

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

+ **W.P.(C) No.533/2010**

% Reserved on : 2<sup>nd</sup> December, 2010

Pronounced on: 14<sup>th</sup> January, 2011

SEVEN STAR HOTEL & RESORTS PVT. LTD. .... Petitioner

Through: Mr. Ravinder Sethi, Sr.  
Adv. with Mr. Sumit  
Bansal and Mr. Ateev  
Mathur, Advocates.

VERSUS

UNION OF INDIA & ORS .... Respondents

Through: Ms. Meera Bhatia &  
Mr. RoshanKr. Adv. for  
R-1/UOI.  
Mr. Sanjay Poddar,  
Adv. for R-2 to R-4

Mr. Sanjeev Sabharwal,  
Adv. for R-5/MCD.

Mr. Ashok Bhasin, Sr.  
Adv. with Mr. Sumeet  
Pushkarna, Adv. for R-  
6/DJB.

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers 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**

**VALMIKI J. MEHTA, J**

1. The petitioner company, by means of the present writ petition under Article 226 of the Constitution of India, seeks reliefs for quashing the acquisition proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as the 'said Act') and also alternatively for quashing the notification under Section 17(4) of the said Act exempting the grant of hearing under Section 5A of the said Act alleging that the provision of Section 17(4) has not been validly invoked.

2. The petitioner company is the owner of land measuring 14 biswas and 8 biswansi (approximately 720 sq. yds) situated in Khasra No. 27/18/2 in village Khampur, Delhi. A notification under Sections 4 and 17(1) read with Section 17(4) of the Act was issued with respect to the land on 13.2.2009. A declaration was thereafter issued under Section 6 on 26.10.2009. The land in question was required for a public purpose namely construction of sewage pumping station by Delhi Jal Board/ respondent no.6. The petitioner received a notice under Section 9 of the said Act dated 22.12.2009, and claims that accordingly, for the first time, it came to know of the acquisition proceedings. The petitioner, therefore filed the present writ petition seeking reliefs as already stated above.

3. Before this court, the learned senior counsel for the petitioner

raised the following main arguments:-

(i) The notification under Section 4 was bad because the land which was sought to be acquired was a small parcel of land belonging to the petitioner company only and therefore it was necessary to effect personal service on the petitioner company at its address and which has not been done. It was also argued that there was no notification under Section 4 which was affixed on the land in question and consequently, once the notification under Section 4 fails, the entire acquisition proceedings also have to go.

(ii) In the facts of the present case, the authorities have erred in invoking the provisions of Sections 17(1) and 17(4) of the said Act by not granting hearing to the petitioner under Section 5A of the said Act as right to property was a valuable constitutional right under Article 300-A of the Constitution. It was urged that the subject land is part and parcel of a much larger land totaling to about approximately 4 acres being Khasra Nos. 27/18/2 (3-10), 16 (4-16), 17(4-11), 27/23/2 (2-5), 24(4-16), 25(4-16) and 26(0-5) and with respect to this land, plans for a motel were already sanctioned by MCD on 7.2.2007 which aspect has not been considered before issuing the acquisition notification. It is further urged that as per the Master Plan/Zonal Plan, the land in question was a part of green belt and is a no construction zone, being required for widening of the National Highway, and which

aspects were not brought to the notice of the authorities and hence even after acquisition, this land cannot be put to use of a sewage pumping station. The authorities have failed to apply their mind in issuing the subject notifications which are therefore, liable to be quashed.

(iii) The acquisition proceedings were malafide because in reality as per the survey report dated 11.1.2008 what was sought to be acquired was actually not the subject K.No. 27/18/2 belonging to the petitioner but the adjoining K.No. 27/13. It is argued that by creating confusion and in a malafide manner, the acquisition proceedings were got altered to the K.No. 27/18/2 belonging to the petitioner.

4. The counsel for the respondent Nos. 2 to 4 being the land acquiring authorities, and the learned senior counsel for respondent no.6/the beneficiary of acquisition, have strongly opposed the case of the petitioner. It was firstly argued in rebuttal that there exists valid cause for issuance of the notifications under Section 4 read with Sections 17(1) and 17(4) of the said Act because the sewage pumping station is part of a larger grid which is being constructed pursuant to the orders passed in various cases by the Supreme Court with respect to the cleaning of the river Yamuna. It was argued that quite clearly this is not only a valid public purpose but also that there were therefore adequate reasons for directing that hearing under the

provision of Section 5A be exempted. It was argued that the applicability of the provisions of Sections 17(1) and 17(4) in the facts of the present case is fully justified and directly covered by the decision of the Supreme Court in a case involving nearly identical facts and reported as ***Jai Narain v. Union of India, (1996) 1 SCC 9***. It was argued that in this decision of ***Jai Narain (supra)***, it has been held that the requirement of sewage plant/pumping station being part of a larger grid for implementation of the requirement of the cleaning of river Yamuna justified the invocation of the powers under Section 17(4) for holding that Section 5A should not apply. It was urged that construction of a sewage pumping station forming part of a larger grid of sewage cleaning system is without doubt an urgent public purpose. It was argued that the land in question is a miniscule part (being only 720 sq. yards) of the total land of approximately 19000 sq. yds belonging to the petitioner and further that the land in question was right in the corner of the total land of the petitioner and would therefore not in any manner affect the motel project of the petitioner. It was further argued that there is no question of malafides because the survey report dated 11.1.2008 unnecessarily created confusion inasmuch as right from 2007, the requirement was very much for the land of the petitioner comprised in K.No. 27/18/2 and which was pursuant to a project report of a consultant and actual inspection of

site in terms of a map prepared for creation of the larger grid. The confusion which was created by revenue officials on 11.1.2008 was cleared on the basis of a subsequent fresh survey conducted on 20.6.2008 where once again the actual location was co-ordinated with the grid map showing the site location and it was once again reiterated that what was required was land comprised in K.No.27/18/2 and not the adjoining land comprised in K.No. 27/13.

5. So far as the issue with regard to the issuance of the notification under Section 17(4) exempting the application of Section 5A is concerned, for the construction of a sewage pumping station, the issue is no longer *res integra* and is fully covered by the decision of the Supreme Court in the case of ***Jai Narain (Supra)***. In the case of ***Jai Narain (supra)***, the Supreme Court has held that requirement of creation of a sewage pumping station/plant being part of the larger sewage grid required for the project for clearing the Yamuna river justifies the invocation of the powers under Section 17(4) of the said Act. The relevant paras of the judgment in the case of *Jai Narain* are paras 6 to 11 which read as under:-

**“6.** The land in dispute is being acquired for the construction of STP. This Court in *M.C. Mehta case*, while directing the closure of the stone-crushers in the city of Delhi, on 15-5-1992 observed as under: (SCC p. 257, para 2)

“We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water

and land to such an extent that it becomes a health hazard for the residents of the area. We are constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly remiss in the performance of their statutory duties and have failed to protect the environments and control air pollution in the Union Territory of Delhi. Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbier, most polluted and unhealthy city as per a study conducted by the World Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environments."

While dealing with the construction of STPs in Delhi, this Court in *Mehta case*<sup>1</sup> passed the following order on 22-4-1994:

"The Delhi Development Authority has filed an affidavit through its Secretary, Mr V.N. Bansal. It is stated that the Authority is ready and willing to provide land to the MCD for setting up of the sewage treatment tanks. *Keeping in view the urgency of the matter*, we request Mr Subhash Sharma, Commissioner, MCD, Mr S.P. Jkhanwal, Vice-Chairman, DDA, Mr Ashok Kumar, Additional Commissioner, Water and Mr J.K. Mathur, Chief Engineer of the Delhi Water Supply and Sewage Disposal Undertaking to be present in Court on May 6, 1994. We are requesting the officers to be present in Court so that we can have their viewpoints for taking appropriate decisions on the spot. *Needless to say that with the increase of population in Delhi, it is of utmost urgency to set up the sewage treatment plants within the time-bound schedule.*"

Thereafter, on 13-5-1994 this Court issued various directions regarding the transfer of land to the Delhi Water Supply and Sewage Disposal Undertaking (the Undertaking) for the STPs in Delhi and finally directed as under:

"We direct the DDA through Mr S. Roy, Commissioner, Lands to hand over the possession of the vacant land available for setting up of the sewage treatment plants in various colonies within four weeks from today. We further direct the MCD to make payment in respect of these lands simultaneously. Mr S. Prakash, Engineer-in-Chief will be responsible for taking over the land and also for making payment to the DDA on behalf of the MCD. *The work for setting up of sewage treatment plants shall be undertaken forthwith and shall be completed at war footing.*" (emphasis supplied)

**7.** Further directions were issued to the Delhi Administration on 14-12-1994 to take over the land from DDA and acquire where necessary for the STPs at various places in Delhi.

**8.** This Court has been issuing time-bound directions for the procurement of land for the STPs in various parts of Delhi. The impugned notifications regarding Keshopur STP were issued under the directions of this Court. On 23-1-1995 this Court passed the following order regarding the land in dispute:

“Notification under Section 4 read with Section 17(1) of the Land Acquisition Act has been issued. The land in the notification has been identified by way of a plan indicating boundaries and not by the khasra numbers. To issue notification under Section 6, exact khasra numbers of the land in dispute are required. Mr Jaitley states that the DDA will give exact khasra number of the land within one week from today. The notification be issued within two weeks from today.”

**9.** In *Mehta case*, this Court on 24-3-1995 observed as under:

“A very grim picture emerges regarding increase of pollution in the city of Delhi from the two affidavits filed by Shri D.S. Negi, Secretary (Environment), Government of Delhi. He has pointed out that the population of Delhi which was about 17 lakhs in 1951 has gone up to more than 94 lakhs as per the 1991 census. In fact, more than 4 lakh people are being added to the population of Delhi every year out of which about 3 lakhs are migrants. Delhi has been categorised as the fourth most polluted city in the world with respect to concentration of Suspended Particular Metal (SPM) in the ambient atmosphere as per World Health Organisation Report, 1989. From NEERI’s annual report 1991 it is obvious that the major contributions, so far as air pollution is concerned, is of the vehicular traffic but the industries in the city are also contributing about 30% of the air pollution. So far as the discharge of effluent in Yamuna is concerned, the industries are the prime contributors apart from the MCD and NDMC which are also discharging sewage directly into the River Yamuna. We are dealing with the sewage problems in separate proceedings.”

Thereafter, on 21-4-1995 this Court, regarding the construction of STPs observed as under:

“Treatment of sewage is of utmost importance for health and for supply of pure water to the citizens of Delhi. Any delay in this respect is a health hazard and cannot be tolerated.”

**10.** Various orders and directions issued by this Court from time to time in *Mehta case*<sup>1</sup> clearly show that the land in dispute — for Keshopur STP — is being acquired under the directions of this Court. Even the impugned notifications under Section 4 read with Section 17 and Section 6 of the Act have been issued under the directions of this Court. This Court repeatedly indicated in the orders/directions that there was urgency in taking over the possession of the land, under acquisition, for the construction of STP at Keshopur. The authorities were directed to take up the work of land acquisition and construction of STPs on war footing. ‘Likely’ in the background of this Court’s orders passed from time to time for a time-bound programme for setting up the STPs means, for purposes of this case, ‘certainly’ and ‘urgently’.

**11.** Delhi — the capital of India — one of the world’s great and historic cities has come to be listed as third/fourth most polluted and grubbiest city in the world. Apart from air pollution, the waters of River Yamuna are wholly contaminated. It is a paradox that the Delhiites — despite River Yamuna being the primary source of water supply — are discharging almost totality of untreated sewage into the river. There are eighteen drains including Najafgarh drain which carry industrial and domestic waste including sewage to River Yamuna. Thirty-eight smaller drains fall into Najafgarh drain. The Najafgarh drain basin is the biggest polluter of River Yamuna. Eight of the drains including Najafgarh drain are untrapped, four fully trapped and remaining six are partially trapped. All these eighteen drains, by and large, carry untreated industrial and domestic wastes and fall into River Yamuna. The River Yamuna enters Delhi at Wazirabad in the North and leaves at the South after travelling a distance of about twenty-five kilometres. The water of River Yamuna till it enters Najafgarh is fit for drinking after treatment, but the confluence of Najafgarh drain and seventeen other drains makes the water heavily polluted. The water quality of Yamuna, in Delhi stretch, is neither fit for drinking nor for bathing. The Biochemical Oxygen Demand (BOD) level in the river has gone so high that no flora or fauna can survive. It is of utmost importance and urgency to complete the construction of the <sup>18</sup> STPs in the city of Delhi. The project is of great public importance. It is indeed of national importance.

We take judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such the emergency provisions of the Act were rightly invoked. We reject the first contention raised by the learned counsel."

(Emphasis added)

6. In view of the decision in the case of **Jai Narain** (supra) and that the acquisition of the land is for the requirement of construction of a sewage pumping station, the authorities were fully justified in invoking the provision of Section 17(4) of the said Act for exempting the application under Section 5A of the said Act on the ground that the land in question was required for an urgent public purpose viz urgency for creation of sewage pumping station which formed part of a larger grid and also that the acquisition is being made pursuant to the various judgments of the Supreme Court including "M.C.Mehta" cases.

7. It may also be noted that the land in question which is required by the petitioner is merely a very minor portion of the land of the petitioner being just 720 sq. yards and which parcel of land is right in the corner of the entire land of the petitioner and therefore the project of the petitioner of a Motel will not be affected by this acquisition. It is not correct for the petitioner to state that the requirement of the land is necessary for the construction of a Motel. It is an admitted case that no construction has to be made as per the sanctioned plan within the subject land of 720 sq. yds. Also it is logical that no construction will be made on this land because the same is right in the corner of the

larger piece of land of the petitioner.

8. It was also vehemently argued that the authorities have mis-directed themselves and have not taken into consideration the fact that the land in question would be required for road widening for the purpose of National Highway and consequently, no construction can be made as per the zonal plan on the land in question and therefore the authorities have not applied their minds by seeking to acquire the subject land. Once again, this issue is fully covered by the decision in the case of **Jai Narain** in which it has been held that different use of land as provided in the Master Plan is not a ground for quashing of the acquisition proceedings. Para 12 of the judgment in **Jai Narain's** case is relevant in this regard and which reads as under:-

**“12.** So far as the second contention raised by Mr Vashisht, the same is mentioned to be rejected. Whatever may be the user of the land under the Master Plan and the Zonal Development Plan the State can always acquire the same for public purpose in accordance with the law of the land. In any case the object and purpose of constructing the STPs is to protect the environment, control pollution and in the process maintain and develop the agricultural green.”

9. In any case, we have also satisfied our judicial conscience that the land in question is not such that if a sewage pumping station is constructed on the same there would in any manner be any hindrance to the widening of the National Highway. Pursuant to the directions of this court, the revenue authorities have filed before us a rough sketch

of the present site conditions/site location of the subject land qua the National Highway. This plan has been filed on 17.11.2010 and which shows that presently the National Highway comprises of approximately 109 feet in width. After the existing road there is still a width of 43 feet on which there exists an unmetalled road and there is thereafter another 25 ft. belt on which there is a drain. The land in question is situated only thereafter, meaning thereby, there is still about 70 ft. of space available for widening of the National Highway towards the side where the subject land is located. In any case, it is not as if, the sewage pumping station which is basically to comprise a sump and one room would be built right at the edge of the plot towards the boundary wall facing the National Highway. The authorities are well advised to avoid any future problem to make any construction in the subject plot which is sought to be acquired at a location which should be furthest from the boundary of the plot facing the National Highway i.e, any construction be made right inside the plot. This, in our opinion, should take care of the argument raised on behalf of the petitioner that the land in question even if, acquired cannot be used for the public purpose. We, again, hasten to add that we have looked into this argument in addition although the same was not required in view of the decision of **Jai Narain's** case which states that this aspect of land use need not be considered with respect to the acquisition of land for a

public purpose.

10. So far as the issue of malafides is concerned, once again we find that this argument on behalf of the petitioner is devoid of substance. The fact of the matter is that right from the inception, land which was projected as being required was the land of the petitioner comprised in K.No.27/18/2. This is clear from the first letter in this regard of the Delhi Jal Board issued on 2.11.2007 and which itself was pursuant to the key plan indicating the location of the sewage pumping station prepared as per a report of the project consultant. This letter dated 2.11.2007 clearly mentions the requirement of the land comprising K.No.27/18/2. This letter has been further followed up by the letter dated 26.12.2007 which stated the requirement was of the land of the petitioner and on the basis of which a joint survey was fixed for 11.1.2008. On 11.1.2008, when the survey was conducted, it appeared as per the survey report that the requirement of the land for Delhi Jal Board in fact could be partly in the adjoining K.No.27/13 and partly in the land of the petitioner as per the site coordinates. Obviously, there was confusion in the minds of the revenue officials and the officials of the Jal Board because it was an issue of coordinating the location in the key plan being the grid plan and the sewage pumping station thereon with its actual positioning at the ground level. The officials seem to have found that the actual land required as per the key plan may be

27/13 and part of the land of the petitioner in K.No. 27/18/2 and not the entire K.No. 27/18/2. Change of acquisition proceedings by seeking to acquire the land in K.No.27/13 would be fraught with grave consequences of enhancement of costs and delay and changing of the entire grid and four consequences were projected, and in our opinion rightly, for stopping the change of acquisition of land from the K.No.27/18/2 of the petitioner to part of this K.No. 27/18/2 and part of K.No. 27/13 belonging to someone else. These four consequences are stated as under:-

- “A. The entire sewerage scheme of all the three villages i.e. Hamidpur, Bakoli and Khampur has to be changed including topographical survey.
- B. The new consultant has to be appointed as the agreement with M/s Shah Technical Consultants [P] Ltd is closed.
- C. Land acquisition process has to be started again.
- D. In view of A,B and C above the project will be delayed by 2-3 years and the cost of project will be escalated accordingly.”

Clearly, the consequences being drastic leading to delay in the project and considerable escalation of cost, it was decided to conduct a fresh survey as to whether the survey of 11.1.2008 was really the correct one. A fresh survey was accordingly conducted on 20.6.2008 and this survey again checked up the site coordinates and it was found that by coordinating the location on the key plan prepared by the

consultant and the actual site position that what was really required was in fact the land of the petitioner comprised in K.No. 27/18/2 and not the land comprised in K.No.27/13. We thus do not find any malafides in the stand of the respondents no.2 to 4 and the respondent no.6. It is therefore not correct that the acquisition which was projected was earlier was of different K.No. 27/13 and thereafter the acquisition proceedings are deliberately sought to be changed to K.No. 27/18/2 belonging to the petitioner.

11. On behalf of the petitioner strong reliance has been placed upon the decision in the case of **Babu Ram Vs State of Haryana 2009 (10) SCC 115** wherein it has been held that when a sewage plant has to be constructed, there cannot be exemption of hearing under Section 5A and powers under Section 17(4) ought not to be exercised. In our opinion, this judgment is clearly distinguishable because this case did not pertain to lands in Delhi whereas the judgment in the case of **Jai Narain (supra)** specifically pertains to the requirement of lands in Delhi for construction of a sewage grid for cleaning of the river Yamuna pursuant to various directions issued by the Supreme Court from time to time in different cases. Further, in our opinion, a sewage pumping plant is a much bigger project than a small sewage pumping station which is basically just one sump and one room. For construction of a small sewage pumping station there is no general public interest

involved of a large number of persons/public and the decision in the case of **Babu Ram (supra)** is thus also distinguishable in this ground. Therefore, there is no question of a serious consequence affecting the health of the general public by construction of sewage pumping station as compared to a sewage plant as was the case in **Babu Ram (supra)**.

12. That takes us to the final issue with respect to the challenge to the notification under Section 4. The challenge which has been laid is that there was no publication of the notification in the locality and in fact in terms of Section 45 of the said Act, it was necessary that there is personal service since the land in question was only a small piece of land belonging to one person namely the petitioner. It is therefore at this stage necessary to reproduce Sections 4 and 45 of the Act which read as under:-

**“4. Publication of preliminary notification and powers of officers thereupon.—**(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette <sup>9</sup>[and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of die notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

**45. Service of notices.**—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Section 4, by the officer therein mentioned, and, in the case of any other notice, by or by an order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and [registered under Sections 28 and

29 of the Indian Post Office Act, 1898], and service of it may be proved by the production of, the addressee's receipt."

A conjoint reading of the aforesaid provisions of Sections 4 and 45 shows that there is substance in the stand of the petitioner because the land in question in fact belongs only to one person and there was no actual service or tender of the acquisition notifications under Sections 4 and 17(4) upon the petitioner. In a general notification which involves acquisition of large parcels of land which involves many persons, the existence of acquisition proceedings are easily known because a large section of the public is affected and which is not the case where a small piece of land of one person is sought to be acquired. A reading of Section 45 shows that there is very much envisaged a personal service upon a person in certain circumstances. Acquisition of a small portion of land belonging only to one person in our opinion is a fit case whereby on a conjoint reading of Sections 4 and 45 it can be said that there ought to be a personal service upon the person whose land is sought to be acquired. After all, acquisition proceedings are harsh proceedings as the same has the effect of taking away valuable rights of ownership of land. Interpretation of the provision therefore in such cases would necessarily have to be balanced with the right of the authorities to acquire land on the one hand and the right of the individual owning the land on the other inasmuch as right to ownership of land is still very much a

constitutional right under Article 300A of the Constitution. Quite clearly, therefore, the notification under Section 4 in the present case is flawed because there was no due service upon the petitioner as required by a conjoint reading of Sections 4 and 45.

13. The question therefore is what follows. Should the acquisition proceedings be necessarily set aside? The power to acquire the land is a power of eminent domain and even if the notification under Section 4 is flawed, surely, the authorities can again issue a fresh notification under Section 4 for acquisition of the land. At best, this would only result in grant of higher price of the land as would be on the date of issuing the subsequent Section 4 notification. In our opinion, this issue is fully covered by the decision in the case of **Competent Authority Vs Barangore Jute Factory (2005) 13 SCC 477** in which it has been held that instead of quashing of the notification, the owner of land can be given a higher price of a notification issued on a subsequent date. In the facts of the case of **Barangore Jute Factory** (supra) price which was held payable was the price on the date on which possession was taken. Paras 14 and 15 of the said judgment are relevant and the same reads as under:-

**“14.** Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification

was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance i.e. the construction of a national highway. The construction of a national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the landowners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the landowners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the landowners, that is, the writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.

**15.** Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the notification so that the landowners are adequately compensated. Reference may be made to:

- (a) *Ujjain Vikas Pradhikaran v. Raj Kumar Johri*
- (b) *Gauri Shankar Gaur v. State of U.P.*
- (c) *Haji Saeed Khan v. State of U.P.*

In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the

respondents from the writ petitioners. This date admittedly is 19-2-2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19-2-2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19-2-2003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the appropriate authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act, should be given to the writ petitioners along with what has been directed by us in this judgment.”

In the present case, the petitioner had obtained a status quo order on 27.1.2010 when the writ petition first came up for hearing. The authorities therefore have not been able to take land pursuant to the orders of this court dated 27.1.2010. Accordingly, applying the ratio in the case of **Barangore Jute Factory**, (supra) we are of the opinion that the price of land which should be awarded to the petitioner should be the price of land as on 27.1.2010 and not the price of land when the notification under Sections 4 and 17(4) of the Act was passed on 13.2.2009.

14. In view of the above, the writ petition is disposed of with the direction that the acquisition proceedings are sustained and it is held that the authorities have validly invoked the powers under Section 17(4) of the Act exempting the application of Section 5A. It is further held that the petitioner will be entitled to price of land as on 27.1.2010 and not the price as on 13.2.2009 when the notification under Section 4 was published. The writ petition is accordingly dismissed subject to the directions made above.

**VALMIKI J. MEHTA, J.**

**JANUARY 14, 2011**  
ib/Ne

**SANJAY KISHAN KAUL, J.**