

THE HIGH COURT OF TRIPURA
AGARTALA

(1) WP(C) NO.173 OF 2010

1. Smt. Kaberi Deb,

W/O Late Sekhar Chandra Deb,

2. Shri Subhradeep Deb(Minor),

S/O Late Sekhar Chandra Deb,

Represented by the natural guardian-mother,

--Both residents of Ramnagar Road No.9,

P.O. Ramnagar, P.S. West Agartala,

District-West Tripura.

..... *Petitioners*

- *Vs* -

1. The State of Tripura,

Represented by the Secretary to the

Government of Tripura,

Revenue Department,

Agartala.

2. The Secretary,

Public Works Department,

Government of Tripura,

Agartala.

3. The Land Acquisition Collector,

West Tripura, Agartala.

..... *Respondents*

(2) WP(C) NO.174 OF 2010

Shri Hiralal Paul,

S/O Late Ananda Chandra Paul,

Resident of Ramnagar Road No.9,

P.O. Ramnagar, P.S. West Agartala,

District-West Tripura.

..... *Petitioner*

- *Vs* -

1. The State of Tripura,

Represented by the Secretary to the

Government of Tripura,

Revenue Department,

Agartala.

2. The Secretary,
Public Works Department,
Government of Tripura,
Agartala.

3. The Land Acquisition Collector,
West Tripura, Agartala.

..... *Respondents*

BEFORE
HON’BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON’BLE MR. JUSTICE S.C. DAS

For the petitioners : Mr. A.K. Bhowmik, Sr. Advocate
Ms. A. Banik, Advocate

For all the respondents : Mr. D.C. Nath, Advocate

Date of hearing : **02.06.2015**

Date of delivery of Judgment & order : **08.07.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

(S.C. Das, J)

Material facts and the points of law involved in both the writ petitions are identical and, hence, both the writ petitions were heard together and this single judgment shall govern both the cases.

Pleadings and documents referred by both side are almost same and identical, and for convenience WP(C) No.174 of 2010 is taken as lead case and the pleadings and documents of that case is referred in this judgment.

2. We have heard learned senior counsel, Mr. A.K. Bhowmik for the petitioners and learned counsel, Mr. D.C. Nath for the State respondents.

3. In short, the facts giving rise to the filing of these writ petitions, *inter alia*, are that the Government of Tripura, by a notification made under Section 4 read with sub-section(1) of Section 17 of the Land Acquisition Act(for short, L.A. Act), published in a daily newspaper, namely '*Dainik Sambad*' dated 01.03.2005, proposed acquisition of land belonging to the petitioner of WP(C) No.173 of 2010, recorded in plot No.2221(Part) measuring an area of 0.0131 acres of land and plot No.2230 measuring an area of 0.004 acres under Mouja-Agartala, Sheet No.1, and the land belonging to petitioner of WP(C) No.174 of 2010, recorded in plot No.2231 measuring 0.0275 acres of khatian No.25118 of same Mouja and Sheet number, "*For construction of approach road towards R.C.C. Bridge over Katakhal near Durga Chowmuhani under Sadar Sub-Division in West Tripura District*". By invoking the provision of sub-section(1) of Section 17 of the L.A. Act, the application of Section 5A has been dispensed with, taking away thereby the valuable right of the petitioners to represent against the purpose of proposed acquisition and urgency thereof adumbrated in the notification.

3.1. The petitioners contended that the RCC Bridge over Katakhal near Durga Chowmuhani was completed in the year 2001

and thereafter it was opened for movement of vehicles from Durga Chowmuhani direction to Airport *via* Barjala and the road at that place runs from south to north. The original road from Durga Chowmuhani to the bridge was measuring 18 feet and while construction of approach road to the bridge in the year 2000, land belonged to the writ petitioners and others were acquired and the approach road was made 51 feet width. At the time of construction of the approach road land measuring 6 feet was acquired in the eastern side of the road running from north to south and land measuring 27 feet was acquired from the western side of the road running from north to south. The petitioners' land were situated in the western side of the road and it was acquired for construction of the approach road. The distance from Durga Chowmuhani to the RCC Bridge is about 612 feet. The present land of the petitioners proposed for acquisition under the notification published on 01.03.2005 is situated by the southern side of the Ramnagar Road No.9 and far away from the approach road of the bridge. Ramnagar Road No.9 runs from east to west connecting the road between Durga Chowmuhani and bridge. In the southern side of the road No.9 the shop huts and the houses of the respective petitioners are situated in pucca building and thereafter there is a shopping mall at Durga Chowmuhani.

3.2. It is contended by the petitioners that for widening the approach road land would be required from both side or either side of the approach road running between Durga Chowmuhani and

bridge but the road by the side of Ramnagar Road No.9 can in no way be used for widening the approach road towards the bridge. The petitioners annexed a hand-sketch map showing the locations of the plots of land belonged to the petitioners and another person which has been proposed for acquisition and it is contended by the petitioners that the respondents with *mala fide* attitude made the notification proposing acquisition of land belonged to the petitioners and if such acquisition is materialized they will lose their livelihood and will be ousted from their respective residence.

3.3. It is also contended by the petitioners that the approach road towards bridge was already constructed in the year 2001 and there was no urgency at all in the year 2005 to acquire the land of the petitioners depriving them from making their representation/objection against the proposed acquisition. The petitioners, therefore, challenged the notification published on 01.03.2005(*Annexure-1* to the writ petition) by filing writ petitions before Agartala Bench of the then Gauhati High Court and the petitioner of WP(C) No.174 of 2010 filed WP(C) No.103 of 2005 as well as the predecessor of the petitioners of WP(C) No.173 of 2010 filed WP(C) No.105 of 2005 and all the writ petitions were disposed of by a learned single Judge of the High Court by judgment dated 13.04.2005 and the writ petitions were dismissed.

3.4. Felt aggrieved, the petitioners preferred writ appeals before the Division Bench of the High Court and in the writ appeals a consenting order was passed in the following terms:

"It is now agreed by learned counsel for the parties that the writ appellants be given opportunity to have their say in the matter of acquisition of their land so as to satisfy the requirement of Section 5-A.

Considering the matter in its entirety, and in the interest of justice, the writ appellants are hereby given 30 days' time, with effect from today, to make their representations and/or objections against the impugned notification assigning therein the reasons, which, according to the writ appellants, do not require acquisition of the land of the writ appellants for the purposes for which the impugned notification has been issued. If the writ appellants make their representations and/or file objections in terms of Section 5-A, as indicated hereinbefore, the respondents shall consider and dispose of the same in accordance with law. Whatever decision is arrived at by the respondents/authorities concerned shall be communicated, in writing, to the writ appellants.

It is made clear that while considering the representations and/or objection aforementioned, the respondents/authorities concerned shall not rely on the observations made in the impugned judgment and order.

In view of the directions given hereinabove, the impugned order, dated 13-04-2005, shall stand set aside.

With the above observations and directions, these three appeals shall stand disposed of. No order as to costs."

3.5. It is contended by the petitioners that pursuant to the above order, the petitioners filed written objection on 12.01.2006 before the L.A. Collector and the L.A. Collector by issuing a notice dated 18.01.2006 asked all the objectors including the petitioners to appear before him on 25.01.2006 at 11.00 AM and accordingly the petitioners appeared with their engaged learned counsel and submitted their objection against the proposed acquisition but no order was passed by the Land Acquisition Collector. Though it was clearly stipulated in the order passed by the Division Bench of the High Court that a copy of the order should be communicated in writing to the petitioners but no such copy was communicated to them. After lapse of about four years the petitioners received a notice dated 26.02.2010(*Annexure-9* to the writ petition) from Assistant Engineer, Construction Sub-Division No.3 requesting the petitioners to attend his office on 02.03.2010 at 12.00 noon along with municipality approved plan and drawings for preparation and assessment of valuation of the structures belonged to the petitioners on the proposed acquired land. Thereafter, the petitioners received another notice dated 24.03.2010(*Annexure-10* to the writ petition) issued under sub-section(2) of Section 12 of the L.A. Act informing the petitioners about the award of compensation and simultaneously they have also received another notice of the same dated 24.03.2010 asking them to vacate the acquired land and to deliver possession before 23.04.2010.

3.6. The petitioners, therefore, filed the writ petitions challenging the notice published on 01.03.2005(*Annexure-1* to the writ petition) on the ground that it was issued without any public purpose and without having any urgency and that though as per order of the High Court the petitioners submitted written objection against the proposed acquisition and they were heard on 25.01.2006 but no order was passed and communicated to them in terms of the order passed by the High Court. The petitioners, therefore, prayed for quashing notice published on 01.03.2005(*Annexure-1* to the writ petition) and also prayed for quashing notices dated 24.03.2010(*Annexure-10 and Annexure-11* to the writ petition) fixing compensation for the land as well as for handing over of possession of the acquired land.

4. Respondents contended that notice under Section 4 read with Section 17(1) of L.A. Act was published on 01.03.2005 by the State Government being satisfied that the land mentioned in the said notification was required for public purpose and that it was urgent to take over possession of the land and therefore invoking provision under Section 17(1) of the L.A. Act the Governor was satisfied to dispense with the application of Section 5A of the L.A. Act. It is contended by the respondents that application of Section 17(1) of the L.A. Act is a matter of subjective satisfaction of the State Government and there cannot have any objective scrutiny by the Court of law.

4.1. It is contended that a road, namely Ramnagar Road No.9 is running perpendicular to the approach road towards west. For smooth flow of traffic from two directions of the bridge, the lands of the petitioners were required. If Ramnagar Road No.9 which was connected with the Airport Road at the southern end of Birendra Bridge is not raised smooth flow of traffic cannot be maintained. Ramnagar Road No.9 will be of no use if it is not raised keeping parity with the Durga Chowmuhani-Airport road. Therefore, this being a very important public purpose, the acquisition of land had become very urgent for completing the construction of approach road and to make the road elevation at par with the main approach road to avoid traffic congestion the acquisition was absolutely necessary. A suitable gradient of the approach road was necessary for smooth and uninterrupted flow of traffic. The notification was issued absolutely for public purpose and since it was very urgent as was felt by the State Government the provision of Section 17(1) of L.A. Act was invoked and the application of Section 5A of the Act was dispensed with. However, as per the consenting order passed by the Division Bench of the High Court a scope of hearing was given to the petitioners pursuant to the written objection filed by them dated 12.01.2006 and accordingly hearing was given by the L.A. Collector and on the date of hearing itself the decision of the L.A. Collector was communicated to the counsel of the petitioners orally and so the allegation of non-compliance of the High Court's order is not justified. The respondents annexed a copy of the order passed by

the L.A. Collector as *Annexure-R/1* to the counter affidavit. However, after the writ petition was filed, on 26.04.2010 a copy of the order passed by the L.A. Collector after hearing the objection of the petitioners was sent to the petitioners by registered post and a copy is annexed as *Annexure-R/2* to the counter affidavit.

5. Learned senior counsel, Mr. Bhowmik appearing for the petitioners contended that there was neither any public purpose nor any urgency and nothing material is reflected in the notice published on 01.03.2005 regarding public purpose or urgency. What is stated in the counter affidavit of the respondents, now before this Court, is all afterthoughts and only to somehow protect the acquisition process which was initiated with *mala fide* motive.

6. Learned counsel, Mr. Nath submitted that public purpose as well as urgency has been clearly stipulated in the notification and nothing more is required to be stated in the notification. Subjective satisfaction of the State Government is enough to conclude that the acquisition was urgently necessary and such subjective satisfaction is not subject to scrutiny by the Court.

7. *Annexure-1* to the writ petition, *i.e.* notification published in the newspaper, dated 01.03.2005 reads as follows:

"NOTIFICATION

WHEREAS, It appears to the State Government of Tripura, that the Land/Lands specified in the Schedule hereto(herein after referred to as "the said land/lands) is needed or is/are likely to be needed for the Public purpose namely, For Construction of Approach road towards R.C.C. Bridge over Katakhal near Durga Chowmuhani under Sadar Sub-Division in West Tripura District.(herein after referred to as "the said public purpose):

NOW THEREFORE, IT IS HEREBY NOTIFIED under the Provisions Section 4 of the Land Acquisition Act, 1894(1 of 1894)(herein after referred to as "the Acquisition Act") that the said land/lands measuring more or less 0.0681 acres in mouja Agartala Sheet No.1(3)/P is/are needed or is/are likely to be needed for the said public purpose at the public expense:

IN EXERCISE of the powers conferred by the aforesaid Section the Governor, is pleased to authorize the Land Acquisition Collector, West Tripura District, with his servants and Workman to enter upon and survey the land and to perform all others Acts, required or permitted by that section;

ALL persons interested in the said land/lands are hereby warned not to obstruct or interfere with any Surveyor or other persons employed upon the said land/lands for the purpose of the said acquisition:

ANY CONTRACT for the disposal of the said land/lands by sale, lease, mortgage assignment, exchange or otherwise or any outlay or improvements made or effected therein, without the sanction of the Land Acquisition Collector, after the date of publication of this Notification, will, under Section 24(Seventhly) of the Acquisition Act, be disregarded by the Officer

Assessing compensation for such parts of the said land/lands as may be finally acquired;

AND

WHEREAS the Governor is of the opinion that in view of the URGENCY of acquisition, the provisions of Sub-Section (1) of Section 17 of the Acquisition Act, is applicable :

NOW, THEREFORE, In exercise of the powers under Sub-Section (4) of Section 17 of the Acquisition Act, the Governor is pleased of direct that provisions of Section 5(A) of the Acquisition Act, Shall not apply in the instant case:

THE Land Statement and Plan may be inspected in the office of the Land Acquisition Collector, West Tripura District.

SCHEDULE OF LAND

FILE NO. : DM/W/LA/SDR/39/04

NAME OF DISTRICT :- WEST Tripura
NAME OF SUBDIVISION :- SADAR
NAME OF TEHSIL :- Sadar West
NAME OF MOUZA :- Agartala Sheet
No.1(3)/P.
NAME OF THE PROJECT :- Construction of
Approach road towards
RCC Bridge over
Katakhal near Durga
Chowmuhan.

<i>SL. NO.</i>	<i>KHATIAN NO.</i>	<i>PLOT NO.</i>	<i>AREA TO BE ACQUIRED(Acres)</i>	<i>CLASS OF LAND</i>
<i>1</i>	<i>25118</i>	<i>2231</i>	<i>0.0275</i>	<i>Dokan(Nal)</i>
<i>2</i>	<i>23800</i>	<i>2231/2807/P</i>	<i>0.0218</i>	<i>Dokan(Nal)</i>
<i>3</i>		<i>2231/2807/P</i>	<i>0.0217</i>	<i>Dokan(Nal)</i>
		<i>2230</i>	<i>0.004</i>	<i>Dokan(Nal)</i>
<i>4</i>	<i>660</i>	<i>2221/P</i>	<i>0.0131</i>	<i>Bastu(Nal)</i>

Total No. of Plots : :	5	Total Area in acres : :	0.0681
Area of Jote Land	:-	0.0681 ACRES	
Area of Khas Land	:-	0.00 ACRES	
Area of Dept. Land	:-	0.00 ACRES	
Total area of Land	:-	0.0681 Acres	
By order of the Governor			
Sd/- (S. Das)			
Under Secretary to the			
Government of Tripura."			

8. It would appear from the reading of the above notification that the words, "*public purpose*" as well as the word, "*urgency*" have been used in the notification and thereafter in exercise of the powers under sub-section(4) of Section 17 of the Act the application of Section 5A of the Act has been dispensed with. There is no elaboration of '*public purpose*' or '*urgency*'.

9. "*Public purpose*" is *sine qua non* for acquisition of any land under the L.A. Act. The act has prescribed certain provision empowering the land owners to make representation and/or objection against any proposed acquisition. To take away such right of a person which is guaranteed under the Constitution, the acquisitioning authority is expected to come out with reasons.

10. Section 5A of the Act has prescribed provision empowering an affected person to make representation/objection to the acquisition of the land and while taking away such right it is expected that the acquisitioning authority have certain and

sufficient reason and so simple using of the word, "*urgency*" cannot be said to be sufficient to ignore the provision of Section 5A of the L.A. Act. There is, no doubt that it is the subjective satisfaction of the Government to invoke Section 17(1) and (4) of the L.A. Act but it has to be shown that the subjective satisfaction has an objective appraisal of facts. When the Government takes a decision it must be on the basis of some relevant considerations taking into account by which the Government is satisfied that there exists emergency for invoking powers under Section 17(1) and (4) of the Act. Once it is shown that for subjective satisfaction there was objective appraisal of materials the Court should not interfere in the process but if nothing is mentioned in the notification about objective appraisal of facts, we are of considered opinion that the Court has jurisdiction to interfere under such eventuality.

11. *Annexure-1, i.e.* the notification published on 01.03.2005 does not speak about any objective appraisal of facts to arrive at a conclusion that there was existence of emergency for invoking the powers under Section 17(1) and (4) of the Act.

12. It is an admitted position that in the year 2000 and 2001 land belonged to the petitioners and others were acquired for widening the approach road from Durga Chowmuhani to RCC Bridge over Katakhal, and it is not disputed that the original road of 18 feet was widened to 51 feet and at the time of widening, land measuring 27 feet in the western side of the approach road

was acquired and in that process the land of the petitioners were also acquired. The approach road is now 51 feet wide. The purpose of acquisition of the proposed land was not at all felt necessary in the year 2000/2001 when the approach road was actually constructed and made through for traffic and people. In the year 2005, what has prompted the respondents to suddenly come out with a notification under Section 4 read with Section 17(1) of the Act is generally expected to be stated in the notification itself for the satisfaction of the land owners as well as for scrutiny of the Court. The respondents by filing counter affidavit contended that Ramnagar Road No.9 is required to be raised for smooth flow of traffic from two directions of the bridge. Might be the acquisition is necessary for public purpose. But there is nothing to show that it was emergency and therefore the application of Section 17(1) was necessary.

13. The petitioners immediately challenged that notification(*Annexure-1* to the writ petition) by filing writ petitions before the High Court and in the writ appeal the petitioners were allowed to make their representation/objection and accordingly they filed objection on 12.01.2006 and it is on record that respondent No.3 gave a hearing on the objections on 25.01.2006 but thereafter from 25.01.2006 till March, 2010 the respondents were sitting idle without taking any further action on the proposed acquisition and in the meantime more than five years elapsed since the notification for acquisition was made and therefore it is

evident that there was no emergency at all to invoke Section 17(1) and (4) of the L.A. Act.

14. The petitioners contended that as per the order passed by the Division Bench they filed written objection on 12.01.2006 against the proposed acquisition and thereafter respondent No.3 issued a notice to the petitioners on 18.01.2006(*Annexure-8* to the writ petition) calling them to appear before him for hearing over the objection on 25.01.2006 at 11.00 AM and accordingly the petitioners appeared before respondent No.3. *Annexure-8* has not been disputed by the respondents that the petitioners were called for hearing on 25.01.2006. Respondents contended that on the date of hearing itself the decision of the respondent No.3 was communicated to the counsel of the petitioners. This plea of the respondents seems to be a false plea which is evident from record. *Annexure-R/1* is the order passed by respondent No.3 on the objection and it shows that the order was passed on 27.01.2006. So, there was no order passed on 25.01.2006, *i.e.* on the date of hearing and hence there was no question of communicating the decision of the respondent No.3 about the objections to the lawyer of the petitioners. It is an admitted position that the decision was not communicated in writing in terms of the order passed by the Division Bench of the High Court in the writ appeal. That communication was made only on 26.04.2010 *i.e.* after the petitioners filed the present writ petitions. It is, therefore, evident that the order passed by the Division Bench was not complied by

the respondents, rather the respondents had taken a false plea that on the date of hearing itself the decision was communicated to the lawyer of the petitioners whereas it is evident from *Annexure-R/1* that no decision was taken on the date of hearing, *i.e.* on 25.01.2006 and the decision was taken only on 27.01.2006, but that was not communicated to the petitioners in terms of the order passed by the Division Bench of the High Court.

15. If it was decided by the respondent No.3 on 27.01.2006 that the objections filed by the petitioners were not sustainable, it is not understood as to what was the reasons for which the respondents were sitting over the matter till 24.03.2010 when the petitioners were asked to receive the compensation and to hand over possession. From the conduct of the respondents it is evident that there was absolutely no emergency in the process and therefore from January, 2006 to March, 2010 the respondents practically have taken no steps in the process of acquisition.

16. We may gainfully refer here the observation of the apex Court in paras 29, 35 and 36 in the case of ***Darshan Lal Nagpal v. Govt. of NCT of Delhi*** reported in ***(2012) 2 SCC 327*** which reads thus:-

"29. In the light of the above, it is to be seen whether there was any justification for invoking the urgency provisions contained in Section 17 (1) and (4) of the Act for the acquisition of the appellants' land. The

Division Bench of the High Court accepted the explanation given by the respondents by observing that substation in East Delhi is needed to evacuate and utilize the power generated from 1500 MW gas-based plant at Bawana. While doing so the Bench completely overlooked that there was long time gap of more than five years between initiation of the proposal for establishment of the substation and the issue of notification under Section 4(1) read with Sections 17 (1) and (4) of the Act. The High Court also failed to notice that the Government of NCT of Delhi had not produced any material to justify its decision to dispense with the application of Section 5-A of the Act. The documents produced by the parties including the notings recorded in file bearing No.F.S(11)/08/L&B/LA and the approval accorded by the Lieutenant Governor do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5-A which represents two facets of the rule of hearing, that is, the right of the landowner to file objection against the proposed acquisition of land and of being heard in the inquiry required to be conducted by the Collector.

.....

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

the Bench of the High Court was unduly influenced by the fact that consumption of power in Delhi was increasing every day and the DTL was making an effort to ensure supply of power to different areas and for that purpose establishment of substation at Village Mandoli was absolutely imperative. In our view, the High Court was not justified in rejecting the appellants' challenge to the invoking of urgency provisions on the premise that the land was required for implementation of a project which would benefit large section of the society.

36. It needs no emphasis that majority of the projects undertaken by the State and its agencies/ instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially a large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated under Section 5-A, which would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is

one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard." (emphasis supplied)

In the given facts and circumstances of this case no reason has been assigned for invoking the provision of Section 17(1) and (4) of the L.A. Act. The silence on the part of the respondents for about four years during the period from January, 2006 to March, 2010 further makes it evident that there was no emergency at all to invoke the provision of Section 17 of the L.A. Act. The subjective satisfaction of the State while invoking the emergency provision should be on an objective appraisal of the facts and mere mention of urgency in the notification is not sufficient to arrive at a conclusion that there was actual emergency to invoke the provision and thereby to curtail the legitimate right of making objection by the land owners.

17. According to the respondents, the L.A. Collector, i.e. respondent No.3 after hearing the objection of the petitioners turned down the objection by order dated 27.01.2006(Annexure-R/1 to the counter affidavit). The order reads as follows:-

"ORDER

27-1-06

This is a proceeding for acquisition of land measuring 0.0681 acre at Agartala Sheet No.1(3)/P under Sadar Sub-Division for construction of approach road of R.C.C. Bridge over river Katakhal near Durga Chowmuhany.

Notification under section 4 of L.A. Act was issued in the Revenue Department vide No.9(2)-REV/ACQ/VI/2005 dated 24-02-05. Declaration under section 6 of L.A. Act was also issued by the Revenue Department vide No.9(2)-REV/ACQ/VI/2005 dated 18-03-05 which was published in "Bartaman Tripura" on 29-03-05.

After completion of the L.A. process U/S 9 of the L.A. Act 1894, the concerned parties filed a case in the Hon'ble Guwahati High Court Single Bench and the Hon'ble Single Bench has dismissed the all of the three petitions by a common judgement order dated 13-05-05. Thereafter the aggrieved petitioners have appealed to the Division Bench. The Division Bench in their verdict dated 15-12-05 has disposed the appeal with observation and direction that the writ appellants be given opportunity to have their say in the matter of acquisition of their lands so as to satisfied to the requirements of the section 5(A) and respondents shall consider and dispose of the same in accordance of law. Whatever decision is arrived by the responding authority concerned shall be communicated in writing to the writ appellant.

In pursuance of the verdict on 15-12-05 of the Double Bench by the Hon'ble Guwahati High Court, Agartala Bench on heard the parties.

At the time of hearing Sri Anup Deb, Ld. Advocate has appeared on behalf of the following petitioners:-

1. Sri Sekhar Ch. Deb,
2. Sri Manik Pal &
3. Sri Hiralal Pal.

The Ld. Counsel stated that land measuring 0.004 acres under mouja Agartala Sheet No.1(3)/P involved with acquisition for the purpose cited above belongs to the objector and can not be needed for the purpose stated in the notification.

The Counsel also prayed for constitution of a committee to make spot investigation towards ascertaining the requirement for construction of approach road for the bridge.

On scrutiny of records it reveals that the State Government in PWD as the appropriate authority has proposed for the acquisition as per their indicated alignment with a considered thought for making approach road towards the bridge over the river Katakhal and the super market constructed on the area and also for making approach towards the main road also to the Katakhal bridge from the different internal roads specially the Ramnagar Road No.9.

As such the question of formation of a committee to reassess the requirement find at all not necessary.

Now the position is that as per verdict of Hon'ble High Court(Double Bench) dated 15-12-05 the concerned parties have duly been heard but they were not able to cite any reasonable ground and justification against the stated acquisition as per alignment shown by the PWD. Rather if not acquired as per the PWD shown requisition the general interest of the public towards development of the area, traffic and vehicular movement towards the bridge over the river Katakhal from the main and internal road including Ramnagar Road No.9 passing by the side of the nearby

constructed super market will hamper a great lot. It is also felt that the changing scenario of the area with the nearby constructed super market(Bepani Bitan) and the alternative airport road resulting increase of vehicular movement from all sides now demanding the said acquisition as per well thought alignment of the appropriate department i.e. PWD.

Now it find no other alternative but to reject the objection filed by the appellants and as no other restriction has been imposed by the Hon'ble High Court the process of land acquisition as per L.A. Act 1894 may continue.

Hence, it be sent to the Government in Revenue Department for taking needful action and the copy may also be sent to the appellants.

Given under my seal and signature.

*(A.K. Podder)
L.A. Collector
Tripura West"*

It would appear from the above order that after hearing the petitioners, respondent No.3 did not make any inquiry in respect of factual objections raised by the petitioners. No inquiry or observations made for invoking Section 17(1) and (4) of the Act. Respondent No.3 simply scrutinized the record and turned down the objection relying on the proposal made by PWD. Respondent No.3 would hear the PWD also for giving justification on the proposed public purpose and thereafter would arrive at a conclusion assigning reason. No doubt, the traffic is increasing day by day in the city area and it is an admitted position that Durga

Chowmuhani is situated in the heart of Agartala city and for smooth movement of traffic as well as the common people, widening of the roads as well as raising of the roads might be necessary for public purpose. So long as the exercise of the power is for public purpose the individual right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, sub-section (2) of Section 23 provides payment of *solatium* to the owner who declines to part with the possession of the land. Acquisition in accordance with the procedure is a valid exercise of the power and it will not amount to deprivation of right to livelihood or otherwise. For exercising the power of acquisition, it is therefore, expected that the acquisitioning authority is guided with reasons and appraisal of facts is necessary for acquisition.

In the given facts and circumstances of the case the public purpose for acquisition process though has been made out, the respondents failed to make out any case of emergency to invoke the provision of Section 17 of the L.A. Act.

Section 17(3A) of the Act prescribes provision to tender payment of eighty per centum of the compensation in the event of invoking emergency provision but the respondents stated nothing that they complied sub-section (3A) of Section 17 of the Act.

18. In view of the discussions made above, we are of considered opinion that the respondents wrongly invoked the emergency provision of Section 17(1) and (4) of the L.A. Act having no cogent reasons for the same and thereby deprived the legitimate right of the petitioners prescribed under the L.A. Act and hence the notice published on 01.03.2005(*Annexure-1* to the writ petition) is liable to be interfered and quashed. Accordingly, the acquisition process initiated by the respondents by way of publication of notice on 01.03.2005(*Annexure-1* to the writ petition) as well as the subsequent notices dated 24.03.2010 intimating the petitioners to accept the awarded compensation and to hand over the possession are all set aside and quashed.

It is, however, observed that this judgment shall not bar the respondents in making any acquisition process in future for public purpose in accordance with law.

19. Both the writ petitions accordingly stand disposed of.

Parties to carry their own costs.

JUDGE

CHIEF JUSTICE