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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2021

Pronounced on : 23.09.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.Nos.14292, 6900, 9059 & 7171 of 2001 and
WMP.Nos.61, 62 & 48 of 2014, 29115 of 2017 and
WPMP.No.686 of 2007 & WVMP.No.177 & 178 of 2008

WP.No.14292 of 2001

K.Govinda Babu

...Petitioner

Vs.

1. State of Tamilnadu,
Rep. by Secretary to Government,
Industrial Development,
Fort St.George, Chennai-9
2. The Special Tahsildar,
Land Acquisition,
TACID, Oragadam Unit,
Tambaram, Chennai-45
3. State Industries Promotion Corporation of
Tamilnadu Limited(SIPCOT),
Rep. by its Assistant General Manager(Law),
19-A, Rukmani Lakshmipathy Road,
Chennai-8

(R3 impleaded as per order dated 12.09.2011
in WPMP.No.690 of 2007 in WP.No.14292 of 2001

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the first respondent relating to the notification issued under Section 4(1) of the Land Acquisition Act vide GO.Ms.No.851 Industries (MIJ) dated 08.12.1998 as published in Tamil Nadu Government Gazattee Extraordinary Part II Section 2 dated 14.12.1998 and Section 6 declaration vide GO.Ms.No.361 Industries (MIJ) dated 05.05.1999 as published in Tamil Nadu Government Gazattee Extraordinary Part II Section 2 dated 05.05.1999 quash the same.



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For Petitioner : Mr.K.V.Subramanian,
Senior Counsel
for Mr.M.A.Abdul Wahab

For Respondents
For R1 & 2 : Mr.Richardson Wilson,
Government Advocate

For R3 : Mrs.Sudarshana Sunder

WP.No.6900 of 2001

M/s.Vasantham Properties Pvt Ltd.,
3rd Floor, Sindoor Towers,
No.95, Luz Church Road,
Mylapore,
Chennai 600 004 rep. by its
Managing Director K.Suresh

...Petitioner

Vs.

1. State of Tamilnadu,
Rep. by Secretary to Government,
Industries Department,
Fort St.George, Chennai-9

2. The Special Tahsildar,
Land Acquisition,
Unit-III (Oragadam Plan),
SIPCOT - TACID Division,
No.1, Sivashanmugam Road,
West Tambaram, Chennai-45

3. The Chairman,
Tamilnadu Corporation for Industries
Infrastructure Development Limited,
68, Greams Road, Chennai 600 006

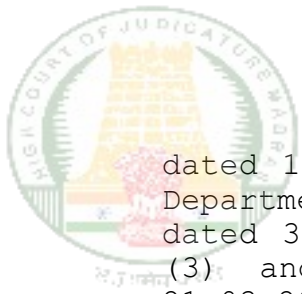
4. State Industries Promotion Corporation of
Tamilnadu Limited(SIPCOT),
Rep. by its Assistant General Manager(Law),
19-A, Rukmani Lakshmipathy Road, Chennai-8

(R4 impleaded as per order dated 14.06.2007
in WPMP.No.684 of 2007 in WP.No.6900 of 2001

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the proceedings in pursuance of 4(1) notification of the first respondent in GO.Rt.No.104, Industries Department dated 27.01.1999 and published in Dina Malar Daily



dated 17.02.1999 and 6 declaration in GO(Rt) No.365, Industries Department dated 05.05.1999 published in the Malai Murasu Daily dated 30.05.1999 and the consequential notices under Sections 9 (3) and 10 of the 2nd respondent in Na.Ka.No.47/98 dated 21.03.2001 in respect of S.Nos.445/2I, 445/3F, 445/3C, 461/19B, 461/27A, 461/27B, 461/27C, 461/27D, 461/16, 445/3A, 442/8, 442/7, 461/1A, 461/1B, 461/5, 461/6B, 461/9A, 461/9B, 461/15A, 461/15B, 461/4, 461/6A, 461/13, 461/14, 461/20, 461/21, 461/22, 461/23, 461/28A, 461/28B, 442/1A, 442/6, 461/8, 442/9, 442/10, 461/12, 460/1, 460/2A, 460/2B, 442/1B, 442/12, 461/2, 461/3, 461/7, 442/2, 442/11, 445/3G, 442/3B, 442/3A, 442/3C, 442/4A, 442/4B, 461/24, 442/5A, 442/5C, 442/5B, 442/5D, 442/4 and 445/3E totally measuring 7.89 acres and quash the same.

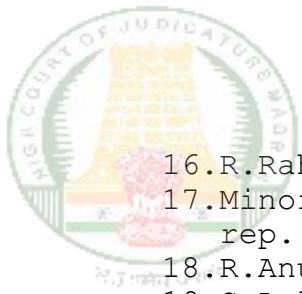
For Petitioner : Mr.Sathish Parasran,
Senior Counsel
for Mr.R.Parthasarathy

For Respondents
For R1 & 2 : Mr.Richardson Wilson,
Government Advocate

For R3 & 4 : Mrs.Sudarshana Sunder

WP.No.9059 of 2001

1. M/s.Vasantham Properties Pvt Ltd.,
3rd Floor, Sindoor Towers,
No.95, Luz Church Road,
Mylapore,
Chennai 600 004 rep. by its
Managing Director K.Suresh
2. J.Lakshmi Priya
3. Minor C.Kalyani
rep. by her father and guardian Chandrasekhar
4. V.Suresh Kumar
5. T.Bharathkumar
6. S.Sivakumar
7. Anand A.Jain
8. Sumitra Kumari Jain
9. S.Deepa
- 10.Minor G.K.Lavanya
rep. her father and guardian Kripanidhi
- 11.K.Santhi
- 12.Pushpalatha Panneerselvam
- 13.A.Vijaya
- 14.Anandhi Madhivanan
- 15.Minor Srividhya,
rep by her father and guardian Sridharan



16.R.Rahul Barua
17.Minor Bharath
rep. by his father and guardian Muralidharan
18.R.Anuradha
19.S.Lakshmi
20.P.Sarala Kumari
21.G.N.Sathyamurthy
22.V.Neelabai
23.A.V.Natarajan
24.Thiagarajan
25.Dr.Santhanam
26.M.Revathy
27.N.Leela
28.A.Balasubramaniam
29.M.Lalitha
30.M.Arunkumar
31.R.Hariharan
32.S.Paramasivam
33.Sumathi Nandakumar
34.Uma Chandrasekar

...Petitioners

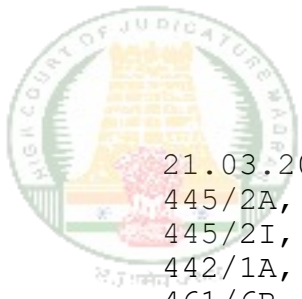
Vs.

1. The State of Tamilnadu,
Rep. by Secretary to Government,
Industries Department,
Fort St.George, Chennai-9
2. The Special Tahsildar,
Land Acquisition,
Unit-III (Oragadam Plan),
SIPCOT - TACID Division,
No.1, Sivashanmugam Road,
West Tambaram, Chennai-45
3. The Chairman,
Tamilnadu Corporation for Industries
Infrastructure Development Limited,
68, Greaves Road, Chennai 600 006

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the proceedings in pursuance of 4(1) notification of the first respondent in GO.Rt.No.104, Industries Department dated 27.01.1999 and published in Dina Malar Daily dated 17.02.1999 and 6 declaration in GO(Rt) No.365, Industries Department dated 05.05.1999 published in the Malai Murasu Daily dated 30.05.1999 and the consequential notices under Sections 9 (3) and 10 of the 2nd respondent in Na.Ka.No.47/98 dated



21.03.2001 in respect of S.Nos.444,445/1A, 445/1B, 445/1C, 445/2A, 445/2B, 445/2C, 445/2D, 445/2E, 445/2F, 445/2G, 445/2H, 445/2I, 445/3A, 445/3B, 445/3C, 445/3D, 445/3E, 445/3F, 445/3G, 442/1A, 442/1C, 442/5D, 442/9, 442/10, 442/11, 442/12, 461/5, 461/6B, 461/8, 461/9A, 461/9B, 461/10A, 461/10B, 461/11, 461/12, 461/14, 461/15A, 461/15B, 461/16, 461/20, 461/22, 461/24 & 461/25 totally measuring an extent of 1.73 acres and quash the same.

For Petitioners : Mr.Sathish Parasran,
Senior Counsel
for Mr.Rahul Balaji

For Respondents
For R1 & 2 : Mr.Richardson Wilson,
Government Advocate

For R3 : Mrs.Sudarshana Sunder

WP.No.7171 of 2001

1. M/s.Vasantham Properties Pvt Ltd.,
3rd Floor, Sindoor Towers,
No.95, Luz Church Road,
Mylapore,
Chennai 600 004 rep. by its
Managing Director K.Suresh
2. Abdul Aziz
3. Balaraman
4. Kandan
5. Padma
6. Parvathi
7. Dhanabakiam
8. Geetha
9. Mala
- 10.Minor Bharathy, rep. by his
Mother and guardian Padma
- 11.E.Munusamy
- 12.Ramu Naicker
- 13.Radhakrishnan
- 14.Kumarasamy
- 15.Arjunan
- 16.Ragava Naicker
- 17.Sadasivam
- 18.Ganapathy
- 19.Thangavelu
- 20.Gopal
- 21.Vedachalam
- 22.Ranganathan
- 23.Mani



24.Velmurugan

25.K.Palani

...Petitioners

Vs.

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1. The State of Tamilnadu,
Rep. by Secretary to Government,
Industries Department,
Fort St.George, Chennai-9
2. The Special Tahsildar,
Land Acquisition,
Unit-III (Oragadam Plan),
SIPCOT - TACID Division,
No.1, Sivashanmugam Road,
West Tambaram,
Chennai-45
3. The Chairman,
Tamilnadu Corporation for Industries
Infrastructure Development Limited,
68, Greams Road,
Chennai 600 006
4. State Industries Promotion Corporation of
Tamilnadu Limited(SIPCOT),
Rep. by its Assistant General Manager(Law),
19-A, Rukmani Lakshmipathy Road,
Chennai-8

(R4 impleaded as per order dated 13.06.2008
in MP.No.685 of 2007 in WP.No.7171 of 2001

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the proceedings in pursuance of 4(1) notification of the first respondent in GO.Rt.No.104, Industries Department dated 27.01.1999 and published in Dina Malar Daily dated 17.02.1999 and 6 declaration in GO(Rt) No.365, Industries Department dated 05.05.1999 published in the Malai Murasu Daily dated 30.05.1999 and the consequential notices under Sections 9 (3) and 10 of the 2nd respondent in Na.Ka.No.47/98 dated 21.03.2001 in respect of S.Nos.445/2E,445/3E, 445/2F, 445/3B, 461/11, 461/10A, 461/10B, 461/17A, 461/17B, 461/19A, 461/25, 461/26, 445/1A, 445/1B, 445/1C, 445/2A, 445/2J1, 445/2C, 445/2B, 445/2G, 445/2K, 445/3D, 445/2J2, 445/2H, 461/18 and 444 totally measuring an extent of 7.52 acres and quash the same.



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For Petitioners : Mr.Sathish Parasran,
Senior Counsel
for Mr.R.Parthasarathy,
Mr.Rahul Balaji

For Respondents
For R1 & 2 : Mr.Richardson Wilson,
Government Advocate

For R3 & 4 : Mrs.Sudarshana Sunder

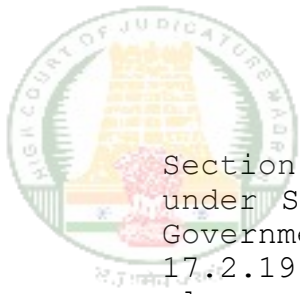
COMMON ORDER

Challenging the acquisition proceedings initiated by the first respondent by issuing 4(1) Notification vis-a-vis Section 6 declaration vide No. G.O.Ms.No.851 Industries(MII), dated 8.12.1998 as published in Tamil Nadu Govt.Gazette Extraordinary Part II Section 2 dated 14.12.1998 and vide G.O.Ms.No.361 Industries (MIJ) dated 5.5.1999 as published in Tamil Nadu Government Gazette Extraordinary Part II Section 2 respectively, in respect of his lands, the petitioner, K.Govida Babu has come forward with the above said writ petition in W.P.No.14292 of 2001.

2. Likewise, M/s.Vasantham Properties Pvt.Ltd., has come forward with the above said writ petitions in W.P.Nos.6900, 7171 and 9059 of 2001, challenging the acquisition proceedings initiated by the first respondent by issuing 4(1) Notification vis-a-vis Section 6 declaration vide G.O.Ms.(Rt) No.104, Industries Department dated 27.1.1999 and published in Dina Malar Daily dated 17.2.1999 and vide G.O.(Rt) No.365, Industries Department, dated 5.5.1999 published in the Malai Murasu Daily dated 30.5.1999 respectively and also the consequential notices issued under Sections 9(3) and 10 by the 2nd respondent, in respect of the above mentioned lands.

3. Since common issues are involved in all these writ petitions, they were heard together and being disposed of by means of this common order.

4. The first respondent for the public purpose, namely, setting up an industrial complex by the Tamil Nadu Corporation for Industrial Infrastructure Development Limited, Chennai-6, issued Notifications under Section 4(1) of the Land Acquisition Act, 1894 proposing to acquire the lands in S.Nos.442,443, 444, 445, 460 and 461 of Panruti B village, Sriperumbudur taluk, totally measuring an extent of 11.36.5 hectares including the lands of the petitioners herein. The said notification under Section 4(1) was issued by invoking the urgency clause under



Section 17(1) of the Act, thereby dispensing with the enquiry under Section 5(A). The said notification was published in the Government Gazette dated 27.1.1999 and in Dinamalar Newspaper on 17.2.1999. After formalities, on 5.5.1999, the first respondent also passed declaration under Section 6 vide G.O.(Rt) No.365, Industries Department, dated 5.5.1999 published in Malai Murasu Daily dated 30.5.1999.

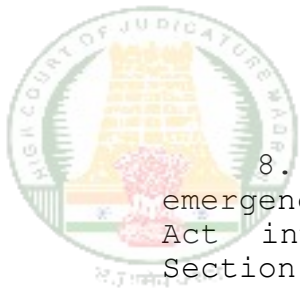
5. The case of the petitioner in W.P.No.14292 of 2001, by way of impugned notification under Section 4(1) of the Act, the first respondent sought for acquisition of the lands by invoking emergency clause, dispensing with 5-A enquiry, however, in fact, there was absolutely no urgency at all for acquiring the lands for the purpose of setting up an industrial complex by the Tamil Nadu Corporation for Industrial Infrastructure Development Limited, Chennai-6 since the said Corporation was already having its offices and other facilities in Chennai and the power of eminent domain invoking the power of urgency was exercised against the purpose and spirit of Section 17 of the Act, which is totally arbitrary and unjust. No notice was given before issuing the 4(1) notification or invoking the power under Section 17 of the Act. Even in the notification issued under Section 6 declaration also, the petitioner's name did not find a place. However, the second respondent issued a Form-7 notice to the petitioner by his proceedings dated 23.2.2001. Aggrieved by this, the petitioner has come forward with the present writ petition.

6. The case of the petitioners in W.P.Nos.6900, 7171 and 9059 of 2001, they have launched a project on 31.10.1994, called "Temple View Gardens" and for the said project, the petitioner company acquired about 30 acres of land at 212, Panruti B village of Sriperumbudur taluk at Kanchipuram District. The said project consists 486 plots and while it was under the process of successful completion, to their shock and surprise, the first respondent issued a notification under Section 4(1) of the Act, proposing acquisition of lands, by invoking emergency clause under Section 17(1) of the Act, dispensing with the enquiry under Section 5(A) of the Act. It is stated that though the invocation of urgency clause under Section 17(4) of the Act empowers the respondents from dispensing with the enquiry under Section 5(A), yet while exercising such power, as contemplated under Section 4(2) of the Act, the second respondent ought to have issued notice to them as provided therein. The proviso to Section 4(2) of the Act categorically emphasizes to issue a 7 days' notice at least, in writing to the owner of the land about the proposal of the acquisition of the lands, however, the second respondent did not issue any such notice to the petitioner. The petitioner made detailed representations to the respondents on 1.3.1999, 5.3.1999 and 9.4.1999 requesting them



to drop the proposal of acquisition of their lands. But the respondents, without considering the representations, had passed a declaration under Section 6 vide G.O.Ms.No.365, dated 5.5.1999. Later, after a lapse of two years from the date of declaration, the second respondent issued notices under Sections 9(3) and 10 of the Act vide proceedings, dated 21.3.2001, calling upon the petitioner for an enquiry. Hence, the petitioner has come forward with these writ petitions.

7. Mr.K.V.Subramanian, Senior Counsel appearing for the petitioner in WP.No.14292 of 2001 submitted that the petitioner purchased the property in plot No.244 comprised in survey Nos.16/2, 18/1, 18/2, Arun Nagar, Oragadam Village, Sriperumbudur Taluk, Chengalpet District to an extent of one ground 850 sq.ft. by the registered sale deed dated 19.02.1985 from one, Devi Enterprises. In pursuant to the said sale deed, all the plot was sub-divided and allotted with sub-division new survey No.16/45. Accordingly, revenue records were mutated in his favour and he was also issued patta No.644 dated 19.05.1985 itself. Even then, in the notification issued by the first respondent, the petitioner's name is not reflected and as such no notice to the petitioner under Section 4(1) of the Land Acquisition Act (hereinafter called as 'the Act'). The first respondent has invoked emergency provisions of dispensing with 5-A enquiry for formation of Tamilnadu Corporation Industrial Infrastructure Development Limited. It has already been formed with all facilities and as such need not be used the emergency provisions and it is totally without base and arbitrary. Therefore, it is violative of the petitioner's fundamental right guaranteed under Articles 14, 19(1), 21 & 300A of the Constitution of India. The first respondent issued GO to the effect that the approved layout for the housing purposes should not be acquired for the purpose of companies and therefore the entire acquisition is bad in law. The respondents also failed to follow the statutory guidelines while invoking the provisions under Section 17 of the Act and also failed to deposit the compensation amount and as such the entire acquisition is bad in law. The petitioner was not served Section 6 declaration and as such it is violation of principles of natural justice and also violation of the procedures prescribed in the Act. In fact, Section 6 declaration did not disclose the petitioner's name and it is liable to be quashed. The first respondent when intended to acquire the subject land for the purpose of formation of the Tamilnadu Corporation for Industrial Infrastructure Development Limited, it has to be proceeded under the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997, whereas the first respondent proceeded under the Land Acquisition Act and as such the entire proceedings are vitiated and liable to be quashed."



8. He further submitted that there was absolutely no emergency to proceed under Section 17 of the Land Acquisition Act invoking emergency clause dispensing with 5A enquiry. Section 17 of the said Act is provided for the purpose of emergency acquisition and it should be grave in nature necessitating to dispense with the enquiry under Section 5A of the Act. Admittedly, proposal for acquisition of land for the purpose of industry and it would take several years to set up industry. The first respondent is empowered to take possession of any land by exercising urgency clause and dispensing with the enquiry under Section 5A of the Act only for the purpose of construction of library, educational institution, godown for any society, constructin of structure for the common use of inhabitants of a village, dwelling house for poor and irrigation tank, etc. Whereas the first respondent proposed to acquire the land by invoking emergency clause for the purpose of setting up an industrial complex, which is found place in the amended provision and as such the first respondent cannot invoke to dispense with enquiry under Section 5(a) of the Act.

9. He further submitted that as per the provision under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, where an award under Section 11 has been made five years or more prior to the commencement of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, but the physical possession of the subject property has not been taken over or the compensation has not been paid, the entire acquisition proceedings should be deemed to have been lapsed. Accordingly, the petitioner was not paid any compensation and also possession of the petitioner has not been taken by the respondents. Therefore, as per Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the entire acquisition proceedings should be deemed to have been lapsed.

10. In support of his contention, he relied upon the judgments in the case of Radhy Shyam (dead) through LR's and others Vs. State of Uttar Pradesh and Others reported in (2011) 5 SCC 553 and in the case of Usha Stud and Agricultural Farms Private Limited and Others Vs. State of Haryana and Others reported in (2013) 4 SCC 2010.

11. Mr.Sathish Parasran, Senior Counsel appearing for the petitioners in WP.Nos.6900, 9059 & 7171 of 2001 submitted that there was absolutely no urgency for invoking emergency clause for setting up of an industrial complex and therefore, acquisition proceedings by dispensing with enquiry under Section 5A of the Act is totally arbitrary and unjust. The Tamilnadu



Acquisition of Land for Industrial Purposes Act, 1997 is appropriate for initiation of acquisition proceedings for the purpose of setting up an industry. A combined reading of Sections 3 sub-clause (1) & 21 of the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997 clearly demonstrates that the land acquisition for industrial purposes within the State of Tamilnadu can only be carried out under the said provisions. It came into effect even before the date of passing the award or completion of acquisition, and the acquisition proceedings could not have been carried out under the Central Act. As per Section 23 of the Tamilnadu Acquisition of Land for Industrial Purposes Act is very clear that it would apply for pending proceedings under the Land Acquisition Act, 1894, where the final award has not been passed. The entire acquisition was not caused by any urgency as the respondents have dragged this acquisition proceedings with delayed actions and as such invoking of provision under Section 5-A of the Act is bad in law.

12. He further submitted that there is absolutely no proper reasons have been assigned for invoking the emergency clause under Section 17 of the Act. The acquisition proceedings under the emergency clause is the procedure contemplated under GO.Ms.No.1895 Revenue dated 27.08.1990 and it was not followed any of the procedures contemplated under the said GO. Section 6 notice has to be issued within 15 days from the notification under Section 4(1) of the Act. Whereas it was issued after four months. The publication under Section 7 and notice under Section 9(1) of the Act also not followed. As per Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if the possession of the subject property was not taken and the compensation amount was not paid, the entire acquisition proceedings deemed to have been lapsed under Section 24 of the said Act. In the case on hand, award was passed on 04.05.2001 and it was not furnished or communicated to the petitioner till date insofar as the petitioner in WP.No.6900 of 2001. Insofar the petitioner in WP.No.7171 of 2001, no award has been passed even till today and no copy of the award was served to the petitioner. The compensation was also not paid to the petitioner nor deposited in the revenue. Therefore, the entire acquisition proceedings have been lapsed. In support of the contention, he relied upon the following judgments:

- (i) Union of India and others Vs. Krishnalal Arneja and others reported in (2004) 8 SCC 453
- (ii) Hindustan Petroleum Corporation Limited Cas Vs. Darius Shapur, Chennai and others reported in (2005) 7 SCC 627
- (iii) Babu Ram Vs. State of Haryana and another reported in (2009) 10 SCC 115



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- (iv) Anand Singh Vs. State of UP reported in (2010) 11 SCC 242
- (v) State of West Bengal Vs. Prafullachura and others reported in (2011) 4 SCC 537
- (vi) Dev Sharan Vs. State of UP reported in (2011) 4 SCC 769
- (vii) Dharshan Lal Nagpal Vs. Government of NCT of Delhi and others reported in (2012) 2 SCC 327
- (vii) Premji Nathu Vs. State of Gujarat and others reported in (2012) 5 SCC 250
- (viii) Laxman Lal & another Vs. State of Rajasthan and others reported in (2013) 3 SCC 764

13. In W.P.No.14292 of 2001, the first respondent filed counter and Mr. Richardson Wilson, Government Advocate submitted that the first respondent by GO.Ms.No.125 Industries (MID2) Department dated 19.05.1997 have accorded administrative sanction for acquisition of dry land situated in Sriperumbudur Taluk, Kancheepuram District under emergency provision of Section 17 (1) of the Land Acquisition Act, 1894 in favour of Tamilnadu Corporation for Industrial Infrastructure Development Limited for setting up of an industrial complex and a satellite city with all facilities. The draft notification under Section 4 (1) of the Act was approved in GO.Ms.No.851 Industries (MII) Department dated 08.12.1998 and it was published in the Government Gazette on 14.12.1998. The same was published in the Tamil Nadu Government Gazattee and two Tamil dailies on 22.12.1998 and the same was also published in the locality on 05.02.1999. Thereafter, the urgency clause under Section 17 (1) of the Act was invoked and the enquiry under Section 5-A of the Act was dispensed with. The proposal for draft declaration under Section 6 of the Act was approved in GO.Ms.No.361 Industries (MII) Department dated 05.05.1999. It was published in the Tamilnadu Government Gazette on 05.05.1999 and it was published in the Tamil dailies on 26.05.1999 and in the locality on 10.06.1999. The petitioner and other interest persons' names have been duly published in the notification under Section 4(1) of the Act. The statutory proceedings as laid under the Act have been scrupulously followed for acquisition of the lands.

14. He further submitted that the petitioner received notice under Section 9 (3) and 10 of the Act for conducting award enquiry. In fact, the petitioner received the same and attended the award enquiry. He also demanded for the payment of Rs.50,000/- per cent and expressed his willingness to receive compensation under protest. The award was passed in time i.e. two years from the date of draft notification under Section 6 of the Act. There is no restriction in the case of application of Section 17 for the companies. The first respondent decided to acquire the land under emergency provision of Section 17 of the



Act and accordingly issued administrative sanction in GO.Ms.No.125 Industries (MID2) Department dated 09.05.1997. After following the procedures contemplated under the Act, award was passed on 24.04.2001 and the compensation has been deposited in the revenue deposit. Therefore, the entire lands are vested with the Government free from all encumbrances. In fact, the writ petition itself filed after passing award dated 24.04.2001. In this regard, he relied upon the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc.

15. In WP.Nos.6900, 9059 & 7171 of 2001, the third respondent filed counter and Mrs.Sudarshana Sunder, the learned counsel submitted that the first respondent have accorded administrative sanction for acquisition of land by GO.Ms.No.125 Industries (MID-2) Department dated 09.05.1997 under urgency provision of Section 17 (1) of the Land Acquisition Act in favour of Tamilnadu Corporation for Industrial Infrastructure Development Limited for setting up of an industrial complex and a satellite city with all infrastructure facilities. Accordingly, the second respondent was authorised to acquire the subject land as per the proceedings of the District Revenue Officer, Tambaram dated 14.11.1997. The 4(1) notification was published in Tamilnadu Government Gazette dated 27.01.1999 and in two Tamil dailies on 17.02.1999. The substance of the said notification was published in the locality on 03.03.1999. Since the acquisition proceedings was initiated under Section 17(1) of the Act, enquiry under Section 5-A of the Act was dispensed with. The draft declaration under Section 6 dated 05.05.1999 and GO.Ms.No.365 Industries (MII) Department was published in the Gazette on 05.05.1999. It was also published in two Tamil dailies on 30.05.1999 and the substance was published in the locality on 14.06.1999. The subject land is situated in the midst of the proposed acquisition area and it cannot be excluded from acquisition. There was no delay in passing award. The notice for award enquiry was duly served to the petitioner and the award enquiry was conducted on 20.03.2001 and award passed on 30.04.2001. Accordingly, on 21.12.2001, compensation of the award was deposited in the Treasury. Therefore, from the date of the award, the land vest with the Government free from all encumbrances. After passing award, the petitioners have challenged the acquisition proceedings in these writ petitions and as such the writ petitions itself are not maintainable since the entire acquisition proceedings were concluded.

16. She further submitted that insofar as the possession is concerned, this Court granted stay in respect of taking possession of the subject property. She also submitted that in respect of taking possession and payment of compensation, the Constitution Bench of Hon'ble Supreme Court of India already



settled all the issues and therefore at no cost, acquisition proceedings have been lapsed by invoking Section 24 (2) of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In this regard, she also relied upon the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc.

17. Heard, Mr.K.V.Subramanian, Senior Counsel appearing for the petitioner in WP.No.14292 of 2001, Mr.Sathish Parasran, Senior Counsel appearing for the petitioners in WP.Nos.6900, 9059 & 7171 of 2001, Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 & 2, and Mrs.Sudarshana Sunder, learned counsel for the third respondent.

18. In all the writ petitions, the petitioners have challenged the acquisition proceedings on three grounds.

(i) They were not served notice under Section 4(1) of the Land Acquisition Act.

(ii) There was no emergency public purpose so as to invoke emergency clause under Sections 17(1) and 17(4) of the Act since the acquisition proceedings initiated for the purpose of setting up of an industrial complex.

(iii) The acquisition proceedings itself have been lapsed as per Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 with regards to after passing of award neither physical possession of the land was taken nor compensation amount was paid or deposited before any court within a period of five years prior to coming into force of the new Act.

19. On perusal of the records produced by the respondents, revealed that the first respondent accorded administrative sanction vide GO.Ms.No.125, Industries (MID.2) Department dated 09.05.1997 for acquisition of dry lands in the villages in Sriperumbudur Taluk, Kancheepuram District under urgency provision of Section 17(1) of the Act in favour of Tamilnadu Corporation for Industrial Infrastructure Development Limited i.e. the third respondent in WP.Nos.6900, 9059 & 7171 of 2001 for setting up of an industrial complex and a satellite city with all infrastructure facilities. Accordingly, the second respondent was authorised to acquire patta land as per the proceedings of the District Revenue Officer dated 14.11.1997. The proposal for notification under Section 4 sub-clause (1) of the Act for acquisition of the land was approved in GO.Ms.No.851 dated 08.12.1998. It was published in the Tamilnadu Government



Gazatte on 14.12.1998. It was also published in two tamil dailies on 22.12.1998 and the substance of the said notification was duly published in the locality on 05.02.1999. Further revealed that notification under Section 4 (1) of the Act was issued by invoking urgency clause under Section 17(1) of the Land Acquisition Act. Enquiry under Section 5-A of the Act was dispensed with. The proposal of draft declaration under Section 6 of the Act was approved by G.O.Ms.No.361 Industries (MIJ) dated 05.05.1999 . It was published in the Tamilnadu Government Gazatte on 05.05.1999 and published in two tamil dailies on 26.05.1999. Its substance also was published in locality on 10.06.1999. The subject lands were duly covered under the notification. In fact, the names of the petitioners / interested persons have been published in the notification issued under Section 4(1) of the Act. Notices under Sections 9(3) and 10 of the Act was conducted and award enquiry notice has been also issued to the land owners / interested persons calling upon them to make their statement on 20.03.2001.

20. The petitioners were duly served those notices. In fact, they attended award enquiry. Award enquiry was conducted on 09.04.2001 and 10.04.2001 and accordingly award was passed on 04.05.2001 insofar as WP.Nos.6900, 9059 & 7171 of 2001. Insofar as WP.No.14292 of 2001 is concerned, after publication in the Gazatte dated 05.05.1999, it was published in two tamil dailies on 26.05.1999 and its substance was published in the locality on 10.06.1999. The notices as contemplated under Sections 9(3) and 9(10) of the Act was issued to the petitioner on 23.02.2001. Accordingly, enquiry was conducted on 04.04.2001 and award has been passed on 30.04.2001. Therefore, all the writ petitioners have been filed after passing the award. By interim order dated 10.04.2001, this Court granted interim stay of dispossession alone if already not dispossessed. In WP.No.7171 of 2001, this Court initially granted interim stay and subsequently modified with regards to the dispossession alone by order dated 24.03.2004. Therefore, the possession of the property has not been taken from the petitioners because of the interim order passed by this Court. While pending the writ petition, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014 and the petitioners raised additional grounds that the entire acquisition proceedings have been lapsed since the petitioners' possession have not been taken and the compensation amount was not deposited for the respective lands.

21. On one hand, the petitioners obtained interim order of stay with regards to their possession of the subject property and on another ground, they raised ground that the possession of the said subject property has not been taken by the respondents for the purpose of which the land was acquired. Insofar as the



payment of compensation is concerned, on perusal of the records submitted by the respondents, revealed that the entire compensation amounts have been duly deposited under revenue deposit as early as on 21.12.2001 itself. Therefore, the grounds raised under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are duly countenanced by the respondents and the acquisition proceedings have not been lapsed on the ground of non taking of possession and non deposit of the award amount.

22. The grounds raised by the petitioners in this Writ Petition have already been settled by the Hon'ble Supreme Court of India in the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., which held as follows :-

"366. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1) (a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word or used in Section 24(2) between possession and compensation has to be read as nor or as and. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in



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subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioners. Therefore, the petitioners failed to satisfy the twin requirements under Section 24 (2) of the New Act, i.e., the physical possession of the land was not taken and the compensation has not been paid/tendered/deposited in accordance with law. In view of the dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioners were settled and therefore, the acquisition proceedings have not been lapsed by operation of law under Section 24 (2) of the new Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

23. Therefore, the grounds raised under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is answered accordingly.

24. Insofar as to invoke emergency clause under Sections 17 (1) and 17(4) of the Act is concerned, the subject land was acquired for the purpose of setting up of an industrial complex and a satellite city with all infrastructure facilities. Therefore, the first respondent invoked the provision under Section 17(1) of the Act. It is relevant to extract the provision under Section 17(1) of the Land Acquisition Act hereunder:

17.Special powers in case of emergency: (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

25. While invoking provision under Section 17(1), the respondents can dispense with Section 5-A of the Act i.e. hearing of the objections as per Section 17(4) of the Land Acquisition Act, 1894, which reads as follows:

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 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).

26. As per Section 17 (3) (a) of the Act, before taking possession of any land under Section (1) of 17, the Collector shall, without prejudice to the provisions of sub-section 3 of Section 17, tender payment of 80% of the compensation for such land as estimated by him to the person interested entitled thereto. Whereas it would cast upon the respondents only if they take possession of the land. However, in the case on hand, due to interim order of stay of dispossession, the respondents could not have taken possession of the property and as such the petitioners are not entitled for any compensation as provided under Section 17 (3) (a) of the Act. In this regard, admittedly, the subject lands were acquired for public purpose. After considering the request made by the petitioners to exempt the lands in question as there are large number of teakwood, mango, guava, coconut trees planted on these lands, the District Revenue Officer (Land Acquisition) recommended to the requisitioning body i.e. the third respondent herein for considering those lands. However, the third respondent found it necessary and expedient to acquire the subject property and proceeded with Section 6 of the Act proceedings. That apart, it is inevitable to acquire the subject land as it is situated in many villages and the proposed acquisition made in the villages such as Mathur, Oragadam, Vaipur and Karanithangal. Therefore, the first respondent rightly approved the declaration under Section 6 of the Act. Though the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997 was enacted as Tamilnadu Act 10 of 1999, it cannot be brought into force due to non framing of rules. There was no impediment to acquire lands under the existing Act and procedures.

27. As stated supra, the third respondent requested to invoke urgency clause for acquisition of land under the



emergency provision and the same was carefully considered by the first respondent and sent a proposal to acquire the subject land under the emergency provision by dispensing with the enquiry under Section 5A of the Act. In this regard, the learned Senior Counsel appearing for the petitioners in WP.Nos.6900, 9059 & 7171 of 2001 relied upon the judgment in the case of Union of India and others Vs. Krishnalal Arneja and others reported in (2004) 8 SCC 453, wherein the Hon'ble Supreme Court of India held that in the case that the expression of urgency in the common notification being general to all 14 properties could not be sustained in respect of any particular property, on the ground that the expression of urgency being one and the same cannot be partly good and partly bad. It is not the case that the ground of urgency was different in respect of different properties which fact is clear from the composite notification.

28. Whereas in the case on hand, under the same notification, they requested for emergency acquisition. Therefore, the above judgment is not helpful to the case on hand. That apart, the above said judgment was held on different set of facts and not applicable to the case on hand.

29. He also relied upon the judgment in the case of Hindustan Petroleum Corporation Limited Cas Vs. Darius Shapur, Chennai and others reported in (2005) 7 SCC 627, wherein it is held as follows:

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

28. Although assignment of reasons is the part of principles of natural justice, necessity thereof may be taken away by a statute either expressly or by necessary implication. A declaration contained in a notification issued under Section 6 of the Act need not contain any reason but such a notification must precede the decision of the appropriate Government. When a decision is required to be taken after giving an opportunity of hearing to a person



who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing.

30. He also relied upon the judgment in the case of Babu Ram Vs. State of Haryana and another reported in (2009) 10 SCC 115, wherein it is held as follows:

29. In the present case, we are not concerned with technicalities but the likelihood of a health-hazard to the inhabitants of the area if the STP was set up in the acquired site. The stand taken by the respondent that the appellants could have filed objections to the proposed acquisition is difficult to appreciate since the right to file such objections had, in fact, been taken away by invoking the provisions of Section 17(4) of the L.A. Act. Such a stand taken on behalf of the respondent authorities only serve to strengthen the case of the appellants that an opportunity should have been given to them to file objections to the proposed acquisition.

30. As indicated hereinabove in the various cases cited by Mr. Pradip Ghosh and, in particular, the decision in Krishan Lal Arneja's case (supra), in which reference has been made to the observations made by this Court in Om Prakash's case (supra), it has been emphasized that a right under Section 5-A is not merely statutory but also has the flavour of fundamental rights under Articles 14 and 19 of the Constitution. Such observations had been made in reference to an observation made in the earlier decision in Gurdial Singh's case (supra) and keeping in mind the fact that right to property was no longer a fundamental right, an observation was made that even if the right to property was no longer a fundamental right, the observations relating to Article 14 would continue to apply in full force with regard to Section 5-A of the L.A. Act.

31. The observations made both in Gurdial Singh's case (supra) and in Om Prakash's case (supra) assign a great deal of importance to the right of a citizen to file objections under Section 5-A of the L.A. Act when his lands are being taken over under the provisions of the said Act. That in the said decisions, such right was elevated to the status of a fundamental right, is in itself sufficient to indicate that great care had to be taken by the authorities before resorting to



aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5A.

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

45.It is true that power conferred upon the government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary.

32. He also relied upon the judgment in the case of Dharshan Lal Nagpal Vs. Government of NCT of Delhi and others reported in (2012) 2 SCC 327, wherein it is held as follows:

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 large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated under Section 5A, which would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot



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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.

33. He also relied upon the judgment in the case of Laxman Lal & another Vs. State of Rajasthan and others reported in (2013) 3 SCC 764, wherein it is held as follows:

20. This Court has dealt with the scope, extent and ambit of the power of the state government under Section 17(1) and (4) of the 1894 Act from time to time. Narayan Govind Gavate & Ors. v. State of Maharashtra & Ors.[5], Deepak Pahwa & Ors. v. Lt. Governor of Delhi & Ors.[6], State of U.P. v. Smt. Pista Dev & Ors.[7], State of U.P. & Anr. v. Keshav Prasad Singh[8], Chameli Singh & Ors. v. State of U.P. & Anr. [9], Meerut Development Authority & Ors. v. Satbir Singh & Ors. [10], Om Prakash & Anr. v. State of U.P. & Ors. [11], Union of India & Ors. v. Mukesh Hans[12], Union of India & Ors. v. Krishan Lal Arneja & Ors. [13], Mahadevappa Lachappa Kinagi & Ors. v. State of Karnataka & Ors.[14], Babu Ram & Anr. v. State of Haryana & Anr.[15] and Tika Ram & Ors. v. State of U.P.[16] have been referred to in Anand Singh⁴ and the legal position in paragraphs 43 to 48 of the Report (pgs. 265-266) is culled out as follows :

"43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A.



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Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

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

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

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



little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

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47. The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. Narayan Govind Gavate [(1977) 1 SCC 133] and Pista Devi [(1986) 4 SCC 251]. In Om Prakash [(1998) 6 SCC 1] this Court held that the decision in Pista Devi [(1986) 4 SCC 251] must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate [(1977) 1 SCC 133]. We agree.

48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A."

21. Anand Singh⁴ has been referred to in later cases, one of such decisions is Radhy Shyam (Dead) Through LRs & Ors.. v. State of Uttar Pradesh and Others^[17] wherein this Court in paragraph 77 (v) to (ix) of the Report stated as follows:

"77(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



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Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

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

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

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



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

22. In light of the above legal position which is equally applicable to Section 17(1) and (4) of the 1953 Act, we may turn to the fact situation of the present matter.

22.1. Section 4(5) notice under the 1953 Act was issued by the state government in 1980. For almost seven years, no steps were taken in taking the acquisition proceedings pursuant to the Section 4(5) notice to the logical conclusion. Even inquiry under Section 5-A was not commenced, much less completed.

22.2. Abruptly on 19.03.1987, without following the procedure contemplated in Section 5-A, the declaration under Section 6 was made and in that notification the state government stated that it has invoked its power of urgency under Section 17(1) and dispensed with inquiry under Section 5-A in exercise of its power under Section 17(4).

22.3. Can it be said that an inquiry under Section 5-A could not have been completed in all these years? We think that it could have been done easily and conveniently in few months leave aside few years. There were not large number of owners or persons interested in respect of the subject land.

22.4. Section 5-A, which gives a very limited right to an owner/person interested, is not an empty formality. The substantial right under Section 5-A is the only right given to an owner/person interested to object to the acquisition proceedings. Such right ought not to be taken away by the State Government sans real urgency. The strong arm of the government is not meant to be used nor it should be used against a citizen in appropriating the property against his consent without giving him right to file objections as incorporated under Section 5-A on any ostensible ground. The dispensation of enquiry under Section 17(4) has to be founded on considerations germane to the purpose and not in a routine manner. Unless the circumstances warrant immediate possession, there cannot be any justification in dispensing



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with an enquiry under Section 5-A. As has been stated by this Court in Anand Singh⁴, elimination of enquiry under Section 5-A must only be in deserving and in the cases of real urgency. Being an exceptional power, the government must be circumspect in exercising power of urgency.

23. In Anand Singh⁴, dealing with the issue whether the pre- notification and post-notification delay would render the invocation of urgency power void, this Court said that such delay would have material bearing on the question of invocation of urgency power, more so, in a situation where no material has been placed by the appropriate government before the Court justifying that urgency was of such nature that necessitated elimination of inquiry under Section 5-A.

24. In the counter affidavit filed on behalf of the respondent nos.1 to 3 before this Court, in respect of invocation of power of urgency under Section 17(1) and dispensation of inquiry under Section 17(4), it is stated as follows:

"..... Section 17 of the Rajasthan Land Acquisition Act which is a code containing complete procedure for acquisition made under the said provision in case of urgency. In the present petition, urgency of the acquisition has been shown by the respondent. For the purpose of public interest, as a bus stand was to be put up, hence the nature of urgency is quite apparent.

The government issued notification under Section 6 read with 17(4) of the Act on 19.03.1987 under the compulsory need of the land".

25. The counter affidavit filed by the respondent no. 4, i.e., Rajasthan State Road Transport Corporation is not relevant as Section 17 confers power of urgency only on the state government alone and it is the state government that has to justify that the urgency was so imminent that dispensation of inquiry under Section 5-A was necessary.

26. The explanation by the state government unsupported by any material indicates that the state government feels that power conferred on it under Section 17(1) and (4) is unbridled and uncontrolled. The state government seems to have some misconception that in the absence of any time



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limit prescribed in Section 17(1) and (4) for exercise of such power after issuance of notice under Section 4 of the 1953 Act, it can invoke the power of urgency whenever it wants. We are afraid the whole understanding of Section 17 by the state government is fallacious. This Court has time and again said with regard to Section 17(1) read with Section 17 (4) of the 1894 Act that the provisions contained therein confer extraordinary power upon the state to appropriate the private property without complying with the mandate of Section 5-A and, therefore, these provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. This principle equally applies to the exercise of power under Section 17(1) and (4) of the 1953 Act. The state government, therefore, has to apply its mind before it invokes its power of urgency and dispensation of inquiry under Section 5-A that the compliance of the mandate of Section 5-A may lead to precious loss of time which may defeat the purpose for which land is sought to be acquired. Any construction of building (institutional, industrial, residential, commercial etc.) takes some time and, therefore, acquisition of land for such purpose can always brook delay of few months. Ordinarily, invocation of power of urgency by the state government for such acquisition may not be legally sustainable.

27. In this case, as noted above, the preliminary notification under Section 4 was issued on 01.5.1980. After lapse of about 7 years on 19.03.1987, one fine morning the state government issued declaration under Section 6 without complying with the mandate of Section 5-A and in that declaration it was stated that it has invoked its powers conferred under Section 17(1) read with Section 17 (4) of the 1953 Act and dispensed with the provisions of Section 5-A. Had the state government intended to hold and complete the inquiry under Section 5-A, it could have been done in few months. However, no steps for commencement of the inquiry under Section 5-A were even taken by the state government. We find that a very valuable right conferred on the land owner/person interested under Section 5-A has been taken away without any justification. It is so because the bus stand construction would have taken some time. The exercise of the power by the state government under



section 17(1) read with Section 17(4) of the 1953 Act and dispensation of inquiry under Section 5-A can not be legally sustained and has to be declared as such.

34. In all the above cases, the Hon'ble Supreme Court of India rendered judgments while dealing with provision under Section 17 of the Land Acquisition Act, in different set of facts on various grounds. Whereas in the case on hand, as stated supra, the notification issued under Section 4(1) of the Act requested for emergency acquisition of land. Therefore, the respondents rightly invoked Section 17(1) of the Land Acquisition Act. Accordingly, the respondents followed the procedures contemplated under the Act and finally passed award on 04.05.2001 and 30.04.2001 respectively. Admittedly, all the writ petitions have been filed after passing the award and in view of the interim order passed by this Court, the possession of the respective property has not been taken by the respondents. Therefore, the above judgments are not helpful to the case on hand challenging the acquisition proceedings. That apart, the writ petitions are pending for the past twenty years even after passing award and these writ petitions have been filed after passing award after due compliance of the procedures as contemplated under the Act. Therefore, the writ petitions are devoid of merits.

35. Accordingly, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamilnadu,
Industrial Development,
Fort St.George, Chennai-9
2. The Special Tahsildar,
Land Acquisition, TACID Division
TACID, Oragadam Unit, III Sipcot
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4. The Chairman,
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WP.Nos.14292, 6900, 9059 & 7171 of 2001

RLD[co]
NSK 22/10/2021