REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11169 OF 2011

Darshan Lal Nagpal (dead) by L.Rs. … Appellants

versus

Government of NCT of Delhi and others … Respondents

J U D G M E N T

G. S. Singhvi, J.

1. The questions which arise for consideration in this appeal are whether the Government of NCT of Delhi could have invoked Section 17(1) and (4) of the Land Acquisition Act, 1894 (for short, 'the Act') and dispensed with the rule of hearing embodied in Section 5A(2) thereof for the purpose of acquiring land measuring 80 bighas 15 biswas including 21 bighas 3 biswas belonging to the appellants for a public purpose, namely, establishment of electric sub-station by Delhi Transco Limited (for short, 'DTL') at village Mandoli and whether the Division Bench of the Delhi

High Court had rightly negatived the appellants' challenge to the acquisition of their land.

2. For deciding the aforesaid questions, it will be useful to notice the events which led to the issue of notification dated 13.10.2009 under Section 4(1) read with Section 17(1) and (4) of the Act and declaration dated 9.11.2009 under Section 6(1) of the Act.

2.1 It is not clear from the pleadings of the parties and the record produced before the High Court and this Court as to when the decision was taken to establish 400/220 KV sub-station at East of Loni Road but this much is evident that by a communication sent in August, 2004, the DTL requested the Delhi Development Authority (for short, 'the DDA') for allotment of land. For the next about 10 months nothing appears to have happened. Between June and October, 2005 different functionaries of DTL made some correspondence inter-se in the matter of establishment of the sub-station. On 5/6.12.2005, Manager (400/220 KV SS&L) sent a communication to the Commissioner (Planning), DDA wherein he emphasized that establishment of the sub-station was necessary to meet the power demand of East Delhi and particularly the upcoming Commonwealth Games. In his reply dated 8.2.2006, Joint Director (MP), DDA informed the DTL that allotment of sites suggested by it is not

feasible because site 'A' was developed as a park and site 'B' was earmarked as a community centre.

2.2 Between January, 2006 and July, 2008, the officers of the DTL, the DDA and the Government of N.C.T. of Delhi exchanged letters on the issue of allotment of land for the sub-station. While the officers of DTL stressed the need for early allotment of land, the officers of the DDA repeatedly expressed their inability to allot the particular site by pointing out that the same was reserved for other purpose. On 28.07.2008, Secretary (Power), Government of NCT of Delhi-cum-CMD, DTL requested the DDA to change the land use of the particular site and inform the Government of N.C.T. of Delhi so that action could be taken for the acquisition of land under Section 17 of the Act. In that letter, it was also mentioned that due to paucity of land, the DTL has proposed to establish a GIS indoor type sub-station which could be accommodated in a space of about 200 x 125 meters as against the original requirement of 700 x 500 meters. The relevant portions of that letter are extracted below:

> "In pursuance of above, a meeting was held with Vice-Chairman, DDA on 06.05.2008 wherein a request was made for the allotment of land in East Delhi. Officers of Delhi Transco Limited, State Transmission Utility, along with Officers of DDA and the concerned ADM of the area had identified the land in their joint inspection held on 30th June, 2008. Copy of Khasra Nos. and their Report is enclosed as Annexure-I. However, in the meantime DDA informed that

> the land in question is not acquired by DDA. It was further informed that as per Master Plan, Agriculture/Green area can be utilized for Utilities. Copy of the letter No. F.6(4)2004/MP/D-127 dated 19.5.2008 is enclosed as Annexure-II. Since the establishment of the Grid Station is of paramount importance for strengthening the power supply in East Delhi, DDA is requested to change the land use and to inform GNCTD so that action be taken for acquisition of the same under Section 17, i.e., for the public utility.
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> Earlier it was proposed to construct an outdoor 400/200 KV Grid Station but keeping in view the paucity and availability of land DTL has now proposed to establish a GIS indoor type sub-station which could be accommodated in a space of about 200 x 125 meters. It shall be appreciated if appropriate directions are issued to the concerned officers for doing the needful expeditiously."
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> (underlining is ours)

2.3 After about one month, Joint Secretary (Power) sent communication dated 9.9.2008 to the Principal Secretary, Land and Building Department with the request that action may be initiated for the acquisition of the identified piece of land by invoking Section 17 of the Act. The relevant portions of that letter are extracted below:

> "Hon'ble Prime Minister of India has laid the foundation for 1500 KV gas based power plant at Bawana on 24.03.2008 being constructed by Pragati Power Corporation Limited, a company owned by Govt, of NCT of Delhi in order to evacuate and utilize the generation from this plant for the benefit of Delhi, a study was conducted by Central Electricity Authority which has recommended the establishment of a 220 KV substation in East Delhi for evacuation of power.

> Officers of Delhi Transco Limited along with officers of DDA and concerned ADM have identified the land measuring 200 M x 150 M in East Delhi for the proposed grid. Copy of Khasra Nos. and their report is enclosed at Annexure-1. Sketch showing broad location of the plot proposed to be acquired with Khasra Nos. of the proposed location is at Annexure-II. DDA has informed that the land in question is not acquired by DDA. However, as per Master Plan 2021, public utilities are permitted in all use zones. In this regard, a copy of Director (Planning) DDA letter dated 19.05.2008 is enclosed as Annexure-III. The proposed site has already been taken up with VC, DDA for change of land use (Annexure-IV).
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> The commissioning of 155 MW power plant at Bawana is scheduled before the Commonwealth Games in October-2010. Therefore, keeping in view the urgency involved, kindly initiate the process for acquisition of identified peace of land in East Delhi in favour of Department of Power, GNCTD as provided under section 17 of the Land Acquisition Act at the very earliest."
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> (underlining is ours)

Soon thereafter, the Land and Building Department sent letter dated 30.9.2008 to Additional District Magistrate-cum-Land Acquisition Collector (North-East) to send the following information/documents:

> "1. Draft notification u/s 4, 6 and 17 along with the copy of Aks Sizra, field book etc.
> 2. Report after conducting Joint Survey.
> 3. 80% estimated compensation amount with Calculation Sheet."

2.4 After about six months, Deputy General Manager (Planning-I), DTL sent letter dated 6.3.2009 to Deputy Secretary (Land Acquisition) and informed him that land measuring 250 x 200 sq. mts. with approach road will be required to accommodate the proposed three voltage level equipment as against the requirement of 200 x 125 sq. mts. indicated in the earlier communications. The concerned officer also requested that the acquisition of 80 bighas 15 biswas land may be finalized as per the joint site inspection carried out on 12.01.2009.

2.5 On its part, the DDA sent letter dated 8.5.2009 to the Deputy Secretary (Land Acquisition) that a joint site inspection be carried out for finalization of the site. However, the latter sent communication dated 16.6.2009 to the DDA to issue NOC required for initiation of the acquisition proceedings.

2.6 In September, 2009, the Land and Building Department of the Government of NCT of Delhi prepared proposal for the acquisition of land measuring 200 x 125 sq. mts. by invoking Sections 4 and 6 read with Section 17(1) and (4) of the Act. This is evident from the notings recorded in paragraphs 56 to 61 and 63 to 65 of file bearing No. F.S(11)/08/L&B/LA, which are extracted below:

> "56. A requisition was received from Joint Secretary (Power) Department of Power for acquisition of land measuring 200 x 125 Sq. m. identified in East Delhi for construction of 400 x 200 KV grid station (Village Mandoli) vide their letter No.

F.11(88)/2008/Power/2186 dated 09.09.2009 (P-6/C). Accordingly, the ADM/LAC (NE) was requested for draft notifications and other revenue records vide letter dated 30.09.2008 (P-7/C).

57. The ADM/LC (NE) vide his letter dated 31.01.2009 (P-28/C) forwarded draft notification u/s 4 & 6 (P-26 & 27/C) for acquisition of land measuring 80 Bigha 15 Biswa. Copy of Joint Survey Report (P-23/C), copy of Field Book (P-20/C), copy of Asks Sizra (P-19/C) and Calculation Sheet for estimated compensation amount (P-25/C).

58. The revenue staff scrutinized the draft notification and some discrepancies have been found. The report of revenue branch may be seen at page (P-5 & 6/N).

59. Accordingly, LAC (NE) was requested for clarification vide letter dated 2/3/09 (page-29/C). A clarification was given by LAC (NE) in aforesaid context and may be seen at P-32 to 39/C. Report of revenue branch may be seen at page 11 & 12/N. Letter dated 30/7/08 and 6/3/09 received from Delhi Transco Ltd. regarding change of proposal may be seen at P.30 and 31/C. Delhi Transco Ltd. has given the justification for the change of proposal regarding requirement of land, i.e., 80 Bigha 15 Biswa instead of 200 x 125 Sq.m.

60. Vide letter No.F.6(4)2004-MP/265 dated 7/9/09 Jt. Director (MP) DD has informed that DDA has no objection with respect to proposed location of land for establishing 400/200 KV ESS subject to compliance of the following conditions:-

a. Submission of a layout plan/location plan with description of the land under reference be submitted to ascertain the boundaries of the site.
b. Justification for an area of 6.8 hact. against 2.96 hact. required for establishment of 200/400 KV ESS as per MPD-2021 norms.
c. This is a Master Plan level utility for which change of land use will be processed after land is acquired.

d. Submission of transmission route alignment plan as the surrounding area is thickly populated.
e. The site shall not be used for any other purpose other than ESS.

61. As the matter is urgent and related to Commonwealth Games, if approved Hon'ble L.G. may be requested to kindly approve acquisition of land measuring 80 Bigha 15 Biswa as per the draft notifications placed opposite for acquisition of land for establishment of 400 x 200 KV sub-station in village-Mandoli and issuance of notification u/s 4 read with 17(4) and section 6 along with 17(1) of Land Acquisition Act, 1894.

63. May kindly see the proposal at page 21/N regarding acquisition of land measuring 80 Bigha 15 Biswa for construction of 400 x 200 KV grid station in village Mandoli. The proposal has been received from Power Department, Govt., of NCT of Delhi, which is available at page 6/C. It has been mentioned in the proposal that Hon'ble Prime Minister of India has laid the foundation stone for 155 MW gas based power plant at Bawana on 24-3-2008 which is being constructed by Pragati Power Corporation Limited, a company owned by Govt., of NCT of Delhi. It has been also mentioned in the proposal that to evacuate and utilize the generation from this plant for the benefit of Delhi, a study was conducted by Central Electricity Authority which has recommended the establishment of a 220 KV sub-station in East Delhi for evacuation of power. The Power Department has requested that the acquisition of the above said land may be proceeded with under the emergency provisions of the Land Acquisition Act because 1500 MW power at Bawana is scheduled to be commissioned before the Commonwealth Games, 2010.

64. The Land Acquisition Collector (N/E) has prepared a draft notification under section 4 & 6 (page 26 & 27/C) after conduction the Joint survey report along with concerned department and copy of the same is available at page 23/C along with relevant records. As per the joint survey available at page 22/C and 23/C it appears that entire land is laying vacant except to Bhattas (Brick Kiln) and boundary walls in 3 Khasras.

> The DDA has also provided no objection for acquisition subject to certain conditions as mentioned in letter dated 07-09-09, which is available at page 64/C.
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> 65. From the proposal of the Power Department it is clear that land is required for valid public purpose and urgent need for acquisition of the land has also been justified by the Power Department. Therefore, if approved, Hon'ble Lt. Governor may kindly be requested to approve acquisition of land measuring 80 Bigha 15 Biswa as per the draft notification placed opposite for the public purpose namely for establishing 400 x 200 KV grid sub-station for Power Department in Village-Mandoli and issuance of notification u/s 4 read with 17(4) and section 6 along with 17(1) of Land Acquisition Act, 1894."

2.7 The Lieutenant Governor of Delhi accorded his approval on 26.9.2009 in the following terms:

> "I have gone through the records and requirement of Delhi Transco Ltd. for acquisition of land for Establishment of 400x200 kv station at village Mandoli and the draft notifications prepared by LAC (North-East).
>
> I am fully satisfied that the land measuring 80 Bigha 15 Biswa is urgently required for above purpose. In view of the urgency of the scheme, I order that the provisions of section 5A shall not apply and notifications under section 4 read with 17(4), 6 & 17(1) of the Land Acquisition Act, 1894 be issued immediately.
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> Sd/-
> Tejendra Khanna
> Lt. Governor Delhi
> 26.09.2009."

3. In compliance of the direction given by the Lieutenant Governor, the Government of N.C.T. of Delhi issued notification dated 13.10.2009

under Section 4(1) read with Section 17(1) and (4) for the acquisition of 80 bighas 15 biswas land. The declaration issued under Section 6(1) was published vide notification dated 9.11.2009. By another notification of the same date, Land Acquisition Collector (North-East), Delhi was authorised to take possession of the land on the expiry of 15 days.

4. When the appellants learnt about the proposed acquisition of their land, they made a representation to the Member of the Legislative Assembly that as per Master Plan of Delhi-2021 only 29.6 bigha land was required for the sub-station and that barren land available in the area could be utilized for that purpose leaving out their land. The concerned Member of the Legislative Assembly forwarded the representation to the Government of NCT of Delhi on 28.4.2009 but the same did not yield the desired result and the notifications were issued under Section 4(1) read with Section 17(1) and (4) and Section 6(1) of the Act. Thereupon, the appellants filed Writ Petition No. 13376 of 2009 for quashing of notifications dated 13.10.2009 and 9.11.2009. The main plank of their challenge was that there was no urgency for the acquisition of land which could justify invoking of Section 17(1) and (4) of the Act. They pleaded that more than 4 years time spent in the correspondence exchanged between the DTL, the State Government and the DDA clearly shows that

there was no urgency in the establishment of the sub-station and the cause put forward by the DTL in 2008-2009, namely, the requirement of power for Commonwealth Games did not warrant invoking of Section 17(1) and (4) which resulted in depriving them of their property without being heard. The appellants further pleaded that the Lieutenant Governor had not applied mind on the issue of urgency and approved the proposal prepared by the Land and Building Department, Government of NCT of Delhi without satisfying himself that there was emergent need for the acquisition of land for the purpose for which the proposal had been initiated prior to August, 2004. The appellants also claimed that other parcels of land including waste land belonging to the public authorities and the Gaon Sabha were available, which could be utilized for establishing the sub-station but, without examining the feasibility of acquiring an alternative piece of land, the respondents arbitrarily deprived them of their property.

5. In the counter affidavit filed on behalf of the Government of NCT of Delhi and the Lieutenant Governor of Delhi it was averred that with a view to provide power to the city of Delhi, 1500 MW gas based power plant was being constructed at Bawana by a Government owned company, viz., Pragati Power Corporation Limited; that the plant is

scheduled to be commissioned in a time-bound manner in October, 2010 before the commencement of the Commonwealth Games; that in order to evacuate and utilize the power generated from the new plant for the benefit of Delhi, the Central Electricity Authority recommended establishment of 220 KV sub-station in East Delhi; that after identifying the land in question the Power Department of Government of NCT of Delhi made a request for initiation of the acquisition proceedings on urgent basis; that on receipt of letter dated 9.9.2008, instructions were issued to the Land Acquisition Collector to conduct a joint survey, prepare a draft notification and also make calculation of 80 per cent of the estimated compensation and that after taking all the necessary steps, a note was put up before the Lieutenant Governor, who approved the proposal for the acquisition of land under Section 4 read with Section 17(1) and (4) and also to dispense with the inquiry envisaged under Section 5A of the Act. It was also pleaded that the beneficiary of the acquisition deposited a sum of Rs.9,27,11,840/- towards 80 per cent of the estimated compensation as required by Section 17(3A) of the Act, which was remitted to the Land Acquisition Collector for payment. In Para 11 of the counter affidavit it was averred that there is an urgent need

of the land for the purpose of construction of sub-station by the DTL in the larger public interest.

6. In a separate written statement filed on behalf of the DTL it was pleaded that decision was taken by the Government to establish 400 / 220 KV grid sub-station to meet the growing demand of power in Delhi and the establishment of the sub-station was approved by Delhi Electricity Regulatory Commission vide order dated 16.6.2009. In paragraphs 5 to 7 of the counter affidavit of the DTL reference was made to the decision taken by the Government to construct 1500 MW Pragati III Power Plant at Bawana IPGCL; 2 x 490 MW Thermal Power Stations at Dadri and 1500 MW Thermal Station at Jhajjar and also to establish grid sub-stations for evacuation of power from different plants. According to the DTL, as per the Master Plan of Delhi-2021, the minimum land required for establishment of a conventional outdoor 400/220/66 KV sub-station is 60 acres but because of scarcity of land, it was decided to establish an indoor GIS sub-station and for that purpose 80 bighas land was required. It was also the pleaded case of the DTL that the appellants' land was identified after inspections carried out by the officers of the DDA, Land and Building Department, Land Acquisition Collector, Government of

NCT of Delhi and its own officers. In paragraphs 13, 14 and 15 of the counter affidavit of the DTL, the following averments were made:

> "13. That proposed 400KV sub-station cannot be established in the 30 bighas of Gram Sabha land. The said Gram Sabha land does not fulfill the complete purpose of the answering respondent because 80 bighas are required for the establishment of the proposed sub-station. Further, the said Gram Sabha's land does not give any entrance / exit point towards State Highway. Therefore, the acquisition of the said Gram Sabha's land does not serve any purpose.
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> 14. That Delhi Electricity Regulatory Commission, which is a statutory body of Govt. of NCT of Delhi vide its letter No. F.17(51)/Engg./DERC/2009-10/1074 dated 16.6.2009 granted investment approval of scheme for supply testing and commissioning of 400/220/66KV GIS sub-station at East of Loni Road to the tune of Rs. 250.24 crores. The true copy of the letter dated 16.6.2009 is marked and annexed as Annexure – E.
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> 15. Further the Power Grid Corporation of India Ltd. vide its letter dated 28.8.2009 addressed to the answering respondent emphasized on the urgency regarding the setting up and commission of the 400 KV sub-station East of Loni Road since the transmission line is being constructed for catering the additional load of Commonwealth Games, 2010 from 2 x 490 MW, NTPC Dadri Power Plant (under construction) and set the timeline of completion by June, 2010. It was further pointed out that location of Lone Road sub-station and coordinates of 400 KV switch yard gantry were urgently required for the completion of the survey work. the true copy of the letter dated 28.8.2009 is marked and annexed as Annexure – F. Therefore, it was a comprehensive scheme consisting of establishment of 400/220KV grid sub-station by the answering respondent whereas in feed i.e. 400 KV transmission line from Dadri Generating

Station upto the proposed grid sub-station at East of Loni Road."

7. The Division Bench of the High Court noticed the correspondence exchanged between the DTL, the DDA and the Government of NCT of Delhi and proceeded to observe:

"The only argument made was that urgency was because of ensuing Common Wealth Games and since those have already concluded, the urgency as seized to exist. This is a myopic view of the requirement for such a project. No doubt, endeavour was to establish the sub-station before the Commonwealth Games, 2010 but that was not the only reason for urgency. The primary reason for urgency was, and continuous to be, that the substation in East Delhi is needed to evacuate and utilize the power generated from 1500 MW Gas based Plant at Bawana which is being constructed. The urgency was, and continuous to exist, i.e. the need for adequate power supply to the residents of this city. This is an urgent need keeping in view the wide gap between the demand and supply. No doubt, the plans were to commission it before Common Wealth Games. That has not happened also because of the reason that stay was granted in these proceedings. Be as it may, it cannot be argued that merely because Common Wealth Games are over, the respondent authorities can now set up the sub-station leisurely. These are the aspects which are to be gone into by the Competent Authority while exercising powers under Section 17 (4) of the Act. Once it is seen that all relevant factors were taken into consideration and the Competent Authority was not influenced by any irrelevant consideration or the power exercised was not the result of malafide, the subjective satisfaction of the Competent Authority, based on those objective considerations namely the purpose of invocation of urgency clause to acquire continued to exist the Court would be loathe to interfere with such discretion exercised by the Competent Authority dispensing

with the enquiry under Section 5A of the Act."

8. The Division Bench of the High Court then referred to the judgments of this Court in First Land Acquisition Collector and Others v. Nirodhi Prakash Ganguli and Another, (2002) 4 SCC 160; Union of India & Others v. Praveen Gupta and Others (1997) 9 SCC 78; Nand Kishore Gupta and Others v. State of U.P. and Others (2010) 10 SCC 282 and of the High Court in Bijwasan Gram Vikas Samiti v. Lt. Governor and Others – WP(C) No. 1307/2010, decided on 5.10.2010 and negatived the appellants' challenge to the invoking of Section 17 of the Act. The Division Bench distinguished the judgments relied upon by the appellants' counsel by observing that those cases did not involve challenge to the acquisition of land for infrastructure projects meant for larger public interest. At the same time, the Division Bench referred to the judgments in Rajiv Joshi v. Union of India 2009 (159) DLT 214, Rajinder Kishan Gupta and another v. Lt. Governor, Government of NCT of Delhi 2010 (114) DLT 708, Sumit Import Services Ltd. and another v. Delhi Metro Rail Corporation and others 2008 (103) DRJ 263, M/s. A.B.Tools Ltd. and another v. Union of India WP (C) No.4611/1996, decided on 3.2.2010, Deepak Resorts v. Union of India 2008 (149) DLT 582, Ajay Kumar Sanghi v. Delhi Police 2009 (163)

DLT 74, Union of India and others v. Pramod Gupta (1997) 9 SCC 78, Sheikhar Hotels Gulmohar Enclave v. State of U.P. (2008) 14 SCC 716 and Jai Narain v. Union of India (1999) 1 SCC 9 in which the acquisition of land for Airport, construction of metro station/metro line, installation of LPG Bottling Plant, construction of sewage treatment plant, construction of police station, relocation of timber merchants outside the walled city and widening of National Highway by invoking the urgency provisions contained in Section 17 of the Act was upheld by the High Court and this Court.

9. Learned counsel for the parties reiterated the arguments made before the High Court. While Shri Dhruv Mehta relied upon the judgments of this Court in Anand Singh v. State of U.P. (2010) 11 SCC 242 and Radhy Shyam v. State of U.P. (2011) 5 SCC 553 to emphasize that the acquisition of land for establishment of 400/220 KV sub-station did not warrant invoking of the urgency provisions contained in the Act because the proposal for establishment of the sub-station was initiated more than five yeas prior to the issue of notification under Section 4(1) read with Section 17(1) and (4) of the Act and there was no justification to deprive the appellants of the right to be heard before being deprived of their property, Shri P.P. Malhotra, learned Additional Solicitor General argued

that the time consumed in the exchange of correspondence between the functionaries of the Government, the DTL and the DDA cannot be made a ground for nullifying the exercise of the State's power of eminent domain. In support of his argument, Shri Malhotra relied upon the judgments of Deepak Pahwa v. Lt. Governor of Delhi (1984) 4 SCC 308 and Chameli Singh v. State of U.P. (1996) 2 SCC 549. Shri Waziri, learned counsel for the DTL, supplemented the argument of learned Additional Solicitor General and submitted that the Court may not quash the acquisition of the appellants' land because the work for establishing the sub-station has been completed to a large extent. Learned counsel submitted that the appellants' land cannot be left out because the same is needed for construction of project road. Shri Waziri also submitted that the sub-station is required for evacuation of power which will be made available from the Dadri Power Plant and no other suitable land was available for the sub-station.

10. We have considered the respective arguments/submissions and carefully scrutinized the record including the documents made available during the course of hearing. The compulsory acquisition of land has generated enormous litigation in the country in last more than five decades and this

Court has been repeatedly called upon to adjudicate upon the legality of the notifications issued under the Act.

11. In State of U.P. v. Pista Devi (1986) 4 SCC 251, Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84, Jai Narain v. Union of India (supra), Union of India v. Praveen Gupta (supra), Land Acquisition Collector v. Nirodhi Prakash Ganguli (supra), Anand Buttons Ltd. v. State of Haryana (2005) 9 SCC 164, Tika Ram v. State of U.P. (2009) 10 SCC 689, Nand Kishore Gupta v. State of U.P. (2010) 10 SCC 282 and some other judgments, the acquisition of land under Section 4(1) read with Section 17(1) and 17(4) and some of the State amendments for different public purposes, i.e., for construction of houses for poor and the members of reserved categories, establishment of medical college, construction of sewage treatment plant under the Court's order and for construction of Express Way has been approved. As against this, the acquisition of land by invoking the urgency provisions for the public purposes, like, planned residential, commercial, industrial or institutional development has been disapproved in Narayan Govind Gavate v. State of Maharashtra (1977) 1 SCC 133, State of Punjab v. Gurdial Singh (1980) 2 SCC 471, Om Prakash v. State of U.P. (1998) 6 SCC 1, Union of India v. Mukesh Hans (2004) 8 SCC 14, Union of India v. Krishan Lal Arneja

(2004) 8 SCC 453, Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai (2005) 7 SCC 627, Essco Fabs (P) Ltd. v. State of Haryana (2009) 2 SCC 377, Babu Ram v. State of Haryana (2009) 10 SCC 115, Anand Singh v. State of U.P. (supra), Dev Sharan v. State of U.P. (2011) 4 SCC 769, State of West Bengal v. Prafulla Churan Law (2011) 4 SCC 537 , Radhy Shyam v. State of U.P. (supra) and Devender Kumar Tyagi v. State of U.P. (2011) 9 SCC 164 because the explanation given by the acquiring authority for invoking Section 17(1) and/or 17(4) was found to be wholly unsatisfactory or it was found that there was total non-application of mind by the competent authority on the question of necessity and desirability of invoking the urgency provisions.

12. Although, it is neither possible nor desirable to lay down any straight jacket formula which can be applied to each and every case involving challenge to the acquisition of land by invoking the urgency provision, it will be profitable to notice two recent judgments in which several judicial precedents including some of the judgments referred to in the impugned order have been considered and some concrete propositions have been laid down which could supply guidance for deciding such matters. In Anand Singh v. State of U.P. (supra), this Court considered the question whether the State Government could invoke Section 17(4) for the

acquisition of land for a residential colony to be constructed by Gorakhpur Development Authority, Gorakhpur. After noticing factual matrix of the case and about 16 judgments, the Court held:

"43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it.

45. It is true that power conferred upon the Government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose,

the judicial review of such administrative decision may become necessary.

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

47. The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that the decision in Pista Devi must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate. We agree.

48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has

been placed by the appropriate Government before the court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A."

13. In Radhy Shyam v. State of U.P. (supra), this Court considered challenge to the acquisition of land under Section 4(1) read with Section 17(1) and (4) for planned industrial development of District Gautam Budh Nagar by Greater Noida Industrial Development Authority and extensively referred to the judgment in Narayan Govind Gavate v. State of Maharashtra (1977) 1 SCC 133 and also adverted to other judgments, in which the importance of the rules of natural justice has been highlighted, and culled out the following principles:

"(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good – Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd., Charanjit Lal Chowdhury v. Union of India and Jilubhai Nanbhai Khachar v. State of Gujarat.

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

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to 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, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the

exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

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

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

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

14. What needs to be emphasized is that although in exercise of the power of eminent domain, the State can acquire the private property for public

purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his Constitutional right of not being deprived of his property without the sanction of law – Article 300A and the legal rights. Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of the Act because that results in depriving the owner of his property without being afforded an opportunity of hearing.

15. In the light of the above, it is to be seen whether there was any justification for invoking the urgency provisions contained in Section 17 (1) and (4) of the Act for the acquisition of the appellants' land. The Division Bench of the High Court accepted the explanation given by the respondents by observing that sub-station in East Delhi is needed to evacuate and utilize the power generated from 1500 MW gas based plant at Bawana. While doing so the Bench completely overlooked that there was long time gap of more than five years between initiation of the proposal for establishment of the sub-station and the issue of notification

under Section 4 (1) read with Section 17 (1) and (4) of the Act. The High Court also failed to notice that the Government of NCT of Delhi had not produced any material to justify its decision to dispense with the application of Section 5A of the Act. The documents produced by the parties including the notings recorded in file bearing No. F.S(11)/08/L&B/LA and the approval accorded by the Lieutenant Governor do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5A which represents two facets of the rule of hearing that is the right of the land owner to file objection against the proposed acquisition of land and of being heard in the inquiry required to be conducted by the Collector.

16. The scope of the rule of hearing, i.e., audi alteram partem was highlighted by the three-Judge Bench in Sayeedur Rehman v. State of Bihar (1973) 3 SCC 333 in the following words:

> "*11*. … This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right

decision than the practice of giving hearing to the affected parties.

17. In Maneka Gandhi v. Union of India (1978) 1 SCC 248 Bhagwati, J. speaking for himself and Untwalia and Fazal Ali, JJ. observed:

"*14*. … The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. *But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case*. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. *The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that 'natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances'. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise*."

(emphasis supplied)

18. In Mohinder Singh Gill v. Chief Election Commr.(1978) 1 SCC 405, Krishna Iyer, J. speaking for himself, Beg, C.J. and Bhagwati, J. observed as under:

> "*43*. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam—and of *Kautilya's Arthashastra*—the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."
>
> *"48*. Once we understand the soul of the rule as fair play in action—and it is so—we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more—but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an

> opportunity to present or meet a case. Textbook excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

19. In Swadeshi Cotton Mills v. Union of India (1981) 1 SCC 664 the majority of the three-Judge Bench held that the rule of *audi alteram partem* must be complied with even when the Government exercises power under Section 18-AA of the Industries (Development and Regulation) Act, 1951 which empowers the Central Government to authorise taking over of the management of industrial undertaking. Sarkaria, J. speaking for himself and Desai, J. referred to the development of law relating to applicability of the rule of *audi alteram partem* to administrative actions, noticed the judgments in Ridge v. Baldwin (1964) AC 40, A.K. Kraipak v. Union of India (1969) 2 SCC 262, Mohinder Singh Gill v. Chief Election Commr. (supra), Maneka Gandhi v. Union of India (supra) and State of Orissa v. Dr. Binapani Dei (1967) 2 SCR 625 and quashed the order passed by the Central Government for taking over the management of the industrial undertaking of the appellant on the ground that opportunity of hearing has not been given to the owner of the undertaking and remanded the

matter for fresh consideration and compliance with the rule of *audi alteram partem.*

20. In Munshi Singh v. Union of India (1973) 2 SCC 337, the three-Judge Bench of this Court emphasised the importance of Section 5-A in the following words:

> "7. … Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

21. It is also apposite to mention that no tangible evidence was produced by the respondents before the Court to show that the task of establishing the sub-station at Mandoli was required to be accomplished within a fixed schedule and the urgency was such that even few months time, which may have been consumed in the filing of objections by the land owners and other interested persons under Section 5A(1) and holding of inquiry by the Collector under Section 5A(2), would have frustrated the project.

It seems that the Bench of the High Court was unduly influenced by the fact that consumption of power in Delhi was increasing everyday and the DTL was making an effort to ensure supply of power to different areas and for that purpose establishment of sub-station at village Mandoli was absolutely imperative. In our view, the High Court was not justified in rejecting the appellants' challenge to the invoking of urgency provisions on the premise that the land was required for implementation of a project which would benefit large section of the society. It needs no emphasis that majority of the projects undertaken by the State and its agencies / instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated under Section 5A, which would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small

delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard. It appears that attention of the High Court was not drawn to the following observations made in State of Punjab v. Gurdial Singh (supra):

> "it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

22. A recapitulation of the facts would show that the idea of establishing 400/220 KV sub-station was mooted prior to August, 2004. For next almost three years, the officers of the DTL and the DDA exchanged

letters on the issue of allotment of land. On 28.7.2008 Secretary (Power), Government of NCT of Delhi-cum-CMD, DTL made a suggestion for the acquisition of land by invoking Section 17 of the Act. This became a tool in the hands of the concerned authorities and the Lieutenant Governor mechanically approved the proposal contained in the file without trying to find out as to why the urgency provisions were being invoked after a time gap of five years. If the sub-station was to be established on emergency basis, the authorities of the DTL would not have waited for five years for the invoking of urgency provisions enshrined in the Act. They would have immediately approached the Government of NCT of Delhi and made a request that land be acquired by invoking Section 17 of the Act. However, the fact of the matter is that the concerned officers / functionaries of the DTL, the DDA and the Government of NCT of Delhi leisurely dealt with the matter for over five years. Even after some sign of emergency was indicated in letter dated 9.9.2008 of the Joint Secretary (Power), who made a mention of the Commonwealth Games scheduled to be organised in October, 2010, it took more than one year and two months to the competent authority to issue the preliminary notification. Therefore, we are unable to approve the view taken by the High Court on

the sustainability of the appellants' challenge to the acquisition of their land.

23. Before concluding we deem it appropriate to notice the judgments relied upon by the learned Additional Solicitor General. A cursory reading of the judgment in Deepak Pahwa v. Lt. Governor of Delhi (supra) (3-Judge Bench) gives an impression that the proposition contained therein supports the argument of Shri Malhotra, that pre-notification delay is not relevant for deciding legality of the exercise of the State's power of eminent domain and invoking of the urgency provisions contained in the Act but careful reading of the judgment along with the precedents referred to in paragraph 8 makes it clear that nothing contained therein can be relied upon for overlooking the time gap of five years between the initiation of proposal for establishment of the sub-station and the issue of notification under Section 4(1) read with Section 17 (1) and (4) of the Act. That case involved challenge to the acquisition of land for construction of 'New Transmitting Station for the Delhi Airport'. The High Court dismissed the writ petition in limine. The special leave petition was also dismissed at the threshold. While dealing with the argument that there was no justification to invoke Section 17(4) of the Act and to dispense with the inquiry under Section 5A because eight

years time was spent in inter-departmental discussions, this court observed:

> "The other ground of attack is that if regard is had to the considerable length of time spent on inter-departmental discussion before the notification under Section 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the enquiry under Section 5-A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void. We however wish to say nothing about post-notification delay. In Jage Ram v. State of Haryana (1971) 1 SCC 671 this Court pointed out the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. In Kasireddy Papaiah v. Government of Andhra Pradesh, AIR 1975 AP 269 it was held, "… delay on the part of tardy officials to take the further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency". In the result both the submissions of the learned counsel for the petitioners are rejected and the special leave petitions are dismissed."
>
> (underlining is ours)

In making the aforesaid observation, the Court appears to have been unduly influenced by what was perceived at the relevant time as pulling of strings in the power corridors by the interested persons which resulted in frustration of the public oriented projects. The general observations made in Deepak Pahwa's case cannot supply basis for approving the impugned order and the notifications challenged by the appellants because it is neither the pleaded case of the respondents nor it has been suggested that the delay was caused due to the representation made by the appellants or that they brought extraneous pressure to prevent the acquisition of their land.

24. We may now notice the two decisions referred to in paragraph 8 of the judgment in Deepak Pahwa's case. In Jage Ram v. State of Haryana (1971) 1 SCC 671 the acquisition of land for setting up a factory for the manufacture of China-ware, Porcelain-ware including wall glazed tiles, etc., at the instance of a private industrialist by invoking Section 17(2)(c) of the Act (as amended by Haryana Legislature) was challenged. The State Government had issued notification dated 14/17.03.1969 under Section 4 of the Act. Simultaneously, a direction was given for taking action under Section 17(2)(c) and it was declared that the provisions of Section 5A shall not apply. On 8.4.1969 the appellants filed writ petition, which was dismissed by the High Court. This Court negatived the

challenge to the invoking of the urgency provisions by making the following observations:

> "The allegations in the writ petition include the assertion that there was no urgency in the matter of acquiring the land in question and therefore there was no justification for having recourse to Section 17 and thus deprive the appellants of the benefit of Section 5-A of the Act. It was further alleged therein that the acquisition in question was made for the benefit of a company and hence proceedings should have been taken under Sections 38 to 44(B) of the Act and that there was no public purpose involved in the case. It was further pleaded that the land acquired was not waste and arable land and that Section 2(c) of the Act did not confer power on the Government to dispense with the proceedings under Section 5-A. In the counter-affidavit filed by the Deputy Director of Industries (Administration), Government of Haryana on behalf of the State of Haryana, the above allegations were all denied. Therein it is stated that at the instance of the State of Haryana, Government of India had issued a letter of intent to a company for setting up a factory for the manufacture of Glazed Tiles etc. in village Kasser. That project was to be started with the collaboration of a foreign company known as Pilkington Tiles Ltd. The scheme for setting up the project had been finalised and approved by the concerned authorities. On November 26, 1968, the Government wrote to one of the promoters of the project, Shri H.L. Somany asking him to complete the "arrangements for the import of capital equipment and acquisition of land in Haryana State for setting up of the proposed factory". It was further stated in that communication that the Government was pleased to extend the time for completing the project up to April 30, 1969. Under those circumstances it had become necessary for the State of Haryana to take immediate steps to acquire the required land. It was under those circumstances the Government was constrained to have recourse to Section 17 of the Act. The Government

denied the allegation that the facts of this case did not come within the scope of Section 17(2)(c). It was also denied that the acquisition in question was not made for a public purpose.

There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialisation of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not: see Smt Somavanti v. State of Punjab and Raja Anand Brahma Shah v. State of U.P. On the facts of this case there can be hardly any doubt that the purpose for which the land was acquired is a public purpose.

Now coming to the question of urgency, it is clear from the facts set out earlier that there was urgency. The Government of India was pleased to extend time for the completion of the project up to April 30, 1969. Therefore urgent steps had to be taken for pushing through the project. The fact that the State Government or the party

> concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the Government in a given case that there was urgency is entitled to weight, if not conclusive."

There is nothing in the aforesaid judgment which can possibly support the cause of the respondents. The scheme for setting up an industry by a company known as Pilkington Tiles Ltd. of which one H.S. Somany was a promoter was finalized on 26.11.1968 and the notification was issued on 14/17.3.1969. This shows that the time gap between finalization of the scheme and the issue of preliminary notification was less than four months. Therefore, the judgment in Jage Ram's case could not have been relied upon for taking the view that pre-notification delay cannot be considered while deciding legality of the State's action to invoke the urgency provisions. That apart, we have serious reservation whether the Court could have approved the invoking of urgency provisions for the acquisition of land on behalf of a private company ignoring that there is a separate Chapter for such acquisition.

25. In Kasireddy Papaiah v. Government of A.P. AIR 1975 AP 269 to which reference has been made in the judgment of Deepak Pahwa's case, the learned Single Judge (Chinnappa Reddy, J., as he then was) rejected the challenge to the acquisition of land under Section 4(1) read with Section

17(4). The facts of that case show that notification under Section 4(1) read with Section 17(4) was issued on 19.5.1970 and was published in the official gazette dated 24.9.1970. The declaration under Section 6 was published in official gazette dated 25.2.1971. The writ petition was filed on 16.9.1971. The High Court held that the time gap of six months was not fatal to the invoking of the urgency provisions because the land was acquired for providing house sites to the Harijans. There is nothing in that judgment which merits serious consideration by this Court.

26. In Chameli Singh v. State of U.P. (supra) this Court simply followed the observations made by the learned Single Judge of the Andhra Pradesh High Court in Kasireddy Papaiah's case and held that the acquisition of land for providing housing accommodation for Harijans did warrant invoking of the urgency provisions and delay by the officials cannot be made a ground to nullify the acquisition. There is no particular discussion in the judgment about the time lag between the proposal for the acquisition of land and the issue of notification under Section 4(1) read with Section 17(1) and (4). Therefore, that judgment is also of no assistance to the respondents.

27. It is also appropriate to mention that in paragraph 48 of the judgment in Anand Singh v. State of UP (supra) this Court did take cognizance of the conflicting views expressed on the effect of pre-notification and post-notification delay on the invoking of urgency provisions and observed that such delay will have material bearing on the question of invocation of urgency power, particularly, when no material is produced by the appropriate Government to justify elimination of the inquiry envisaged under Section 5A.

28. In the result, the appeal is allowed and the impugned order is set aside. As a corollary, the writ petition filed by the appellants is allowed and the acquisition of their land is quashed. However, it is made clear that this judgment shall not preclude the competent authority from issuing fresh notification under Section 4(1) and taking other steps necessary for the acquisition of the appellant's land. If the respondents initiate fresh proceedings for the acquisition of the appellants' land then they shall be free to file objections under Section 5A(1) and they shall also be entitled to be heard in the inquiry to be conducted by the Collector in terms of Section 5A(2) of the Act. The parties are left to bear their own costs.

……J.
[G.S. Singhvi]

.....J.
[Sudhansu Jyoti Mukhopadhaya]

New Delhi
January 3, 2012.