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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.04.2022	18.04.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 22621, 22622, 22623 OF 2005

W.P. NOS. 28646 TO 28650 OF 2006

W.P. NOS. 19832 OF 2007 & 3078 & 6085 OF 2008

R.P.MOHAN ... PETITIONER in WP No.22621 of 2005
Mrs.GUNAWATHEE MOKAN ... PETITIONER in WP No.22622 of 2005
M.ANAND RAJ ... PETITIONER in WP No.22623 of 2005
G. THUKARAM ... PETITIONER in WP No.28646 of 2006
SAJAN RAO ... PETITIONER in WP No.28647 of 2006
GOWRAPPAN ... PETITIONER in WP No.28648 of 2006
M. GOVINDARAJU ... PETITIONER in WP No.28649 of 2006
K. SIDDARAJ ... PETITIONER in WP No.28650 of 2006
K.SIDDARAJ ... PETITIONER in WP No.19832 of 2007
L. RAJAMANICKAM ... PETITIONER in WP No.3078 of 2008
1.R.CHINNAMMAL
2.RAJAMMAL W/O Cinnugaan
3.VALLIAMMAL
4.N.ABIRAMI ... PETITIONERS in WP No.6085 of 2008

VS

1.THE SECRETARY
REVENUE DEPT. GOVT. OF TAMILNADU FOST ST.
GEORGE CHENNAI-9
2.THE DISTRICT COLLECTOR
KRISHNAGIRI DIST KRISHNAGIRI



3.Dr.MANGATH RAM SHARMA I.A.S
DISTRICT COLLECTOR KRISHNAGIRI DIST
KRISHNAGIRI

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4.THE REVENUE DIVISIONAL OFFICER,
KRISHNAGIRI REVENUE DIVISION
KRISHNAGIRI ... RESPONDENTS in WP No.22621 of 2005

1.THE SECRETARY
REVENUE DEPT. GOVT. OF TAMILNADU FOST ST.
GEORGE CHENNAI-9

2.THE DISTRICT COLLECTOR
KRISHNAGIRI DIST KRISHNAGIRI

3.Dr.MANGATH RAM SHARMA I.A.S
DISTRICT COLLECTOR KRISHNAGIRI DIST
KRISHNAGIRI

4.THE REVENUE DIVISIONAL OFFICER,
KRISHNAGIRI REVENUE DIVISION KRISHNAGIRI

5.L. KUBENDRA RAO

6.N. SUJARITHA

7.K. GANESH RAO

8.K. GOPINATH RAO

9.K. BABY

10.N. SAROJA BAI

R-5 TO R10 ARE IMPEADED AS PER ORDER DATED: 07/04/2016
BY T.S.S. J. IN WMPS.8687 & 8688/2016 IN WPS. 22622&22623/2005.

... RESPONDENTS in WP No.22622 of 2005

1.THE SECRETARY
REVENUE DEPT. GOVT. OF TAMILNADU FOST ST.
GEORGE CHENNAI-9.

2.THE DISTRICT COLLECTOR
KRISHNAGIRI DIST KRISHNAGIRI.

3.Dr.MANGATH RAM SHARMA I.A.S
DISTRICT COLLECTOR KRISHNAGIRI DIST
KRISHNAGIRI.



4.THE REVENUE DIVISIONAL OFFICER,
KRISHNAGIRI REVENUE DIVISION KRISHNAGIRI.

5.L. KUBENDRA RAO
S/O.R.LAKSHMANA RAO
NO.42 C-BUILDING QUEENS ROAD
BENGALURU KARNATAKA.

6.N. SUJARITHA
D/O.R.KUPPAJI RAO
NO.49 1ST MAIN 8TH CROSS VASANTHA
VALLABAI NAGAR SUBRAMANYAPURA
BENGALURU-61 KARNATAKA.

7.K. GANESH RAO
S/O.R.KUPPAJI RAO, NO.7 2ND STREET
ELLAMMAN KOVIL STREET, ULSOOR BENGALURU
KARNATAKA.

8.K. GOPINATH RAO
S/O.R.KRISHNAJI RAO, NO.8 2ND CROSS
GANESHA BLOCK, JAYASAMARAJENDRA NAGAR
BENGALURU, KARNATAKA.

9.K. BABY

10.N. SAROJA BAI
D/O.R.NARASINGA RAO, NO.8, 3RD CROSS RIGHT SIDE
MANNARAN PALYA, R.T.NAGAR PO
BENGALURU-32, KARNATAKA.

R-5 TO R10 ARE IMPEADED AS PER ORDERS DATED: 07/04/2016
BY T.S.S. J. IN WMPS.8687&8688/2016 IN WPS.22623/2005.

... RESPONDENTS in WP No.22623 of 2005

1.THE GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY REVENUE DEPARTMENT
FORT ST. GEORGE CHENNAI.

2.THE REVENUE DIVISIONAL
OFFICER KRISHNAGIRI. ..RESPONDENTS in WP No.28646 of 2006

1.THE GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY REVENUE DEPARTMENT
FORT ST. GEORGE CHENNAI.

2.THE REVENUE DIVISIONAL
OFFICER KRISHNAGIRI.



3.L.GUBENDRA RAO

4.N.SUJARITHA

5.K.GANESH RAO

6.K.GOPINATH RAO

7.K.BABY

8.N.SAROJA BAI

R-3 TO R-8 ARE IMPEADED AS PER ORDER DATED:08/01/2016

BY T.S.S.J IN MP.1/2015 IN WP.28647/2006.

... RESPONDENTS in WP No.28647 of 2006

1.THE GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY REVENUE DEPARTMENT
FORT ST. GEORGE CHENNAI.

2.THE REVENUE DIVISIONAL
OFFICER KRISHNAGIRI.

... RESPONDENTS in WP No.28648 of 2006

1.THE GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY REVENUE DEPARTMENT
FORT ST. GEORGE CHENNAI.

2.THE REVENUE DIVISIONAL
OFFICER KRISHNAGIRI.

... RESPONDENTS in WP No.28649 of 2006

1.THE GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY REVENUE DEPARTMENT
FORT ST. GEORGE CHENNAI.

2.THE REVENUE DIVISIONAL
OFFICER KRISHNAGIRI.

... RESPONDENTS in WP No.28650 of 2006

1.THE GOVT. OF TAMILNADU
REP. BY ITS SECRETARY REVENUE DEPT.FORT
ST GEORGE CHENNAI.

2.THE REVENUE DIVISIONAL
OFFICER KRISHNAGIRI.

... RESPONDENTS in WP No.19832 of 2007

1.THE STATE OF TAMILNADU REP.BY
ITS SECRETARY TO GOVERNMENT REVENUE



DEPARTMENT FORT ST. GEORGE CHENNAI 600009

2. THE DISTRICT COLLECTOR
KRISHNAGIRI DISTRICT, KRISHNAGIRI DISTRICT

3. THE LAND ACQUISITION OFFICER
REVENUE DIVISIONAL OFFICER, KRISHNAGIRI
DISTRICT KRISHNAGIRI

... RESPONDENTS in WP No.3078 of 2008

1. THE STATE OF TAMILNADU
REP BY ITS SECRETARY TO GOVT. REVENUE DEPT.
FORT ST. GEORGE CHENNAI 9.

2. THE DISTRICT COLLECTOR
KRISHNAGIRI.

3. THE REVENUE DIVISIONAL OFFICER
KRISHNAGIRI. ... RESPONDENTS in WP No.6085 of 2008

WP No.22621 of 2005: Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of certiorarified Mandamus, calling for the records relating to the impugned notification dated 29.6.2005 Ref.G.O.Ms.No.380 (Rev.Dept) by the first respondent in Thina Thanthi Daily published on 2.7.2005, and all consequential proceedings and quash the same in so far as the petitioners land in S.Nos.2/2, 1/2 and 16/5A, Kothapettah Village, Krishnagiri Taluk and District are concerned, and consequently direct the respondents authorities not to acquire the petitioners said lands as sought to be done in the impugned notification.

WP No.22622 of 2005: Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of certiorarified Mandamus, calling for the records relating to the impugned notification dated 29.6.2005 in G.O.Ms.No.380 (Rev.Dept) published by the first respondent in Thina Thanthi Daily on 2.7.2005 and all consequential proceedings and quash the same in so far as the petitioners land in S.Nos.3/1A1B, 3/1A2, 16/5B, 16/6, 16/7A and 16/9A,, Kothapettah Village, Krishnagiri Taluk and District are concerned, and consequently direct the respondent authorities not to acquire the petitioners said lands as sought to be done in the impugned notification.

WP No.22623 of 2005: Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of certiorarified Mandamus calling for the records relating to the impugned notification dated 29.6.2005 in .G.O.Ms.No.380 published by the first respondent in Thina Thanthi Daily on 2.7.2005 and all consequential proceedigns and quash the same in



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so far as the petitioners land in S.Nos.16/8A Kothapettah Village, Krishnagiri Taluk and District are concerned, and consequently direct the respondent authorities not to acquire the petitioners said lands as sought to be done in the impugned notification.

WP No.28646 of 2006: Writ Petition filed under Article 226 of the Constitution of India pleaded to issue a Writ of certiorarified to call for the records on the file of the 1st respondent in G.O 380 RAI (2) dt. 29.2.2005 issued under section 17 of the Land Acquisition Act in sofar as the petitioners land is concerned in Sy. No. 3-1B, 3-2B, 16-1 A2 at Kothapetta village, measuring 0.05.5 0.72.0 and 2.55.0 hectares as published in the Tamilnadu gazette dt. 29.06.05 and quash the same as illegal, incompetent and without jurisdiction.

WP No.28647 of 2006: Writ Petition filed under Article 226 of the Constitution of India pleaded to issue a Writ of certiorarified to call for the records on the file of the 1st respondent in G.O 380 RAI (2) dt. 29.2.2005 issued under section 17 of the Land Acquisition Act in so far as the petitioners land situate at 16-1B, 16-2 16-3 measuring 0.03.0 hectares 0.45.5 hectare and 0.27.5 hectare as Published Tamil Nadu Gazette Extraordinary dt. 29.6.05 respectively at kothepetta village, krishnagiri district is concerned and quash the same as illegal, incompetent and without jurisdiction.

WP No.28648 of 2006

Writ Petition filed under Article 226 of the Constitution of India praying that this Hon'ble court to issue Writ of Certiorari to call for the records on the file of the 1st respondent in G.O 380 RAI (2) dt. 29.2.2005 issued under section 17 of the Land Acqusiition Act in so far as the petitioners land and that of the pattadars are concerned situate at Sy.No. 2-1 kothapetta village kirshnagiri district and measuring 1.22.0 hectares as per published in Tamilnadu Gazette extraordinary dt.29.6.2005 and quash the same as illegal, incompetent and without jurisdiction.

WP No.28649 of 2006

Writ Petition filed under Article 226 of the Constitution of India praying that this Hon'ble court to issue Writ of Certiorari to call for the records on the file of the 1st respondent in G.O 380 RAI (2) dt. 29.2.2005 issued under section 17 of the Land Acquisition Act in sofar as the petitioners land is concerned and situate in Sy.No.16 1A1 Kothapetta village measuring 0.66.0 hectares as published in Tamilnadu gazette extraordinary dt. 29.6.05 and quash the same as illegal, incompetent and without jurisdiction.



WP No.28650 of 2006

Writ Petition filed under Article 226 of the Constitution of India praying that this Hon'ble court to issue Writ of Certiorari call for the records on the file of the 1st respondent in G.O 380 RAI (2) dt. 29.2.2005 issued under section 17 of the Land Acquisition Act insofar as the petitioners land is concerned in Sy. No. 3-2 A measuring 0.59 0 hectare as published in the Tamilnadu gazette extraordinary dt. 29.6.05 kothepetta village, krishnagiri taluk and district and quash the same as illegal, incompetent and without jurisdiction.

WP No.19832 of 2007

Writ Petition filed under Article 226 of the Constitution of India praying that this Hon'ble court to issue Writ of Certiorari to call for the records on the file of 1st respondent in G.O.380 Revenue RA (2) dt 29.6.2005 issued under section 17 of the Land Acquisition Act insofar as the petitioners land is concerned in Survey No.4. 3/1 A1A and 16/1 A2 measuring 2.65.0, 1.44.5 & 2.55.0 hectares respectively in Kothapetta village, Krishnagiri taluk and district and quash the same as illegal, incompetent and without jurisdiction.

WP No.3078 of 2008

Writ Petition filed under Article 226 of the Constitution of India praying that this Hon'ble court to issue Writ of Certiorari to calling for the entire records of the 1st respondents notifications issued under section 17 read with section 4(1) of the Land Acquisition Act in G.O.Ms.No. 380 Revenue Department dated 29-06-2005 published in Daily Thanthi on 02-07-2005 followed by Section 6(2) Declaration published on 20-07-2005 in Daily Thanthi insofar as the petitioners lands are concerned in Sy.Nos 58 and 58B for an extent of 18.20 acres situated in Sippaiyour village, paiyanapalli panchayath, krishnagiri district and quash the same.

WP No.6085 of 2008

Writ Petition filed under Article 226 of the Constitution of India praying that this Hon'ble court to issue Writ of Certiorari to call for the records connected with the file of the 1st respondent in G.O.380 Revenue RAI(2) Department, dt 29.6.2005 issued under section 17 of the Land Acquisition Act and G.O.Ms.No.412 Revenue RAI(2) Department, dt 15.7.2005 and also G.O.Ms.No.782 Revenue Department, dt 5.12.2006 insofar as the petitioners land is concerned in Sy.No.58 at Balyanapalli village, measuring 20 acres and quash the same as illegal, incompetent and without jurisdiction.



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For Petitioners: Mr. S.Thankasivan in
WP Nos.22621, 22622 & 22623/05
Mr. V.Raghavachari in
WP Nos.19832/07, 28646 to 28650/06

Mr. M.Venkateswaran in WP 3078/08
Mr. G.Elanchezhiyan in WP 6085/08

For Respondents: Mr. J.Ravindran, AAG
Assisted by Mr. P.Sathish, AGP
For RR-1, 2 & 4 in WP 22621/05
For RR-1 & 2 in WP 19832/07, 28646
to 28650/06
for RR-1 to 3 in WP 3078 & 6085/08
for R1,R2 & R4 in WP 22622 & 22623/05
Mr. R.N.Amarnath for RR-5 to 10
In WP 22622 & 22623/05 and R3 to R8
in WP.No.28647 of 2006

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 Collector's Office & other Department Offices not being in consonance with the intent and spirit of the Land Acquisition Act and the consequential issuance of Notification u/s 4 (1) and the Declaration u/s 6 of the Act, has been used as a tool to deny the petitioners of their valuable right of enquiry contemplated u/s 5-A of the Act has been assailed before this Court in this batch of writ petitions.

2. It is the case of the petitioners that on the basis of the requirement of the respondents for the purpose of construction of Collector's Office and other department offices under the 'Master Plan Complex', Notification was issued u/s 4 (1) of the Act on 29.6.2005. The urgency provision u/s 17 (4) of the Act was invoked, which dispensed with the enquiry contemplated u/s 5-A of the Act resulting in the publishing of the Declaration u/s 6 of the Act on 15.7.05. Though poramboke lands were available, however, inspite of the request of the petitioners not to include their lands under the acquisition proposal, for reasons best known to the respondents, the lands of the petitioners were acquired by invoking the urgency powers under Section 17 (4) of the Act.

3. It is the further averment of the petitioners that without proper application of mind and without appreciating the proposal, the present acquisition has been ordered. It is the further averment of the petitioners that only in the absence of



adequate government lands, private lands of the petitioners could be acquired. It is the further averment of the petitioners that the purpose for which acquisition has been proceeded with could not be said to be an urgent purpose warranting invocation of Section 17 (4) of the Act and dispensing with the enquiry u/s 5-A of the Act. It is the stand of the petitioners that only to negate their rights and deny them the opportunity of hearing mandated u/s 5-A, the urgency provision has been invoked. 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 respective petitioners submitted that the substance of Section 4 (1) Notification was published in the dailies on 2.7.1985 and gazette publication was made on 29.6.05. Declaration was issued on 15.7.05 upon invoking the urgency power under Section 17 (4) of the Act. It is the further submission of the learned counsel that the purpose should be of such a grave nature that it would not stand the normal acquisition process, which alone would entail the invocation of the urgency powers u/s 17 (4) of the Act. However, the present acquisition is only for the purpose of Collector's Office and other Department Offices, which, by no stretch could be termed to be a grave purpose warranting acquisition by dispensing with the enquiry u/s 5-A, which denies the land owners of their right to be heard. Learned counsel further submitted that the compensation is yet to be paid to the petitioners and the possession of the lands have also not been taken, which clearly shows that the invocation of Section 17 (4) is wholly unsustainable. Therefore, it is submitted that the notification issued u/s 4 (1) deserves to be quashed and the petitions should be allowed.

5. Learned counsel for the petitioners, in support of their submissions, placed reliance on the following decisions :-

- "i) Darshan Lal Nagpal - Vs - Govt. of NCT of Delhi & Ors. (2012 (2) SCC 327);
- ii) Hamid Ali Khan & Anr. - Vs - State of UP & Ors. (2021 SCC OnLine SC 1115)
- iii) Vidya Devi - Vs - State of HP & Ors. (2020 (2) SCC 569);
- iv) Tukaram Kana Joshi - Vs - Maharashtra Industrial Development Corporation & Ors. (2013 (1) SCC 353);
- v) Laxmi Devi - Vs - State of Bihar (2015 (10) SCC 241);
- vi) Nareshbhai Bhagubhai & Ors. - Vs - Union of India & Ors. (2019 (15) SCC 1);



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- vii) State of Haryana - Vs - Devender Sugar & Ors. (2016 (4) SCC 746);
- viii) D.B.Basnett - Vs - Collector East District (2020 (4) SCC 572);
- ix) Union of India & Ors. - Vs - Shakunth (2002 (7) SCC 98);
- x) Sanjay Das - Vs - State of Orissa & Ors. (MANU/OR/0487/2012);
- xi) Sanjay Das - Vs - State of Odhisa & Ors. (2014 SCC OnLine Ori 87);
- xii) J & K Housing Board - Vs - Kunwar Sanjay Krishan Kaul (2011 (10) SCC 741); and
- xiii) Delhi Airtech Services - Vs - State of UP (2011 (9) SCC 354)"

6. Per contra, learned Addl. Advocate General appearing for the respondents, advertng to the various counter and additional counter affidavits filed by the respondents submitted that all the provisions of law prescribed under the Land Acquisition Act were followed before invoking the urgency provision u/s 17 (4) of the Act. It is the further submission of the learned Addl. Advocate General that the lands were acquired for the purpose of implementing the Master Plan Complex, which has been drawn for the locality and the implementation of the Master Plan warranted invocation of the urgency provisions u/s 17 (4) and the Government, after carefully considering all the issues, had invoked the urgency provision u/s 17 (4) and rightfully so and only on account of the act of the petitioners in obtaining orders of stay from this Court, the compensation could not be paid to the petitioners. Therefore, the delay in the project cannot be put on the head of the respondents.

7. It is the further submission of the learned Addl. Advocate General that on the formation of the new District, the Collector's Office, Superintendent of Police Office and various other Government Offices, which were functioning in the rented buildings were decided to be shifted and considering the future needs of the District and its functioning, the Government had invoked the urgency powers and dispensed with the enquiry u/s 5-A of the Act. It is the further submission of the learned Addl. Advocate General that the amount of compensation has also been determined by the Commissioner for Land Administration as early as on 23.3.06 and, therefore, what remains is only the conduct of award enquiry and passing of award. 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 the same does not call for any interference.



8. 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. Though very many decisions have been relied upon by the learned counsel appearing for the petitioners, however, the relevant decisions, which would have a bearing in this case, would be dealt with by this Court at the relevant point of time when the said issue is deliberated by this Court.

9. 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 compensation also have not been paid till date, which clearly reveals that there is no urgency in the acquisition.

10. 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



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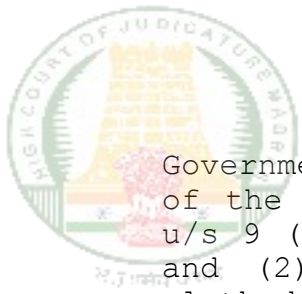
Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon 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 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



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.

14. 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).

15. 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



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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 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.



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

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

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



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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."

16. 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



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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 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



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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-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)

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17. 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 that the said requirement should be so grave in nature which requires the power to be used by dispensing with the enquiry.

18. 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.

19. However, the question that befalls before this Court whether the purpose of the acquisition of lands for the purpose of establishment of Collector's Office and other Department Offices citing the Master Plan could be termed to be a grave necessity, necessitating the invocation of the urgency powers under Section 17 (4) of the Act.

20. 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 :-

"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



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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)

21. From the above, it is manifestly clear that invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months and that such delay may frustrate the public purpose for which the land is sought to be acquired. As has been stated above, the acquisition is for establishment of Collector's Office and other Department Offices on the basis of the Master Plan and whether the same could fall within the parameters set forth by the Hon'ble Apex Court in Radhy Shyam case (supra).

22. The decision in the case of Pon. Elangovan & Ors. - Vs - State of Tamil Nadu & Ors. (2009 (5) CTC 661), has been pressed into service by the learned counsel for the petitioners to contend that the requirement should be of such a grave nature warranting invocation of the urgency provision u/s 17 (4) and in the absence of the gravity, the invocation of the urgency provision cannot be sustained. In the said case, lands were acquired for the Master Plan Complex, as has arisen in this case by invoking the urgency clause and dispensing with the enquiry u/s 5-A and considering the various decisions of the Hon'ble Apex Court and the reason for which acquisition has been resorted to, learned single Judge of this Court, in the said decision, held as under :-

"12. Subsequently, the Hon'ble Supreme Court in Union of India & Ors. - Vs - Krishnan Lal Arneja



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& Ors. reported in (2004) 8 SCC 453. has held in paragraph No.31, as follows:

"31. In the present appeals, the appellants have not been able to show before the High Court any genuine subjective satisfaction depending upon any relevant material available to the State authorities at the time when they issued the impugned Notification under S.4(1) of the Act and dispensed with S.5-A inquiry taking aid of S.17 (4) of the Act. A Bench of three learned Judges of this Court in Narian Govind Gavate & Ors. - Vs - State of Maharashtra [(1997) 1 SCC 133]] has expressed that S.17(4) cannot be read in isolation from Ss.4(1) and 5-A of the Act and has expressed that having regard to the possible objections that may be taken by the land owners challenging the public purpose, normally there will be little difficulty in completing inquiries under S. 5-A of the Act very expeditiously. In the same judgment, it is also stated that "the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under S. 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under S.5-A which has to be considered."

"Urgency" for invoking the provision under section 17 of the Act should be one arising naturally out of circumstances which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of acquiring authority. It has been further held in the said Judgment that failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the land owner to raise objections to the acquisition under Section 5-A of the Act. The learned Senior counsel would therefore submit that in this case the invoking of urgency clause under section 17 (4) is not at all required and so the G.O. is liable to be set aside, directing the District Collector to hold an appropriate enquiry as provided under section 5-A.

14. A perusal of the judgments of the Hon'ble Supreme Court cited supra, would go a long way to show that it is not an ordinary emergency



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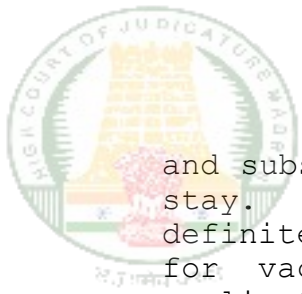
which would empower the Government to invoke emergency provision, but it should be a grave emergency wherein, it will not be possible to hold any enquiry under Section 5-A of the Act and only in such grave emergency, the Government can invoke the emergency provision.

15. Further, the very fact that this writ petition was filed in the year 1999 and an interim order of stay was also granted, but, till today, no application to vacate the interim order has been filed by the respondents, itself would go to show that there is no emergency in the matter, much less grave emergency.

16. Though right to property is not a fundamental right, nevertheless, it is a constitutional right under Article 300-A of the Constitution. Therefore, the provision of the Land Acquisition Act should be scrupulously followed. Analysing the facts and circumstances of the case, the Hon'ble Supreme Court in the judgments cited supra has ultimately held that there was no such grave emergency impelling the Government to invoke emergency provision. Applying the same test, if the facts of the present case are analysed, as I have already said, except stating that "Master Plan Complex" is to be constructed, no other circumstance has been brought out on record to substantiate the contention that there was really grave emergency as required under Section 17 (4) of the Act. Therefore, I have to hold that the direction of the Government to invoke the emergency provision under Section 17 (4) of the Act, so as to dispense with enquiry under Section 5-A of the Act, is not sustainable. "

23. From the decisions aforesaid, it is evident that the Master Plan Complex to be opened in the newly formed District, for which acquisition is sought to be made, would not fall within the ambit of emergency falling u/s 17 (2) of the Act and, in such a backdrop, invoking the urgency provision u/s 17 (4) to dispense with the enquiry u/s 5-A, which is a valuable and substantive right of a land owner, cannot be done away with to the detriment of the petitioners, as the enquiry u/s 5-A, as already held above, is not an empty formality and it definitely serves a purpose.

24. Further, it is to be pointed out that the notification for acquisition was issued in the year 2005 which has resulted in the batch of writ petitions being filed in the very same year



and subsequent years in which this Court had granted an order of stay. If really the project was so very urgent, prudent definitely warranted the respondents to have filed a petition for vacating the order of stay. However, till date, no application has been filed to vacate the interim order passed by this Court and this itself would go to show that there is no emergency in the matter, much less grave emergency.

25. Further, it is also to be pointed out that the decision of the learned single Judge in Pon.Elangovan's case (supra) has not been taken on appeal and the findings and the ratio laid down therein have attained finality. Further, the facts in the present case as also the and the acquisition proceedings are identical in nature to that of the issue in Pon. Elangovan's case (supra) and, necessarily the ratio, which has been allowed to attain finality by the State, would have to enure to the present petitions as well.

26. Learned Addl. Advocate General, during arguments, drew the attention of this Court to sketch in which the various purposes for which the lands are sought to be used in the Master Plan have been detailed. It is the stand of the Addl. Advocate General that the plan has been put in action and any order at this stage would have a cascading effect on the whole Master Plan. It is to be pointed out that the subject lands are sought to be acquired for the purpose of construction of staff quarters. It is to be pointed out that construction of staff quarters cannot be brought within the urgency provision provided u/s 17 (4) of the Act so as to do away with the enquiry u/s 5-A, which is a substantive right.

27. Further, urgency provision, though 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 2005, 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. Advocate General appearing for the respondents, but only submitting that the interim order had put the shackles on the respondents from proceeding further. However, as already pointed out above, the lacunae on the part of the respondents in not trying to get the interim order vacated cannot be put against the petitioners to deny them their right under Article 300-A.



28. In the above backdrop, this Court is of the considered view that the project for which the lands were sought to be acquired cannot be said to be of such a grave nature which necessitated invocation of the urgency power u/s 17 (4) by dispensing with the enquiry u/s 5-A and the same definitely warrants interference at the hands of this Court and the facts of the present case, being in violation of the constitutional safeguards, the present acquisition deserves to be quashed.

29. Accordingly, for the reasons aforesaid, all the writ petitions are allowed and the acquisition proceedings, which have been initiated by resorting to invoking the urgency provision u/s 17 of the Act and the consequential Notification u/s 4 (1), dated 2.7.05 and Declaration u/s 6, dated 15.7.05 are hereby quashed. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

GLN

To

- 1.The Government of Tamil Nadu
Rep. by its Secretary
Revenue Department
Fort St. George, Chennai.
- 2.The Revenue Divisional Officer
Krishnagiri.
- 3.The District Collector,
Krishnagiri District.
- 4.The Land Acquisition officer/
Revenue Divisional Officer,
Krishnagiri District.

+6cc to Mr.V.Raghavachari, Advocate, S.R.No.25899 to 25904
+1cc to Mr.S.Thanka Sivan, Advocate, S.R.No.26271
+1cc to Mr.M.Venkateswaran, Advocate, S.R.No.26294
+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.26594
+1cc to the Government Pleader, S.R.No.26549

W.P. NOS.22621 OF 2005, etc. Batch

SPD(CO)
SB(05/05/2022)