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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
28.03.2022	18.04.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 11974, 11975 & 12634 OF 2008

Gopalakrishnan ... Petitioner in WP 11974/08

G.Lakshmipathi ... Petitioner in WP 11975/08

1. C.Mohan
2. E.Kuppammal
3. E.Jothi
4. E.Ramalingam
5. A.Kuppan
6. K.Ramajayammal
7. G.Kutty
8. D.Dhasarathan
9. M.Ranganayagi
- 10.Selvam ... Petitioners in WP 12634/08

- Vs -

1. The Union of India
Rep. by Ministry of Food
Agriculture, Community Development
& Cooperation (Development of
Agriculture), New Delhi.

2. The Government of Tamil Nadu
Rep. by Secretary to Government
Public Works Department (Irrigation)
Fort St. George, Chennai 600 009.

3. The Collector
Office of Collectorate, Vellore
Vellore District.

4. The Revenue Divisional Officer
Vellore, Vellore District, Tamil Nadu.

... Respondents in all petitions

W.P. No.11974 of 2008 filed under Article 226 of the
Constitution of India praying this Court to issue a writ of



certiorarified mandamus to call for the records relating to impugned Section 4 (1) Notification in reference in G.O. Ms. No.30 PW(T1) Dept., dated 1.2.06 and the impugned Section 6 Declaration in reference G.O. Ms. No.48 PW (T1) dated 27.2.2006 on the file of the 2nd respondent and consequent impugned award Na.Ka.B1/9411/2005 dated 24.4.2008 on the file of the 4th respondent and quash the said notifications on the file of the 2nd respondent and impugned award on the file of the 4th respondent as null and void and has become lapsed and to forbear the respondents from proceeding with the land acquisition in respect of the land comprised in S. No.178/4 of an extent of 0.22.0 Hectares situated at No.28, Melarasampattu Village, Vellore Taluk, Vellore District.

W.P. No.11975 of 2008 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to impugned Section 4 (1) Notification in reference in G.O. Ms. No.30 PW(T1) Dept., dated 1.2.06 and the impugned Section 6 Declaration in reference G.O. Ms. No.48 PW (T1) dated 27.2.2006 on the file of the 2nd respondent and consequent impugned award Na.Ka.B1/9411/2005 dated 24.4.2008 on the file of the 4th respondent and quash the said notifications on the file of the 2nd respondent and impugned award on the file of the 4th respondent as null and void and has become lapsed and to forbear the respondents from proceeding with the land acquisition in respect of the land comprised in

Survey No.	Hectares
S. No.177/2	0.71.0
S.177/5	0.20.0
S. No.179/6	0..92.0
S. No.179/11	0.61.0
Total	2.44.0

and joint patta lands in S. No.177/1, 177/3, 179/3A, 179/2A, 179/4 of total extent of 0.17.5 Heactares situated at Melarasampattu Village, Vellore Taluk, Vellore District.

W.P. No.12634 of 2008 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to impugned Section 4 (1) Notification in reference in G.O. Ms. No.30 PW(T1) Dept., dated 1.2.06 and the impugned Section 6 Declaration in reference G.O. Ms. No.48 PW (T1) dated 27.2.2006 on the file of the 2nd respondent and consequent impugned award



Na.Ka.B1/9411/2005 dated 24.4.2008 on the file of the 4th respondent and quash the Notification in reference in G.O. Ms. No.30 PW(T1) Dept., dated 1.2.06 and the impugned Section 6 Declaration in reference G.O. Ms. No.48 PW (T1) dated 27.2.2006 on the file of the 2nd respondent and the impugned award in reference Na.Ka.B1/9411/2005 dated 24.4.2008 on the file of the 4th respondent as null and void and has become lapsed and to forbear the respondents from proceeding with the land acquisition in respect of the land comprised in

Name	Survey No.	Hectares
C. Mohan M.Kumar	177/6	2.58.0
G.Kutty S/o Govindan	177/4A 179/8 179/9 179/10 180/2A 180/3A	0.13.0 0.06.5 0.05.0 0.06.0 0.16.5 0.20.5
K.Ramajayammal W/o Late Kaliayappan	177/4B 177.4D 180/9 180/10A	0.06.5 0.05.5 0.61.0 0.03.5
A.Kuppan S/o Adhimoolam	179/1 179/2B 180/2B 180/3B 180/4A 180/6 180/10B 180/11	0.04.5 0.31.0 0.00.5 0.01.0 0.22.0 0.14.0 0.55.5 0.65.5
1. E.Kuppammal W/o Ekanathan 2. E.Jothi S/o Ekanathan 3. E.Ramalingam S/o Ekanathan	179/2C 179/3B 179/7 180/4B 180/5 180/7 180/8	0.30.0 0.28.5 0.07.0 0.02.0 0.21.5 0.04.0 0.09.5
D.Dasarathan S/o Dhandavarayan	182/1 182/2	1.58.0 0.95.0



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M.Ranganayaki W/o Murugesu Gounder M.Selvam S/o Murugesu Gounder	182/3	0.91.0
Mohan	177/1 177/3 179/4 179/5	0.09.0 0.02.0 0.04.5 0.03.5
Kutty S/o Govindan	177/3 177/4C 179/3A 179/4 177/3	0.02.0 0.01.0 0.04.5 0.04.5 0.02.0
K.Ramajayammal W/o Late Kaliayappan	177/3 179/3A 179/2A	0.02.0 0.04.5 0.01.5
1. E.Kuppammal W/o Ekanathan 2. E.Jothi 3. E.Ramalingam	179/4 179/5 179/3A 179/2A 177/3	0.04.5 0.00.5 0.00.5 0.01.5 0.02.0
1. Kuppammal W/o Late Ekanathan 2. Jothe 3. Ramalingam	177/3 179/3A 179/2A 179/4 179/5	0.02.0 0.00.5 0.01.5 0.04.5 0.03.5

situated at Melarasampattu Village, Vellore Taluk, Vellore District.

For Petitioners : Mr. J.R.K.Bhavanantham

For Respondents : Ms.Anuradha,
ACGSC for R-1 in WP 11974/08
Mr. M.Gopikrishnan, CGSC for R-1 in
WP 11975 & 12634/2008
Mr. V.Veluchamy, AGP for RR-2 to 4



COMMON ORDER

The invocation of the emergency provision u/s 17 (4) of the Land Acquisition Act (for short 'the Act') for the purpose of acquisition of lands for construction of a reservoir across Koilmalayar to tap the abundant water flowing into the river during the rainy season not being in consonance with the intent and spirit of the said Section 17 (4) and non-grant of an opportunity of hearing contemplated u/s 5-A of the Land Acquisition Act, 1894 (for short 'the Act') as the said hearing is not an empty formality and the invocation of the aforesaid emergency provision is bad is being assailed before this Court in the above writ petitions.

2. The short facts, which are necessary for the disposal of the present petitions are as under :-

On the basis of the requirement of the Union Government, viz., the 1st respondent, for the purpose of construction of a reservoir across Koilmalayar, the 2nd respondent proposed to acquire dry lands to an extent of 17.55.5 Hectares equivalent to 43.46 acres situate at Melaraspattu Village, Vellore Taluk for the formation of a Dam across Koilmalayar in Melaraspattu Village by the Water Resource Organisation functioning under the Public Works Department for public purpose under the aforesaid Act.

3. It is the averment of the petitioners that on receipt of the award notice in reference Na.Ka.B1/9411/05 dated 24.4.08 on 29.4.08, it came to light that the while passing G.O. Ms. No.131 PW(T1) Dept., dated 27.5.05, the Government had consented for invoking the urgency clause u/s 17 (4) of the Land Acquisition Act with regard to acquisition of lands situated at Melaraspattu Village for the formation of Dam across Koil Malaiyar river. It is the further averment of the petitioners that the aforesaid Government Order was not published in the Government Gazette and that the publication of the Notification u/s 4 (1) of the Act was not effected by the 4th respondent. It is the further averment of the petitioner that the 2nd respondent has not dispensed with the enquiry u/s 5-A. It is the further averment of the petitioners that non-conduct of hearing u/s 5-A vitiates Section 4 (1) Notification, as conduct of Section 5-A enquiry is mandatory. Since the Notification u//s 4 (1) of the Act having not indicated any urgency in the acquisition for invoking Section 17 (4) and further dispensing with the enquiry u/s 5-A of the Act, it is the averment of the petitioners that the only inference that could be drawn is that the respondents



are deemed to have waived the abovesaid urgency clause and the need to dispense with the enquiry u/s 5-A. Aggrieved by the aforesaid unlawful acquisition, which is not in consonance with the provisions of the Land Acquisition Act, the present petitions have been filed assailing the said acquisition.

4. Learned counsel appearing for the petitioners submitted that Section 4 (1) Notification was published on 8.2.06, however, the said Notification u/s 4 (1) is silent as the provisions Section 17 (1) and (2) have not been invoked in the Section 4 (1) Notification. It is the further submission of the learned counsel for the petitioners that the Government Orders invoking the urgency clause u/s 17 (4) for the purpose of acquisition of lands by dispensing with the notice u/s 5-A was published in G.O. Ms. No.24 PWD (T1) Dept., dated 25.1.2005, but the said Government Order was not published in the Government Gazette and that the version as is found in G.O. Ms. No.131, PWD dated 18.3.05 alone has been incorporated.

5. It is the further submission of the learned counsel that in case of take over of forest lands, lands equivalent to two times the lands that are sought to be taken over from the forest department ought to be given to the forest department. Further, clearance from the Ministry of Environment & Forest is required for proceeding with the said project. However, such a clearance doesn't seem to have been obtained. In the absence of provision of lands and also funds and non-obtainment of clearance from the Ministry of Environment and Forest, the present project itself is wholly impermissible and illegal and for the reasons aforesaid, the present petitions deserve to be allowed.

6. Learned counsel for the petitioner, in support of his submissions, placed reliance on the following decisions :-

- "i) Darshan Lal Nagpal - Vs - Govt. of NCT of Delhi & Ors. (2012 (2) SCC 327);
- ii) Laxman Lal & anr. - Vs - State of Rajasthan & Ors. (2013 (3) SCC 764); and
- iii) Hamid Ali Khan & anr. - Vs - State of UP & Ors. (2021 SCC OnLine SC 1115)"

7. Per contra, learned Addl. Government Pleader appearing for the 2nd respondent submitted that Section 4 (1) Notification was issued prior to invoking the urgency clause u/s 17 (4) and, therefore, no occasion arose for incorporating the said urgency clause in the said Notification issued u/s 4 (1) . It is the further submission of the learned Addl. Government Pleader that at all times, the petitioners as well as the other land owners



were put on notice about the acquisition proceedings as also called upon for submitting their objections and, therefore, the contention of the petitioners that no notice was served on them does not merit acceptance.

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8. It is the further contention of the learned Addl. Government Pleader that the Government have accorded sanction to acquire the lands invoking the urgency clause u/s 17 (4) dispensing with 5-A enquiry in G.O. Ms. No.24, PW (T1) Dept., dated 25.1.2006 and no specification has been mentioned in the Notification u/s 4 (1) and this renders the notification valid and legal. It is the further submission of the learned Addl. Government Pleader that since 5-A enquiry has been dispensed with, the question of granting opportunity to the land owners u/s 4 (1) and 6 of the Act does not arise. There is no procedural violation and all the provisions of law were scrupulously followed. Therefore, there is no illegality, arbitrariness or perversity in the acquisition proceedings and, therefore, the same does not call for any interference.

9. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

10. The pivotal contention raised on behalf of the petitioners relate to invocation of the urgency clause u/s 17 (4) in and by which the enquiry contemplated u/s 5-A of the Act was dispensed with. However, it is the submission of the petitioners that inspite of the invocation of the urgency clause, possession of the lands have not been taken and no funds have been allotted for the said reservoir project till date.

11. Since the enquiry u/s 5-A has been dispensed with by invoking the urgency clause u/s 17 (4), it is necessary to peruse Section 5-A and Section 17 and the same are quoted hereunder :-

"5 A.Hearing of objections:- (1) Any person interested in any land which has been notified under section 4, Sub-section (1) as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity



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of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]”

“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 waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in subsection (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hour's notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable



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such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in cases, such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(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 not so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).]"

12. A bare perusal of sub-section (1) of Section 5-A reveals that in respect of the lands, which are sought to be acquired for public purpose, for which notification u/s 4 (1) has been issued, the person interested in the said lands shall file their objections within thirty days from the date of publication of the notification. Sub-section (2) therein mandates that any objection made under sub-section (1) the appropriate authority, as provided therein, shall, after hearing all such objections and after making such further enquiry, submit report with regard to different parcels of land. From the above, it is clear that enquiry u/s 5-A of the Act is mandatory with regard to any acquisition and the same to be conducted after affording an opportunity of hearing to the person interested in the land and before passing of the award.

13. It is to be pointed out that the limited right given to the owner/person interested u/s 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right which can be taken away for good and valid reasons and within the limitations prescribed u/s 17 (4) of the Act. The right to representation and hearing contemplated u/s 5-A of the Act is a very valuable right of a person whose



property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. If the appropriate Government decides to take away this minimal right then, its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A (See : Union of India - Vs - Mukesh Hans (AIR 2004 SC 4307)).

14. From the above it is evident that Section 5-A cannot be dispensed with, but for Section 17 (4) of the Act. A perusal of Section 17 of the Act reveals that it pertains to the special powers of the Government in case of urgency. Sub-section (1) to Section 17 provides the Government to direct the appropriate authority that without passing an award as well, on the expiration of fifteen days from the publication of notice u/s 9(1), to take possession of any land needed for public purpose and the land to vest with the Government free of all encumbrances. Further, more especially, sub-section (4) to Section 17 deals with the power of Government to dispense with the enquiry mandated u/s 5-A and to direct a Declaration to be published u/s 6 in respect of any land for which Notification u/s 4 (1) has been published. The above provision makes it clear that in case of urgency in the public purpose, the Government has been vested with powers to take over possession of the lands within fifteen days from the date of notification u/s 9 (1) and in respect of the lands to which sub-sections (1) and (2) of Section 17 will apply, the Government has been clothed with power to further direct dispensing with enquiry u/s 5-A. However, it is to be pointed out that urgency is the backbone for application of Section 17 (1) and 17 (4) of the Act and it is the duty of the respondents to establish that such an urgency necessitated the take over of possession of the lands.

15. It is further to be pointed out that the object of Section 17 of the Act is that when there is an urgency for the execution of a public purpose, that can be done expeditiously by taking possession of the land without waiting for an award. Sub-section (2) of Section 17 of the Act empowers the Collector to take possession of the land immediately after publication of notice mentioned in sub-section (1) and with the previous sanction of the Government. But it is to be pointed out that the said power can be invoked only in cases of sudden change in an emergency situations, as provided for in sub-section (2).



16. In this regard, useful reference can be had to the decision of the Hon'ble Apex Court in Laxman Lal & anr. - Vs - State of Rajasthan & Ors. (2013 (3) SCC 764), wherein on the question of dispensing with the enquiry u/s 5-A by invocation of the provisions of Section 17 (4), the Apex Court held as under :-

"21. 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 and Ors. v. State of Maharashtra and Ors. MANU/SC/0015/1976 : (1977) 1 SCC 133, Deepak Pahwa and Ors. v. Lt. Governor of Delhi and Ors. MANU/SC/0228/1984 : (1984) 4 SCC 308, State of U.P. v. Smt. Pista Dev and Ors. MANU/SC/0401/1986 : (1986) 4 SCC 251, State of U.P. and Anr. v. Keshav Prasad Singh MANU/SC/0500/1995 : (1995) 5 SCC 587, Chameli Singh and Ors. v. State of U.P. and Anr. MANU/SC/0286/1996 : (1996) 2 SCC 549, Meerut Development Authority and Ors. v. Satbir Singh and Ors. MANU/SC/0346/1997 : (1996) 11 SCC 462, Om Prakash and Anr. v. State of U.P. and Ors. MANU/SC/0416/1998 : (1998) 6 SCC 1, Union of India and Ors. v. Mukesh Hans MANU/SC/0773/2004 : (2004) 8 SCC 14, Union of India and Ors. v. Krishan Lal Arneja and Ors. MANU/SC/0496/2004 : (2004) 8 SCC 453, Mahadevappa Lachappa Kinagi and Ors. v. State of Karnataka and Ors. MANU/SC/7893/2008 : (2008) 12 SCC 418, Babu Ram and Anr. v. State of Haryana and Anr. MANU/SC/1714/2009 : (2009) 10 SCC 115 and Tika Ram and Ors. v. State of U.P. MANU/SC/1616/2009 : (2009) 10 SCC 689 have been referred to in Anand Singh MANU/SC/0527/2010 : (2010) 11 SCC 242 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



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in Section 17 itself for exercise of the exceptional power in dispensing with enquiry Under Section 5-A. 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



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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.

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 MANU/SC/0015/1976 : (1977) 1 SCC 133 and Pista Devi MANU/SC/0401/1986 : (1986) 4 SCC 251. In Om Prakash MANU/SC/0416/1998 : (1998) 6 SCC 1 this Court held that the decision in Pista Devi MANU/SC/0401/1986 : (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 MANU/SC/0015/1976 : (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



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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."

17. Yet again, the Hon'ble Supreme Court, in the case of Hamid Ali Khan & Anr. - Vs - State of UP & Ors. (2021 SCC OnLine SC 1115), after analyzing in depth the various case laws on the scope of dispensing with the enquiry u/s 5A by invoking the urgency provision u/s 17 (4) of the Act, has succinctly extracted the directions of the Hon'ble Supreme Court in the case of Radhy Shyam - Vs - State of U.P. (2011 (5) SCC 553) and held as under :-

"19. We need to notice the decision of this Court rendered by a bench of two learned Judges and reported in Radhy Shyam (supra). Therein this Court after an exhaustive survey of decisions including Gavate, Pista Devi and Rajasthan Housing Boards, Chameli Singh (supra) which appears to be the representatives of two streams of perspectives summed up its conclusions as follows:

Para 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) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good--Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd. [MANU/SC/0019/1953 : AIR 1954 SC 119], Charanjit Lal Chowdhury v. Union of India [MANU/SC/0009/1950 : AIR 1951 SC 41] and Jilubhai Nanbhai Khachar v. State of Gujarat [MANU/SC/0033/1995 : 1995 Supp (1) SCC 596].

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be



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construed strictly--DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [MANU/SC/0116/2003 : (2003) 5 SCC 622]; State of Maharashtra v. B.E. Billimoria [MANU/SC/0597/2003 : (2003) 7 SCC 336] and Dev Sharan v. State of U.P. [MANU/SC/0178/2011 : (2011) 4 SCC 769 : (2011) 2 SCC (Civ) 483]

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(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.



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(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.

(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.”

(Emphasis supplied)

18. It is needless to mention that in the aforesaid decisions, while the Hon'ble Supreme Court has held that the urgency provision u/s 17 (4) can be invoked to dispense with enquiry u/s 5-A of the Act, nevertheless it has been held that 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 should not be resorted to in a routine manner and the surrounding circumstances warranting immediate possession should be considered and the said power should not be lightly invoked for dispensing with the enquiry.

19. It has also been held by the Courts that the existence of urgency cannot be a matter of judicial review, but, however, total exclusion is not made that no judicial review is permissible. In the case on hand, the project itself, viz., the construction of a reservoir, is definitely a far urgent necessity, as water, being the source of sustenance and necessity for existence to the human race, the invocation of Section 17 (1) and (4) of the Act cannot be found fault with. Once this urgency provision is invoked and this Court, in consideration of the public purpose, has come to the conclusion that the said project is really an urgent necessity, invoking Section 17 (4) and dispensing with the enquiry u/s 5-A cannot be said to be bad.

20. But equally it should be borne in mind that once the public purpose by invoking the urgency provision is carried on, the public purpose has to be taken through to its logical end. In the case on hand, the public purpose being construction of a reservoir over the Koil Malayar river, which has been designed for storing the water from the rains during the rainy season, which is definitely serves the larger interests of the public, it is incumbent upon the Government to achieve the said purpose by taking timely action on it.

21. However, it is to be remembered that while invoking the urgency provision, the real urgency is a matter of concern, and it is necessary for the State and its agencies/instrumentalities to sustain the case of invocation of the urgency provision, by pointing out that even a delay of even a few weeks or months in the implementation of the project would cause great hardship and prejudice to the public and would defeat the public purpose. In



this regard, useful reference can be had to the decision of the Hon'ble Apex Court in Darshan Lal Nagpal - Vs - Govt. of NCT of Delhi & Ors. (2012 (2) SCC 327), wherein the Hon'ble Supreme Court held as under :-

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"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 brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the Appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard."

(Emphasis Supplied)

22. Though urgency provision has been invoked and the enquiry u/s 5-A has been dispensed with, however, it is the stand of the petitioners that even as on date, the possession of the lands is with the petitioners and that the project has not even started. Though the Notification u/s 4 (1) of the Act was issued in the year 2006, yet, after a passage of nearly a decade and a half, possession of the lands have not been taken over by the Government and transfer of the lands upon payment of the compensation to the petitioners have not seen the light of the



day. The said fact is not disputed by the learned Addl. Government Pleader appearing for the respondents.

23. In this regard, advertence can be had to the status report filed by the respondents before this Court on 7th March, 2022, wherein the necessity for the continuance of the project has been highlighted and also the payments made to some of the land owners, who are patta holders, with regard to a limited extent of land, yet, the compensation amount has not been paid to all the land owners. Further, the status report reveals that as on 12.5.08, the compensation payable to the land owners, whose lands were sought to be acquired was Rs.39,39,670/- of which only a sum of Rs.9,21,181/- is alleged to have been paid to the patta land owners. Cheque for an amount of Rs.16,69,255/- is alleged to have been issued in the name of the Subordinate Judge, Vellore in respect of the cases filed by some of the land owners. But it is to be pointed out that there is no mention as to the date on which the amount was deposited with the Court and also the date on which the patta land owners were paid. Further, the compensation is said to be in the region of Rs.39 Lakhs and odd, yet the amount, as found in the status report, works out to only Rs.25 Lakhs and odd.

24. Be that as it may. The status report further reveals that the requisite funds for carrying out the project, which is termed to be an emergency need, which resulted in invocation of the urgency provision u/s 17 (4), is yet to be earmarked, rather, allocated to the concerned Department for commencing the project. The relevant portion of the status report is extracted hereunder for ready reference :-

"8. It is submitted that though the project was conceived in the year 2006, it could not be taken up in view of impediments in the process of land acquisition and also due to other technical reasons due to the pendency of the writ petitions herein.

9. It is submitted that during the Water Resources Department's Demand for Grants for the year 2021-2022 held on 23.08.2021, the Hon'ble Minister for Water Resources announced on the floor of the Assembly that in order to save the precious rain water available during the monsoon seasons, it is essential to establish new water storage and distribution structures. Considering this, works shall be undertaken to form 3 tanks in Vellore, theni and Dindigul Districts and 5 new canals



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10. It is submitted that in G.O. (Ms) No.185, Water Resources Department dated 13.12.2021, the Government have accorded in-principle approval for the Scheme of formation of a small dam across the Koilmalayar river near Melarasmpattu Village in Anicut taluk of Vellore District, but Administrative and Financial sanctions would be issued only after 90% of the lands required for this scheme are acquired and in possession of the Water Resources Department."

25. From the above, it is amply evident that inspite of the acquisition of the lands by invoking the urgency provision u/s 17 (4) by dispensing with the enquiry u/s 5-A of the Act, even as on date, the funds that are required for the project have not yet been crystallized by proper allocation by the respondents. This clearly shows that the public purpose, which was stated to have been urgent, and which is definitely so, which cannot be disputed, is yet to take off, and the whole project has sunk to abysmal depths that the urgency has not only been diluted, but it has since evaporated. Therefore, presently, the respondents cannot claim that the invocation of Section 17 (4) by dispensing with the enquiry u/s 5-A is sustainable, as by their very own act, the respondents have destructed their act and in such a backdrop, dispensing with the enquiry u/s 5-A, which is a very valuable right of the land owner cannot be brushed aside merely on the ground of invocation of the urgency provision u/s 17 (4). Invocation of the urgency provision denies the substantive right of the land owner which cannot be allowed to be done under the guise of urgency. If the State is allowed to exercise the urgency power as a matter of course, then the provision provided u/s 5-A would be made an empty formality, which is not the intent and purpose of the said provision u/s 5-A.

26. In the above backdrop, this Court is of the considered view that though the project for which the lands were sought to be acquired were truly a public purpose and necessitated the invocation of the urgency power u/s 17 (4) by dispensing with the enquiry u/s 5-A, yet the lethargic act of the State in not even starting the project even after a lapse of a decade and a half really renders the invocation of the provision of Section 17 (4) an excessive use of power, which definitely warrants interference at the hands of this Court. As pointed out above, the project not having taken off, the act of the State in depriving the land owners of the enquiry u/s 5-A by invoking Section 17 (4) of the Act, in the facts of the present case, is



violative of the constitutional safeguards and, therefore, the present acquisition deserves to be quashed.

27. Accordingly, for the reasons aforesaid, all the writ petitions are allowed by quashing the impugned Notification issued u/s 4 (1) and the consequential Declaration issued u/s 6 of the Act. However, considering the necessity of the project, liberty is granted to the respondents to proceed with acquisition by issuing fresh notification. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

GLN
To

1. The Ministry of Food
Agriculture, Community Development
& Cooperation (Development of
Agriculture), Government of India
New Delhi.
2. The Secretary to Government
Public Works Department (Irrigation)
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
3. The Collector
Office of Collectorate, Vellore
Vellore District.
4. The Revenue Divisional Officer
Vellore, Vellore District, Tamil Nadu.

+3cc to Mr.J.R.K.Bhavanantham, Advocate Sr.26135 to 26137

W.P. NOS.11974, 11975 &
12634 OF 2008

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srg 26/04/2022