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Gujarat High Court

Case No: Special Civil Application No. 1326 of 2010

Babubhai Kanjibhai Patel		APPELLANT
	Vs	
State of Gujarat		RESPONDENT

Date of Decision: July 15, 2014

Acts Referred:

- Bombay Commissioners of Divisions Act, 1957 - Section 3(4)
- Bombay Provincial Municipal Corporations Act, 1949 - Section 77, 78
- Constitution of India, 1950 - Article 12, 300A
- Land Acquisition Act, 1894 - Section 11, 17, 17(1), 17(4), 24

Citation: AIR 2014 Guj 229 : (2015) 3 ALLMR 71 : (2014) 3 GLR 2165 : (2015) 1 RCR(Civil) 725

Hon'ble Judges: Bhaskar Bhattacharya, C.J; Paresh Upadhyay, J; J.B. Pardiwala, J

Bench: Full Bench

Advocate: Anshin H. Desai, Advocate for the Appellant; Prakash Jani, Govt. Pleader, Prashant Desai and Kaushal D. Pandya, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.

This Special Civil Application has been referred to a Larger Bench by a Division Bench consisting of Jayant Patel & Mohinder Pal, JJ. under the following circumstances:

1.1 The writ-petitioner had filed this Special Civil Application for quashing and setting aside the Notification under Sec. 4 of the Land Acquisition Act, 1894 (for short, "the Act" hereafter), dated 30th January, 2008 and the further Notification under Sec. 6 of the Act dated 29th April, 2008 by which, the land of the petitioner

bearing original Survey Nos. 25/2 and 25/3 and 25/4 (now final Plot No. 50) was acquired.

1.2. When the matter was at the final hearing stage before the referring Bench, the said Bench decided to call for the original file from the State-respondent and it appears from the original file of the State Government that after the proposal was received by the Government, there were various correspondences, but the most important aspect was that the State Government had called for the details about actual use of the land which was already acquired earlier admeasuring 1,03,447 sq.mtrs. At the time of taking ultimate decision, the highest authority, i.e. the Hon''ble Minister, made notes in the original file, the translated version of which read as under:

"1. The sanction may be granted to publish the Notification.

2. Earlier for the same purpose, land was acquired. Whether it was used or not? Considering the purpose is served or not? 28-1-2008."

1.3. According to the referring Bench, the State Government, before examining the aspect as to whether the land already acquired for the same purpose was in actual use or not and whether the purpose of earlier acquisition was served or not, granted sanction for publication of the notification. Although subjective satisfaction of the State Government is required before taking decision to acquire any particular land, according to the referring Bench, the subjective satisfaction means that the Government on the basis of the materials supplied before it, is satisfied about the requirement of the land for public purpose, which, in this case, prima facie, is not reflected from the records.

1.4. The referring Bench further recorded that the notes in the original file had indicated that from the very beginning, when the proposal was received by the Government, the information about actual use of the land which was already acquired in the past was called for and from the correspondences, it appears that such information were not supplied to the Government and before the said aspect was considered as to whether the land which was acquired earlier for the very purpose was used or not and whether the purpose was served or not, the decision was taken for publication of the Notification under Sec. 4, which prima facie was improper, particularly when the Government has taken decision to apply urgency clause under Sec. 17 of the Act which would mean that the inquiry under Sec. 5A of the Act would be dispensed with and the possession of the land would be taken away immediately upon the publication of declaration under Sec. 6 of the Act.

1.5. The referring Bench was of the further prima facie view that there was material available in the original file of the State Government which indicated that the proposal was moved by the Corporation for acquisition of the land as back as 13th October, 2004 onwards and the copy of the said correspondence had also been produced with the affidavit-in-reply filed on behalf of the Corporation. The referring

Bench further recorded that although initially, No Objection Certificate was applied by the Corporation for the land in question since it was under Urban Agglomeration and the time was consumed therein, yet, even if it is considered from the date of final decision of the District Collector, the same was 13th December, 2006 as per Annexure-VIII produced with the said affidavit-in-reply. The referring Bench further recorded that the Government had ultimately taken final decision on 22nd January, 2008 (sic. 28th January, 2008) and under the circumstances, when so much time was consumed in processing the proposal for acquisition at various levels after the District Collector was satisfied for acquisition of the land and proposal forwarded to the State Government, the referring Bench was of the prima facie view that dispensation of the inquiry under Sec. 5A was not called for and the acquisition, if undertaken in normal course without applying urgency clause under Sec. 17, would have served the purpose. The referring Bench further noted two decisions of the Supreme Court where the principle for application under Sec. 17 of the Act was laid down.

1.6. Recording the above prima facie finding, the referring Bench was of the opinion that in view of an earlier decision of another co-ordinate Bench of this Court in Spl.C.A. No. 3639 of 2008 taking a contrary view on the subject-matter of the selfsame notification involving other owners, the matter should be placed before the Chief Justice for constitution of a Larger Bench for hearing of this matter.

1.7. Consequently, the matter is placed before us.

In order to appreciate the facts involved in this application, the following dates and events are important, which are quoted below:

2. Mr. Anshin Desai, the learned Advocate, appearing on behalf of the petitioner has advanced four-fold submission in support of the application:

2.1. First, according to Mr. Desai, it appears from the original record that the Hon''ble Minister, while giving approval of issuing Notification under Sec. 4 of the Act by invoking urgency clause as provided in Sec. 17(4) of the Act, did not apply his mind as would appear from the fact that before putting signature on 28th January, 2008, two questions were asked : "Whether earlier for the same purpose, land was acquired and whether it was used or not or whether the purpose was served or not." By pointing out the above questions, Mr. Desai contends that it is apparent that there was no application of mind while sanctioning issue of notification when the Hon''ble Minister himself put the above query in the next line. According to Mr. Desai, so long those queries were not answered, there was no justification of granting permission to proceed in terms of Sec. 17(4) of the Act in the matter of issuing Notification under Sec. 4. Mr. Desai further contends that it would appear from the original record that those queries were answered subsequently, but in the meantime, Notification under Sec. 4 with urgency clause had already been issued. Mr. Desai contends that on the above ground alone, the Notifications under Secs. 4

and 6 should be quashed.

2.2. Secondly, Mr. Desai contends that invocation of urgency clause in terms of Sec. 17(4) of the Act in the facts of the present case was an abuse of process of law in order to deprive his client of taking benefit of Sec. 5A of the Act. Mr. Desai contends that before invoking the urgency clause, it is the duty of the appropriate Government to be specifically satisfied that urgency is such that even to give an opportunity of raising objections, if one or two months are lost, it would frustrate the object of the acquisition. Mr. Desai contends that no material was placed before the appropriate Government that this is a case of such a nature and the Hon''ble Minister, while approving the urgency clause did not take into consideration that aspect as would reflect from the approval with query itself.

2.3. Thirdly, Mr. Desai contends that in the earlier Special Civil Application, the selfsame notification was challenged by some other owners in respect of different land where his client was not made party and this Court has upheld the validity of this notification but such fact, according to Mr. Desai, does not come in the way of his client in independently challenging the said notification in respect of his land. Mr. Desai contends that the finding given in the order passed in the earlier Special Civil Application filed by some other owners in respect of other plots of land is not binding upon his client. Mr. Desai further contends that in the earlier proceeding before this Court, the original record was not called for and thus, the earlier Division Bench had no occasion even to see the endorsement of the Hon''ble Minister and if those were brought to the notice of the earlier Division Bench, the conclusion would have been otherwise.

2.4. Lastly Mr. Desai contends that in the facts of the present case, it would appear that in the past, there was an acquisition and the said acquisition was ultimately withdrawn and in the latest town planning scheme, his client''s land has been given a separate holding number. The aforesaid fact, according to Mr. Desai, indicates that there was no justification of acquiring the land by the impugned notification.

2.5. Mr. Desai, therefore, prays for allowing this application by quashing the notifications in question.

2.6. In support of his contentions, Mr. Desai relied upon the following decisions:

(1) Union of India (UOI) and Others Vs. Mukesh Hans etc.,

(2) Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others,

(3) Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,

(4) Mahender Pal and Others Vs. State of Haryana and Others,

(5) Dev Sharan and Others Vs. State of U.P. and Others,

(6) Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others, .

(7) Surinder Singh Brar and Others Vs. Union of India (UOI) and Others,

(8) Union of India (UOI) and Others Vs. Deepak Bhardwaj and Others,

(9) Patasi Devi Vs. State of Haryana and Others,

(10) Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,

(11) Mulchand Khanumal Khatri Vs. State of Gujarat and Others, .

(12) Laxman Lal (Dead) Through L.Rs. and Another Vs. State of Rajasthan and Others, .

(13) Women Education Trust and Another Vs. State of Haryana and Others,

(14) Om Prakash and Another Vs. State of U.P. and Others,

(15) National Thermal Power Corporation Ltd. Vs. Mahesh Dutta and Others, .

(16) Anand Singh and Another Vs. State of Uttar Pradesh and Others, .

(17) Mohanlal Nanabhai Choksi (Dead) by Lrs. Vs. State of Gujarat and Others, .

(18) M. Naga Venkata Lakshmi Vs. Viskhapatnam Municipal Corp. and Another, .

(19) Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, .

(20) Sk. Abdul Hamid and Another Vs. The Land Acquisition Collector, Balasore and Another, .

(21) Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, .

(22) Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, .

3. Mr. P.K. Jani, the learned Government Pleader, appearing on behalf of the State of Gujarat, has, on the other hand, opposed the aforesaid contentions of Mr. Anshin Desai and has advanced the following submissions in support of his contentions:

3.1. First, Mr. Jani contends that this application should be dismissed simply on the ground of delay in moving the present application by pointing out that the Notification under Sec. 4 of the Act was issued in the year 2008, whereas the present application has been filed in the year 2010.

3.2. Secondly, Mr. Jani submits that in the earlier proceeding challenging the selfsame notification at the instance of some owners of different lands covered under the selfsame notification, the Division Bench of this Court, after taking into consideration the materials on record having specifically upheld the notification, we should not, in this application, take a different view when the selfsame notification

has been upheld and the said order was not challenged by the aggrieved party. Mr. Jani points out that the said order was sought to be challenged by the present petitioner, but he withdrew the Special Leave Application before the Supreme Court with liberty to file fresh application.

3.3. Thirdly, Mr. Jani contends that there is no dispute that the purpose for which this notification has been issued is a public purpose as would appear from the fact that Municipal authority, after being satisfied with the requirement, asked the State Government to take steps for acquisition. According to Mr. Jani, once it is established that the purpose of acquisition is not mala fide but is a genuine one for the public purpose, this Court should not interfere with such decision for any technical breach of law. Mr. Jani submits that the petitioner, in this application also could not give any convincing reason why the notifications for acquisition should be set aside. Mr. Jani submits that his client is ready to convince this Court even at this stage that the purpose for which the acquisition has been made is public purpose and there is no mala fide intention in it and thus, for giving an opportunity to file objection under Sec. 5A, the Notification of 2008 should not be quashed in the year 2014.

3.4. Mr. Jani thus, prays for dismissal of this application.

3.5. Mr. Jani, in support of the above contentions, relied upon the following decisions:

(1) Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others,

(2) State of U.P. Vs. Smt. Pista Devi and Others,

(3) Chameli Singh and others etc. Vs. State of U.P. and another,

(4) Nand Kishore Ojha Vs. Anjani Kumar Singh,

4. Mr. Prashant G. Desai, the learned Senior Advocate appearing on behalf of the Surat Municipal Corporation, has supported the contentions of Mr. Jani and has opposed this application. The first submission of Mr. Desai is that the Municipal authority, on consideration of the entire materials on record arrived at a conclusion that in view of the increasing population of Surat and for improvement of the sewage treatment system for the purpose of preventing the pollution of Tapi river, such step was essential, and as such, the Municipal authority recommended the acquisition of the land. Mr. Desai contends that once the Municipal authority has arrived at such a decision, such finding is virtually binding upon the State-respondent as would appear from the Division Bench decision of this Court in the case of Kanaiyalal Maneklal Chinai and Others Vs. The State of Gujarat and Others, . He also relied upon the decision of the Division Bench of this Court in the case of Kikabhai Ukabhai Patel and Others Vs. State of Gujarat and Others, contending that there is no scope of disputing the finding of the authority as regards the public purpose arrived at by the Municipal authority. In support of his

contentions, Mr. Prashant Desai relied upon the following decisions:

(1) Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others,

(2) State of U.P. Vs. Smt. Pista Devi and Others,

(3) Jai Narain and Others Vs. Union of India and Others, .

5. In order to appreciate the question involved in this Special Civil Application, it will be profitable to refer to the provisions contained in Secs. 4, 5A, 6 and 17 of the Act, as it stands after the Gujarat amendment, which are quoted below:

"4. Publication of preliminary notification and powers of officers thereupon--

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2) Thereupon, it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for this servants and workmen,--

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days'' notice in writing of his intention to do so. xxx xxx xxx

State amendment - Gujarat

In its application to the State of Gujarat, in Sec. 4-

(1) In sub-sec. (1), the words "or the Commissioner" shall be deleted.

(2) In sub-sec. (2), the words "or, as the case may be, by the Commissioner" shall be deleted. Gujarat Act 14 of 1964, Sec. 4 and Sch. (w.e.f. 15-5-1964). This Act repeals Bombay Act 8 of 1958.

(3) In sub-sec. (1), after the words "for any public purpose", insert "or for a Company".

(4) In sub-sec. (2), for the words beginning with word "to mark such levels" and ending with words "trenches, and", substitute the following, namely:-

"to mark such levels, boundaries and line by placing marks and cutting trenches, to measure the land likely to be needed, and" - Gujarat Act 20 of 1965, Sec. 7 (w.e.f. 15-8-1965).

5A. Hearing of objections--

(1) Any person interested in any land which has been notified under Sec. 4, sub-sec. (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication 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-sec. (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Sec. 4, sub-sec. (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. 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.

6. Declaration that land is required for a public purpose:-

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under Sec. 5A, sub-sec. (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Sec. 4, sub-sec. (1), irrespective of whether one report or different reports has or have been made

(wherever required) under Sec. 5A, sub-sec. (2):

Provided that no declaration in respect of any particular land covered by a Notification under Sec. 4, sub-sec. (1),--

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1:- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the Notification issued under Sec. 4, sub-sec. (1), is stayed by an order of a Court shall be excluded.

Explanation 2:- Where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and after making such declaration the appropriate Government may acquire the land in a manner hereinafter appearing.

State amendments - Gujarat

In its application to the State of Gujarat, in Sec. 6,

(i) In sub-sec. (1),-

(a) the words "or, as the case may be, the Commissioner" shall be deleted;

(b) the words "or, as the case may be, under the signature of the Commissioner"" shall be deleted;

(ii) In sub-sec. (3), the words "or as the case may be, the Commissioner" shall be deleted. Gujarat Act 15 of 1964 Sec. 4 and Sch. (w.e.f. 15-5-1964)

"17. Special powers in cases of urgency.--

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Sec. 9, sub-sec. (1), take possession of any land needed for a public purpose. 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 riverside or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-sec. (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 hours 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 Sec. 24; and, in case 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.

(3A) Before taking possession of any land under sub-sec. (1) or sub-sec. (2), the Collector shall, without prejudice to the provisions of sub-sec. (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by someone or more of the contingencies mentioned in Sec. 31, sub-sec. (2), and where the Collector is so prevented, the provisions of Sec. 31, sub-sec. (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that Section.

(3B) The amount paid or deposited under sub-sec. (3A), shall be taken into account for determining the amount of compensation required to be tendered under Sec. 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Sec. 11, the excess may, unless refunded within three months from the date of the Collector''s award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-sec. (1) or sub-sec. (2) are applicable, the appropriate Government may direct that the provisions of Sec. 5A shall not apply, and if it does so direct, a declaration may be made under Sec. 6 in respect of the land at any time after the date of the publication of the Notification under Sec. 4 sub-sec. (1).

State amendments - Gujarat

(1) In Sec. 17, sub-sec. (1), the words, "or the Commissioner" shall be deleted; in sub-sec. (2), the words, "or the Commissioner" and "or, as the case may be, of the Commissioner", and in sub-sec. (4) the words "or, as the case may be, of the Commissioner" occurring at two places and the words, "or he" shall be deleted - Gujarat Act 15 of 1964 Sec. 3 and Sch. (w.e.f. 15-5-1964);

(2) In Sec. 17, the words "waste or arable" shall be deleted - Gujarat Act 23 of 1962, Secs. 31 and 20 of 1965, Sec. 17 (w.e.f. 15-8-1965)."

6. The first question, therefore, that arises for consideration is whether the State Government, while issuing Notification under Sec. 4 of the Act, had subjective satisfaction that the land in question was needed for any public purpose.

7. As pointed out earlier, it appears from the original records that first the Municipal authorities opined that the land was necessary for the purpose of Sewage Treatment Plant and, therefore, requested the State Government to take steps for acquisition of land for the said purpose. Consequently, the file, with the notes of the concerned officer was placed before the Hon''ble Minister whose subjective satisfaction is necessary before publication of the Notification under Sec. 4 of the Act. It appears from the official record that the Hon''ble Minister accorded sanction on 28th January, 2008 by giving the following notes in Gujarati, which as translated into English, reads as follows:

"1. The sanction may be granted to publish the notification.

2. Earlier for the same purpose, land was acquired. Whether it was used or not? Considering the purpose is served or not?

28-1-2008."

8. From the above notes of the Hon''ble Minister, it appears that although the Minister had in his mind some queries as reflected in second Paragraph of his notes and put two specific questions in writing, at the very first Paragraph, the sanction has been granted without getting answers of those queries. From the above notes, it appears that the Hon''ble Minister did not take into consideration the fact that sanction granted by him in Paragraph 1 cannot be given so long he was not satisfied about the query in his mind as reflected in Paragraph 2 of the selfsame note. There is no dispute that answers were given in the month of April - long after publication of the Notification under Sec. 4 of the Act.

9. We, thus, find substance in the contention of Mr. Anshin Desai, the learned Advocate appearing on behalf of the petitioner, that before getting answer of the queries, the Hon''ble Minister granted sanction by totally overlooking the requirement of law that sanction to publish Notification under Sec. 4 can be accorded only after subjective satisfaction and so long the questions reflected in Paragraph 2 are not answered, the sanction cannot be granted in accordance with law.

10. Although Mr. Jani, the learned Government Pleader appearing on behalf of the State and Mr. Prashant Desai, the learned Senior Advocate appearing on behalf of the Surat Municipal Corporation, tried to convince us that the fact that the Municipal authority had required such land for public purpose is sufficient for issue of notification even without the subjective satisfaction of the Minister concerned, we are not impressed by such submission. Satisfaction of the Municipality of its requirement for public purpose should be placed before the State Government, and only the appropriate Government, meaning thereby, the Minister concerned, can take the final decision after taking into consideration the request of the Municipal authority. It appears from the notes that the concerned Minister was conscious that previously the land was acquired and his specific query was whether it was used or not and the purpose was served or not, but before getting any answer from the concerned authority, sanction was granted at the very first instance. Thus, the above ground itself is sufficient for quashing the Notifications under Secs. 4 and 6 of the Act.

11. The next question is whether it is a fit case where the urgency clause provided in Sec. 17(4) of the Act could be invoked while issuing Notification under Sec. 4 of the Act.

12. It appears from Sec. 5A of the Act that the said provision was incorporated by way of amendment long back in the year 1923, which gives right to any person interested in the land, which has been notified under Sec. 4 sub-sec. (1) of the Act, to show that the land is not necessary for the purpose indicated in the notification. Any person interested in the land can be deprived of such valuable right only if the conditions mentioned in Sec. 17(4) of the Act are satisfied. According to sub-sec. (4) of Sec. 17 of the Act, if the appropriate Government is of the opinion that the

provisions of sub-sec. (1) or (2) of Sec. 17 are applicable, then and then only the appropriate Government may direct that the provisions contained in Sec. 5A of the Act should not apply and a declaration may be made under Sec. 6 of the Act in respect of the land at any time after the date of publication of Notification under Sec. 4, sub-sec. (1). In the case before us, it does not appear from the official record that there is any noting that the appropriate Government had in its mind the provisions contained in Sec. 17 of the Act.

13. It is rightly pointed by Mr. Anshin Desai, the learned Advocate appearing on behalf of the petitioner, that even if for public purpose a Notification under Sec. 4 of the Act is issued, the opportunity provided in Sec. 5A of the Act must be given to the person interested, and if such opportunity is not given, the invocation of urgency clause will be per se void and in that event, the consequent Notification under Sec. 6 of the Act should also be quashed. In this connection, Mr. Jani and Mr. Prashant Desai, the learned Senior Advocates appearing on behalf of the State and Surat Municipal Corporation respectively tried to convince us that once decision to acquire the land has been taken by the Municipal authority, it was binding upon the State Government and in this type of acquisition where land is required for the purpose of Sewage Treatment Plant, urgency is visible on the face of requisition. We, however, find no substance in such contention. It appears that previously also, the land was sought to be acquired but the respondents dropped the idea and no material has been placed before the appropriate Government that it is such a case where it is so urgent that even opportunity of making objection should be taken away. We find that there was no justification of even issuing the Notification under Sec. 4 of the Act invoking a further clause of urgency by depriving the person interested of giving objection as provided under Sec. 5A of the Act.

14. We are also not impressed by the contentions of Mr. Jani and Mr. Prashant Desai that even if we find that the question of urgency was not considered, we should call upon the petitioner to disclose his objection under Sec. 5A of the Act in this proceedings and if he is unable to show such material objection, we should not interfere. The provisions of Sec. 5A of the Act, in our opinion, is one which cannot be waived as it is based on public policy, and cannot be given a go-bye by giving opportunity to a party interested to give objection post-notification. The aforesaid contentions are not tenable in the eye of law.

15. The next question is whether this writ petition should be dismissed on the ground of delay. It appears that in this application, not only the Notification under Sec. 4 but also the subsequent Notification under Sec. 6 of the Act has been challenged which was issued on 29th April, 2009 - long after 1 year and 3 months after the publication of the Notification under Sec. 4 of the Act. The objection filed by the petitioner on 4th December, 2008 before the Land Acquisition Officer was rejected on 23rd October, 2009. It appears that this writ-application has been filed in the month of January, 2010. Thus, we do not find any substance in the contention

that this application should be dismissed on the ground of delay.

16. As regards the question of delay, the rule, which says that the High Court may not enquire into belated and stale claim, is not a rule of law but a rule of practice based on sound and proper exercise of discretion. The principle on which the relief to party on the ground of laches or delay is denied is that the rights which have accrued to others by reason of delay in filing petition should not be allowed to disturb unless there is reasonable explanation for delay. The real test to determine delay in such cases is that the petitioner should come to Court before a parallel right is created and lapse of time is not attributable to any laches or negligence. (See M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others,). In this case, the petitioner is still in possession of his land and no third party''s right has been created at the time of filing the Special Civil Application. In any case, by the action of a State within the meaning of Art. 12 of the Constitution, the Constitutional right of the petitioner created under Art. 300A of the Constitution has been infringed and at the same time, the action complained of must be held to be arbitrary. Thus, in this case, it cannot be said that the petitioner by his conduct has waived his constitutional right.

17. We now propose to deal with the decisions cited by Mr. Jani and Mr. Prashant Desai, the learned Counsel appearing on behalf of the State and the Surat Municipal Corporation, in opposing the prayer of the petitioner.

18. In the case of Deepak Pahwa (supra), a point was taken that having regard to the fact that a considerable length of time was spent on interdepartmental discussions before the Notifications under Sec. 4(1) was published, there was no justification in invoking the urgency clause under Sec. 17(4) and dispensing with the inquiry under Sec. 5A. The Supreme Court, however, did not agree with the said contention by pointing out that (Para 8):

".....Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void."

18.1. By relying upon the aforesaid observations of the Supreme Court, Mr. Jani strenuously contended that in the past, there was proposal for acquisition which was dropped and the fact that it took long time in ultimately publishing the notification, is no ground for accepting the contention that in this case, there was no justification of invoking urgency clause.

18.2. It may be mentioned here that in the decision of Deepak Pahwa (supra), the Supreme Court held that the point is whether on the date on which the notification was issued there was urgency or not, as earlier pointed out by the Supreme Court in the case of Jage Ram and Others Vs. State of Haryana and Others, . It may also be pointed out that in the case of Deepak Pahwa (supra), the Supreme Court made it clear that it wished to say nothing about the post-notification delay.

18.3. In our opinion, in the case before us, if we apply the principle laid down in the case of Deepak Pahwa (supra), we do not find any material on record that on the date of publication of notification, there was any necessity for invoking urgency clause as would appear from the notes of the Hon''ble Minister itself, and the fact remains that even after publication of notification in the month of January, 2008, the Sec. 6 Notification was issued only in the month of April 2009. We, therefore, find that the above decisions only indicates that the reason of any delay prior to the publication of Notification under Sec. 4 cannot be taken into consideration for deciding, whether in the facts of a given case, there was justification of invoking Sec. 17(4) of the Act.

19. In the case of State of U.P. v. Smt. Pista Devi (supra), the main ground on which the High Court set aside the notification and declaration impugned therein was that the case of urgency put forward by the State Government for dispensing with the compliance of provisions of Sec. 5A had been believed by the delay of nearly one year that had ensued between the date of the Notification under Sec. 4 and the date of declaration made under Sec. 6 of the Act. The High Court observed that "if the Government were satisfied with the urgency it would have certainly issued declaration under Sec. 6 of the Act immediately after the issue of the Notification under Sec. 4 of the Act". The High Court found that the failure to issue declaration under Sec. 6 of the Act immediately on the part of the State Government was fatal and there was delay of nearly one year between the publication of the Notification under Sec. 4(1) containing the direction dispensing with the compliance with Sec. 5A of the Act and the date of publication of the declaration issued under Sec. 6 of the Act. In such background, the Supreme Court pointed out that after the publication of the Notification under Sec. 4(1), the Collector, after going through it, found that there were some errors in the notification which needed to be corrected by issuing a corrigendum. Accordingly, he wrote a letter to the State Government pointing out the errors and requesting the State Government to publish a corrigendum immediately. Both the corrigendum and the declaration under Sec. 6 of the Act were issued on May 1, 1981. The Supreme Court, thus, held that on account of some error on the part of the officials who were entrusted with the duty of processing of the case at the level of Secretariate, there was a delay of nearly one year between the publication of the Notification under Sec. 4(1) and the publication of the declaration under Sec. 6 of the Act, and thus, the question was whether in the circumstances of that case, it could be said that on account of the mere delay of nearly one year in the publication of the declaration, it could be said that the order made by the State

Government dispensing with the compliance with Sec. 5A of the Act at the time of publication of the Notification under Sec. 4(1) of the Act would stand vitiated in the absence of any other material. The Supreme Court further pointed out that in that case, there was no allegation of any kind of mala fides on the part of either the Government or any of the officers, nor did the respondents contend that there was no urgent necessity for providing housing accommodation to a large number of people of Meerut city during the relevant time. The Supreme Court further observed that the letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the Notification under Sec. 4(1) clearly demonstrated that at that time, there was a great urgency felt by them regarding the provision of housing accommodation at Meerut, and the State Government acted upon the said reports, certificates and other material which were before it.

19.1. In the above circumstances, the Supreme Court held that it could not be said that the decision of the State Government in resorting to Sec. 17(1) of the Act was unwarranted as the provisions of housing accommodation in these days has become a matter of national urgency, which, according to the Supreme Court, could be taken a judicial note.

19.2. From the above observations of the Supreme Court, it appears that in the facts of that case, the Supreme Court held that the delay of publication of declaration under Sec. 6 of the Act in the above fact did not indicate that there was no urgency at the relevant time of publication of notice under Sec. 4 of the Act. In the fact of the present case, the State, however, could not explain the delay of more than one year in publishing the Notification under Sec. 6 of the Act.

19.3. In the case before us, we have already pointed out that the Hon''ble Minister himself had inquired regarding the position of the land and what happened as regards the earlier notification, and before getting any answer, the sanction of issuing notice under Sec. 4(1) of the Act with urgency clause was given. Therefore, in the facts of the present case, the said decision cannot have any application. At any rate, the above decision of the Supreme Court does not lay down a proposition of law that delay, however long may be, is not to be taken into account for considering the justification of urgency clause even if the same remains unexplained.

20. In the case of Chameli Singh v. State of U.P. (supra), there was delay in respect of both pre-notification and post-notification on the part of the officials to finalise and publish the notification. The Supreme Court pointed out that those facts were present before the Government when it invoked the urgency clause and dispensed with the inquiry under Sec. 5A. In the said case, the land was acquired for housing need of Dalits, Tribes and poor, and as such, the Supreme Court held that so long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist and the Government, on the basis of material, constitutional and international obligations,

having formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the findings unless the Court conclusively finds the exercise of the power mala fide.

20.1. We have already pointed out that the above decision was taken in the facts of the said case and the said decision cannot be said to be a proposition laying down that the appropriate Government can, without subjective satisfaction, dispense with the necessity of complying with the provisions contained in Sec. 17 of the Act before dispensing with the provision of raising objections under Sec. 5A of the Act.

21. In the case of Nand Kishore Gupta v. State of U.P. (supra), a two-Judge Bench of the Supreme Court was considering the case of acquisition of land for the purpose of construction of Yamuna Expressway. In that context, it was held that acquisition of land along Yamua Expressway for development of the same for commercial, amusement, industrial, institutional and residential purposes were complementary to creation of Expressway and hence, amounted to acquisition for public purpose. In the above fact, it was further observed that if a person interested wanted to challenge the dispensing with of the inquiry under Sec. 5A of the Act by invoking Sec. 17(4) of the Act, it could be made only the ground of insufficiency of supporting material or on the ground that the order suffers from malice. In that context, it was held that the likelihood of encroachment, magnitude of number of persons who had been required to be heard and time to be taken for that purpose and the fact that the project had already been delayed by 8 long years due to various challenges thereto justified dispensing with the inquiry under Sec. 5A.

21.1. In our view, in the case before us, it appears that the appropriate Government, while giving sanction of issue of Notification under Sec. 4 of the Act with urgency clause, was itself not satisfied as would appear from the fact that the Hon''ble Minister inquired on certain factual aspects but without waiting for answers thereto, directed issue of the notification whereas answer to those queries came after issue of such notification. Therefore, the principle laid down in the case of Nand Kishore Gupta (supra) cannot have any application to the facts of the present case and on the other hand, it supports the case of the petitioner that the urgency clause was invoked notwithstanding the existence of insufficiency of supporting material and non-application of mind.

22. So far as the decisions relied upon by Mr. Prashant Desai are concerned, it appears that Mr. Desai also relied upon the case of Deepak Pahwa (supra) and State of U.P. v. Pista Devi (supra), which have also been relied upon by Mr. Jani, and we have dealt with those same in the earlier part of this judgment. Therefore, we are not separately dealing with these two cases.

23. In the case of Jai Narain v. Union of India (supra), a two-Judge Bench of the Supreme Court was considering a case of justification of invocation of urgency clause while issuing a Notification under Sec. 4 of the Act in a case where the

acquisition of land was for the construction of Sewage Treatment Plant for planned development of Delhi under the direction of the Supreme Court. In that context, it was held that whatever may be the user of the land under the Master Plan and the Zonal Development Plan, the State can always acquire the same for public purposes in accordance with the law of the land. In that case, the Supreme Court observed that the object and purpose of construction the S.T.P. was to protect the environment, control pollution and in the process, maintain and develop the agricultural green. The Supreme Court further took judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such, the emergency provisions of the Act were rightly invoked.

23.1. In the case before us, we find that in the past, the proposal for acquisition of land was sent; subsequently, the proposal was dropped and for the above reason, the Hon''ble Minister, while granting sanction, made specific query about the past acquisition but before receiving the answer of the queries, on the very same day, sanctioned issue of Notification under Sec. 4 of the Act and that too invoking the urgency clause, and the answer to the specific queries were received after three months. Therefore, in our opinion, the decision of the Supreme Court in the case of Jai Narain (supra) has no application to the facts of the present case.

24. In the case of Kaniyalal v. State (supra), the contention before the Court was that the State Government had no power to acquire the land of the petitioners under the provisions of the Land Acquisition Act for the benefit of the Municipal Corporation since it could not be said that the Municipal Corporation was unable to acquire the land by agreement under Sec. 77 of the B.P.M.C. Act, 1949. The argument was that by reason of Sec. 78 of me B.P.M.C. Act, the State Government could take proceedings for acquisition of land on behalf of the Municipal Corporation only if the Municipal Corporation was unable under Sec. 77 to acquire the land by agreement and since the condition was not fulfilled in the case of the petitioners'' land in that case, the acquisition purported to be made by the State Government was invalid. The Division Bench, however, rejected the aforesaid contention by holding that the notification impugned in that case did not derive its strength and force from Sec. 78 nor did it seek its justification under that Section but it was issued in exercise of the power conferred under Sec. 6 and so far as that Section was concerned, there was nothing in it which in any way affected the power of the Commissioner to issue the impugned notification.

24.1. We fail to appreciate how the said decision could be of any help to the respondents in the facts of the present case. It appears that in that case, the Division Bench was considering the quashing of a Notification dated 18th August, 1961 which raised a question as to the validity of Sec. 3(4) of the Bombay Commissioners of Divisions Act and two notifications issued by the State Government under that Section, one dated 5th September, 1985 and the other 22nd September, 1958. It appears from the Gujarat Amendment of the Land Acquisition

Act that in the years 1964 and 1965 there have been an amendments in Secs. 4, 6 and 17 wherein the words "or as the case may be Commissioner" and "under signature of the Commissioner" etc. were deleted.

24.2. Be that as it may, in the facts of the present case, the above question has not been raised by Mr. Anshin Desai regarding lack of power on the part of Sec. 6 of the Act in view of Sec. 78 of the Municipal Act, and, therefore, we find that the said decision is insignificant in the facts of the present case.

25. In the case of Kikabhai Ukabhai Patel (supra), a Division Bench of this Court held that the acquisition proceedings being initiated at the behest of Municipal Corporation which had proposed acquisition of the land for installation of its drainage disposal scheme and the said proposal being accepted by the State Government and Notifications under Secs. 4 and 6 having been issued, such proceedings could be withdrawn only if the proposal was moved by the Municipal Corporation. In the absence of such proposal, the State Government could withdraw the acquisition proceedings in question.

25.1. In the context of the above case, it was pointed out that if the proposal for alternative site was considered and found to be not feasible, after full deliberations with all concerned, it could not be said that the State authority had followed pick-and-chose policy and arbitrarily selected the petitioners'' land for acquisition or that the said acquisition was contrary to any confirmed policy of the State Government.

25.2. In the case before us, the inquiry under Sec. 5A has been dispensed with and thus, the petitioner has been deprived of his opportunity to make appropriate submissions against the proposed acquisition in ignorance of Sec. 17 of the Act. We, thus, find that the above decision could be of no help to Mr. Desai''s client on the question of invoking urgency clause.

26. A four-Judge Bench of the Supreme Court, in the case of Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, had the occasion to consider the scope and object of Sec. 5A of the Act. In that context, K.N. Wanchoo, J., (as His Lordship then was) speaking for the Bench categorically held (in Para 13) that the "right to file objections under Sec. 5A is a substantial right when a person''s property is being threatened with acquisition and we cannot accept that that right can be taken away as if by a side-wind because sub-sec. (1A) mentions sub-sec. (1)."

27. In a very recent decision of a three-Judge Bench of the Supreme Court, in the case of Union of India v. Shiv Raj, in Civil Appeal Nos. 5478 to 5483 of 2014 decided on May 7, 2014, strongly relied upon by Mr. Anshin Desai, it had the occasion to consider this aspect, and the said Court took into consideration the hostile interpretation of Sec. 5A of the Act which was not there in the original statute. In that context, the Supreme Court made the following observations:

"6. Section 5A of the Act, 1894 was not there in the original statute. In J.E.D. Ezra v. Secy. of State for India, 1902-1903 (7) CWN 249, the Calcutta High Court expressed its inability to grant relief to the owner of the property whose land was sought to be acquired without giving any opportunity of hearing observing that there was no provision in the Act requiring observance of the principles of natural justice. It was subsequent to the said judgment that the Act was amended incorporating Sec. 5A w.e.f. 1-1-1924. The Statement of Objects and Reasons for the said amendment provided that the original Act did not oblige the Government to enquire into and consider any objection of the persons interested nor the Act provided for right of hearing to the person whose interest stands adversely affected.

7. In Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, , this Court dealt with the nature of objections under Sec. 5A of the Act, 1894 observing as under:

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

8. The rules of natural justice have been ingrained in the scheme of Sec. 5A of the Act, 1894 with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land.

Section 5A(2) of the Act, 1894, which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Sec. 4(1) of the Act, 1894 or that there are other valid reasons for not acquiring the same. Thus, Sec. 5A of the Act, 1894 embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.

On the consideration of the said objection, the Collector is required to make a report. The State Government is then required to apply mind to the report of the Collector and take final decision on the objections filed by the land owners and other interested persons. Then and then only, a declaration can be made under Sec. 6(1) of the Act, 1894.

9. Therefore, Sec. 5A of the Act, 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The

State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Sec. 5A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Art. 300A of the Constitution of India has been held to be akin to a fundamental right.

10. Thus, the limited right given to an owner/person interested under Sec. 5A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under Sec. 17(4) of the Act, 1894.

11. The Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons."

(Emphasis supplied)

28. We, therefore, find that the contention of Mr. Jani and Mr. Prashant Desai that this Court should take into consideration the objections of the petitioner against the proposed acquisition, instead of quashing the notification, is not tenable in the eye of law.

29. A similar view has been taken by another three-Judge Bench of the Supreme Court in the case of Union of India v. Mukesh Hans (supra) wherein the Supreme Court made the following observations in Paragraphs 35 and 36, which are quoted below:

"35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Sec. 5A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Sec. 17(4) of the Act. The object and importance of Sec. 5A inquiry was noticed by this Court in the case of Munshi Singh and Others Vs. Union of India (UOI), where this Court held thus:

"7. Section 5A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. 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 Sec. 5A."

36. It is clear from the above observation of this Court that right of representation and hearing contemplated under Sec. 5A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Sec. 5A."

(Emphasis supplied)

30. In the case of Radhyshyam (Dead) through L.Rs. v. State of Uttar Pradesh (supra), the Supreme Court made the following observations in Para 77:

"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) to (iii) xxx xxx xxx

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Secs. 4, 5A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, 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 Sec. 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Sec. 5A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Sec. 5A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Sec. 5A will, in all probability, frustrate the public purpose for which land is proposed to be acquired."

(Emphasis supplied)

31. Even in the subsequent decision of the Supreme Court in the case of Darshan Lal Nagpal v. Govt. (N.C.T.) of Delhi (supra), the Supreme Court made the following observations in Para 27:

"27. In Radhyshyam v. State of U.P. (supra), this Court considered challenge to the acquisition of land under Sec. 4(1) read with Secs. 17(1) and (4) for planned industrial development of District Gautam Budh Nagar by Greater Noida Industrial Development Authority and extensively referred to the judgment in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, and also adverted to other judgments, in which the importance of the rules of natural justice has been

highlighted, and culled out the following principles:

"(i) to (iii) xxx xxx xxx

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Secs. 4, 5A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, 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 Sec. 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Sec. 5A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Sec. 5A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Sec. 5A will, in all probability, frustrate the public purpose for which land is proposed to be acquired."

31.1. In the said decision, the Supreme Court further pointed out that the judgment of the Supreme Court in the case of Jage Ram and Others Vs. State of Haryana and Others, could not have been relied upon for taking the view that pre-notification delay cannot be considered while deciding the State''s action to invoke urgency provision.

32. In the case of Mahender Pal v. State of Haryana (supra), the Supreme Court made the following observations in Paragraphs 6 and 7 of the judgment, regarding strict compliance of Sec. 17 of the Act:

"6. The Act has been enacted for the acquisition of land for public purposes and for Companies. Having regard to the provisions contained in Art. 300A of the Constitution of India as also the provisions of Act, the State in exercise of its power of ''eminent domain'' may deprive a person of his right to a property only when there exists a public purpose and a reasonable amount by way of compensation is offered for acquisition of his land. The Act fulfils the aforementioned criteria. It, however, lays down the details procedures therefor. It is also of some significance to notice that the Parliament, by reason of the Act, has imposed further restrictions/conditions for acquisition of land for the benefit of the land-owner.

7. Right to file objection and hearing thereof to a notification issued by the appropriate Government expressing its intention to acquire a property is a valuable right. Such a valuable right of hearing and particularly in a case of this nature could have been taken away only if conditions precedent for exercise of this emergency power stood satisfied. Sub-section (4) of Sec. 17 of the Act is an exception to Sec. 5A of the Act. An opinion of the Government in this behalf is required to be formed if

there exists an emergency. Existence of the foundational fact for invoking the aforementioned provision is, therefore, a sine qua non for formation of opinion. Such subjective satisfaction must be based on an objective criteria. Ipse dixit on the part of the State would not serve the purpose. The appellants, in our opinion, had made out a case for examination of their cases in details. The nature of constructions and other features of the land sought to be acquired have been noticed by us hereinbefore."

(Emphasis supplied by us)

33. At this stage, it will also be profitable to refer to the following observations of the Supreme Court in Para 16 of the judgment in the case of Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, regarding compliance of the provisions of Sec. 5A.

"16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Sec. 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Sec. 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immoveable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Sec. 5A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Sec. 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Sec. 5A of the Act could be completed. In other words, if power under Sec. 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen''s property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."

(Emphasis supplied by us)

34. At this juncture, we also rely upon the observations of the Supreme Court in the case of Dev Sharon (supra), wherein the Supreme Court, in Paragraphs 35 to 37, made the following observations:

"35. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government''s letter dated 4-6-2008 for issuance of Sec. 4(1) and Sec. 17 Notifications. A meeting for selection of the suitable site for construction was held on 27-6-2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2-7-2008. This was in turn forwarded to the State Government by the Director on 22-7-2008. After due consideration of the forwarded proposal and documents, the State Government issued the Sec. 4 Notification, along with Sec. 17 Notification on 21-8-2008. These notifications were published in local newspapers on 24-9-2008.

36. Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the land-owners, along with 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Sec. 6 declaration was sent to the Director, Land Acquisition on 19-6-2009. The Director in turn forwarded all these to the State Government on 17-7-2009, and the State Government finally issued the Sec. 6 declaration on 10-8-2009. This declaration was published in the local dailies on 17-8-2009.

37. Thus the time which elapsed between publication of Sec. 4(1) and Sec. 17 notifications, and Sec. 6 declaration in the local newspapers is 11 months and 23 days, i.e. almost one year. This slow pace at which the Government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Sec. 17(4) of the Act."

(Emphasis supplied)

34.1. The facts of the above case, to some extent, are similar to the one involved in the present case in the matter of publication of Notification under Sec. 6 of the Act.

35. Thus, on consideration of the entire materials on record, we find substance in the contention of Mr. Anshin Desai, the learned Advocate for the petitioner, that having regard to the notes reflected in the original records, there was no subjective satisfaction on the part of the Hon''ble Minister, the appropriate authority, before giving permission to issue Notification under Sec. 4 of the Act and that too, invoking Sec. 17(4) of the Act. It is, therefore, a fit case where we should set aside the Notifications under Sec. 4 as well as Sec. 6 of the Act for non-compliance of the provisions contained in Sec. 5A of the Act by ignoring the provisions of Sec. 17(4) of the Act, and the impugned notifications are, accordingly, set aside. The Special Civil Application is allowed accordingly. We, however, make it clear that this order will not stand in the way of the State to proceed afresh after complying with the requirement of Sec. 5A of the Act. In the facts and circumstances of the case, there will be, however, no order as to costs.

FURTHER ORDER:

After this judgment was pronounced, Mr. Jani, the learned Government Pleader, and Mr. Pandya, the learned Advocate appearing on behalf of the Municipal Corporation, pray for maintaining status quo as regards the nature and character of the property to enable their respective client to move the higher forum against our judgment.

The prayer is granted. Let there be an order of status quo as regards the nature and character of the property for a period of two months from today.