

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9647/2009 & CM 7710/2009**

Reserved on: 2nd September, 2009

Pronounced on: 8th September, 2009

RAJINDER KISHAN GUPTA & ANR. Petitioners

! Through: Mr. Maninder Singh, Sr.
Advocate with Mr. Vivek Singh and Mr.
Manish Kaushik, Advocates.

Versus

\$ LT.GOVERNOR,GOVT. OF N.C.T. OF DELHI & ORS
..... Respondents

^ Through: Mr. V.K. Tandon for Forest Deptt.
GNCT, Mr. Yatinder Chaudhary, Adv. for R-
2/UOI, Mr. Tarun Johri and Mr. Ankur
Gupta, Advocates for DMRC, Mr. Pawan
Mathur, Advocate for DDA, Mr. Sanjay
Poddar, Advocate for LAC.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

V.K.Jain, J.

A Notification dated 24.10.1961 was issued under Section 4(1) of Land Acquisition Act, to acquire vast chunk of agricultural land in Delhi for planned development of Delhi. The notification covered land of the petitioners in Village Mehrauli. Declaration under Section 6 of Land Acquisition Act (hereinafter referred to as "the Act") in respect of the aforesaid land was issued on 4th January, 1969. After filing objections and claims pursuant to the notice dated 26.4.83, issued under Section 9 of Land Acquisition Act, the petitioners filed Civil Writ Petition No. 1129 of 1983, challenging the validity of the acquisition proceedings. The Writ Petition filed by the petitioners having been dismissed by this court on 15th April, 2004, they filed Review Petition No. 253 of 2004 which also was dismissed by this court vide order dated 13th August, 2004. The petitioner preferred Civil Appeal No. 2418-2419/2008 before the Hon'ble Supreme Court and vide order dated 24.01.2005, the Hon'ble Supreme Court granted status quo in respect of possession of land in question.

2. In October 2008, Delhi Metro Rail Corporation Limited (hereinafter referred to as "DMRC"), filed an application being I.A. No 1 and 2 of 2008 in Civil Appeal No. 2418 – 2419/2008, seeking impleadment in the appeal and vacation of stay orders dated

24.1.2005 and 31.3.2008 on the ground that land admeasuring 26,187 Sq mtr was required urgently for construction of Chattarpur Metro Railway Station on Qutub Minar – Gurgaon Corridor of MRTS, which was scheduled to be commissioned in January 2010 and was held up on account of inability expressed by DDA to allot the said land to DMRC, due to stay orders passed by the Hon'ble Supreme Court. It was further stated in the application that timely execution of the work being necessary on account of approaching Commonwealth Games 2010 in Delhi, the land was required by DMRC on an urgent basis. It was also stated in the application that DMRC proposes to construct Chattarpur Metro Railway Station including Running Section, Entry/Exit Area, road Modification and Staircase of Foot Bridge, Viaduct, Traction Sub Station on the aforesaid land. A copy of the map showing total area of land required for construction of Chattarpur Metro Railway Station was enclosed with the application as Annexure-A. It was also stated in the application that the route proposed for the construction of Phase-II of the Project between Qutub Minar – Gurgaon corridor had been thoroughly investigated and the same had been proved to be the most feasible route economically and for the purposes of the ridership etc etc.

3. Vide order dated 17th November, 2008, the Hon'ble Supreme Court directed as under:

"Impleadment allowed.

In the matters order of status quo has been running from 24th January, 2005.

I.A. Nos. 3 and 4 have been preferred by Delhi Metro Rail Corporation Limited. From the I.A., it appears that Delhi Metro Rail Corporation Limited requires urgently an area admeasuring 2.6 hectares (approximately) for Chhatarpur Railway Station.

Having heard learned counsel on both sides, we hereby clarify that the order of status quo passed by this court will not come in the way of Delhi Metro Rail Corporation Limited proceeding with fresh acquisition in accordance with law.

I.A. accordingly stand disposed of.

We make it clear that rights and contentions on both sides with regard to fresh acquisition are expressly kept open."

4. An application dated 19th January 2009 was filed by respondents No. 2 and 3 before the Hon'ble Supreme Court for modification of its order dated 17.11.2008. It was stated in Para 12 of the application that notification issued by Delhi Government

for acquisition of land in question had neither lapsed nor was it withdrawn by the Government and therefore another notification could not be issued afresh in respect of the same land. Respondents No. 2 and 3 felt aggrieved by the order dated 17.11.2008 to the extent it directed "fresh" acquisition. They sought deletion of the word "fresh" from the order dated 17th November, 2008. DMRC also filed an application stating therein that it required the land in question on an urgent basis for timely implementation of DMRC project which was required to be commissioned before Commonwealth Games 2010 and had no objection to the application of Respondents No. 2 and 3 for modification of the order dated 17.11.2008.

5. The applications were disposed of by the Hon'ble Supreme Court vide order dated 23rd February, 2009 which reads as under:

"Order dated 17th November, 2008 needs no clarification. It is expressly passed in the I.A. of Delhi Metro Rail Corporation.

Applications for modification of Court's Order dated 17th November, 2008 are disposed of accordingly. WE clarify that the said Order was passed only because Delhi Metro Rail Corporation wanted to acquire a portion urgently on payment of compensation at the current rate. Hence, we used

the word “fresh” in the said Order. The said Order was passed not in the main matter and not in the I.A. Therefore, Order dated 17.11.2008 is not a direction. It does not affect the case of the parties in the Civil Appeal.”

6. On June 6, 2009, Respondent No. 3 published a notification dated June 2, 2009 under Section 48 of Land Acquisition Act, withdrawing its earlier notification for acquisition of land in question. A fresh notification dated June 4, 2009 was published on June 7, 2009 exercising powers under Section 4 read with Section 17(1) (4) of the Act seeking to acquire land of the petitioners. The notification dated 4.6.09 has been challenged in the present petition.

7. In his counter affidavit dated 2nd July, 2009, Respondent No. 5, LAC, has alleged that at the time of passing of orders dated 17.11.2008 and 23.2.2009, the Hon'ble Supreme Court was fully appraised of the facts and the only issue which was required to be decided at that point of time was as to whether compensation as prevalent in the year 1961 was to be paid or current market price was to be paid to the petitioners and since the Hon'ble Supreme Court declined the request for deletion of word “fresh” from the order passed by it, the only inference was that the petitioner was to be paid compensation as per the current market price. It has

been further alleged that the request of DMRC for acquisition of 28 Bighas 5 Biswa of land in Chhatarpur for Metro Station, to expand the line to Gurgaon before the Commonwealth Games, was considered in an urgent meeting held by the Chief Secretary on 5th March, 2009. The Lieutenant Governor vide his order dated 18.5.2009 was pleased to direct the issuance of Section 4 notification of the Act read with Section 17(1). Since the Lt. Governor was also satisfied that the land was urgently required by DMRC, the filing of objection under Section 5A was dispensed with. The Lt. Governor also granted approval for release of land in question under Section 48 of the Act, from the purview of the notification issued in the year 1961. Therefore, first notification was issued under Section 48 of the Act on 2.6.2009 whereby the land in question was released from acquisition initiated vide notification dated 24.10.1961. The second notification was issued on 4.6.2009 under Section 4 read with Section 17(1) of the Act seeking to acquire the land in question for public purpose namely for construction of Qutub-Minar – Gurgaon Corridor Delhi MRTS Project, Phase-II and both the notifications were duly published. It has also been stated in the reply that Government is paying current market price to the petitioners. It has been further stated that land in question is coming in the alignment of metro line and

it is not possible to shift the Metro Station and the competent authority was fully aware of this fact while granting the approval for invocation of urgency clause. It has been averred that there is no undue delay in undertaking commission as the file remained under active consideration of the Government and the notifications were issued after complying with all the formalities required under the law.

8. In its reply dated 13.6.2009, Respondent No. 6, DMRC alleged that it had earlier approached the Central Empowered Committee (CEC), constituted under the directions of the Hon'ble Supreme Court, seeking permission to construct Chhattarpur Station and Electric Sub Station on DDA land. Since the DDA land was a notified Forest land, the CEC recommended for the shifting the location of the Electric Sub Station from forest land to the land of the petitioners, that being a non forest land. It has been alleged that each portion of the land of the petitioners is essential for the construction of the Chhattapur Station and the Electric Sub Station. It has been further stated that there is no provision in Metro Railway (Construction of Works) Act, 1978 for acquisition of the land on an urgent basis and therefore, resort to the provisions of the Section 17 of the Land Acquisition Act, is completely legal and valid.

9. Respondents No. 1, 3 and 4 i.e. Lt. Governor, Govt. of NCT of Delhi and Land and Building Department, also filed a counter affidavit dated 1.7.09 taking pleas identical to the pleas contained in the counter affidavit of Respondent No. 5. It has been stated in the counter affidavit of Respondents No. 1, 3 and 4 that after meeting taken by him on 5.3.09, the Chief Secretary vide his note dated 28.4.09 sought approval for issuance of requisite notifications under the provisions of Land Acquisition Act. The Lt. Governor thereupon desired that the Government should first try to seek vacation of stay order from the Hon'ble Supreme Court for early disposal of the case pending before it. However, looking into the urgency involved in the matter, the Chief Secretary vide his note dated 30.4.09, again requested the Lt. Governor for issuance of notification under the provisions of Land Acquisition Act. The Lt. Governor thereupon directed the issuance of notification under Section 4 read with Section 17(1) of the Act vide order dated 18.5.09 and since he was satisfied that the land was urgently required by DMRC, the right to file objection under Section 5A was also dispensed with. It has been further stated that DMRC has already deposited a sum of Rs. 3,28,56,687.49 with the Government being 80% of the estimated compensation as required under Section 17(3A) of the Act. It has been alleged that there

was no delay in issuance of notification as the file was to be processed at various levels and report from Government counsels appearing before the Hon'ble Supreme Court was also to be sought before taking a decision on the request of DMRC dated 19.11.2008 for issuance of a fresh notification under the provisions of Land Acquisition Act. Since issuance of a fresh notification would have resulted in payment of additional compensation to the land owners, it was desired, in order to save public money, that an appropriate application be made to the Hon'ble Supreme Court in the mean time. In the mean time, report was also sought from the Revenue Department. As the Hon'ble Supreme Court declined to modify its order, steps to initiate fresh acquisition proceedings were taken and notifications were issued after detailed consultations and obtaining necessary approvals. It has also been alleged that land in question cannot be excluded from acquisition and Metro Station cannot be shifted to some other land. In its counter affidavit dated 28.7.09, respondent DDA has stated that DMRC had requisitioned for the requirement of 27584 sq. mtr. of land at Chhattarpur in connection with construction of Qutub Minoar – Gurgaon Corridor of Delhi MRTS project, Phase-II vide its letter dated 13.12.2007. It has been further alleged that between the land of DDA and the land allotted to DMRC, there is

another land, acquisition of which is under challenge before the Hon'ble Supreme Court. It has been stated that though the land sought by DMRC was the land with respect to which acquisition proceedings were under challenge in Civil Appeal No. 2418-19 of 2008 and Civil Appeal No. 2729 of 2008, the DDA was of the view that land measuring 4331 sq. mtr was free from challenge to the acquisition and the same was therefore allotted to the DMRC vide letter dated 4.7.08. It later transpired, at the time of handing over of possession to DMRC that, in fact, the land allotted to DMRC was subject matter of the appeal pending before the Hon'ble Supreme Court. After a meeting, chaired by Chief Secretary on 5.3.09 to consider the acquisition of land for DMRC, a joint survey of the land was carried out and pursuant thereto, a afresh notification was issued on 4.6.09.

10. Since there was dispute between the parties as to whether land of DDA available in the vicinity was forest land or not, Chief Conservator (Forest) and Director (Land Management-I) of DDA were directed to make spot inspection in the presence of officials of DMRC and the petitioners and affidavits were directed to be filed by Chief Conservator (Forest) and DDA.

11. An action taken report was filed by Conservator of Forests on 18th August, 2009 after carrying out joint inspection in terms of

our directions dated 11th August, 2009. The copies of Zonal Plan of Zone “J” of DDA and Total Station Method (TSM) Survey map of village Mehrauli was available to the officers who carried out the inspection. The petitioners were also present at the time of inspection. It has been reported in the Action Taken Report that the subject land, as mentioned in notification dated 4.6.09, is situated on the tri-junction of Aurobindo Marg, Mehrauli – Mahipalpur Road and Mehrauli-Gurgaon Road in village Mehrauli and a part of the Regional Park and Reserved Forest in South Central Ridge as per MPD 2021 and notification dated 24.5.94. It has been further stated that Central Empowered Committee also recommended use of 2.3 hectare of above subject land falling in Delhi Ridge area for construction purpose, which was accepted by the Hon’ble Supreme Court vide its order dated 23.3.07. It has been alleged that 1.9 hectare of adjacent DDA land situated on Mehrauli – Gurgaon Road has been partly used by DMRC for construction of the Viaduct for the elevated metro line and casting yards. The land, presently, used as casting yard, has been earmarked for development of parking space for Chhatarpur Station, after the metro construction work is over. Government of India, on the recommendation made by Central Empowered Committee and the approval of Hon’ble Supreme Court vide order

dated 23.3.07, has allowed DMRC to use this 1.9 hectare of land which is part of 5.56 hectare of notified Reserved Forest land in the Ridge under Section 2 of the Forest (Conservation) Act, 1980, for non-forestry use. The Central Empowered Committee has also recommended temporary non-forestry use of another 2.17 hectare of DDA land by DMRC, which is adjacent to the above said diverted land for a period of three years with the condition that no tree shall be removed from the said land, and after completion of the project, this part of the land shall be restored to its original condition. It has accordingly been reported by Conservator of Forest that the subject land as well as DDA land adjacent to it are situated within its boundary of Reserved Park as per MPD 2021 and the Reserved Forest in the South-Central Ridge as per the notification dated 24.5.94. The boundaries of the Reserved Forest as notified vide notification dated 24.5.94 and that of the Regional Park mentioned in MPD 2021 are the same. Being Government land situated within the boundary of Regional Park / Reserved Forest in South Central Ridge, the adjacent DDA land is, therefore, a forest land, part of which has already been utilised by Delhi Metro Rail Corporation for non-forestry use.

12. An affidavit was filed by Director – L.M.-H.Q., DDA on 19th August, 2009. In his affidavit, he stated that pursuant to

directions of this court, a joint inspection was carried out on 12.8.09 on the basis of Zonal Development Plan for Zone-‘J’ as well as plan of Forest Department, it was clarified that land in question before this court as well as land of DDA falls within the Regional Park and Reserved Forest in South-Central Ridge. The Aks Shajra of the area is filed as Annexure R7-A with the affidavit. It has been stated that the portion shown in red colour is the land in dispute whereas the portion shown in blue colour (4.64 acres) is allotted to DMRC, portion shown in green colour (4.06 acres), is DDA land, possession of which is with DDA. It has been further stated that the portion shown in yellow colour in the Annexure – R7-A is under litigation under SLP (C) No. 14047/05 and DDA has given an undertaking to the Supreme Court on 18.11.2005 that it still not deal with this land nor create any third party interest on it. The area shown in yellow colour measures 8.87 acres.

13. The acquisition has been assailed before us on the following grounds:

(i) the orders of Hon’ble Supreme Court dated 24.1.05 and 31.3.2008 envisaged acquisition of land in question by DMRC under Metro Railway (Construction of Works) Act, 1978 and therefore acquisition under the provisions of Land Acquisition Act was not permissible

(ii) *De hors* orders of the Hon'ble Supreme Court, Land for the purpose of DMRC can be acquired only under Metro Railway (Construction of Works) Act, 1978;

(iii) There was no ground to invoke urgency clause under Section 17 of Land Acquisition Act as the respondents were guilty of delay and did not take steps before October 2008 to obtain possession of land in question and even after fresh acquisition was allowed by the Hon'ble Supreme Court, the respondents did not move expeditiously as the notification came to be issued more than three months after the order of Hon'ble Supreme Court;

(iv) There was no ground for dispensing with the issue of notice as envisaged under Section 5A of Land Acquisition Act as the respondents could have concluded the inquiry well in time had they acted with expedition;

(v) Since land belonging to DDA is available in the vicinity and the project report approved by the Government of India for this Section of MRTS envisages use of Government land, the DDA land and not the land of the petitioners should be made available to DMRC.

14. A perusal of the application filed by DMRC before the Hon'ble Supreme Court in Civil Appeal No. 2418-2419 of 2008

would show that no request was made by it for permission to acquire land in question under the provisions of Metro Railway (Construction of Works) Act, 1978. The prayer made was to implead it as a party and vacate the status quo orders. The Hon'ble Supreme Court vide order dated 17.11.2008 clarified that the order of status quo would not come in the way of DMRC proceeding with a 'fresh' acquisition. Since no acquisition by DMRC under the provisions of Metro Railway (Construction of Works) Act, 1978, existed at that time there could be no question of its initiating a 'fresh' acquisition. Acquisition by the Government under the provisions of Land Acquisition Act was, however, in force at the time of passing of this order. In these circumstances, use of the word 'fresh acquisition' in our view, in the order of Hon'ble Supreme Court dated 17.11.08 implied that DMRC could acquire the land through the Government, by way of a fresh acquisition, by the Government.

15. We have also perused the applications of Respondents No. 2 and 3 as well as the application of DMRC before the Hon'ble Supreme Court for modification of the order dated 17.11.08. The plea of respondents No. 2 and 3 before the Hon'ble Supreme Court was that since the notification already issued by the Government was still in force and had neither lapsed nor been quashed or

withdrawn, another notification in respect of the same land could not be issued afresh. They accordingly sought deletion of the word 'fresh from the order passed by the Hon'ble Supreme Court. There was no reference to any acquisition by DMRC under Metro Railway (Construction of Works) Act, 1978 in this application. It is thus obvious that respondents No. 2 and 3 also interpreted the order the Hon'ble Supreme Court dated 17.11.08 to be an order for fresh acquisition by them under the provision of Land Acquisition Act. In its application for modification of order dated 17.11.2008, the DMRC informed the Hon'ble Supreme Court that when it approached the land and building department of Government of NCT for issuance of a fresh notification with respect to land in question, it was informed that the department was unable to proceed further to issue fresh acquisition in this matter as previous notification was still operative and had not been quashed. The DMRC conveyed its no objection to the application filed by Respondents No. 2 and 3. Thus, the application of DMRC also did not contain any reference to acquisition under the Metro Railway (Construction of Works) Act, 1978. In fact, the application made it quite clear that it was seeking fresh acquisition through Government of NCT of Delhi and had already approached its Land & Building department for this

purpose. Thus, acquisition by DMRC under the provisions of Metro Railway (Construction of Works) Act, 1978 was not even in contemplation either of the Government or of the DMRC, when they filed this application and both of them were referring to acquisition by Government of NCT of Delhi under the provisions of Land Acquisition Act only. During the course of arguments, we inquired from the petitioners as to whether they had filed any reply to the applications for modification of the order dated 17.11.08 and if so, whether in the reply they had taken the stand that the Hon'ble Supreme Court had permitted acquisition under the Metro Railway (Construction of Works) Act, 1978 and not a fresh acquisition under the provisions of Land Acquisition Act. We were informed that no reply to these applications was filed by the petitioners. Thus, despite, an opportunity to do so, the petitioners did not say, before the Hon'ble Supreme Court, that the order dated 17.11.2008 envisaged acquisition under the provisions of Metro Railway (Construction of Works) Act, 1978 and not under the provisions of Land acquisition Act. The inevitable inference is that the petitioners also understood the order of Hon'ble Supreme Court dated 17.11.08 as an order permitting fresh acquisition under the provisions of Land Acquisition Act and did not interpret it as an order permitting acquisition taking recourse to the

provisions of Metro Railway (Construction of Works) Act, 1978. It has been alleged by the petitioners that the counsel for DDA had informed DDA, after court hearing that acquisition was permitted under the Metro Railway (Construction of Works) Act, 1978. We don't have any letter of the counsel on record. More importantly, the applications filed by Govt. & DMRC who were the concerned agencies, show that in their interpretation, the order envisaged fresh acquisition by the Government.

16. Vide order dated 23.2.2009, the Hon'ble Supreme Court clarified that order dated 17.11.2008 was passed by it only because DMRC wanted to acquire land urgently on payment of compensation of current rate and that is why they had used the word 'fresh' in the order. Since there is no provision for acquisition of land on urgent basis in the Metro Railway (Construction of Works) Act, 1978, the Hon'ble Supreme Court while passing the order dated 17.11.08 and 23.2.2009 could not have intended acquisition under the Metro Railway (Construction of Works) Act, 1978. Permitting acquisition on urgent basis leaves no doubt as regards the Act which was to be resorted to for fresh acquisition of land. Therefore, we find no merit in the contention of the petitioners in this regard.

17. Now we come to the second contention of the petitioners that *de hors* the order of Hon'ble Supreme Court, the acquisition for the purpose of DMRC is permissible only under the provisions of the Metro Railway (Construction of Works) Act, 1978. The question whether acquisition under Land Acquisition Act is permissible or not, when there is a parallel Act envisaging acquisition for a special purpose, has been subject matter of judicial pronouncements from time to time.

In ***S.S.Darshan versus State of Karnataka and Others***, AIR (1996) SC 671, land was sought to be acquired under Section 4(1) read with Section 17 of Land Acquisition Act, for establishment of a technological park which was a joint venture project of Karnataka Industrial Area Development Board. Power of acquisition was also available to the Government under Karnataka Industrial Areas Development Act, 1966. Karnataka Act did not contain emergency provision and it was, therefore, contended before the Hon'ble Supreme Court that acquisition under Land Acquisition Act, which is a more stringent provision, was violative of Article 14 since it deprived the appellants of the right of the more liberal provisions of the Karnataka Act, 1966. The contention was rejected by the Hon'ble Supreme Court holding that in view of the urgent need for acquisition of land,

which could not have been met under Karnataka Act, resort to provisions of Central Act could not be faulted.

18. In ***Pawan Singh & Ors. Versus UOI & Ors.***, 112 (2004) DLT 420, it was contended before the Division Bench of this Court that the land for the purpose of DMRC is to be necessarily acquired only by invoking the provisions of the Metro Railways Act which is a complete code, specially enacted for the purpose of acquisition of land and building etc. for construction of the Metro Railway. The contention was rejected by the Division Bench, relying upon the decision of the Hon'ble Supreme Court in the case of ***S.S.Darshan*** (supra) as well as its later judgment in ***Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad & Anr.***, (2003 (5) Scale 93 and in ***Nagpur Improvement Trust Vs. Vasantrao and Others***, 2002 (7) SCC 657 where it was held that for the purpose of providing housing facilities to the people, lands could be acquired both under Land Acquisition Act as well as under the U.P. Avas Evam Vikas Parishad Adhiniyam. It was pointed out by learned counsel for the petitioner that in the case of ***Pawan Singh*** (supra), resort to the provisions of Section 17 of the Land Acquisition Act by the Government had not been challenged by the petitioners. The contention was that resort to the provisions of Land Acquisition Act would not have been upheld in

the case of **Pawan Singh** (supra), had the petitioners in that case challenged the urgency clause by the Government. We are unable to agree. The Court examined the provision of Metro Railway (Construction of Works) Act, 1978 vis-a-vis provisions of Land Acquisition Act and came to the conclusion that taking recourse to LA Act was permissible. In **Nitin versus Lt. Governor and Ors.** W.P.(C) No.5049/2007, decided by a Division Bench of this Court on 30.7.2007, this Court rejected the contention that the acquisition was bad, having not been made under the provisions of Metro (Construction of Works) Act, 1978. In **Ram Niwas vs. Lt. Governor and Ors.** , (2007) (VIII) AD (D) 493, a Division Bench of this Court again rejected a similar contention. In **Summit Inport Services Ltd. and Anr. vs. Delhi Metro Rail Corporation and Ors.**, W.P.(C) No.573/2008 decided on 11.4.2008, this Court again repelled the contention that acquisition of land for the benefit of DMRC was impermissible under the provisions of Land Acquisition Act. It would be pertinent to note here that land in the case of **Summit** (supra) was acquired taking recourse to the urgency provisions contained in Section 17(1) and 17(4) of Land Acquisition Act.

19. Admittedly Metro Act, does not contain any provision for urgent acquisition of land. If we accept the contention that no

land for the purpose of DMRC can be acquired under the provision of Land Acquisition Act, the inevitable result would be that even if a small piece of land is urgently required for a project of DMRC, the Government would be helpless and would not be able to acquire the land leading to failure of the project. Such an interpretation is neither justified nor sustainable in law. Therefore, we find no merit in the contention that acquisition was bad, having been made under the provisions of Land Acquisition Act.

20. Now we deal with the contentions that the acquisition is bad in law as there was no ground or justification to invoke urgency provisions of Land Acquisition Act and dispense with the inquiry envisaged under Section 5A of the Act. The argument before us was that though the project was approved by the Government of India way back on 4.12.2006, neither DMRC nor the Government sought vacation of the status quo order passed by the Hon'ble Supreme Court, at any time prior to October 2008 and therefore they cannot be allowed to take recourse to the urgency provisions to get out of a situation brought about by their own lethargy and delay. It was contended on behalf of the respondents that there was no delay on their part and in fact DMRC had requisitioned land from DDA vide its letter dated 13.12.2007 and DDA had also allotted 4331 sq. meter of land to it vide its letter dated 4th July,

2008 though it later transpired that the land allotted to DMRC was subject matter of the appeal pending before the Hon'ble Supreme Court.

21. We are of the opinion that in view of the orders of the Hon'ble Supreme Court dated 17.11.2008 and 23.2.09, we need not go into the questions of delay prior to the orders passed by the Hon'ble Supreme Court. As noted earlier, in its application before the Hon'ble Supreme Court DMRC brought it to the notice of the Hon'ble Supreme Court that land in question was urgently required by it for construction of Chattarpur Metro Railway Station on Qutub Minar – Gurgaon Corridor of MRTS, which was scheduled to be commissioned in January 2010 and that the project was held up on account of inability expressed by the DDA to allot the said land to it on account of stay orders passed by the Hon'ble Supreme Court despite the delays which had taken place up to filing of the application, the Hon'ble Supreme Court decided to allow a fresh acquisition on payment of compensation at current rates. Once the Hon'ble Supreme Court took note of the matter and gave clearance for a fresh acquisition so as to meet the urgent requirement of DMRC, it is not open to this court to go into the delays, if any, prior to the orders of the Hon'ble Supreme Court and take a view that invocation of urgency provisions and

dispensing with the inquiry under Section 5A of the Land Acquisition Act was not justified because there was delay on the part of the respondents.

22. As regards the period taken by the respondents after passing of the order of the Hon'ble Supreme Court, we are of the view that there has been no unreasonable delay on the part of the respondents. The affidavit filed by the respondents would show that the matter received attention of the Government at the highest level and a meeting was taken by none other than Chief Secretary on 5.3.09 to consider acquisition of land in question. A number of formalities were required to be completed before placing the matter before the Lt. Governor seeking approval of the notification under Section 48 of Land Acquisition Act and issue of a fresh notification for acquisition. Learned counsel for the respondent has submitted the file relating to this notification for our perusal. We find that on 19th November, 2008 itself DMRC had written to the Government requesting that acquisition process for land in question be initiated at the earliest and in least possible time. The letter having been written just two days after the first order of the Hon'ble Supreme Court, it cannot be staid that there was any delay on the part of DMRC in approaching the Government. A perusal of the file shows that the matter always

remained under process and there has been no unreasonable delay at any level. We have to appreciate that the Government has its own procedures and systems for processing the files and it may not be always possible to move on a very fast speed. But, that by itself would not indicate any efficiency or negligence on the part of the Government. Various checks and balances are necessary and inherent in the functioning of a Government and therefore the files required to be examined and processed at various levels. When the request of DMRC contained in its letter dated 19.11.08 was examined in the light of order of the Hon'ble Supreme Court dated 17.11.08, it was noticed by them that since notification dated 24.10.61 issued in respect of this very land was still in operation and had neither been quashed nor withdrawn, a fresh acquisition, during the subsistence of the previous notification may not be valid. Therefore, a letter was sent by the Government to DMRC suggesting it to seek modification or order of the Hon'ble Supreme Court dated 17.11.2008. Before writing of this letter, a meeting was also held in Land and Building Department where this issue was discussed pursuant to a noting on the file. After the order of the Hon'ble Supreme Court dated 23.2.09, DMRC wrote a letter dated 23.2.09 to Land and Building department seeking acquisition of land under Section 17 as it was urgently required for

construction of Chattarpur Metro Railway Station on Qutub Minar – Gurgaon Corridor of MRTS, Viaduct, and Electric Sub Station etc. and thereupon a meeting was convened by the Chief Secretary on 5th March, 2009 to discuss various issues relating to acquisition of this land. Minutes of the meeting, which are available on the file, would show that it was decided that DMRC would move DDA requesting them to terminate the earlier land acquisition proceedings and would also send a formal proposal for initiating a fresh proceeding under Section 4, 6 and 17 of Land Acquisition Act. On receipt of proposal from DMRC, Land & Building department was to move a proposal to Lt. Governor for terminating the earlier proceedings and initiating a fresh acquisition proceeding invoking the urgency clause. It was also decided to initiate process at the earliest. Pursuant to this decision, DMRC wrote a letter to Land & Building department on 5th March, 2009 itself seeking a fresh acquisition of land. Land & Building department also sent a letter dated 9.3.09 to LAC (South). Request made to forward the draft notification along with documents such as 80 per cent compensation calculation sheet, joint survey report, field book, aks shajra. The joint survey was carried out between 18.3.09 and 20.3.09 and the report of the survey is available on the file. The draft notifications were

prepared on 23.3.09 and a detailed proposal for acquisition was put up on 27th March, 2009. The proposal was examined at various levels. It was finally cleared by the Chief Secretary on 20th April, 2009. However, vide note dated 27.4.09, the Chief Secretary was informed that Lt. Governor, after considering the matter had directed that to engage a senior counsel along with DMRC for vacation of stay order in the aforesaid litigation and early disposal of the case. When the file came back to the Chief Secretary, he prepared a fresh note on 30.4.09 pointing out that Metro Station at Chhatarpur had to be completed before Commonwealth Games. Thereupon, the proposal was approved by Lt. Governor on 5th May, 2009 in override public interest. On 18.5.09, the Lt. Governor, after according his satisfaction that land measuring 28 Bighas, 12 Biswa and 5 Biswansi was urgently required for construction of Qutum-Minar – Gurgaon Corridor of MRTS Project and in view of urgency of the scheme ordered that the provision of Section 5A shall not comply and notification under Section 4 read with Section 17(4), 6 and 17(1) of Land Acquisition Act be issued immediately. In these circumstances, it cannot be said that there has been any delay as such on the part of DMRC or the Government in processing the matter, after the orders of the Hon'ble Supreme Court.

23. In ***Jage Ram and Ors. Vs. State of Haryana and Ors.***, 1971 (1) SCC 671, notification was issued invoking urgency provision contained in Land Acquisition Act and enquiry envisaged under Section 5A was also dispensed with. The acquisition was made for setting up a factory for manufacturing of glazed tiles etc. The acquisition was challenged on the ground that there was no urgency in the matter and, therefore, there was no justification for having recourse to Section 17 and deprive the appellant of the benefit of Section 5A of the Act. Rejecting the challenge to the acquisition, the Hon'ble Supreme Court inter alia observed as under:

"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 was entitled to weight, if not conclusive."

In the case before us, it cannot be denied that there was urgent need of land; on the day decision was taken by Lt. Governor, to invoke urgency provisions and dispense with enquiry

under Section 5A. Therefore, the conclusion drawn by him can't be disturbed, except for very strong reasons.

24. In ***Chameli Singh and others vs. State of U.P. and Another***, (1996) (2) SCC 549, land was acquired for providing houses to Scheduled Castes. The appellants challenged the validity of the notification under Section 4(1) and the exercise of the power given under Section 17(1) read with Section 17(4). Dispensing with the inquiry under Section 5-A, was challenged on the ground that there was no urgency to take possession and there was pre and post notification delay of more than three years. As regards urgency provision, the Hon'ble Supreme Court inter alia held as under:

"It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated, by mala fides or colourable exercise of power."

In the present case, there are no grounds to hold that the decision taken by the Lt. Governor was actuated by malafide, personal or legal, or was a colourable exercise of power.

25. As regards, delay in acquisition, the Hon'ble Court in *Chameli Devi's* case, observed as under:

"The pre-notification and post-notification delay cause by the officer concerned does not create a cause to hold that there is no urgency"

"Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition."

"In Narayan Govind Gavate case a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A, inquiry thereunder unduly gets prolonged."

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

"It is true that there was pre-notification and post-notification delay on the part of the

officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency.”

In the present case, all the facts and circumstances were available to the Lt. Governor, when he passed order to invoke Section 17 and dispense with enquiry under Section 5A. The file on which he passed the order, contained all material documents and relevant facts. Therefore, delays, if any, or on the part of officers of Govt. as of DMRC, by itself could not have been a sufficient decision, for declining to invoke urgency provision and thereby delay the project at a crucial stage, when the work was held up for want of land of petitioners. In any case, the conclusion of Lt. Governor being subjective, must be upheld, in absence of any malafide or arbitrariness.

26. In ***Deepak Pahwa and Ors. Vs.*** Lt. Governor of Delhi and Ors., 1984 (4) SCC 308, a combined notification under Section 4 and 17 and declaration under Section 6 of Land Acquisition Act was published with regard to acquisition of Land for construction

of new transmitting station for Delhi Airport. A writ petition was filed, impugning the notification and declaration on the grounds that a period of eight years was spent in inter-departmental discussion which showed that there was no urgency necessitating the emergency of Land Acquisition Act to dispense with the enquiry under Section 5A. Rejecting the contention, the Hon'ble Supreme Court inter alia observed as under:

“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 of acquisition. It is, therefore, not possible to agree with the invocation of the urgency provisions void.”

27. In ***Union of India And Others vs. Praveen Gupta And Others***, (1997) 9 SCC 78, land was acquired invoking the urgency question contained in Section 17(4) of the Land Acquisition Act. It was contended before the Hon'ble Supreme Court that there was

no real urgency in the matter and the respondents could have been given an opportunity to contend that the land was not needed for any public purpose. Rejecting the challenge, the Hon'ble Supreme Court noted as under:

“If the enquiry was conducted, delay would defeat the very public purpose of acquisition for shifting of timber business from the walled city and establishment of the timber depots outside the walled city. Therefore, the urgency mentioned in exercising the power under Section 4(1) was justified.”

As regards, scope of the power of the Court to examine the decision of the Government in invoking urgency provision, the Hon'ble Supreme Court held as under:

“It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record.”

28. In ***Union of India And Others vs. Mukesh Hans***, (2004) 8 SCC 14, a judgment relied upon by learned counsel for the petitioners, land was sought to be acquired for holding a festival called 'phoolwalon ki sair' in Mehrauli. The notification issued

under Land Acquisition Act mentioned the public purpose as “Land Development, Delhi”. Enquiry under Section 5A of the Act was also dispensed with.

During the course of the judgment, the Hon’ble Court inter alia observed as under:

“A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry.

.....

“It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.

.....

“At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act.”

On facts, the Hon’ble Supreme Court found as under:

“The facts of the present case as found from the records show that the Anjuman-Saire-e-Gul-Faroshan, the Committee that organises this festival was using some land in Village Mehrauli for conducting its concluding ceremony. It is for this purpose it sought 4000 sq. Yards of land in Khasra Nos. 1151/3(new) and 1665(old) of the said village. It is also found from the record that ever since the revival of the festival the

concluding programme was being continued in a piece of land situated in the said khasra of Mehrauli village which is now sought to be acquired along with certain other lands. There is no material on record to show that either the said festival has been discontinued for want of land or the owners of the land where the festival has its concluding ceremony are preventing the utilisation of that land for the said purpose. We have also noticed hereinabove that an earlier attempt to acquire 40 bighas of the land for the very same purpose was allowed to be lapsed by the authorities concerned by efflux of time which was also a relevant factor to be taken note of by the Lt. Governor when he took the decision to dispense with the Section 5A inquiry but the same was not placed before him. These facts coupled with the findings of the High Court that in almost all the notings in the file there is no reference to the need for invoking Section 17(4), indicates that the Lt. Governor was not apprised, of all the necessary and relevant facts before he took the decision in question. Therefore, in our opinion, the findings of the High Court that the decision of the Lt. Governor to dispense with the Section 5-A inquiry suffered from the vice of non-application of mind has to be upheld.”

The Hon'ble Court made it very clear in paragraph 37 of the judgment that consideration of these facts by them was not for the purpose of finding out whether the stated public purpose was in reality a public purpose or not nor was it for the purpose of finding out whether there was an urgency, but, was limited to the question of whether there was any material available before the Lt. Governor pursuant to whose orders Section 4(1) Notification stated that Section 5A enquiry was dispensed with. However, the facts of the case before us are altogether different. We find, from a perusal of the file that there was material available before the Lt. Governor which justified invocation of urgency provisions of Land Acquisition Act as Mehrauli-Gurgaon, Corridor of Metro Railways was required to be completed before commencement of Commonwealth Games 2010. Even in the case of ***Mukesh Hans*** (supra), the Hon'ble Supreme Court did not deny the power of the Government to invoke urgency provisions and dispense with enquiry under Section 5A of the Act if there was material placed in this regard before a Lt. Governor. It was only in the facts of the case that dispensing with enquiry was held to be suffering from non-application of mind.

29. In ***Sheikhar Hotels Gulmohar Enclave vs. State of U.P.***, AIR 2008 SC 2284, the land was sought to be acquired for

establishing Transport Nagar in the National Capital Region. Under the Regional Plan of N.C.R Planning, National Highway No.91 was proposed to be made a four-lane road. Upholding the notification of urgency provision and dispensing with enquiry under Section 5A of Land Acquisition Act, the Hon'ble Supreme Court inter alia observed as under:

"There is no gainsaying in the fact that this right to file objection under Section 5-A is a valuable right and the Governments are not given a free hand to dispense with Section 5-A. Section 5-A is only a safeguard against the arbitrary exercise of the power by the State. But one should also not lose sight of the fact that invocation of such a provision is also sometimes imperative as in order to meet the urgency of the situation it needs to be invoked in public interest. It depends upon case to case.

.....

"In the present case, there is no two opinions that because of the globalization of Indian economy is progressing with fast speed. Therefore, in order to keep pace with the speed, invocation of Section 5-A has become imperative. Traffic congestion is a common experience of one and all and it is very difficult to negotiate with the traffic congestion in Delhi

and National Capital region. Therefore, in the present situation, it cannot be said that the invocation of Section 5-A was for ulterior purpose or was arbitrary exercise of the power.”

.....

“There is need for decongestion of the traffic and it really the dire need of the hour and earliest it is implemented, better for the people at large.”

.....

Dealing with its decisions in the case of **Mukesh Hans** (supra), the Hon’ble Supreme Court observed as under:

“But in the present case the notification was struck down on the facts that no material was placed on record and secondly, it was also held that discontinuance of festival for want of land and any hindrance in using the land was not there. It was also pointed out that earlier an attempt was made to acquire the land for the very same purpose for holding such festival and it was allowed to lapse by efflux of time and consequently the Court found that there was no reference in the file to the need of invoking Section 17(4) of the Act was vitiated by non-application of mind by the authorities. Therefore, this case was decided on the question of fact.”

It would be pertinent to note here that Hon'ble Mr. Justice A.K.Mathur, who delivered the judgment in the case of ***Sheikhar Hotels*** (supra), was also a Member of the Bench which decided the case of ***Mukesh Hans*** (supra).

30. In ***Rajasthan Housing Board*** (supra), land was acquired for construction of houses for weaker sections and middle income group people. Repelling the challenge to invocation of emergency clause and dispensing of enquiry under Section 5-A of the Land Acquisition Act, the Hon'ble Supreme Court held as under:

"If must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not under Section 17(4) but also generally with respect to subjective satisfaction."

31. In ***First Land Acquisition Collector and Ors. V. Nirodhi Prakash Gangoli and Anr.***, 2002 (4) SCC 160, the Hon'ble Supreme Court held that invoking urgency powers u/s 17(1) and

(4) of Land Acquisition Act was a matter of substantive satisfaction of the government with which the court would not ordinarily interfere unless it comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision taken by the appropriate authority was mala fide. The following observations made by the Hon'ble Supreme Court in this regard are pertinent:

“The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned. If an

order invoking power under Section 17(4) is assailed, the courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post-notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5-A by invoking powers under Section 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the Government or its officers are alleged.”

32. Learned counsel for the petitioner has referred to the recent decision of the Hon’ble Supreme Court in ***Mahinder Pal & Ors. Vs. State of Haryana***. In that case, a notification under Section 4 read with Section 17(4) of Land Acquisition Act was issued for acquisition of land for development and utilisation for outer ring road. A writ petition was filed by the appellants challenging the writ petition. The writ petition was dismissed *in limine*. The matter came before the Hon’ble Supreme Court. Allowing the appeal and remitting the matter back to the High Court for fresh consideration on merits, the Hon’ble Supreme Court inter alia observed as under:

“Right to file objection and hearing thereof to a notification issued by the appropriate

government expressing its intention to acquire a property is a valuable right. Such a valuable right of hearing and particularly in a case of this nature could have been taken away only if conditions precedent for exercise of this emergency power stood satisfied. Sub-section (4) of Section 17 of the Act is an exception to Section 5A of the Act. An opinion of the government in this behalf is required to be formed if there exists an emergency. Existence of the foundational fact for invoking the aforementioned provision is, therefore, a sine qua non for formation of opinion. Such a subjective satisfaction must be based on an objective criteria. Ipse dixit on the part of the State would not serve the purpose. Appellants, in our opinion, had made out a case for examination of their cases in details. The nature of constructions and other features of the land sought to be acquired have been noticed by us hereinbefore.”

The Hon'ble Court also referred to its decision in the case of **Mukesh Hans** (supra) as well as to an earlier decision in **Union of India vs. Krishan Lal Aneja**, 2004(8) SCC 453, the following observations made in the case of **Krishan Lal Aneja** were quoted by the Hon'ble Supreme Court

“16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or

overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."

In the above noted case also, the Hon'ble Supreme Court recognized to urgency provisions in cases of time-bound project where the delay is likely to render the purpose nugatory or infructuous. In the present case also, the land is sought to be acquired for construction of Mehrauli -Gurgaon, phase of metro, which is a time bound project, to be completed before Commonwealth Games, 2010 and, therefore, cannot brook any delay. Therefore, this judgment is of no help to the petitioner in the facts and circumstances of the present case. A perusal of

judgment in ***Krishan Lal Aneja*** (supra) would show that in the case before the Hon'ble Supreme Court, Union works and Housing Minister had assured the Lok Sabha, way back on 28.3.1995, that the Government would return to the requisitioned properties within two years or acquire them permanently after paying compensation. The Minister informed that he had written letter to the concerned for making arrangements for vacating or permanently acquiring the properties within next two years. The properties in question continued to be in possession of the Government. There was no urgency to take possession nor was any threat of immediate dispossession of the appellants from the properties. In the facts and circumstances of the case, it was found that the authorities could have completed acquisition proceedings within normal course without resorting to Section 17(1) and 17(4) of the Act. It was noted that the Authorities were aware that the properties were to be released or acquired and the maximum period was extended upto two years for the purpose. From 1985 to 1987 they had sufficient time to acquire the properties in question in the usual course. They had enough time to provide opportunity for filing objections and holding inquiry under Section 5A of the Act. In these circumstances, the Hon'ble Court found that there was no need to dispense with Section 5A of the Act. The appellants

were fully aware that they had to make arrangements either for acquiring the properties or de- requisitioning them by making alternate arrangement within a period of two years i.e. upto 10.3.1987 inasmuch as no further extension of the Requisitioning Act was possible. In these circumstances, acquisition of properties in question by way of notification issued on 6.3.1987 was held to be bad in law. However, the Hon'ble Supreme Court held that the view taken by the High Court that the acquisition could not be sustained without expression of urgency in the impugned notification itself was not correct.

33. Learned counsel for the petitioners has also referred *Banwari Lal & Sons Pvt. Ltd. vs. Union of India and Ors.*, 1991(1) DRJ (Suppl.) 317. In that case, acquisition of a building in Daryaganj, Delhi, acquisitioned under Requisitioning and Acquisitioning of Immovable Properties Act, was to lapse on 10.3.1987. On 6.3.1987, the Delhi Administration issued a Notification under Section 4 of the Land Acquisition Act under Section 17(1) of the Act, invoking urgency provisions. The purpose for acquisition mentioned in Notification was "residential use of government servants." The Delhi Administration thereafter proposed to the petitioners that the building be given on lease and the negotiations continued. The respondents prolonged the negotiations for the lease, only

promising that after the lease Deed was entered into the possession would be handed over to the petitioners. The Officers of Delhi Administration continued to stay in the buildings for over 20 months. The Delhi Administration suddenly decided to proceed with the land acquisition proceedings after a period of 20 months. Thus, they had sufficient time to make alternate arrangement for the residence of their officers and there was no urgency whatsoever for invoking the provisions of Section 17(1). It was, therefore, held that the provisions of Section 17(1) cannot be utilised to cover up the laxity or lethargy of the Administration to take appropriate steps in time for making available alternate accommodation for its officers and there was no urgency whatsoever for invoking the provisions of Section 17(1). In fact, the notification acquiring properties in question was a common notification in case of *Banwari Lal & Krishan Lal Aneja*. The facts of the present case being altogether different, this judgment is of no help to the petitioners. In the present case, there has been no delay after issue of notifications.

34. Even if we presume that keeping the urgency of requirement in mind, the respondents could have acted more expeditiously, we do not find any justification for quashing the acquisition on this ground alone, particularly, when there has been no delay on the

part of DMRC in moving the Government and pursuing the matter with it from time to time. An important and prestigious project like Mehrauli – Gurgaon Corridor or MRTS cannot be stalled merely because the Government machinery could possibly have acted more expeditiously than it has actually moved. Public interest is the paramount consideration in such matters and cannot be ignored. The purpose of establishing metro network in Delhi is to remove traffic congestion and reduce environmental pollution by limiting reducing vehicular traffic on the roads. It is in the interest of the citizens of Delhi that the Metro Project is completed expeditiously and within the time frame fixed for the purpose. The Commonwealth Games are scheduled to be held in Delhi next year. It would be endeavour of DMRC, as far as possible, to complete this prestigious project before commencement of the Games so that there are no bottle-necks and traffic snarls in the city during the Games. If there is a conflict in private/individual interest and public interest, which is common to all citizens, the private/individual interest must yield to the public interest.

35. As regards dispensing with the inquiry envisaged under Section 5 of Land Acquisition Act, as noted earlier by us, the entire relevant material was placed before Lt. Governor before he passed

an order directing issue of notification under Sections 4, 6 and 17 of Land Acquisition Act and to dispense with the inquiry. Since the work on this part of the Corridor is held up only on account of non availability of land in question to DMRC and delay of even days can be fatal to the timely completion of the project, the Lt. Governor, in our view, was imminently justified in dispensing with the inquiry envisaged under Section 5A of the Act. Had the Lt. Governor not dispensed with inquiry envisaged under Section 5A of the Act, the Land Acquisition Collector would have been required to give 30 days' time to file objection. Consideration and disposal of the objection would also have taken considerable time. We have to take a realistic view of the matter in this regard and therefore we are agree that it would not have been possible to give hearing to the objectors and dispose of the objections within a short time after expiry of last date for receipt of objections. In fact, the requirement of DMRC for this land is so urgent that the respondents were justified in saving every day they could, in completing the process of acquisition. In any case, it was for the Lt. Governor, to decide, on the basis of the material made available to him on file, as to whether dispensing with inquiry was to be ordered or not. The court, in exercise of Writ Jurisdiction under Article 226 of the Constitution would not interfere with the

subjective satisfaction of the Lt. Governor and cannot go behind it, so long as it finds that the relevant material was placed before him at the time he applied his mind and took an appropriate decision. The decision taken by the Lt. Governor, in the facts and circumstances of the case, cannot be said to be tainted with non application of mind nor can it be said to be arbitrary or wholly unreasonable. Even if two views were possible, on the basis of the material placed before the Lt. Governor, the court would not interfere with the decision taken by him unless it was shown that the decision was *mala fide* or was based on extraneous consideration. In the present case, there are no allegations of *mala fide* either against the Lt. Governor or against any particular officer of the respondents and the decision is not based upon any extraneous or irrelevant consideration.

36. Now, we come to the last contention of the petitioners that DDA land being available in the vicinity, land of the petitioner could not have been acquired. The affidavit dated 19th August, 2009 filed by DDA along with Aks Shajra of village Mehrauli and Sultanpur Mehrauli, would show that land in question has been shown in red colour in this document. The land which has already been allotted by DDA to DMRC has been shown in blue colour whereas the land which is still in possession of DDA has been

shown in green colour in this document. The land shown in yellow colour is under litigation in SLP (C) No. 14047/05 before the Hon'ble Supreme Court and in view of the undertaking given by it, the DDA cannot allot this land to DMRC. The land shown in brown colour is the balance land which is the subject matter of Civil Appeal No. 2418-19/08 and 2729/08. A bare perusal of the Aks Shajra would show that the Metro Track has to pass right through the land of the petitioners. There is no way Metro Track can be completed without it passing through this land.

37. As regards land of DDA, the Conservator of Forest, who inspected the same along with Director (LM-I) of DDA and other offices, in the presence of the petitioners, would show that this land is comprised in Reserved Park as per MPD 2021 and has also been notified as a Reserved Forest vide notification No. F.10 (42)-I/PA/DCF/93/2012-17(1) dated 24.5.1994. The Conservator of Forest has specifically stated that this DDA land is a forest land. The affidavit filed by DDA also admits that on inspection it was verified that the land of DDA falls in reserved park and reserved forest, South Central ridge.

A perusal of notification No.F.10(42)-1/PA/PCF/93/2012-17(1) dated 24th May, 1994 shows that vide this notification, Lt. Governor of the Delhi declared the lands mentioned in Schedule A

of the Notification as Reserved Forest. Schedule A would show that all forests land and waste land which is the property of the government, over which government has propriety rights, in South Central Ridge in Delhi surrounded by Qutab Institutional Area in North, Vasant Kunj, Kishan Ganj in South, Aurobindo Marg, Nazari Lal Bagh in East and by Jawahar Lal University Road, Vasant Kunj, Mehrauli in West has been declared as Reserved Forests. The area in South Central Ridge comprises approximately 626 hectares. It was contended by the learned counsel for the petitioners that since notification u/s 20 of Forests Act has not been issued and Khasra-wise details of the land, subject matter of this notification have not been ascertained as is evident from the reply sent to the petitioners on their application under RTI Act, this land cannot be said to be Reserved Forest, and therefore, can be allotted by DDA to DMRC. We find no merit in this contention. Section 5 of Forests Act provides that after the issue of the notification u/s 4, no fresh clearing for cultivation or for any other purpose shall be made in such land except in accordance with such Rules as may be made by the State Government in this behalf. Therefore, once notification u/s 4 has been issued, no tree can be cut and no construction activity can be carried out in respect of the land comprised in the notification, unless permission by the

State Government is obtained in accordance with the Rules made in this behalf. In view of the clear language of Section 5 even on mere issuance of notification u/s 4 and in absence of notification u/s 20 declaring finally certain areas as reserved forests, a status quo is to be maintained and DMRC can neither cut trees nor carry out any construction on it without requisite permission. If anyone commits breach of Section 5 of the Act, he is liable to punishment under Section 26(a) thereof. The joint survey carried out by Conservator of Forests and DDA, in the presence of the petitioners is a sufficient proof of DDA land shown in green colour in the Aks Shajra filed by DDA being the land notified under the notification No.F.10(42)-1/PA/PCF/93/2012-17(1) dated 24th May, 1994, and therefore, final identification by Khasra Number would not be necessary for the purpose of deciding whether this land can be made available by DDA to DMRC. Once it is reported by Conservator of Forests and is admitted by DDA that this particular piece of land is covered under the Notification No.F.10(42)-1/PA/PCF/93/2012-17(1) dated 24th May, 1994, the petitioner who is a stranger, as far as this land is concerned, cannot be allowed to dispute the factual position stated by Conservator of Forests and DDA. DDA being the land owning agency of this land is not expected to act against its own interest and admit, a land, which is

not subject matter of a notification u/s 4 of Forests Act, to be reserved forests. Moreover Section 2(1) of Forests Conservation Act, 1980 specifically provides that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall, except with the prior approval of the Central Government, make any order directing that any forest land or any portion thereof may be used for any non-forests purpose. Therefore, DDA has no authority to allot a forest land to DMRC without prior approval of the Central Government. That precisely is the reason why Central Government, on the recommendations of CEC and pursuant to the orders of the Hon'ble Supreme Court, based on the recommendations of CEC, granted permission for its use by DMRC for non-forest purposes and pursuant thereto the land shown in blue colour in the Aks Shajra filed by DDA was allotted by it to DMRC for this very project. The restriction imposed by Section 2 on use of forest land for non-forest purpose applies to all forests and is not confined to reserved forests only. This proposition of law was also accepted by Allahabad High Court in *Yashwant Stone Works v. State of Uttar Pradesh and Ors.*, AIR 1988 Allahabad 121.

The word 'forest' has been used in a general sense which means that all lands bearing vegetable associations demarcated by

trees of any size exploited or not, capable of producing wood or other forest products of exerting an influence on the climate or water regime or providing shelter for livestock and wild life. This definition has been given by Food and Agricultural Organizations of United Nations. The expression "forest land" has not been defined in the Act but it can be understood as a wild area covered with trees and developing saplings along with pastures or any other area declared by the State as forest land. Therefore, we agree that DDA land, shown in green colour in Aks – Shajra filed by DDA cannot be directed to be allotted to DMRC.

38. As per the plans prepared by DMRC for this project, Chhatarpur Metro Station, including the running section, entry/exit area, road modification and staircase of Food Bridge via Duct and electric sub-station are to come up on land in question. The plan prepared by DMRC in this regard has already been approved by Central Empowered Committee of Hon'ble Supreme Court of India and was also filed before the Hon'ble Supreme Court, along with the application of DMRC for vacation of status quo order. DMRC expressly stated before the Hon'ble Supreme Court that the route proposed for construction of Phase II of MRTS Project has been thoroughly investigated by it and the same has proved to be the most feasible route economically and for the

purpose of ridership etc. Once a particular route has been decided by DMRC after examining all aspects including economic feasibility and expected ridership, it is not for the court to sit in appeal over the decision of DMRC and take a different view. The question as to which place is most suitable for a particular portion of the project is a technical matter, required to be decided by the experts. The courts do not have the expertise or information which is necessarily required for deciding such matters. The petitioners have not given any valid ground for shifting the route decided by DMRC and the location selected by it for constructing Chhatarpur Metro Station and Electric Sub-Station. The only plea taken by them is that since DDA land is available in the vicinity, private land belonging to them should not be acquired. We find no merit in this argument. As noted earlier, DDA land which is shown in green colour in the Aks-Shajra filed by DDA is forest land and, therefore, DDA has no authority to allot it to DMRC without prior approval of the government. In any case, mere availability of DDA land in the vicinity cannot be a good ground for quashing the notification which has otherwise been validly issued under the provisions of Land Acquisition Act. Neither DDA can be compelled to allot this land to DMRC nor can DMRC be asked to shift its track or station or even electric sub-station to the land of DDA. If

DMRC is asked at this stage to consider feasibility of using DDA land, seek approval of the government and then ask DDA to allot the same to it, that would be a very lengthy process and would cause unacceptable delay in completion of the bridge even if it is found that it is feasible to use the land of DDA for the purpose for which land in question is sought to be used by DMRC.

39. It was contended by the learned counsel for the petitioner that the approval granted by the Central Government for this project envisaged use of government land only as is evident from para (iii) of the order dated 4th December, 2006 whereby sanction of the President was accorded for this project. We have perused the order issued by the government. The order nowhere excludes use of private land for the purpose of the project. This order only says that land belonging to various Ministries/Departments as well as autonomous/statutory bodies/agencies which is required for Delhi portion of the Project will be taken over by GOI/GNCTD at inter-departmental transferral rates. The correct interpretation of this order would be that those portion of the land which belong to Ministries/Departments, autonomous/statutory bodies/agencies would be transferred at inter-departmental transferral rates and not at market rates, to DMRC. It does not exclude use of private land if otherwise required for the project.

40. It has been alleged by the petitioners that DMRC was unwilling to use DDA land as the said land would be given on leasehold basis and cannot be used for commercial purposes. We find no merit in this plea. A perusal of the approval granted by Central Empowerment Committee of this project would show that one of the conditions imposed by the Committee was that the area falling within the Delhi region shall not be used for any commercial purpose by DMRC or any other party. It further stipulated that part of the area should be used as Ridge Interpretation Centre, in order to reflect the rich ecology of the area, educate the public at large and increase the awareness of the people towards the vital attributes of Delhi ridge. In view of the conditions imposed by Central Empowerment Committee, DMRC is precluded from using the land in this area for commercial purpose irrespective of whether it uses the land acquired from the petitioner or it uses the land which is available with DDA. Therefore, it cannot be accepted that DMRC was unwilling to take DDA land on account of restriction on its use for commercial purposes. In fact, had DDA land been available for this purpose, DMRC would have been more than happy as it would not have been compelled to litigate with the petitioners and the project also would not have been delayed. DMRC is keen to have land in

question only because it is the most suitable land for this part of the project.

41. At the conclusion of arguments, the learned counsel for the petitioners stated, on instructions, that the petitioners were ready to forgo that much land as was required for metro tracks and Chhatarpur Metro Station provided that the electric sub-station is shifted to some other land and that part of the petitioners' land, which was sought to be used for electric sub-station, is allowed to be retained by the petitioners.

As we have noted earlier the only other land available in the vicinity is DDA land shown in green colour in the akshajra and the same is forest land as well as subject matter of the notification issued u/s 4 of Forests Act. Moreover, no study has been carried out to ascertain whether this land can be used for electricity sub-station required by DMRC in this stretch of the corridor or not. As noted earlier even if such a study is carried out and it is found that DDA land can be used for this purpose, that cannot be allotted to DMRC without obtaining necessary approvals including permission from the government and the whole process, if undertaken would take considerable time, resulting in unacceptable delay. Such an exercise if undertaken would inevitably result in project not being completed before Common Wealth Games, 2010 and, therefore,

cannot be directed. We, therefore, cannot direct exclusion of any part of land of the petitioners which is subject matter of notifications challenged by the petitioners.

In Summit Inport Services Ltd. and Anr. Vs. Delhi Metro Rail Corporation and Ors. WP(C) No. 573/2008 decided on 11th April, 2008, a Division Bench of this court held that the court sitting in its extra ordinary writ jurisdiction is ill-equipped to sit in judgment over the view taken by the experts and choice of location of a project is a matter ordinarily within the administrative discretion of the government. A writ court would not sit in judgment over them or embark upon an exercise to determine the locational advantages and disadvantages of the project at one or the other place. Interference in the matter of such decisions may be called for only in the cases of patent perversity or irrationality. The court may be induced to examine the validity of any such decision only in case it is shown to be so outrageously illogical that no person of ordinary prudence would countenance the same. Simply because another side may be equally good or even better is no reason for the court to interfere with the decision already taken by the authorities. In this case also, we cannot sit in judgment over the location selected by DMRC and cannot interfere with the decision

taken by the experts. Selection of location is a matter exclusively in the domain of experts and should continue to rest with them.

For the reasons given in the preceding paragraphs, the writ petition and CM are dismissed. Interim order is vacated.

(V.K. JAIN)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

September 8, 2009.

‘sk’/’sn’/acm’