



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
14.06.2022	20.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.28610 OF 2007

M/s. Larsen & Toubro Ltd.
Rep. by its Dy. General Manager
Form Works, A.Sukumaran
ECC Division, 113 Mylam Road
Sedarapet Village, Puducherry
Union Territory of Puducherry.

.. Petitioner

- Vs -

1. Union Territory of Puducherry
Rep. by the Secretary to Government
Dept. of Revenue & Disaster Management
Puducherry.

2. The Addl. Secretary (Revenue)
Government of Puducherry
Dept. of Revenue & Disaster Management
Puducherry.

3. The Deputy Collector (Revenue) - cum -
Land Acquisition Officer (South)
Villianur, Union Territory of Puducherry.

4. Pondicherry Industrial Promotion
Development & Investment Corpn. Ltd.
Rep. by its Managing Director
60, Romain Rolland Street
Pondicherry 605 001.

.. Respondent

(4th Respondent implied as per
order dated 27.01.2011 in MP.NO.5107 in WP.28610 of 2001)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent comprised in its Notification under Section 4 (1) of the Land Acquisition Act, issued by the 2nd respondent in G.O. Ms. No.28, Revenue Department, dated 11.2.2005 as published in the Gazette of Pondicherry Extraordinary issue dated 24.3.2005 and Declaration



under Section 6 of the Land Acquisition Act, 1894, issued by the 2nd respondent vide G.O. Ms. No.163 dated 29.12.2005 as published in the Gazette of Pondicherry Part-I dated 2.1.2006 and quash the same insofar as it relates to the petitioner's lands comprised in S. Nos.132/1, 132/2, 132/3,132/4, 132/5A, 132/5B,132/5C,132/5D, 132/5E, 132/6, 132/7, 132/8A, 132/8B, 132/9, 132/10, 132/11, 132/12, 132/13, 132/14, 132/15, 132/17, 133/1A, 133/1B, 133/2A, 133/2B, 133/4, 133/5, 133/7B, 133/7C, 133/7D and situate at No.22, Sedarapet Village, Pondicherry and consequently issue a mandamus forbearing the respondents, their officers, employees, subordinates, agents or any other person(s) claiming or acting under them from in any manner interfering with the peaceful possession and enjoyment of the petitioner's lands comprised in S. Nos.132/1, 132/2, 132/4, 132/5A, 132/5B, 132/5C,132/5D, 132/5E, 132/6, 132/7, 132/8A, 132/8B, 132/9, 132/10, 132/11, 132/12, 132/13, 132/14, 132/15, 132/17, 133/1A, 133/1B, 133/2A, 133/2B, 133/4, 133/5, 133/7B, 133/7C, 133/7D and situate at No.22, Sedarapet Village, Pondicherry.

For Petitioner : Mr.Sathish Parasaran, SC, for
Mr. R.Parthasarathy

For Respondents: Mr. J.Kumaran, AGP (Pondicherry)
For RR-1 to 3
Mr. T.P.Manoharan for R-4

ORDER

The present petition has put in issue the acquisition of the petitioner's lands invoking the urgency clause u/s 17 of the Land Acquisition Act to circumvent the enquiry u/s 5-A of the Act and the dereliction on the part of the respondents to issue opportunity of hearing to the petitioner, which, in effect, is violation of principles of natural justice and, accordingly, seeks quashment of the acquisition proceedings.

2. It is the case of the petitioner, that it is one of the largest integrated engineering and private sector construction company, indulging in various infrastructure development activities, including fabrication of large volume steel items and form work systems of international standards directly linked with the construction activities and with a view to further expanding its presence and expertise, purchased lands admeasuring total extent of about 51.2 acres in Sedarapet and Karasur Villages in Pondicherry of which the present writ petition relates to about 17 acres of land at Sedarapet. The said lands were purchased under different sale deeds in the year 1997 from various parties.

3. It is the further averment of the petitioner that subsequent to the aforesaid purchase, the petitioner constructed large factory buildings and established industry in the said



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land after obtaining necessary permissions from the various authorities, which included permission for conversion of land from agricultural to industrial purpose, planning permission, building permission, etc., and other necessary approval from the authorities under the Factories and Industrial laws. It is the further averment of the petitioner that the said approvals were granted between the years 1997 to 1999 and since the date of purchase and construction, the petitioner has been in continuous possession, enjoyment and occupation of the said lands and that the petitioner is also paying the necessary statutory dues. It is the further averment that mutation of the revenue records in respect of the said lands in the name of the petitioner is under progress with the revenue authorities.

4. It is the further case of the petitioner that with regard to expansion of its industrial activities, the petitioner proceeded to purchase lands, which are adjacent to the lands of the petitioner and sought to register the sale deeds, it came to light that lands, including the lands of the petitioner, which were in its possession and enjoyment since 1997, were under acquisition even without any notice or intimation to the petitioner, either as owner or as an occupier of the subject lands. It is the further averment of the petitioner that the respondents, issued Declaration u/s 6 of the Land Acquisition Act (for short 'the Act') vide G.O. Ms. No.163 dated 29.12.2005 acquiring about 17 acres of land of the petitioner along with 1000 acres of other lands for setting up a Special Economic Zone (for short 'SEZ'). Further, the said Government Order also mandated the 3rd respondent to take possession of the lands by invoking Section 17 (1) of the Act, on the expiry of 15 days after the publication of notice mentioned u/s 9 (1) of the Act.

5. Though the petitioner had been in continuous possession and enjoyment of the property since 1997 as owner as well as occupier of the property in question in terms of Section 9 of the Act, the petitioner was not served with the mandatory notice u/s 9 of the Act, which is a pre-requisite for taking possession in line with the emergency powers conferred upon the 3rd respondent. It is the further stand of the petitioner that since the date of purchase till date, the petitioner was not served with notice of any kind nor was there any public notice of such acquisition in respect of the petitioner's property in the locality.

6. It is the further averment of the petitioner that the setting up of a SEZ has come to naught and the acquisition proceedings stood frustrated with the rejection of the application of the respondent for approval of the proposed SEZ by the Board of Approval. The lands having been acquired for the establishment of a SEZ, which plan has since stood frustrated due to rejection of the approval, the acquisition is no longer permissible.



7. It is the further averment of the petitioner that the rejection of the proposal is for varied reasons, including the discovery of the real intent behind the said acquisition, being real estate project, under the garb of establishment of SEZ, by the private developer of SEZ, which culminated in the rejection of the approval and with a further direction to the 1st respondent to reconvey the lands acquired under the acquisition proceedings.

8. In spite of the rejection of approval, the lands having not been reconveyed and the entire acquisition proceedings being farce and only to benefit a certain individual and no public interest is involved in the acquisition process, the present petition has been filed for quashment of the acquisition proceedings with a consequent direction to forbear the respondents from taking possession of the property from the petitioner.

9. Learned senior counsel appearing for the petitioners raised two fold contentions before this Court. The primary contention raised on behalf of the petitioner by the learned senior counsel is that the acquisition being for SEZ, which normally takes about three to four years to be established, there is no necessity for invoking the urgency clause provided u/s 17 of the Act and only to defeat the rights and legitimate claims of the land holders, including the petitioners, with regard to service of notice, the urgency clause has been invoked. It is the further submission of the learned senior counsel that it has been the consistent view of the Courts that in respect of acquisition relating to SEZ, invocation of the urgency clause should not be resorted to.

10. It is the further submission of the learned senior counsel that in spite of the fact that the lands have been purchased way back in the year 1997 and that the petitioner has been in continuous possession and enjoyment of the said lands and necessary steps have also been taken for mutation of revenue records, the authorities knowing very well that the lands belong to the petitioner, have not issued any notice upon the petitioner, which is clear violation of principles of natural justice.

11. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

- i) Radhy Shyam & Ors. - Vs - State of UP & Ors. (2011 (5) SCC 553);
- ii) Ramesh - Vs - Union of India & Ors. (2021 (1) CTC 1); and
- iii) M/s.Om Metal Infra Projects Ltd. - Vs - Union of India & Ors. (2014 SCC OnLine Mad 9055)

12. Per contra, learned Addl. Government Pleader appearing for respondents 1 to 3 submitted that the lands are very much



required for putting up the SEZ and though the SEZ project has not been approved, still the Government is well within its powers to utilize the said lands for any public purpose as it deems fit and merely because the petitioner has established an industrial unit in the said lands that cannot be taken as a ground to defeat the acquisition proceedings.

13. It is the further submission of the learned Addl. Government Pleader that only the lands, which are lying unutilized by the petitioner are sought to be acquired and not the lands on which the petitioner is carrying industrial activity. Such being the case, the petitioner cannot contend that the acquisition proceedings are only for the purpose of certain acts unconnected with SEZ.

14. It is the further submission of the learned Addl. Government Pleader that the lands have been acquired by invoking the urgency clause provided u/s 17 of the Act. Once the urgency clause is invoked, notice u/s 5-A of the Act alone is not served on the petitioner, which will in no way hinder the legitimate rights of the petitioner. Once the proceedings are set in motion, the notice with regard to the other provisions would be served on the petitioner and the mere non-service of notice on the petitioner cannot be said to be in violation of principles of natural justice as no notice is required to be served when the urgency clause is invoked.

15. It is the further submission of the learned counsel that though the petitioner claims that the lands have been purchased in the year 1997, yet, the revenue records have not been mutated even after a long lapse of time and in the absence of the revenue records revealing the name of the petitioner as the person, who is the owner of the lands, non-service of notice on the petitioner cannot be put against the respondents. The inaction on the part of the petitioner in mutating the revenue records cannot be a ground to quash the acquisition proceedings on the ground of non-service of notice, as the petitioner ought to have been diligent enough to have the revenue records mutated.

16. In reply to the aforesaid submissions, learned senior counsel appearing for the petitioner submitted that Section 19 of the Puducherry Settlement Act, 1970 (Act 28 of 1970) provides for Register of Mutations and sub-section (2) to Section 19 provides for the correction of entries in the revenue records to be made by the officer so designated, upon receipt of report u/s (1) of Section 17 or u/s 18 of the Settlement Act. Such being the case, the petitioner having purchased the lands way back in the year 1997, the Register of Mutations should have been corrected by the officer authorized to do so. The inaction of the revenue authorities in correcting the Register of Mutations cannot be put against the petitioner to deny him his legitimate right of receipt of notice.



17. 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 as also the decisions relied on by the learned senior counsel for the petitioner.

18. 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 petitioner that inspite of the invocation of the urgency clause, possession of the lands have not been taken till date and the lands are still in possession of the petitioner. It is the further case of the petitioner that opportunity of hearing was not granted to the petitioner by publication of the notification in the locality, which vitiates the acquisition proceedings.

19. 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 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),



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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 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).]"

20. 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.

21. 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)).

22. 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.



23. 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 situation, as provided for in sub-section (2). Therefore, the urgency in the execution of the project should be of such a nature so as to warrant invocation of Section 17.

24. 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



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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. 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 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."

25. 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--Dwarkanadas 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 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



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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.

(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-



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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)

26. 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 u/s 5-A in a case where possession of 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. It has also been held by the Courts that the existence of urgency cannot be a matter of judicial review, but, however, there is no total ouster of power of exercising judicial review.

27. Further, in Radhy Shyam case (supra), the Hon'ble Supreme Court has, in unequivocal terms, held that 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



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17(1) and/or 17(4). It has been further held that 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 and, 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. Such being the case, dispensing with the enquiry mandated u/s 5-A, in the present case, would definitely fall within the periphery of judicial scrutiny and this Court, in exercise of its powers of judicial review, can very well look into the entire acquisition proceedings to find out whether the invocation of the urgency provision is really warranted.

28. In the case on hand, the project pertains to establishment of SEZ, which is an industrial purpose. It is the case of the respondents that in order to lure international investors for investing in the area for upliftment of the UT, the project has been envisioned. However, except for the stray stand that to lure international investors to invest more and thereby create more employment opportunities, no other material worth mentioning has been placed to show that the project is of such urgent nature that dispensation of Section 5-A enquiry by invoking Section 17 (4) was deemed essential. Merely because the top most officials of the executive hierarchy had made certain inspection and had decided to invoke the urgency clause would not suffice to hold that the act of invoking urgency clause is justifiable in the absence of any other material to indicate that the project is of such an urgent nature that even giving a breathing space would render the project useless and not viable.

29. 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 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 :-

"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



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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)

30. It is evident from the materials available on record, as pointed out by the petitioner in its affidavit as well as in the reply that the proposal to establish SEZ was mooted out in the year 2003, yet the same has seen the light of the day only in the year 2005, after a lapse of about a year and a half. Thereafter, pursuant to the Notification u/s 4 (1), the Declaration u/s 6 came to be published only after a staggering lapse of 10 months. If, on the above backdrop of the undisputed timelines, the respondents want this Court to accept their stand that there existed an urgency, which resulted in invocation of Section 17 (4) of the Act, then this Court is of the considered view that it is nothing but an overzealous attempt on the part of the respondents to shield certain materials coming out in the public domain with regard to the necessity of the acquisition. Further, it is also not disputed that the said project has not been approved by the Approval Board.

31. Though the belated counter of the respondents runs to number of pages, yet there is no semblance of material in it to justify the act of the respondents on the question of urgency. The counter is silent on why the proposal for establishment of SEZ, mooted out in the year 2003, was taken up only in the year 2005, after a lapse of about a year and a half and why there is a delay of about 10 months between the issuance of Notification u/s 1 and the Declaration u/s 6. All the above fallacies in the act of the respondents significantly impact the acquisition process by invocation of Section 17 by dispensing with the



enquiry u/s 5-A, which hits at the substratum of the acquisition process.

32. Further, the delay of ten month period between the Notification u/s 4 (1) and the Declaration u/s 6 is sought to be countenanced by submitting that the extent of the lands involved and the number of persons, whose lands are sought to be acquired and the hearing given to them in all earnestness have resulted in the delay, yet this act of the respondents go to prove that the project is not of such urgent nature warrant invocation of Section 17, however, the said delay would itself stand testimony for the fact that the invocation of the urgency provision is for certain ulterior reasons, as otherwise, the respondents would not have taken such a long time to complete scrutiny of the representations/objections of the land owners. It is to be pointed out that the number of persons whose lands were involved or the extent of lands would not be a determinative factor when the urgency provision is invoked. Knowing fully well the enormity of the acquisition of lands, if really there existed an urgent situation, the respondents ought to have been prepared for all the contingencies, if it decides to invoke the urgency provision. The act of the respondents reveals that but for invoking the urgency provision, there seems to have been no urgency in the project is evident from the time taken by the State to screen the representations and pass orders one way or the other.

33. 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.

34. Further, as held by the Hon'ble Apex Court in Radhy Shyam case (supra), the property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5A 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. In the case on hand, the delay at different points of time, viz., the proposal for acquisition and the issuance of Declaration u/s 6, which have been pointed out above, clearly show that the urgency clause has been invoked for reasons other than urgency, which



vitiates the whole acquisition process. Therefore, the invocation of the urgency provision for acquiring the land by by-passing the mandatory notice u/s 5-A of the Act is wholly unsustainable.

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35. Coming to the non-issue of opportunity to the petitioner by issuing notice, which according to the petitioner, vitiates the acquisition, as it is the case of the petitioner that notice was issued upon the erstwhile owners, though the petitioner had purchased the property and that necessary application has also been moved for mutation of revenue records and, therefore, the respondents are very well aware of the possession, enjoyment and ownership of the petitioner, but yet, for reasons best known to the respondents, no notice has been issued to the petitioner. However, it is the stand of the respondents that invocation of the urgency provision negates the issuance of notice u/s 5-A. Further, insofar as notice on other heads is concerned, the said position has not yet come, as the petitioner has come before this Court. It is the further stand of the respondents that the petitioner has not been diligent enough to have the revenue records mutated and, therefore, the respondents cannot be fastened with any liability for non-issuance of notice to the petitioner as the name of the petitioner is not revealed in the revenue records.

36. It is the stand of the petitioner that the lands were purchased in the year 1997 and the petitioner has put up a factory in a portion of the land and that the factory is functioning. It is to be borne in mind that for the purpose of establishing and starting an industrial unit, very many statutory permissions/approvals need to be obtained from the various authorities, but for which the petitioner could not have started the industrial establishment.

37. Further, it is the case of the petitioner that he has taken steps for carrying out mutation of the revenue records to carry its name by filing necessary application before the appropriate authority. In this regard, Sections 18 and 19 of the Pondicherry Settlement Act is relied upon by the petitioner to submit that in the Union Territory of Pondicherry, upon registration of a document u/s 17 or 18 of the Registration Act, it is the bounden duty of the statutory authorities, who have been notified, to mutate the revenue records.

38. To appreciate the aforesaid contention, reference to Sections 18 and 19 of the Pondicherry Settlement Act is necessary, which is extracted hereunder:-

"18. Procedure on acquisition of right through documents registered.- No document by virtue of which any person acquires a right in any land as registered Holder, Occupant, Owner, Mortgagee, Lessee or Tenant or Assignee, of the Rent or Revenue thereunder shall be registered under the



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Indian Registration Act, 1908 (12 of 1908) unless the person liable to pay the registration fees also pays to the Registering Authority such fees as may be prescribed for making the necessary entries in the approved Register of Rights and other connected Registers and on the registration of such document the Registering Authority shall make a report of the acquisition of the right to the Officer specified by the Collector under sub-section (1) of Section 17 in the manner prescribed.

19. Register of Mutations.-

(1) There shall be maintained for every village a Register of mutations in such form as may be prescribed.

(2) On receipt of a report under sub-section (1) of section 17 or under Section 18, the officer specified by the Collector under sub-section (1) of section 17 shall correct the entries in the approved Register of Rights after making such enquires as are necessary, and after hearing objections, if any. Any such correction made shall be communicated by the said officer to all persons who from the Register of Rights or the Register of Mutations appear to be interested in the mutation and to any other person whom the said officer has reason to believe to be interested therein.

(3) The entries effected in the approved Register of Rights in accordance with sub-section (2) shall be tested and certified by such officer as may be specified by the Collector in this behalf."

39. A careful perusal of the aforesaid provision reveals that the register of mutations to be corrected on receipt of report under sub-section (1) of section 17 or under section 18, which clearly signify that upon a sale being effected u/s 17 or 18 of the Registration Act, it is the bounden duty of the office of the Sub Registrar to make the necessary corrections regarding the sale transaction in the revenue records by sending necessary intimation, irrespective of the purchaser of the land making any application for mutation of records, as even during registration of the sale deed, necessary fees, as prescribed, stand collected from the said purchaser for making the necessary entries.

40. It is the admitted case of the parties that the lands were purchased in the year 1997 by the petitioner, whereas the acquisition proceedings had taken place only in the year 2005. In the interregnum, there is a period of about eight years and as mandated by Section 19 (2) of the Pondicherry Settlement Act, upon sale being effected, the records ought to have been mutated by the notified revenue authority. But inspite of a passage of



eight years, if the records have not been mutated, which is the duty of the notified authority, liability cannot be fastened on petitioner to show that it has not been diligent in getting the revenue records mutated and his right to the said property cannot be non-suited and had this process been carried out, there would not have been any need of enquiry about the status of the owner of the land, as admittedly, the sale had been executed in the year 1997.

41. Insofar as possession of the lands is concerned, though it is claimed by the respondents that possession has been taken, which is refuted by the petitioner, however, the possession at the hands of the respondents does not stand fortified on account of the fact that the Sub-collector (Revenue) South, Government of Puducherry, vide proceedings dated 7.5.2014, had issued a draft statement u/s 9 (5) of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 to the petitioner on the ground that the petitioner was in possession of lands in excess of the ceiling limit. When the said authority has confirmed the possession of the lands at the hands of the petitioner, it does not lie in the mouth of the respondents to claim that possession has been taken by the respondents, when the respondents have not tabled any material to show how possession of the lands were taken. It is incumbent upon the respondents to show the manner in which possession has been taken, as there are certain procedures to be followed while taking possession and in the absence of any such material substantiating taking possession, the possession at the hands of the respondents is wholly fictional only to suit the convenience of the respondents for the purpose of the present case.

42. Further, insofar as the claim of the respondents that the stage of issuing notice with regard to following the other provisions of the Act has not fructified and, therefore, the non-issuance of notice and opportunity of hearing to the petitioner would not vitiate the acquisition proceedings is too far-fetched to be accepted. It is the case of the respondents that wide publicity was given with regard to the acquisition and after obtaining representations/objections from the various land owners, after due consideration, the certain representations/objections were accepted and the said lands were released from the acquisition and only the balance portion of the lands were sought to be acquired.

43. True it is that the phase when notice has to be given has not fructified in the case of the petitioner, as the acquisition was undertaken by invoking the urgency provision, whereby enquiry u/s 5-A stood dispensed with. However, there is no material placed by the respondents to show that wide publicity was given in the said area with regard to the lands that were sought to be acquired, so as to enable the petitioner to file representations/objections. It is the specific case of the petitioner that the Notification u/s 4 (1) of the Act was



never published in or near the locality of the subject lands as contemplated under the Act. When such a specific stand is taken by the petitioner with regard to non-publication of Notification in or near the locality, duty is cast upon the respondents to place materials to show that publication of notification was made in or near the locality of the subject lands, which the respondents have miserably failed to establish. In the absence of such a material, this Court has to definitely accept the case of the petitioner to hold that the publication of Notification u/s 4 (1) has not been done in the manner as prescribed under the Act and the same vitiates the acquisition proceedings.

44. This Court has come across instances wherein urgency provision u/s 17 of the Act is invoked to do away with the notice u/s 5-A of the Act. As has been pointed out above, enquiry u/s 5-A is a mandatory procedure, which safeguards the interests of the landholders and unless and until there exists a real urgency, the said provision should not be invoked. Right to property is a right guaranteed under Article 300-A of the Constitution and the said right cannot be lightly brushed aside and negated at the whims of the respondents. It has been pointed out by this Court and the Hon'ble Apex Court in very many cases that urgency should be of such a nature that even a short delay in the acquisition, would frustrate the acquisition or continuance of the project. But, unmindful of the same, in the present case, the acquisition proceedings have been taken up invoking the urgency provision, when there is no urgency involved. The State and its agencies/instrumentalities should desist from invoking the urgency provision where there is no urgency involved and a prudent approach should be taken to follow all the procedures contemplated under law, which is the hallmark of a democratic society and a democratic form of Government being run for the welfare of its citizens.

45. Further, one other aspects which needs to be stressed is the fact that the acquisition, according to the respondents, is sought to be made for establishment of SEZ to lure more investors for establishing industries. However, what is totally forgotten by the respondents is the fact that the petitioner is one of the large industrial establishments in the country and in the lands which are sought to be acquired, the petitioner had already put up an industrial establishment. When such being the undisputed case, this Court is at a loss to understand as to the actual intent of the respondents in acquiring the said lands, as wiping out an industry from the said lands, the respondents want to establish another industry, which defies common sense and logic. Had really the intention of the respondents is to establish industries for the upliftment of the area, prudent approach would have been to safeguard the industry already existing in the said place, viz., the petitioner, which industry has been giving more employment opportunities to youth in the locality, and to establish more industries in and around the



petitioner's industry. However, trying out to wipe out an existing industry and re-establish industries, which has not even fructified, clearly reveals sheer non-application of mind on the part of the respondents. For all the reasons aforesaid, the impugned acquisition proceedings by issuance of Notification u/s 4 (1) and the consequent Declaration u/s 6 of the Land Acquisition Act, 1894, issued by the 2nd respondent stand vitiated and, accordingly, the same deserve to be quashed.

46. Accordingly, the writ petition stand allowed by quashing the impugned Notification issued u/s 4 (1) and the consequential Declaration issued u/s 6 of the Act. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

GLN
To

1. The Secretary to Government
Dept. of Revenue & Disaster Management
Union Territory of Puducherry
Puducherry.

2. The Addl. Secretary (Revenue)
Government of Puducherry
Dept. of Revenue & Disaster Management
Puducherry.

3. The Deputy Collector (Revenue) - cum -
Land Acquisition Officer (South)
Villianur, Union Territory of Puducherry.

4. The Managing Director
Pondicherry Industrial Promotion
Development & Investment Corpn. Ltd.
60, Romain Rolland Street
Pondicherry 605 001.

+1 cc to Mr.R.Parthasarathy, Advocate Sr.NO.37029

+1 cc to Mr.D.Ravichandran, Advocate Sr.NO. 37548

W.P. NO. 28610 OF 2007

smi (CO)
A.SK(04/07/2022)