malafides 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 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 under Sections 17(1) and/or 17 (4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 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 scrutinise the relevant record before adjudicating upon the legality of such acquisition.

Lastly, the law laid down in case of Devendra Singh and others (supra), the Apex Court has categorically held in Paragraphs 18, 20 and 21 the very same object and purpose and the scope of exercising the power under the aforesaid provisions. The aforesaid paras of the report read thus:--

18. In view of the above, it is well settled that acquisition of the land for public purpose by itself shall not justify the exercise of power of eliminating enquiry u/s 5A in terms of Section 17(1) and Section 17(4) of the Act. The Court should take judicial notice of the fact that certain public purpose such as development of residential, commercial, industrial or institutional areas by their intrinsic nature and character contemplates planning, execution and implementation of the schemes, which generally takes time of few years. Therefore, the land acquisition for the said public purpose does not justify the invoking of urgency provisions under the Act.

20. Moreover, in Dev Sharan case, the acquisition of land for construction of new District Jail, since the old jail was overcrowded and causing hardships including health and hygiene concerns to the inmates, by invoking the urgency provisions u/s 17 was quashed on the ground that the Government machinery had functioned at a very slow pace in processing the acquisition, which clearly evinces that there was no urgency to exclude the application of Section 5A of the Act. The Court further observed:--

35. From the various facts disclosed in the said affidavit, it appears that the matter was initiated by the Government's Letter, dated 4-6-2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of a suitable site for construction was held on 27-6-2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2-7-2008. This was, in turn forwarded to the State Government by the Director on 22-7-2008. After due consideration of the forwarded proposal and documents,

the State Government issued Section 4 notification, along with Section 17 notification on 21-8-2008. These notifications were published in local newspapers on 24-9-2008.

36. Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the landowners, along with 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Section 6 declaration was sent to the Director, Land Acquisition on 19-6-2009. The Director in turn forwarded all these to the State Government on 17-7-2009, and the State Government finally issued the Section 6 declaration on 10-8-2009. This declaration was published in the local dailies on 17-8-2009.

37. Thus, the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days, i.e., almost one year. This slow pace at which the Government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17 (4) of the Act.

38. In Para 15 of the writ petition, it has been clearly stated that there was time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action, which could deny the petitioners their right u/s 5A. In the counter, which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.

30. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section 17. If so advised, the Government can initiate acquisition proceeding by following the provision of Section 5A of the Act and in accordance with law.

21. In the facts and circumstances of the present case, it is clear that the district of Jyotiba Phule Nagar was created in the year 1997, which was, however, dissolved and recreated in 2004. The District Magistrate, Jyotiba Phule Nagar, had sent a proposal to the Principal Secretary, Home/Prisons, Government of U.P. for acquisition of land for the construction of District Jail on 24-1-2003, which is undoubtedly a public purpose. After the lapse of 5 years, in the year 2008, the State Government asked the District Magistrate to trace the availability of lands for acquisition for construction of the District Jail in the proximity to district headquarters and further requested the Selection Committee to recommend the land suitable for the said purpose. Thereafter, the Selection Committee recommended the acquisition of the said land as suitable for the construction of the jail but it took two years for the State Government to issue the said notifications u/s 4 and Section 6 respectively, thereby invoking the urgency

provisions u/s 17 of the Act. The series of events shows lethargy and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions u/s 17 of the Act, thereby depriving the appellants of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

20. Thus, it is clear that there was no need of exercising emergent power u/s 17 of the Act, specially, when the land acquired has not yet been utilized for any purpose of industrial development. When asked, it is contended by learned Government Advocate that the land is reserved only for the extension of the industrial area in future. By no stretch of imagination could it be said that the land of the petitioners within the Urban Agglomeration is to be kept reserved for industrial development. If the residential area is to be increased in that particular portion, rather it would be necessary for the respondent-State to shift the industrial area away from Urban Agglomeration. Keeping large piece of land, only for the purpose of development of industrial area, whereas in future there is a requirement of shifting the industrial area away from Urban Agglomeration, cannot be said to be a wise decision of the State Government. Thus, on such lame excuses if the emergent power was exercised by the State Government, even in the year 1990 or 1992; it cannot be said to be correct and proper action of the respondents. Such an action is not required to be approved, but since the entire proceedings are already to be treated as lapsed on account of passing of award after expiry of period prescribed u/s 11A of the Act, no specific order is required to be passed on this issue.

21. The last question, which is required to be considered is, whether the purpose for which the land was acquired still subsists. Since, it has been found that industrial development in particular area was sought for, No Objection Certificate to this effect was issued by the Director, Town and Country Planning only to the effect that in case the land is acquired only for the purpose of expansion of industrial area of Govindpura, the Directorate had no objection to this effect, but separate No Objection Certificate required from other authorities may be obtained, it was necessary for the respondents to make use of the land for the purposes of industrial development. It was nowhere stated in the notification that the land, shown to be acquired is to be kept reserved for the purposes of expansion of industrial area in future. At bar it has been categorically contended by the learned Senior Counsel for the petitioners that not a single brick has been placed on the land so acquired, though it remained in possession of the respondents right from the date of passing of the award, for the purpose of establishing any industry, it is clear that the land of petitioners was acquired but for no real purpose, what to call a public purpose. Had it not been so, the land would have been utilized properly. Such acquisition of the land of the petitioners, thus cannot be given an approval by this Court. The award to the said extent is still bad in law.

22. Now the serious objection is taken with respect to maintainability of petition on account of delay and laches as also on the ground that the issue in relation to particular award was considered by this Court and an order was passed in the case of Charan Singh and others (supra). Learned Senior Counsel for the petitioners has contended that the respondents were well aware of the proceedings, which were initiated as the earlier writ petition filed by Charan Singh and others against the award was disposed of by this Court. Taking this Court to the document annexed to the rejoinder as Annexure RJ-1, learned Senior Counsel for the petitioners contended that W.P., No. 398/1997 was initially filed challenging the award. Leaving aside all such grounds raised by the petitioners in that case, they restricted their claim only to one aspect that a representation has been made before the respondents-authorities for denotifying the land so acquired, under the provisions of Section 48 (1) of the Act and since such a representation is not decided, the respondents-authorities be directed to decide the said representation. It is contended that this Court, vide order dated 10-10-2000 disposed of the writ petition with a direction to decide the representation of the petitioners by the end of December, 2000. An M.C.C. was filed seeking extension of time by the respondents and since the time was extended by this Court, ultimately the representation made by Charan Singh and others was rejected. This rejection order was called in question in W.P. No. 2986/2002 which came to be decided on 1-7-2002. Reading opening paragraph of this order, placed on record as Annexure R-1 along with the return of the respondents, learned Senior Counsel has pointed out that the petition was for challenging the order dated 29-4-2002 passed by the Principal Secretary refusing to denotify the land, which was acquired for industrial purposes way back in the year 1990. Learned Senior Counsel further contended that the only issue raised before the Court was whether the rejection of the representation of the petitioners in that case was just or not. Whether the award was rightly made or not, whether the proceedings were saved despite the fact that as per provision of Section 11A of the Act the same were not concluded within a period of 2 years from the date of publication of the notification and whether the purposes for which the land was acquired is still subsist or not, were not at all issues before this Court when the writ petition aforesaid was decided. Learned Senior Counsel has contended that the law is well settled on this issue that in case, a particular issue is neither raised nor decided, the decision against the same order/award would not become operative at res judicata. It is contended that this being the situation, such an order is not a bar and this Court has still power to judicially review the conduct of the respondents.

23. There is much force in the submissions made by the learned Senior Counsel for the petitioners. In the writ petition of Charan Singh and others (supra), the question was never raised with respect to the lapse of the proceedings of acquisition on account of not completing the same within the period of two years from the date of publication of notification as is required u/s 11A of the Act. Even if that issue was raised, the same was foregone and the writ petition earlier filed

in the year 1997 was disposed of with a direction to decide the representation for denotifying the land of the petitioners in that case. Apart from that, there was no adjudication of the said issue at the relevant time. The Court itself has recorded that if the petitioners in that case are serious for assailing the acquisition they should have raised the question when earlier writ petition was filed. It makes it clear that there was no adjudication of the grounds raised by the petitioners in the present writ petition by this Court in the writ petition of Charan Singh and others (*supra*), and, therefore, such an objection raised by the respondents cannot be sustained. Further, if the award was a nullity in the eye of law, delay in filing petition will not come in the way of petitioners and as such this objection is also to be ignored.

24. Now the question would be whether the proceedings can be quashed in exercise of powers under Article 226 of the Constitution of India setting free the land of the petitioners only from the acquisition. This has to be seen that there were no objections by others, whose lands were acquired, and those who have filed the objections, have not challenged the orders before this Court. Thus, who have accepted the compensation of the land so acquired and have chosen not to challenge such action, are not to be benefited or not to be granted any advantage of this order simply because they are not before this Court. The petitioners are the only persons, who have come against the acquisition of their land and have said that as far as acquisition of their land is concerned, the proceedings are lapsed and such relief can still be granted by this Court in exercise of its powers. The lands, which have been vested in the State Government on payment of compensation and in respect of which no claims have been made before this Court, are not going to be affected by this order.

25. Since all the questions formulated are answered in affirmation in favour of the petitioners, this writ petition deserves to be and is hereby allowed. The acquisition proceedings, in so far as the land of the petitioners is concerned, initiated vide notifications, dated 15-15-1990 (Annexures P-9 and P-10) and the award said to be passed on 6-9-1993 are hereby quashed. The land of the petitioners be declared to be released from such acquisition proceedings. The respondents are directed to restore the possession of the petitioners over the land for all purposes. Looking into the circumstances that the petitioners have: not initiated the proceedings at appropriate time after the acquisition in the year 1992-93, it is not justified to grant them any compensation. However, the petitioners will get the cost of this petition, if pre-certified, to the tune of Rs. 25,000/-. With the aforesaid, the writ petition stands allowed.