

(2015) 03 AHC CK 0083

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 19939 of 2006

Krishna Bahadur Singh
and Others

APPELLANT

Vs

Kanpur Development
Authority and Others

RESPONDENT

Date of Decision: March 20, 2015

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 226, 300A
- Land Acquisition Act, 1894 - Section 11, 16, 17, 17(1), 17(2)

Citation: (2015) 3 ADJ 497 : (2015) 110 ALR 415 : (2015) 2 AWC 1909 : (2015) 128 RD 290 :
(2015) 4 UPLBEC 3298

Hon'ble Judges: Krishna Murari, J; Shashi Kant, J

Bench: Division Bench

Advocate: L.K. Singh, Arun Kumar Singh, Kripa Shanker Singh, L.P. Singh and N.P. Singh, for
the Appellant; M.C. Tripathi, Pradeep Kumar Tripathi, R.C. Upadhyaya and Ramesh
Upadhyaya, Advocates for the Respondent

Final Decision: Allowed

Judgement

Krishna Murari, J.

By means of this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the notification dated 14.2.2005 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") read with Section 17(1) and Section 17(4) published in newspaper on 19.3.2005 as well as notification dated 16.3.2006 issued under Section 6 of the Act for acquisition of plots No. 416, 427, 428, 457, 458 and 461 having an area of 0.911 hectare for construction of 80 ft. wide road. We have heard learned counsel for the petitioner, Sri Pradeep Kumar Tripathi, learned counsel for respondent No. 1 and learned Standing Counsel for respondent Nos. 2 to 4.

2. Factual matrix of the case giving rise to the dispute are as under:

3. A notification under Section 4 of the Act was issued for alleged public purpose i.e. planned development by construction of 80 ft. road, in the official gazette of the State of Uttar Pradesh dated 14.2.2005 read with Section 17(1) and 17(4) of the Act invoking the urgency clause and dispensing the filing of objection under Section 5A of the Act. The substance of the said notification was published in Hindi newspaper "Dainik Aaj" on 19.3.2005. Declaration under Section 6 was published in the official gazette on 16.3.2006. The substance of the said notification was published in local Hindi newspaper "Dainik Jagran" on 22.3.2006.

4. The petitioners claim that they are owners in possession of the land sought to be acquired and having purchased the same, have constructed their residential house about two decades ago and are living with their family members.

5. The acquisition is sought to be challenged on several grounds including the following:

"(I) That the petitioners have already constructed dwelling house and as per the policy of the State Government, the residential structure are exempted from acquisition.

(II) That the State Government has arbitrarily invoked Section 17(1) read with Section 17(4) of the Act and deprived them from raising objection under Section 5A of the Act.

(III) That the alleged public purpose for which the land is sought to be acquired is non-existent inasmuch as by invoking Section 17(1) read with Section 17(4) dispensing of filing the objection, they have been deprived of a reasonable opportunity of being heard and to establish that there is no need of acquiring the land in dispute.

(IV) That there is already existence of 150 ft. wide road known as "Awasthi Vikash - Panki Kalyanpur Road and parallel to the said road, Kanpur Development Authority itself has constructed a 20 ft. wide road inside the colony known as "Canal Road" and just after the 20 ft. road, 80 ft. road has been proposed for which acquisition is being made and thus the same is useless for the purpose."

6. In support of the challenge to invoking the provisions of Section 17(1) and (4) of the Act, the petitioners have made detailed averments in the writ petition and raised specific grounds, which are extracted below:

"7. That there is no occasion to invoke the urgency clause and to apply the provisions of Section 17 of the Land Acquisition Act, 1894. The only purpose of invoking Section 17 is to deprive the valuable rights under Section 5-A of the Act and thereby escaping the obligation to consider the objections against the proposal for acquisition.

8. That the plea of urgency is belied by the fact that even though the notification under Section 4(1) of the Land Acquisition Act was on 8.3.2004 but was issued in Gazette Notification on 14.2.2005 and published in Dainik Aaj Newspaper on 19.3.2005, although the time for filing objection was only 21 days under Section 5-A of the Land Acquisition

Act as amended by U.P. Act No. XXII of 1954 and likewise notification under Section 6 was issued after about a year. Thus the aforesaid notifications are tainted with malafide and uncalled for the showing purpose of acquisition.

9. That mere existence of urgency under Section 17(1) Land Acquisition Act would not by itself is sufficient for dispensing with Section 5-A inquiry inasmuch as the intention of the legislature is to provide opportunity of hearing to the interested person in case of his land is taken but there is no application of mind in the present case from the opposite parties because no plot inspection was made by them and constructing of a third road in presence of two parallel road on the spot belied their claim of urgency in constructing a third road.

11. That moreover the issuance of Notification under Section 17(1) and 17(4) of the Land Acquisition Act is non existing in as much as Respondent No. 1 has already parallel 150 F. wide road known as Awas Vikas/Kalyanpur road and 20 F. wide Canal road which are just parallel to the scheme of the present acquisition and as such the scheme itself is a colourable exercise of jurisdiction of the opposite party No. 1 for constructing the road of 80 F. wide just to satisfy and to safeguard the interest of some interested person and that too under political pressure."

15. That so far as the process of acquisition is concerned the opposite parties are taking their own time which would be evident from the fact that the Notification under Section 4(1) read with Section 17(4) of the Land Acquisition Act was issued on 14.2.2005 in Gazette notification while same was published after 35 days on 19.3.2005 in Newspaper and thereafter Section 6 of the Notification was issued about a year thereafter on 22.3.2006 in Dainik Jagaran while the limitation for filing objection was only 23 days under Section 5-A as amended Land Acquisition Act. But the opposite parties have deprived the petitioners to file objection in the name of urgency although they took about 13 months in finalising the scheme and this conduct of opposite parties falsified of acquisition of land in dispute."

16. That the conclusion becomes in evitable that the action of dispensing with enquiry under Section 5-A of the Act in the present case was not based on any real and genuine subjective satisfaction depending upon any relevant data's available to the State Authorities at the time when they issued impugned notification under Section 4(1) of the Act of the land acquisition and dispensed with Section 5-A enquiry by resorting to Section 17(4) of the Land Acquisition Act and without application of mind issued notification under Section 6 Land Acquisition Act."

7. A counter-affidavit of Additional District Magistrate (Land Acquisition), Kanpur Nagar has been filed on behalf of the State respondents. Reply to the averments made in the writ petition quoted hereinabove is contained in paragraphs 4, 5, 6, 7 and 10 of the counter-affidavit, which are reproduced hereunder:

"4. That the contents of paragraph Nos. 3, 4, 5, 6 and 7 of the writ petition are not admitted in the manner as are stated hence denied. In reply thereto, it is submitted that for the interest of public at large and for the purposes of providing the facilities to the public the provision of Section 17 Urgency clause has rightly been used by the respondent No. 4, which is just, proper and in accordance with law. It is further relevant to make mention here that the notification under Sections 4 and 6 of Land Acquisition Act have been published on 14.2.2005 and 16.3.2006 and the Section 17 of Urgency clause has also been used which is just, proper and in accordance with Rules.

5. That the contents of paragraph No. 8 of the writ petition are not admitted in the manner as are stated hence denied. In reply thereto, it is submitted that the notification under Section 4 of L.A. Act has been published on 14.2.2005. The date mentioned in the notification as 8.3.2004 is with regard to indexing and it is not the date of publication as referred by the petitioner in para under reply. The notification has been done in accordance with law and the same is legal one.

6. That the contents of paragraph Nos. 9 and 10 of the writ petition are not admitted in the manner as are stated hence denied. In reply thereto, it is submitted that after inspection by the respondent No. 1 and for the well development of Kanpur City and for making traffic easy he filed his report and on the basis of the same and also seeing the urgency of the land Section 27 of Urgency clause has rightly been used by the respondent No. 1 which is just, proper and in accordance with law.

7. That the contents of paragraph No. 11 of the writ petition are related with the respondent No. 1, Kanpur Development Authority, the Acquisition authority, hence requires no reply from the answering respondents.

10. That the contents of paragraph Nos. 15 to 18 of the writ petition are not admitted in the manner as are stated hence denied. In reply thereto, it is submitted that most of the land situated near proposed Chhapera Pulia, 80 feet road has been acquired by the respondent No. 1 and the construction work has been done and in the middle of the said land the temporary construction is to be proposed and as such after considering the grievances of the public at large by exempting the provisions of Section 5 of L.A. Act the urgency clause of Section 17 has rightly been used which is in accordance with law."

8. Kanpur Development Authority has also filed a counter-affidavit wherein the delay and time gap in issuing notifications between Section 4 and 6 has been tried to be explained by saying that the petitioners themselves are responsible for the delay inasmuch as they made various representations to various authorities and comments were sought from the Development Authority on account of which the delay has occurred.

9. The expression "public purpose" has been defined under Section 3(f) of the Act which is quoted as under:

[3(f) the expression "public purpose" includes -

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State:

(vi) the provision of land for carrying out any educational, housing health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office,

but does not include acquisition of land for Companies;]"

10. Hon"ble Apex Court in the case of [Dev Sharan and Others Vs. State of U.P. and Others](#), (2011) 3 JT 102 : (2011) 3 RCR(Civil) 587 : (2011) 3 SCALE 369 : (2011) 4 SCC 769 : (2011) AIRSCW 4569 : (2011) AIRSCW 1778 : (2011) 4 Supreme 303 , has observed as under:

"16. The concept of "public purpose" cannot remain static for all time to come. The concept, even though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one.

17. It must be accepted that in construing "public purpose", a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of

people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by preconstitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under fundamental rights and also the directive principles."

11. In view of the definition of the "public purpose" contained in the Act and interpretation given to it by the Hon"ble Apex Court, the construction of a road would fall under the planned development for a public purpose and there can be no dispute about the same.

12. The next question arises for consideration whether the State Government can be said to be justified for invoking the provisions of Section 17(1) and 17(4) of the Act and dispensing with the inquiry under Section 5-A of the Act on account of urgency in the matter.

13. Section 5-A of the Act provides for hearing of objections. The said Section embodies the most important dimension of the rules of natural justice laying down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the same, file objection in writing against the proposed acquisition of land or any land in the locality before the Collector. Section further provides that the Collector shall give the objector an opportunity of hearing either in person or by any person authorised by him or by pleader. After hearing the objector and making such further inquiry as he may think necessary, the Collector has to make a report in respect of the land notified under Section 4(1) with a recommendation on the objections and forward the same to the Government alongwith record of the proceedings held by him. It is open to the Collector to make different reports in respect of different parcel of the land proposed to be acquired.

14. Upon receipt of the report of the Collector, the Government is required to proceed under Section 6(1) of the Act, which lays down that after considering the report, if any, made under Section 5-A(2), the appropriate Government is satisfied that any particular land is needed for public purpose then a declaration to that effect is to be made in that regard by the Government. This Section also envisages making of different declaration from time to time in respect of different parcel of land covered by the same notification issued under Section 4(1). Clause (ii) of Section 6(1) provides that no declaration in respect of any particular land covered by a notification issued under Section 4(1) after Amendment Act, 1984 can be made after expiry of one year from the date of publication of notification. The Amendment Act, 1984 was enforced on 24.9.1984. Thus after the said date, no declaration under Section 6(1) of the Act can be made after expiry of a period of one year from the date of publication of notification under Section 4(1) of the Act. In other words, a declaration is required to be made under Section 6(1) within one year from the date of publication of notification under Section 4(1) of the Act. Section 6(3) provides that declaration made under Section 6(1) shall be conclusive evidence of the fact that the land

is needed for public purpose. After publication of the declaration under Section 6, the Collector is required to take order from the State Government for the acquisition of land to be carved out, measured and planned.

15. Section 9 of the Act envisages issuance of public notice and individual notice to the persons interested in the land to file their claim for compensation.

16. Section 11 of the Act provides for holding of an inquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23.

17. Section 16 of the Act lays down that after an award is made, the Collector can take possession of the land, which thereafter shall vest in the Government free from all encumbrances.

18. Section 17 vests with the Government special power in case of urgency. Section 17(1) postulates taking of possession of land without making an award. In case the appropriate Government comes to the conclusion that land proposed to be acquired is urgently needed for public purpose then it can authorise the competent authority to take possession. Section 17(2) contemplates a different type of urgency in which the State Government can authorise taking of possession even before expiry of fifteen days period specified in Section 17(1). Section 17(4) of the Act lays down that in case where appropriate Government comes to the conclusion that there exists urgency and unforeseen emergency, it can direct that provisions of Section 5-A shall not apply.

19. Section 5-A vis-à-vis Section 17(4) of the Act have been subject-matter of interpretation by the Hon"ble Apex Court in large number of decisions. The importance of Section 5A was emphasized by the Hon"ble Apex Court as long back as in 1964. In the case of [Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others](#), AIR 1964 SC 1217 : (1964) 3 SCR 425 , while considering rights under Section 5A, vis-à-vis Section 17 of the Act, it was observed as under:

"The right to file objection under Section 5-A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that the right can be taken away as it by a side wind."

20. In [Munshi Singh and Others Vs. Union of India \(UOI\)](#), AIR 1973 SC 1150 : (1973) 2 SCC 337 : (1973) 1 SCR 973 , the three Judge Bench of Hon"ble Supreme Court emphasised the importance of Section 5A in the following words:

"7.Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the

appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

21. In [State of Punjab and Another Vs. Gurdial Singh and Others](#), AIR 1980 SC 319 : (1980) 2 SCC 471 : (1980) 1 SCR 1071 , the Hon"ble Apex Court emphasized the necessity of reasonableness and fairness in the State action of invoking the urgency provision in the following words:

"it is fundamental that compulsory taking of a man"s property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

22. In [Shyam Nandan Prasad and Others Vs. State of Bihar and Others](#), (1993) 4 JT 590 : (1993) 3 SCALE 435 : (1993) 4 SCC 255 : (1993) 1 SCR 533 Supp , the Apex Court again reiterated that the compliance of provisions of Section 5-A is more or less mandatory and observed as under:

"The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument."

23. In the case of [Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others](#), AIR 2005 SC 3520 : (2005) 5 CTC 789 : (2005) 8 JT 470 : (2005) 7 SCALE 386 : (2005) 7 SCC 627 : (2005) 3 SCR 388 Supp , the Hon"ble Apex Court while considering the provisions of Section 5-A of the Act held that rights conferred under the said Sections have to be read considering the provisions of Article 300A of the Constitution and being akin to fundamental right the procedure laid down for depriving a person of the said right must be strictly complied with.

24. In [Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another](#), AIR 2009 SC 1552 : (2008) 12 JT 315 : (2009) 2 SCC 377 : (2009) AIRSCW 1074 , after considering the earlier judgments on the subject and the provisions of Section 17 of the Act observed in paragraph 41 as under:

"41. Whereas sub-section (1) of Section 17 deals with cases of "urgency". Sub-section (2) of the said Section covers cases of "sudden change in the channel of any navigable lives or other unforeseen emergency". But even in such cases i.e. cases of "urgency" or "unforeseen emergency" enquiry contemplated by Section 5-A cannot ipso facto be dispensed with which is clear from sub-section (4) of Section 17 of the Act."

25. In the case of [Union of India \(UOI\) and Others Vs. Mukesh Hans etc.](#), AIR 2004 SC 4307 : (2004) 7 JT 526 : (2004) 8 SCALE 1 : (2004) 8 SCC 14 : (2004) AIRSCW 5081 : (2004) 7 Supreme 407 , on an analysis of provisions of Section 17 of the Act, the Hon"ble Apex Court held in paragraph 31 and 32 as under:

"31. Section 17(4) as noticed above, provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub-section (1) or (2) of Section 17, it may direct that the provisions of Section 5-A shall not apply and if such direction is given then Section 5-A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of Section 4(1) notification and possession can be made.

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that alongwith the existence of such urgency or unforeseen emergency that there is also a need for dispensing with Section 5-A enquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A enquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A enquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A enquiry will be dispensed with. But then that is not the language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A enquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5A enquiry does not mean that in each and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section

5-A enquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act."

26. The same has been reiterated by the Hon"ble Apex Court in [Dev Sharan and Others Vs. State of U.P. and Others](#), (2011) 3 JT 102 : (2011) 3 RCR(Civil) 587 : (2011) 3 SCALE 369 : (2011) 4 SCC 769 : (2011) AIRSCW 4569 : (2011) AIRSCW 1778 : (2011) 4 Supreme 303 and [Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others](#), AIR 2011 SC 2161 : (2011) 5 SCALE 423 : (2011) 5 SCC 607 : (2011) 7 SCR 468 : (2011) 4 UJ 2475 : (2011) AIRSCW 3033 : (2011) 3 Supreme 569 .

27. In the case in hand, admittedly, the notification under Section 4 of the Act, as per the pleadings, was lastly published in the newspaper on 19.3.2005. Declaration under Section 6 was published in official gazette on 16.3.2005. The substance of the said notification was published in local Hindi newspaper on 22.3.2006. Thus the total time lapsed between Section 4(1) read with Section 17 and declaration under Section 6 in official gazette is 11 months 27 days i.e. almost one year. The substance of the declaration under Section 6 was published in local Hindi newspaper after one year on 22.3.2006. In such circumstances, it is to be tested as to whether the State authorities were justified in invoking Section 17(4) of the Act for dispensing with the inquiry under Section 5-A of the Act when the themselves took one year in publication of the declaration under Section 6 of the Act.

28. In [Anand Singh and Another Vs. State of Uttar Pradesh and Others](#), (2010) 8 JT 15 : (2010) 7 SCALE 353 : (2010) 11 SCC 242 : (2010) 9 SCR 133 , while considering the questions whether State Government was justified in invoking Section 17(4) for acquisition of land for residential colony to be constructed by a Development Authority the Hon"ble Apex Court has observed as under:

"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".

"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 realizing 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 viz. Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that the decision in Pista Devi 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. 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."

29. On the issue it may be also be pertinent to notice the judgment of the Hon"ble Apex Court rendered in the case of [Sri Radhy Shyam \(Dead\) through L.Rs. and Others Vs. State of U.P. and Others](#), (2011) 4 JT 524 : (2011) 3 RCR(Civil) 96 : (2011) 4 SCALE 677 : (2011) 5 SCC 553 : (2011) 8 SCR 359 . After analyzing the provisions of the Act and interpretation thereof made by various judicial pronouncements culled out the following principles for invocation of urgency clause by resorting to provisions of Section 17(1) read with Section 17(4) dispensing with the filing of objections under Section 5-A of the Act.

"(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 of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others](#), AIR 1954 SC 119 : (1954) 24 CompCas 103 : (1954) 1 SCR 674 , [Chiranjit Lal Chowdhuri Vs. The Union of India \(UOI\) and Others](#), AIR 1951 SC 41 : (1951) 21 CompCas 33 : (1950) 1 SCR 869 and [Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.](#), AIR 1995 SC 142 : (1994) 4 JT 473 : (1994) 3 SCALE 389 : (1995) 1 SCC 596 Supp : (1995) 1 SCC 596 : (1994) 1 SCR 807 Supp .

(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 - [D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others](#), AIR 2003 SC 1648 : (2003) 2 SCALE 145 : (2003) 5 SCC 622 : (2003) 2 SCR 1 : (2003) AIRSCW 1046 : (2003) 2 Supreme 123 ; [State of Maharashtra and Another Vs. B.E. Billimoria and Others](#), AIR 2003 SC 4368 : (2003) 7 JT 257 : (2003) 6 SCALE 441 : (2003) 7 SCC 336 : (2003) 2 SCR 603 Supp : (2004) 1 UJ 35 : (2003) AIRSCW 5167 : (2003) 5 Supreme 580 and Dev Sharan v. State of U.P., Civil Appeal No. 2334 of 2011 decided on 7.3.2011.

(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 scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner 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, the State can invoke the urgency provisions and dispense with the requirement of hearing the land

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply 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 Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years.

Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A(1) and (2) is not at all warranted in such matters.

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

30. On the touch stone of aforesaid tests laid down by judicial pronouncements in the case in hand also absolutely no material has been produced before us to demonstrate that at the time of formation of opinion by the Government for dispensing with the enquiry under Section 5-A of the Act there was due application of mind on the material which were before the State Government. The counter-affidavit of the Additional District

Magistrate (Land Acquisition), Kanpur Nagar filed on behalf of State respondents is not only sketchy but lacks even a reference to any material which may have been relied upon to formulate the opinion to dispense the enquiry under Section 5-A. What has been stated is "that for well and planned development of Kanpur city the land in dispute has been acquired on the basis of report submitted by respondent No. 1 (Kanpur Development Authority) and after considering all the facts and circumstances of the case, the provisions of Section 17 urgency clause has rightly been used in view of the fact that land is urgently required by the State Government in order to provide facilities of residential and traffic to the public at large as per demand raised before the Government. The alleged report of Kanpur Development Authority has not been produced. Thus the Court is at a total loss to know that what was the material before the State Government on which there was a proper application of mind to arrive at a conclusion that there was a real urgency in the matter and of such a nature that enquiry under Section 5-A of the Act would have resulted in delay in implementation of project for planned development.

31. An identical issue came up for consideration before the Hon"ble Apex Court in the case of [Om Prakash and Another Vs. State of U.P. and Others](#), AIR 1998 SC 2504 : (1998) 4 JT 601(1) : (1998) 4 SCALE 73 : (1998) 6 SCC 1 : (1998) 3 SCR 643 . After noticing that there was delay of more than nine months in issuing the notification and that there was possibility of encroachment hence the urgency, was not pleaded on behalf of the State in the pleadings, the Court held in paragraph 14, 15 and 16 as under:

"14.We were informed by Senior Counsel Shri Mohta for NOIDA that even though in the earlier acquisition of 1987 pursuant to Section 4 notification, inquiry under Section 5-A was not dispensed with, by the time Section 6 notification came to be issued, Section 17(1) was resorted to as urgency had developed at least by the end of December 1989. If that be so, it was expected that pursuant to the requisition of 14.12.1989 by NOIDA invoking urgency powers of the State Government, consequential notification under Section 4(1) would have seen the light of day at the earliest in connection with acquisition of the proposed 494.26 acres of land for the development of Sector 43 and other sectors. But curiously enough, nothing happened urgently and Section 4 notification which is impugned in the present case was issued on 5-1-1991. Thus despite the invocation of urgency by NOIDA by its letter dated 14.12.1989, it appears that the State did not think the said proposal to be so urgent as to immediately respond and to issue notification under Section 4 read with Section 17 sub-section (4) till 5-1-1991. More than one year elapsed in the meantime. Why this delay took place and why the State did not think it fit to urgently respond to the proposal of NOIDA, has remained a question mark for which there is no answer furnished by the respondent-authorities in the present cases and nothing is brought on the record by them to explain the delay. It has, therefore, necessarily to be presumed that despite the emergency powers of the State Government being invoked by NOIDA, the State authorities in their wisdom did not think the matter to be so urgent as to immediately respond and promptly issue Section 4 notification read with Section 17(4).... Even that apart, despite proposal to acquire this land was moved by

NOIDA as early as on 14-6-1988, and even thereafter when the request was sent in this communication on 14.12.1989, the State authorities did not think the situation to be so urgent as to respond quickly and could wait for more than one year. When the appellants in the writ petitions before the High Court raised their grievances regarding dispensing with inquiry under Section 5-A being not backed up by relevant evidence and the subjective satisfaction of the State in this connection was brought in challenge, all that was stated by NOIDA in its counter in para 26 was to the effect that the contents of paras 25 and 26 of the writ petition were denied and that the petitioners were not able to point out any lacunae in the proceedings under the Land Acquisition Act. The position was no better so far as the counter of the State authorities was concerned. In para 24 of the counter before the High Court, all that was stated was that paras 25 and 26 of the writ petition were denied. When we turn to paras 25 and 26 of the writ petition, we find averments to the effect that the urgency of the acquisition was only for the purpose of depriving the petitioners of their rights to file objections under Section 5-A and their right to hold the possession till they got compensation for which the respondents had issued notification under Section 17(1) as well as notification Section 17(4) of the Act. But so far as the process of the acquisition was concerned, the respondents were taking their own time, which would be evident from the fact that the notification under Section 4 read with Section 17(4) was issued on 5-1-1991 but was published in the newspaper on 30-3-1991, whereas the declaration under Section 6 of the Act was made on 7-1-1992 and that on the one hand, the respondents had deprived the petitioners of filing their objections under Section 5A of the Act on the ground of urgency of acquisition, but on the other hand, they themselves had taken more than nine months in issuing the declaration under Section 6 of the said Act. This conduct of the respondents falsified their claim of urgency of acquisition....The additional material which was produced before the High Court was by way of Annexures CA-3, CA-4 and CA-5. When we turn to these annexures, we find that Annexure CA-3 is a letter dated 21-4-1990 written by the District Magistrate, Ghaziabad, to the Joint Secretary, Industries, Government of Uttar Pradesh. It recites that on examination, it was found that the land was immediately required in public interest so that the development work in the said land could be carried out smoothly. What was the nature of urgency is not mentioned in the said letter. Therefore, the position remains as vague as it was earlier. When we turn to Annexure CA-4 which is dated 12-6-1990, we find that the District Magistrate, Ghaziabad wrote to the Joint Secretary, Industries, State of U.P., that as to how many farmers were going to be affected by the proposed acquisition. It does not even whisper about the urgency of the situation which requires dispensing with Section 5-A inquiry. The last, Annexure CA-5 is the letter dated 14.12.1989 written by NOIDA to the Land Acquisition Officer proposing urgent acquisition of the lands in question. We have already made a reference to the said letter. It recites that if immediate action for acquisition of the aforesaid lands adjacent to Sector 43 for development of which the acquisition was to be resorted to was not taken, then there was possibility of encroachment over the area cannot by any stretch of imagination be considered to be a germane ground for invoking urgency powers for dispensing with Section 5-A inquiry. Even if acquisition takes place urgently by dispensing with inquiry

under Section 5-A and the possession is taken urgently after Section 6 notification within 15 days of issuance of notice under Section 9 sub-section (1), even then there is no guarantee that the acquired land would not be encroached upon by unruly persons. It is a law and order problem which has nothing to do with the acquisition and urgency for taking possession. Even that apart, it is easy to visualize that if objectors are heard in connection with Section 5-A inquiry they would be the best person to protect their properties against encroachers. Consequently, the ground put forward by NOIDA in its written request dated 14.12.1989 for invoking urgency powers must be held to be totally irrelevant....."

15. So far as the present proceedings are concerned, the situation was tried to be salvaged further in the counter-affidavit filed on behalf of NOIDA. Its working secretary Ram Shankar has filed a counter-affidavit in the present proceedings explaining the necessity to apply emergency provisions. It has been averred in para 9 of the counter to the effect that what necessitated application of emergency provisions was imminent possibility of unauthorised construction and/or encroachment upon the suit land which would have hampered the speedy and planned industrial development of the area which was the purpose of acquisition proceedings. This stand is in line with the earlier stand of NOIDA in its written requisition dated 14th December, 1989. We have already seen that the said stand reflects a ground which is patently irrelevant for the purpose of arriving at the relevant subjective satisfaction by the State authorities about dispensing with Section 5-A inquiry. We could have appreciated the stand of the State authorities for invoking urgency clause under Section 17(4) of the Act on the ground that when about 500 acres of land were to be acquired for further planned development of Sector 43 and other sectors of Noida, as mentioned in the impugned notification, hearing of objectors who might have filed written objections when there are large number of occupants of these lands and who possess about 438 plots of land under acquisition, would have indefinitely delayed the acquisition proceedings and years would have rolled by before Section 6 notification could have been issued. Under these circumstances, the entire further development of the area would have, on the peculiar facts and circumstances of these cases, come to a grinding halt. Such a stand would have justified the subjective satisfaction of the authorities for invoking Section 17(4) of the Act. Such satisfaction then could not have been gone behind by Court of law. But unfortunately for the respondents such was not their case nor did they even whisper in these cases that these aspects were kept in view while dispensing with Section 5-A inquiry. The Court cannot obviously, therefore, make out a new case for them which is not pleaded in these proceedings to justify their action.

16. In the light of the aforesaid factual position emerging on the record of the case it becomes clear that there was no relevant material before the State authorities when it invoked powers under sub-section (4) of Section 17 for dispensing with Section 5-A inquiry while issuing the impugned notifications under Section 4 followed by Section 6 notification of 7.1.92."

32. It is an altogether different question that after laying down the above law, the Hon"ble Apex Court did not quash the notifications instead relegated the appellants to avail the remedy before the State Government under Section 48 of the Act, and that was done on peculiar facts of the said case as has been observed in paragraph 29 of the reports.

33. In view of above legal position settled by judicial pronouncements and facts of the case in hand, we have no hesitation in coming to a conclusion that there has been no application of mind by the State Government to form an opinion that there was extreme urgency in the matter to invoke the provisions of Section 17(4) of the Act, and to eliminate the enquiry provided by Section 5-A of the Act, as the State Government has completely failed to justify the dispensation of enquiry prescribed by Section 5-A by invoking Section 17(4) of the Act.

34. Another issue which draws our attention is whether time gap in issuance of notification under Section 4 and 6 and delay would render the invocation of urgency power void. The facts as noted above go to show that last date of publication of notification is 19.3.2005 when it was published in Hindi daily "Aaj". Declaration under Section 6 of the Act in official gazette was made on 16.3.2006 i.e. after 11 months and 27 days. It just fell short of 4 days in getting hit by the provisions of clause (ii) of Section 6(1) of the Act providing a limitation of one year in publication of notification under Section 4 and 6(1) of the Act.

35. The State Government as well as Development Authority have failed to place on record the material to indicate when the proposal was sent to the Government. However, it is admitted in the counter-affidavit that indexing in respect of notification was done on 8.3.2004 which means that in 2004 pre-notification exercise was underway. State Government took full one year to issue notification under Section 4 read with Section 17(1) and 17(4) and thereafter, further almost one year in making the declaration under Section 6 of the Act.

36. The slow pace at which the State Government functioned in processing the acquisition and the time spent in pre-notification process as well as in time gap in notifications under Section 4 and 6 clearly demonstrates that there was no urgency for acquiring the land so as to warrant invoking provisions of Section 17(4) of the Act, and the same has been done in a routine manner mechanically.

37. The view taken by us finds support from the decisions of the Hon"ble Apex Court rendered in the case of Anand Singh (Supra) and Radhey Shyam (Supra). In the case of Dev Sharan v. State of U.P. (Supra), the Hon"ble Apex Court has observed as under, which again goes to support the view being taken by us.

"This Court has also held that in view of ratio in Union of India v. Mukesh Hans, sub-section (4) of Section 17 cannot be pressed into service by officers who are negligent and lethargic in initiating acquisition proceedings."

38. The only possible conclusion which can be drawn in the facts and circumstances is that there was no real urgency to justify invoking of the provisions of Section 17(4) doing away with Section 5-A.

39. Thus it is not possible to accept that making an enquiry in the objections which would have been filed under Section 5-A and the time spent in making enquiry under sub-section (2) would have defeated the object of acquisition.

40. In such facts and circumstances of the case as discussed above, the Government has completely failed to justify the dispensation of enquiry provided by Section 5-A of the Act by invoking the provisions of Section 17(4).

41. For the aforesaid reasons, the impugned notification dated 14.2.2005 under Section 4(1) of the Act and declaration dated 16.3.2006 under Section 6 of the Act cannot be sustained and are hereby quashed.

42. Writ petition accordingly stands allowed. However, there shall be no order as to costs.