

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.10.2015

W.P.(C) 5553/2013

MOOL RAJ TYAGI & OTHERS

... Petitioners

versus

GOVT OF NCT OF DELHI AND OTHERS

... Respondents

Advocates who appeared in this case:-

For the Petitioners	: Mr B.S.Maan, Ms Smita Maan and Mr Vishal Maan
For the Respondents 1&2	: Mr Sanjay Kumar Pathak, Mr Sunil Kumar Jha and Mr Kushal Raj
For the Respondent No.3	: Mr Anuj Aggarwal and Ms Niti Jain
For the Respondent No.4	: Mr Ajay Verma

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. The petitioner seeks the quashing of Notification No. F.10 (6)/2012/WEST/ L&B /LA/8316 dated 27.8.2013 issued under Section 4, 17(1) and 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') and the impugned declaration bearing No. F.10(6)/2012/WEST/ L&B /LA/8360 dated 29.08.2013 issued under Section 6 of the said Act in respect of the petitioners' land comprised in

Khasra Nos. 65/11/2 (3-15), 12/2 (3-15), 13/2 (3-15) and 14/2/2 (0-6) measuring 11 bighas and 11 biswas, in all, in the revenue estate of village Hastsal, New Delhi.

2. Two points of challenge have been raised in the present petition. The first point is that the Section 6 declaration is prior to the date of publication of the notification under Section 4 of the said Act. This, according to the learned counsel for the petitioners, is impermissible in law. In support of this proposition, the learned counsel has placed reliance on a decision of a Division Bench of this court in the case of ***Uday Kaushish v. The Land Acquisition Collector & Others***: 31 (1987) DLT 181 DB. Based on the said decision, the learned counsel submitted that not only the declaration under Section 6, but the notification under Section 4 is also liable to be quashed.

3. The second point urged by the learned counsel for the petitioners is that Section 17(4) has been invoked without proper application of mind and the provisions of Section 5A have been dispensed with by invoking the said provisions of Section 17(4) without the pre-conditions therefor having been satisfied. It was submitted by the learned counsel for the petitioners that merely because there was an urgency, as contemplated under Section 17(1)

of the said Act, did not, *ipso facto*, entail that the provisions of Section 5A had to be dispensed with by invoking the provisions of Section 17(4). The invocation of Section 17(4) could only be done in a situation where even a delay of a few days or weeks would defeat the purpose. No such ground has been made out, according to the learned counsel for the petitioners, in the present case. He placed reliance on this aspect of the matter on a recent decision of this Bench in the case of **Neena Mohini Williams & Another v. Govt of NCT of Delhi & Others: 220 (2015) DLT 141(DB).**

4. On the other hand, the learned counsel for the respondents submitted that the land in question was urgently required for a 200 bedded hospital which was clearly in public interest. It was contended that, although there may have been pre-acquisition delays in bringing out the notification under Section 4 of the said Act, that would not enable us to detract from the requirement of urgency and of the necessity to invoke the provisions of Section 17(4) of the said Act. Reliance was sought to be placed on the decision of the Supreme Court in the case of **Chameli Singh and Others v. State of U.P. and Another: 1996 (2) SCC 549.** It was also contended that the acquisition proceedings had been validly initiated and the urgency provision of Section 17(1) was clearly invocable in the facts and

circumstances of the present case and that the provisions of Section 17(4) of the said Act had also been validly invoked by dispensing with the application of the provisions of Section 5A of the said Act.

5. Consequently, the learned counsel for the respondents submitted that the writ petition ought to be dismissed.

6. Before we examine the rival contentions of the parties, it would be necessary to set out the factual parameters. Prior to the issuance of the notification under Section 4 and the declaration under Section 6 of the said Act, a proposal had been submitted for orders of the Lt. Governor, Delhi on 13.08.2013. The following extracts from the proposal are relevant:-

“64. In this regard, a meeting is also held under the chairmanship of Chief Secretary, Delhi on the request of Hon’ble MLA Sh. Mukesh Sharma and it has been decided to invoke urgency clause for acquisition of land for the proposed site. The said meeting was also attended by the Director, DHS, Govt. of NCT of Delhi alongwith his officers. Subsequently, a letter dated 29/07/2013 has been sent to the requisitioning agency i.e. Dte. Of Health Services for proposal of invoking urgency clause and also requested to release the estimated 80% compensation amount i.e. Rs. 1,35,79,041/- for the land. (P-129/C).

65. In response to the same, vide letter dated 08/08/2013, a cheque amounting to Rs. 1,35,79,041/- towards estimated 80% compensation amount has been received from Executive Engineer, PWD for the acquisition of land for construction of

200 bedded hospital at Peepalwala Chowk, Mohan Garden, Uttam Nagar, Village Hastal. It is also requested that the acquisition may please be done by invoking urgency clause. (P-146/C).

66. In view of the above the proposal is submitted for kind consideration and approval of Hon'ble Lt. Governor, Delhi for acquisition of land falling in Kh. Nos. 64//15/2 (0-5-10), 65//11/2 (3-15), 12/2 (3-15), 13/2 (3-15), 14/2/2/ (0-6) measuring 11 bigha 16 biswa 10 Biswansi of village Hastal for construction of 200 Bedded Hospital near Pipalwala Chowk, Mohan Garden, Uttam Nagar, Delhi and issuance of notification thereof u/s 4 read with 17 (4), 6 and 17 (1) of Land Acquisition Act, 1894. Accordingly, draft notifications are placed opposite in the file for kind consideration and orders of HE the Lt. Governor, Delhi.

67. Submitted please.”

Subsequently, the Lt. Governor gave his approval in the following manner:-

“70. I have gone through the records and requirements of Dte. Of Health Services, Govt. of NCT of Delhi for construction of 200 Bedded Hospital Near Pipal Wala Chowk, Mohan Garden, Uttam Nagar, Village Hastal, Delhi and the draft notifications prepared by LAC (West).

71. I am satisfied that the land measuring 11 Bigha 16 Biswa 10 Biswansi of village Hastal, Delhi is urgently required for above purpose. In view of the urgency of the scheme, I order that the provisions of Section 5A shall not apply and notification under Section 4 read with 17 (4), 6 and 17(1) of the Land Acquisition Act, 1894, be issued immediately.”

7. Thereafter, on 27.08.2013, the Notification under Section 4, read with Sections 17(1) and 17(4), to the following effect, was issued:-

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI
LAND & BUILDING DEPARTMENT, VIKAS BHAWAN, NEW
DELHI
N.F.10(6)/2012/West/L&B/LA/8316 Dated: 27/08/2013

NOTIFICATION

Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at the public expense for a public purpose namely for construction of 200 Bedded Hospital Near Pipal Wala Chowk, Mohan Garden, Uttam Nagar Village Hastal, Delhi. It is, thereby, notified that the land in the locality described in the specification below is likely to be acquired for the above purpose.

The notification is made under the provisions of Sub Section 1 of Section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi is pleased to authorize the Officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land in the locality and do all other acts required or permitted by that section.

The Lt. Governor, Delhi is satisfied also that provisions of sub section (1) of the section 17 of the said act are applicable to this land and is further pleased under sub section 4 of the said section to direct that all the provisions of section 5A shall not apply.

SPECIFICATION

VILLAGE	Khasra No.
Hastal	64// 15/2 (0-5-10)

	65// 11/2(3-15) 12/2(3-15) 13/2(3-15) 14/2/2(0-6)
Total Area	11-16-10

BY ORDER AND IN THE NAME OF THE LT. GOVERNOR
OF DELHI.

Sd/-
(Vinay Kumar)
Addl. Secretary (L&B)”

8. It will be pertinent to note that the said Notification was, *inter alia*, published in the English daily “Hindustan Times, New Delhi” on 30.08.2013 and 31.08.2013. It was also published in the Official Gazette on 27.08.2013. The Section 6 declaration was made on 29.08.2013. The Notification in respect thereof was as under:-

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI
LAND & BUILDING DEPARTMENT, VIKAS BHAWAN, NEW
DELHI
N.F.10(6)/2012/West/L&B/LA/8360 Dated: 29/08/2013

NOTIFICATION

Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at the public expense for a public purpose namely for construction of 200 Bedded Hospital Near Pipal Wala Chowk, Mohan Garden, Uttam Nagar Village Hastal, Delhi. It is, thereby, notified that the land in the locality described in the specification below is likely to be acquired for the above purpose.

The notification is made under the provisions of Section 6 of the Land Acquisition Act, 1894 in respect of the land notified under

Section 4 of the L.A. Act, 1894 vide Notification No.F.10(6)/2012/West/L&B/LA/8316 dated 27/08/2013 to all whom it may concern. Under the provisions of Section 7 of the said Act, the Land Acquisition Collector (West), Delhi is hereby directed to take orders for the acquisition of the said land.

A plan of the land may be inspected at the office of the Land Acquisition Collector (West), Old School Building, Rampura, New Delhi.

SPECIFICATION

VILLAGE	Khasra No.
Hatsal	64// 15/2 (0-5-10) 65// 11/2(3-15) 12/2(3-15) 13/2(3-15) 14/2/2(0-6)
Total Area	11-16-10

BY ORDER AND IN THE NAME OF THE LT. GOVERNOR
OF DELHI.

Sd/-
(Vinay Kumar)
Addl. Secretary (L&B)”

9. Shortly thereafter, the present petition was filed and on 04.09.2013. While issuing notices in the matter, this court had granted an order of *status quo*, as a result of which, the possession of the subject lands could not be taken by the land acquiring agency and the same remained with the petitioners.

10. It would also be necessary to set out the relevant provisions of the said Act. Section 4 thereof, to the extent relevant, reads 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 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 the publication of the notification).

2. xxxx xxxx xxxx xxxx xxxx”
(underlining added)

Section 6 of the said Act reads as under:-

“6. Declaration that land is required for a public purpose.—(1) Subject to the provisions of Part VII of this Act, when the Appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under sections 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),—

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. – In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. – Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration 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 the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration the Appropriate Government may acquire the land in a manner hereinafter appearing.”

(underlining added)

Section 17, to the extent relevant, reads as under:-

“17. Special powers in cases of urgency. – (1) In cases of urgency, whenever the Appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) xxxx xxxx xxxx xxxx xxxx

(3) xxxx xxxx xxxx xxxx xxxx

3A xxxx xxxx xxxx xxxx xxxx

3B xxxx xxxx xxxx xxxx xxxx

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government

may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1):”

(underlining added)

11. Upon a plain reading of the aforesaid provisions, it is evident that the date of publication of the notification under Section 4 would be the last of the dates of publication in (1) the Official Gazette and (2) in two daily newspapers circulating in the concerned locality, of which, at least one shall be in the regional language. In the facts of the present case, the notification under Section 4 was issued on 27.08.2013. But, it was published in the Hindustan Times, New Delhi on 30.08.2013 and 31.08.2013. Thus, 31.08.2013 being the last of the dates of publication would have to be regarded as the date of publication of the notification. To be clear, while the notification was issued on 27.08.2013, the date of publication will be taken as 31.08.2013. Now, let us look at the provisions of Section 6 which require, in the normal sequence of events, that the declaration thereunder should be made, in the circumstances applicable to the present case, within one year from the date of publication of the notification under Section 4. Reading Section 17(4) of the said Act, it becomes clear that where the provisions thereof are invoked, the appropriate Government may direct that

the provisions of Section 5A shall not apply and that, if it so directs, a declaration is to be made under Section 6 in respect of the land at any time “after the date of publication of the notification under Section 4, sub-section (1)”. The clear indication from a reading of the provisions of Section 6 and 17(4) is that the declaration under Section 6 has to be made after the date of publication of the notification under Section 4(1). In other words, the declaration under Section 6 can only be made after the last of the dates of publication, as stipulated in Section 4(1). At this juncture, we may recall that the last of such dates was 31.08.2013 which would be taken as the date of publication of the notification under Section 4(1) of the said Act. But, in the present case, we find that the declaration under Section 6 was made on 29.08.2013, which was prior to the date of publication of the notification under Section 4(1). This is contrary to the provisions of the said Act.

12. At this point, it would be relevant to notice the decision in the case of **Uday Kaushish** (*supra*), which was relied upon by the learned counsel for the petitioners. In that case also, a similar situation had arisen. The last date of publication of the notification under Section 4 of the said Act was 01.03.1986. But, the declaration under Section 6 read with Section 17(4) had been issued on 12.02.1986. The declaration under Section 6 was held

to be in violation of the provisions of Section 17(4) of the said Act. The court observed as under:-

“6. It is thus clear from Section 4 (as amended) that the date of publication of the Notification is the date on which either the Notification is published in the Official Gazette or in the newspaper last. In the present case we are proceeding on the assumption that the last date of publication is 1/3/1986, Therefore, the date of publication of Section 4 Notification is 1/3/1986. Sub-section (4) of Section 17 of the Act may also be examined in this connection:-

‘17.(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and if it does so direct, a declaration made be made under Section 6 in respect of the land at any time after the date of the publication of the notification under Section 4, Sub-section (1).’

It is clearly mentioned that Section 6 read with Section 17 declaration has to be issued after the date of publication of the Notification under Section 4. Since the date of publication of Section 4 Notification is assumed to be 1/3/1986 the declaration under Section 6 read with Section 17(4) could only have been issued after 1/3/1986. In the present case the declaration under Section 6 read with Section 17(4) has been issued on 12/2/1986 itself. Therefore, the declaration' under Section 6 on the basis of it is contrary and in violation of the provisions of Section 17(4) of the Act.

7. It will be noticed that this Court in the decision reported as AIR 1977 Delhi 209: *S.K. Gupta v. The Union of India and others*, had taken the view that simultaneous making of Notifications under Section 4 and Section 6 read with Section 17(4) was valid and this view was taken in view of the decisions of the Supreme Court in the cases reported as 1963

SC 151: *Smt. Somawanti v. State of Punjab* and (1969) 2 SCR 60; *Vijay Cotton & Oil Mills Ltd. v. State of Gujarat*. However, inspired by the aforesaid decisions of the Supreme Court the legislative authorities thought fit to amend not only Section 4 but also Section 17(4) of the Act. The effect of amendments in Section 4 and Section 17(4) is that the declaration under Section 6 read with Section 17(4) has to follow the date of publication of Section 4 Notification and can no longer be issued simultaneously.

8. In view of the fact that the declaration issued under Section 6 of the Act which debarred the petitioner from making any objections under Section 5A of the Act is invalid, we have no option but to quash not only the Notification under Section 6 read with Section 17(4) of the Act but also the Notification of the same date issued under Section 4 of the Act.

9. Since the petition succeeds on this short point we are not examining the other submissions made by the petitioner.

10. The result is that the petition succeeds and the Notifications dated 12/2/1986 issued under Section 4 and Section 6 read with Section 17(4) of the Act are hereby quashed.”

13. Therefore, following the decision of this court in *Uday Kaushish (supra)*, it has to be held that the declaration made under Section 6 is contrary to and in violation of the provisions of the said Act. The declaration under Section 6 as well as the notification under Section 4 read with Section 17(1) and 17(4) are also liable to be quashed and they are quashed.

14. Although it is not necessary for us to examine the second aspect which was raised by the learned counsel for the petitioners in view of our

decision on the first point, however, for the sake of completeness, we shall deal with the second point also. It was contended by the learned counsel for the petitioners that merely because a situation of urgency existed, as contemplated under Section 17(1) of the said Act, this did not by itself entail that in every case of such urgency, the provisions of Section 17(4) could be invoked. It was contended that mere existence of the urgency or unforeseen emergency, although it is a condition precedent for invoking Section 17(4), that by itself would not be sufficient to direct the dispensation of the enquiry under Section 5A of the said Act. It was necessary that an opinion be formed by the Government concerned that alongwith the existence of such urgency or unforeseen emergency, there was also a need for dispensing with the enquiry under Section 5A. Reliance on this aspect of the matter was placed on a recent decision of this court in *Neena Mohini Williams & Another (supra)*. In that case, this court had considered the Supreme Court decision in the case of **Radhey Shyam (Dead) through Lrs & Ors v. State of U.P. & Others: 2011 (5) SCC 553**, which, in turn, had relied on an earlier decision of the Supreme Court in the case of **Union of India v. Mukesh Hans: 2004 (8) SCC 14**. This court examined the said decisions in the following manner:-

“8. After having considered the arguments advanced by the learned counsel for the parties, we are of the view that the petitioners are right in submitting that no independent application of mind has taken place insofar as the provisions of Section 17(4) of the said Act are concerned. Before we move on to examine the same, it would be relevant to set out portions of the Supreme Court’s decision in the case of ***Radhy Shyam (supra)***. Referring to an earlier decision in the case of **Union of India vs. Mukesh Hans:[(2004)8 SCC 14]**, the Supreme Court in ***Radh23y Shyam (supra)*** observed, in paragraph 61, as under:-

“61. We may now notice some recent decisions. In ***Union of India v. Mukesh Hans (supra)***, this Court interpreted Sections 5A and 17 and observed:

“32. 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. If that was not the intention of the legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of

existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency.....

33. An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Sections 17(1) and (2), the dispensation with inquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because Sub-section (4) of Section 17 itself indicates that the 'Government may direct* that the provisions of Section 5-A shall not apply' which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry."

(emphasis supplied)

The Supreme Court in ***Radhy Shyam*** (*supra*) examined several other decisions rendered by it and then culled out certain principles. Paragraph 77 gives a summary of the principles which had been culled out. Sub-paragraphs (v), (vi), (vii),

(viii) and (ix) of paragraph 77 of the said decision are relevant and they are reproduced herein below:-

“77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) xxxxxxxxxxxx

(iv) xxxxxxxxxxxx

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion

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

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

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

(underlining added)"

15. After examining the said decision, this court concluded that it was abundantly clear that the exercise of power by the Government under

Section 17(1) does not necessarily result in exclusion of Section 5A of the said Act in terms of which any person interested in land can file objections and is entitled to be heard in support of his objections. It was further observed that the use of the word “may” in Section 17(4) made it clear that it merely enabled the Government to direct that the provisions of Section 5A would not apply to the cases covered under sub-section (1) or (2) of Section 17. The invocation of Section 17(4) was not a necessary concomitant of the exercise of power under Section 17(1). In the decision of the Lt. Governor, in the present case, which we have extracted in the earlier part of this judgment, it only indicates that there was “urgency of the scheme”. Based on this, it was stated that the provisions of Section 5A would not apply. This, we are afraid, is not enough. As observed in ***Radhey Shyam*** (*supra*), the provisions of Section 17(4) can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Merely because there is urgency in terms of Section 17(1) of the said Act, would not, *ipso facto*, entail the applicability of the provisions of Section 17(4) of the said Act. It has been made clear in ***Radhey Shyam*** (*supra*) that before excluding the applicability of Section 5A of the said Act, the concerned authority must be fully satisfied that the time of a few weeks or months likely to be taken in conducting an enquiry

under Section 5A would, in all probability, frustrate the public purpose for which the land was proposed to be acquired. We do not discern any such exercise having been undertaken or mind having been applied on this aspect of the matter in the present case. Therefore, in our view, the provisions of Section 17(4) of the said Act could not have been invoked and the safeguard provision of Section 5A of the said Act could not have been dispensed with.

16. In any event, in view of our conclusions arrived at with regard to the first point, the impugned notification under Section 4(1) read with Sections 17(1) and 17(4) of the said Act, as also the declaration under Section 6 of the said Act, are quashed. The writ petition is allowed. The parties are left to bear their respective costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

October 07, 2015

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