REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3261 OF 2011
(Arising out of Special Leave Petition (C) No.601 of 2009)

Sri Radhy Shyam (Dead) Through L.Rs. and others ……Appellants

Versus

State of U.P. and others ……Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. This appeal is directed against order dated 15.12.2008 passed by the Division Bench of the Allahabad High Court whereby the writ petition filed by the appellants questioning the acquisition of their land for planned industrial development of District Gautam Budh Nagar through Greater NOIDA Industrial Development Authority (hereinafter referred to as the, "Development Authority") by invoking Section 17(1) and 17(4) of the Land Acquisition Act, 1894 (for short, "the Act"), as amended by Uttar Pradesh Act No.8 of 1974, was dismissed.

3. Upon receipt of proposal from the Development Authority for acquisition of 205.0288 hectares land of village Makora, Pargana Dankaur, Tehsil and District Gautam Budh Nagar, which was approved by the State Government, notification dated 12.3.2008 was issued under Section 4(1) read with Section 17(1) and 17(4) of the Act. The relevant portions of the notification are extracted below:

> "Under Sub-Section (1) of Section 4 of the Land Acquisition Act 1894 (Act no.1 of 1894), the Governor is pleased to notify for general information that the land mentioned in the scheduled below, is needed for public purpose, namely planned industrial development in District Gautam Budh Nagar through Greater Noida Industrial Development Authority.
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> 2. The Governor being of the opinion that the provisions of sub-section 1 of Section 17 of the said Act, are applicable to said land inasmuch as the said land is urgently required, for the planned industrial development in District Gautam Budh Nagar through Greater Noida Industrial Development Authority and it is as well necessary to eliminate the delay likely to be caused by an enquiry under Section 5A of the said Act, the Governor is further pleased to direct under sub-section 4 of Section 17 of the said Act that the provisions of Section 5A of the said Act, shall not apply."

4. Since the appellants' land was also included in the notification, they made a representation to the Chairman-cum-Chief Executive Officer of the Development Authority (Respondent No.4) with copies to the Chief Minister, Principal Secretary, Housing and Urban Development, U.P., the

District Magistrate and the Special Officer, Land Acquisition, Gautam Buddh Nagar with the request that their land comprised in Khasra No.394 may not be acquired because they had raised construction 30-35 years ago and were using the property for abadi/habitation. The concerned functionaries/authorities did not pay heed to the request of the appellants and the State Government issued notification dated 19.11.2008 under Section 6 read with Section 9 of the Act.

5. The appellants challenged the acquisition of their land on several grounds including the following:

(i) That the land cannot be used for industrial purposes because in the draft Master Plan of Greater NOIDA (2021), the same is shown as part of residential zone.

(ii) That they had already constructed dwelling houses and as per the policy of the State Government, the residential structures are exempted from acquisition.

(iii) That the State Government arbitrarily invoked Section 17(1) read with Section 17(4) of the Act and deprived them of their valuable right to raise objections under Section 5-A.

(iv) The acquisition of land is vitiated by arbitrariness, mala fides and violation of Article 14 of the Constitution inasmuch as lands of the Member of Legislative Assembly and other influential persons were

left out from acquisition despite the fact that they were not in abadi, but they were not given similar treatment despite the fact that their land was part of abadi and they had constructed dwelling units.

6. In support of their challenge to the invoking of Section 17(1) and (4), the appellants made detailed averments in paragraphs 11 and 16 and raised specific grounds A and F, which are extracted below:

> "11. That as per the scheme of the said Act, each and every section from sections 4 to 17 has an independent role to play though there is an element of interaction between them. Section 5-A, has a very important role to play in the acquisition proceedings and it is mandatory of the part of the government to give hearing to the person interested in the land whose land is sought to be acquired. It is relevant to point out that the acquisition proceedings under the Act, are based on the principal of eminent domain and the only protection given to the person whose land is sought to be acquired is an opportunity under Section 5-A of the Act to convince the enquiring authority that the purpose for which the land is sought to be acquired is in fact is not a public purpose and is only purported to be one in the guise of a public purpose.
>
> It is relevant to mention here that excluding the enquiry under Section 5-A can only be an exception where the urgency cannot brook any delay. The enquiry provides an opportunity to the owner of land to convince the authorities concerned that the land in question is not suitable for purpose for which it is sought to be acquired or the same sought to be acquired for the collateral purposes. <u>It is pertinent to mention here that the respondents No. 1 & 2 without the application of mind dispensed with the enquiry on the ground of urgency invoking the power conferred by Section 17 (1) or (2) of the Act. Further, the respondent No. 1 & 2 without</u>

application of mind did not considered the survey report of the abadi of the village Makaura where the entire land is being used for the purpose of residence and grazing of cattle's in Khasra No. 394. Further, the petitioners were surprised to find that their land have not been included in the Abadi irrespective the same is in use for habitable and keeping the cattle and other uses. The petitioners have constructed their houses and using the same for their residence and keep their cattle's and agricultural produce. The survey report clearly shows that the impugned Khasra No. 394 is in use for residence. The report in respect of the land in question falling in Khasra No. 394 given by the respondent No. 4 vide communication dated 26th March, 2007 is annexed as Annexure 6.

16. That the said notification under Section 4 of the Act issued by the respondent No. 1 and 2 is without application of mind and there was no urgency in the acquisition of land, for the planned industrial development, as the land, as per the master plan – 2021 the land of the village Makaura is reserved for "residential" of which the respondent No. 2 invoked Section 17 (1) and subsection 4 of the Act by dispensing with an enquiry under Section 5A of the Act. The said action on the part of the respondents are un-warranted and is in gross violation of Article 14,19, 21 and 300A of the constitution. The such illegal act on the part of the respondents show mala fide and their oblique motive to deprive the owners from their houses in order to fulfill their political obligations/promise to the private builders by taking the shelter of section 17 of the Act by dispensing with the enquiry under Section 5-A of the Act as well as overlooked purpose as stipulated in the Master Plan 2021 which is any way do not require any urgent attention.

A. That the whole acquisition proceedings are void, unconstitutional, tainted with mala fide, abuse of authority and power, non-application of mind, and as such, liable to be quashed as violative of Articles 14,19 and 300-A of the Constitution of India.

> F. That the purpose stated in the notification under Section 4 and declaration under section 6 by invoking section 17 is presently non-existent and thus the notification is bad in law. There is no urgency for the invocation when the land is to be acquired for planned development for the purpose of setting residential colony. The impugned notification is without any authority of law and volatile of Article 300-A of the Constitution of India, which limits the power to acquire land to the authority under the Land Acquisition Act. Therefore, the notification in question is bad in law."
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> (emphasis supplied)

7. The High Court negatived the appellants' challenge at the threshold mainly on the ground that the averments contained in the petition were not supported by a proper affidavit. This is evident from the following portions of the impugned order:

> "Here the petitioners neither have pleaded that there exist no material before the State Government to come to the conclusion that the enquiry under Section 5-A should be dispensed with by invoking Section 17(4) of the Act nor the learned counsel for the petitioners could place before us any such averment in the writ petition. Though, in para-11 of the writ petition, an averment has been made that the respondents no. 1 and 2 without the application of mind dispensed with the enquiry on the ground of urgency invoking the power conferred by Section 17(1) or (2) of the Act, but in the affidavit, the said paragraph has been sworn on the basis of perusal of record. Similarly in para 16 of the writ petition, the only averment contained therein is as under:
>
> "16. That the said notification under Section 4 of the Act issued by the respondent No.1 and 2 is without application of mind and there was no urgency in the acquisition of land, for the planned industrial development, as the land, as per the master plan-2021

> the land of the village Makaura is reserved for "residential" of which the respondent No.2 invoked Section 17(1) and sub-section 4 of the Act by dispensing with an enquiry under Section 5-A of the Act. The said action on the part of the respondents are un-warranted and is in gross violation of Article 14,19,21 and 300A of the Constitution. The such illegal act on the part of the respondents show mala fide and their oblique motive to deprive the owners from their houses in order to fulfill their political obligations/ promise to the private builders by taking the shelter of Section 17 of the Act by dispensing with the enquiry under Section 5-A of the Act as well as overlooked purpose as stipulated in the Master Plan 2021 which is any way do not require any urgent attention."
>
> However, in the affidavit, this para has not been sworn at all and in any case with respect to dispensation of enquiry under Section 5-A by invoking Section 17(4) of the Act nothing has been said except that the exercise of power is violative of Articles 14,19, 21 and 300-A of the Constitution.
>
> We, therefore, do not find any occasion even to call upon the respondents to file a counter affidavit placing on record, the material if any for exercising power under Section 17(1) and (4) of the Act in the absence of any relevant pleading or material and the question of requiring the respondents to produce the original record in this regard also does not arise."

8. The High Court distinguished the judgment of this Court in **Om Prakash v. State of U.P.** (1998) 6 SCC 1, albeit without assigning any cogent reason, relied upon the judgments of the Division Benches in **Kshama Sahkari Avas Samiti Ltd. v. State of U.P.** 2007 (1) AWC 327, **Jasraj Singh v. State of U.P.** 2008 (8) ADJ 329 and **Jagriti Sahkari Avas**

Samiti Ltd. Ghaziabad v. State of U.P. 2008 (9) ADJ 43 and held that the decision of the Government to invoke Section 17(1) cannot be subjected to judicial review. The High Court also rejected the appellants' plea that in terms of the policy framed by the State Government, the land covered by abadi cannot be acquired by observing that no material has been placed on record to show that the policy framed in 1991 was still continuing. To buttress this conclusion, the High Court relied upon the judgment of this Court in **Anand Buttons Limited v. State of Haryana** (2005) 9 SCC 164.

9. By an order dated 29.10.2010, this Court, after taking cognizance of the fact that the respondents did not get opportunity to file reply to the writ petition, directed them to do so. Thereupon, Shri Harnam Singh, Additional District Magistrate (Land Acquisition)/Officer on Special Duty (Land Acquisition) NOIDA, District Gautam Budh Nagar filed counter affidavit on behalf of respondent Nos.1 to 3. In paragraph 10 of his affidavit, Shri Harnam Singh has attempted to justify invoking of the urgency clause by making the following assertions:

> "That in invoking the urgency clause the State Government has taken into consideration the following factors:-
>
> i) Greater Noida Industrial Development Authority was constituted under the U.P. Industrial Area Development Act, 1976 to promote Industrial and Urban Development in the Area. The acquired land was

urgently required by the Development Authority for planned Industrial Development of the area.

ii) That the land in the adjoining villages were already acquired by the Greater Noida Industrial Development Authority. Thus, the acquired land was urgently required for continuity of infrastructure services and planned Industrial Development of the Area. If, the proposed land was not acquired immediately and delay in this regard would lead to encroachments and would adversely affect the Planned Industrial Development of the Area.

iii) That the acquired land was required for overall development i.e. construction of roads, laying of sewerages, providing electricity etc. in the area and the said scheme has been duly approved by the state government.

iv) That the acquired land consists of 246 plots numbers with 392 recorded tenure holders. If objections are to be invited and hearing be given to such large number of tenure holders, it would take long time to dispose of the objections thereof and would hamper the planned development of the area.

v) That reputed industrial houses who are interested in investing in the State and in case the land is not readily available, they might move to other states and such a move would adversely affect the employment opportunities in the State."

Shri Harnam Singh also controverted the appellants' plea for exemption by stating that the constructions made by them on land of Khasra Nos.101 and 399 were insignificant and the construction raised on Khasra No.394 is not part of village Abadi.

10. Shri Manoj Kumar Singh, Tehsildar filed a separate affidavit on behalf of Respondent No.4 and justified the invoking of urgency clause by asserting that large tracts of land were acquired for industrial development of the district. According to him, as per the policy of industrial development of the State Government, the land is required to be allotted to industrial houses.

11. On 8.11.2010, **Shri Dinesh Dwivedi** learned senior counsel for the State made a request for permission to file additional affidavit with some documents. His request was accepted. Thereafter, the respondents filed an affidavit of Shri Sushil Kumar Chaubey, Tehsildar, Land Acquisition, Gautam Budh Nagar along with eight documents of which seven have been collectively marked as Annexure A-1. The first of the documents marked Annexure A-1 is copy of letter dated 25.2.2008 sent by the Commissioner and Director, Directorate of Land Acquisition, Revenue Board, U.P. to the Special Secretary, Industrial Development on the subject of issuance of notification under Sections 4 and 17 of the Act for acquisition of lands measuring 205.0288 hectares of village Makora. The second document is an undated letter signed by Deputy Chief Executive Officer, Greater Noida, Collector, Gautam Budh Nagar and four other officers/officials. The next document has been described as comments/certificate on the issues raised in Government Order No.5261/77-4-06-251N/06 dated 21.12.2006 with regard to proposal for acquisition of 205.0288 hectares lands in village Makora.

This document is accompanied by seven forms containing various particulars. The third document is communication dated 29.10.2007 sent by the Commissioner, Meerut Division, Meerut to the District Magistrate, Gautam Budh Nagar conveying the consent of the Divisional Land Utility Committee for the acquisition of lands of five villages including Makora. This letter is accompanied by minutes of the meeting of the Divisional Land Utility Committee held on 29.10.2007. The fifth document is form No.43A-1. The sixth document is communication dated 22.2.2008 sent by Collector, Land Acquisition/Special Land Acquisition Officer, Greater Noida. The last document which forms part of Annexure A-1 is form No.16 showing the list of properties having constructions etc. Annexure A-2 is copy of letter dated 31.10.2008 sent by the Director, Directorate of Land Acquisition to the Special Secretary, Industrial Development.

12. Shri N.P.Singh, learned counsel for the appellants argued that the impugned order is liable to be set aside because the High Court failed to consider the issues raised in the writ petition in a correct perspective. Learned counsel submitted that the appellants had specifically pleaded that there was no valid ground to invoke the urgency clause contained in Section 17(1) and to dispense with the application of Section 5-A but the High Court did not even call upon the respondents to file counter affidavit and brushed aside the challenge to the acquisition proceeding on a wholly untenable

premise that the affidavit filed in support of the writ petition was laconic. Learned counsel further argued that the purpose for which land was acquired i.e. planned industrial development of the district did not justify invoking of the urgency provisions and denial of opportunity to the appellants and other land owners to file objections under Section 5-A (1) and to be heard by the Collector in terms of the mandate of Section 5-A (2). In support of his argument, learned counsel relied upon the judgments in **Narayan Govind Gavate v. State of Maharashtra** (1977) 1 SCC 133 and **Esso Fabs Private Limited v. State of Haryana** (2009) 2 SCC 377. Another argument of the learned counsel is that the High Court misdirected itself in summarily dismissing the writ petition ignoring the substantive plea of discrimination raised by the appellants.

13. Shri Dinesh Dwivedi, learned senior counsel appearing for the respondents urged that this Court should not nullify the acquisition at the instance of the appellants because the pleadings filed before the High Court were not supported by proper affidavit. Shri Dwivedi argued that the High Court was justified in non-suiting the appellants because they did not produce any evidence to effectively challenge the invoking of urgency provision contained in Section 17(1). Learned senior counsel emphasized that the satisfaction envisaged in Section 17(1) is purely subjective and the Court cannot review the decision taken by the State Government to invoke

the urgency clause. He submitted that planned industrial development of District Gautam Budh Nagar is being undertaken in consonance with the policy decision taken by the State Government and the appellants cannot be heard to make a grievance against the acquisition of their land because they will be duly compensated. In support of his argument, Shri Dwivedi relied upon the judgment of this Court in **State of U.P. v. Pista Devi** (1986) 4 SCC 251 and **Chameli Singh v. State of U.P.** (1996) 2 SCC 549. Learned senior counsel further submitted that the appellants' land cannot be released from acquisition because that will result in frustrating the objective of planned industrial development of the district. On the issue of discrimination, Shri Dwivedi argued that even if the land belonging to some persons has been illegally left out from acquisition, the appellants are not entitled to a direction that their land should also be released.

14. The first issue which needs to be addressed is whether the High Court was justified in non-suiting the appellants on the ground that they had not raised a specific plea supported by a proper affidavit to question the decision taken by the State Government to invoke Section 17(1) and 17(4) of the Act. We shall also consider an ancillary issue as to whether the appellants had succeeded in prima facie proving that there was no justification to invoke the urgency clause and to dispense with the inquiry envisaged under Section 5-A.

15. At the outset, we record our disapproval of the casual manner in which the High Court disposed of the writ petition without even calling upon the respondents to file counter affidavit and produce the relevant records. A reading of the averments contained in paragraphs 11 and 16 and grounds A and F of the writ petition, which have been extracted hereinabove coupled with the appellants' assertion that the acquisition of their land was vitiated due to discrimination inasmuch as land belonging to influential persons had been left out from acquisition, but their land was acquired in total disregard of the policy of the State Government to leave out land on which dwelling units had already been constructed, show that they had succeeded in making out a strong case for deeper examination of the issues raised in the writ petition and the High Court committed serious error by summarily non-suiting them.

16. The history of land acquisition legislations shows that in Eighteenth Century, Bengal Regulation I of 1824, Act I of 1850, Act VI of 1857, Act XXII of 1863, Act X of 1870, Bombay Act No. XXVIII of 1839, Bombay Act No. XVII of 1850, Madras Act No. XX of 1852 and Madras Act No.1 of 1854 were enacted to facilitate the acquisition of land and other immovable properties for roads, canals, and other public purposes by paying the amount to be determined by the arbitrators. In 1870, the Land Acquisition Act was

enacted to provide for proper valuation of the acquired land. That Act envisaged that if the person having interest in land is not agreeable to part with possession by accepting the amount offered to him, then the Collector may make a reference to the Civil Court. The 1870 Act also envisaged appointment of assessors to assist the Civil Court. If the Court and the assessor did not agree on the amount then an appeal could be filed in the High Court. This mechanism proved ineffective because lot of time was consumed in litigation. With a view to overcome this problem, the legislature enacted the Act on the line of the English Lands Clauses Consolidation Act, 1845. However, the land owners or persons having interest in land did not have any say in the acquisition process either under pre-1984 legislations or the 1984 Act (un-amended). They could raise objection only qua the amount of compensation and matters connected therewith. The absence of opportunity to raise objection against the acquisition of land was resented by those who were deprived of their land. To redress this grievance, Section 5A was inserted in the Act by amending Act No.38 of 1923. The statement of Objects and Reasons contained in Bill No.29 of 1923, which led to enactment of the amending Act read as under:

> "The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under Section 6 of the Act,

> that any land is needed for a public purpose unless time has been allowed after the notification under Section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government."

17. The Act, which was enacted more than 116 years ago for facilitating the acquisition of land and other immovable properties for construction of roads, canals, railways etc., has been frequently used in the post independence era for different public purposes like laying of roads, construction of bridges, dams and buildings of various public establishments/institutions, planned development of urban areas, providing of houses to different sections of the society and for developing residential colonies/sectors. However, in the recent years, the country has witnessed a new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi-storied complexes, commercial centers and for setting up industrial units. Similarly, large scale acquisitions have been made on behalf of the companies by invoking the provisions contained in Part VII of the Act.

18. The resultant effect of these acquisitions is that the land owners, who were doing agricultural operations and other ancillary activities in rural areas, have been deprived of the only source of their livelihood.

Majority of them do not have any idea about their constitutional and legal rights, which can be enforced by availing the constitutional remedies under Articles 32 and 226 of the Constitution. They reconcile with deprivation of land by accepting the amount of compensation offered by the Government and by thinking that it is their fate and destiny determined by God. Even those who get semblance of education are neither conversant with the functioning of the State apparatus nor they can access the records prepared by the concerned authorities as a prelude to the acquisition of land by invoking Section 4 with or without the aid of Section 17(1) and/or 17(4). Therefore, while examining the land owner's challenge to the acquisition of land in a petition filed under Article 226 of the Constitution, the High Court should not adopt a pedantic approach, as has been done in the present case, and decide the matter keeping in view the constitutional goals of social and economic justice and the fact that even though the right to property is no longer a fundamental right, the same continues to be an important constitutional right and in terms of Article 300-A, no person can be deprived of his property except by authority of law. In cases where the acquisition is made by invoking Section 4 read with Section 17(1) and/or 17(4), the High Court should insist upon filing of reply affidavit by the respondents and production of the relevant records and carefully scrutinize the same before pronouncing upon legality of the impugned notification/action

because a negative result without examining the relevant records to find out whether the competent authority had formed a bona fide opinion on the issue of invoking the urgency provision and excluding the application of Section 5-A is likely to make the land owner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when land is required to meet really emergent situations like those enumerated in Section 17(2). If the acquisition is intended to benefit private person(s) and the provisions contained in Section 17(1) and/or 17(4) are invoked, then scrutiny of the justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land, the pleadings should be liberally construed and relief should not be denied to the petitioner by applying the technical rules of procedure embodied in the Code of Civil Procedure and other procedural laws. In this context it will be profitable to notice the observations made by this Court in **Authorised Officer, Thanjavur v. S Naganatha Ayyar** (1979) 3 SCC 466, which are as under:

> "……It is true that Judges are constitutional invigilators and statutory interpreters; but they are also responsive and responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of

> statutory interpretation in the developing countries so that courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme."

19. We may now advert to the ancillary question whether the High Court was justified in non suiting the appellants on the ground that they failed to discharge the primary burden of proving that the State Government had invoked Section 17(1) and 17(4) without application of mind to the relevant considerations. In this context, it is apposite to observe that while dealing with challenge to the acquisition of land belonging to those who suffer from handicaps of poverty, illiteracy and ignorance and do not have the resources to access the material relied upon by the functionaries of the State and its agencies for forming an opinion or recording a satisfaction that the urgency provisions contained in Section 17(1) should be resorted to and/or the enquiry envisaged under Section 5A should be dispensed with, the High Court should not literally apply the abstract rules of burden of proof enshrined in the Evidence Act. It is too much to expect from the rustic villagers, who are not conversant with the intricacies of law and functioning of the judicial system in our country to first obtain relevant information and records from the concerned State authorities and then present skillfully drafted petition for enforcement of his legal and/or constitutional rights. The

Court should also bear in mind that the relevant records are always in the exclusive possession/domain of the authorities of the State and/or its agencies. Therefore, an assertion by the appellants that there was no urgency in the acquisition of land; that the concerned authorities did not apply mind to the relevant factors and records and arbitrarily invoked the urgency provisions and thereby denied him the minimum opportunity of hearing in terms of Section 5-A(1) and (2), should be treated as sufficient for calling upon the respondents to file their response and produce the relevant records to justify the invoking of urgency provisions.

20. In **Narayan Govind Gavate v. State of Maharashtra** (supra), the three-Judge Bench of this Court examined the correctness of the judgment of the Bombay High Court whereby the acquisition of land by the State Government by issuing notification under Section 4 read with Section 17(1) and 17(4) for development and utilisation as residential and industrial area was quashed. The High Court held that the purpose of acquisition was a genuine public purpose but quashed the notifications by observing that the burden of proving the existence of circumstances which could justify invoking of urgency clause was on the State, which it had failed to discharge. Some of the observations made by the High Court, which have been extracted in paragraphs 11 and 12 of the judgment of this Court, are reproduced below.

"When the formation of an opinion or the satisfaction of an authority is subjective but is a condition precedent to the exercise of a power, the challenge to the formation of such opinion or to such satisfaction is limited, in law, to three points only. It can be challenged, firstly, on the ground of mala fides; secondly, on the ground that the authority which formed that opinion or which arrived at such satisfaction did not apply its mind to the material on which it formed the opinion or arrived at the satisfaction, and, thirdly, that the material on which it formed its opinion or reached the satisfaction was so insufficient that no man could reasonably reach that conclusion. So far as the third point is concerned, no court of law can, as in an appeal, consider that, on the material placed before the authority, the authority was justified in reaching its conclusion. The court can interfere only in such cases where there was no material at all or the material was so insufficient that no man could have reasonably reached that conclusion.

In the case before us the petitioner has stated in the petition more than once that the urgency clause had been applied without any valid reason. The urgency clause in respect of each of the said two notifications concerning the lands in Groups 1 and 2 is contained in the relative Section 4 notification itself. The public purpose stated in the notification is 'for development and utilization of the said lands as an industrial and residential area'. To start with, this statement itself is vague, in the sense that it is not clear whether the development and utilization of the lands referred to in that statement was confined to the lands mentioned in the schedule to the notification or it applied to a wider area of which such lands formed only a part. So far as the affidavit in reply is concerned, no facts whatever are stated. The affidavit only states that the authority i.e. the Commissioner of the Bombay Division was satisfied that the possession of the said lands was urgently required for the purpose of carrying out the said development. Even Mr Setalvad conceded that the affidavit does not contain a statement of facts on which the authority was satisfied or on which it formed its opinion. It is, therefore, quite clear that the respondents have failed to bring on record any material

> whatever on which the respondents formed the opinion mentioned in the two notifications. The notifications themselves show that they concern many lands other than those falling in the said first and third groups. It is not possible to know what was the development for which the lands were being acquired, much less is it possible to know what were the circumstances which caused urgency in the taking of possession of such lands. We have held that the burden of proving such circumstances, at least prima facie is on the respondents. As the respondents have brought no relevant material on the record, the respondents have failed to discharge that burden. We must, in conclusion, hold that the urgency provision under Section 17(4) was not validly resorted to."
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> (emphasis supplied)

While dealing with the argument of the State that it was for the petitioner to prove that there was no material to justify invoking of the urgency clause, this Court observed:

> "We do not think that a question relating to burden of proof is always free from difficulty or is quite so simple as it is sought to be made out here. Indeed, the apparent simplicity of a question relating to presumptions and burdens of proof, which have to be always viewed together is often deceptive. Over simplification of such questions leads to erroneous statements and misapplications of the law."

The Court then referred to the judgment in **Woolmington v. Director Public Prosecutions,** 1935 AC 462, extensively quoted from **Phipson on Evidence (11th Edn)**, noticed Sections 101 to 106 of the Evidence Act and observed:

"Coming back to the cases before us, we find that the High Court had correctly stated the grounds on which even a subjective opinion as to the existence of the need to take action under Section 17(4) of the Act can be challenged on certain limited grounds. But, as soon as we speak of a challenge we have to bear in mind the general burdens laid down by Sections 101 and 102 of the Evidence Act. It is for the petitioner to substantiate the grounds of his challenge. This means that the petitioner has to either lead evidence or show that some evidence has come from the side of the respondents to indicate that his challenge to a notification or order is made good. If he does not succeed in discharging that duty his petition will fail. But, is that the position in the cases before us? We find that, although the High Court had stated the question before it to be one which "narrows down to the point as to the burden of proof" yet, it had analysed the evidence sufficiently before it to reach the conclusion that the urgency provision under Section 17(4) had not been validly resorted to.

… … …

… We think that the original or stable onus laid down by Section 101 and Section 102 of the Evidence Act cannot be shifted by the use of Section 106 of the Evidence Act, although the particular onus of providing facts and circumstances lying especially within the knowledge of the official who formed the opinion which resulted in the notification under Section 17 (4) of the Act rests upon that official. The recital, if it is not defective, may obviate the need to look further. But, there may be circumstances in the case which impel the court to look beyond it. And, at that stage, Section 106 Evidence Act can be invoked by the party assailing an order or notification. It is most unsafe in such cases for the official or authority concerned to rest content which non-disclosure of facts especially within his or its knowledge by relying on the sufficiency of a recital. Such an attitude may itself justify further judicial scrutiny.

… … …

In the cases before us, if the total evidence from whichever side any of it may have come, was insufficient

> to enable the petitioners to discharge their general or stable onus, their petitions could not succeed. On the other hand, if, in addition to the bare assertions made by the petitioners, that the urgency contemplated by Section 17(4) did not exist, there were other facts and circumstances, including the failure of the State to indicate facts and circumstances which it could have easily disclosed if they existed, the petitioners could be held to have discharged their general onus.
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> … … …
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> It is also clear that, even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori, the court may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the court will interfere."

The Court finally held as under:

> "……There is no indication whatsoever in the affidavit filed on behalf of the State the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry under Section5A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under Section 5A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under Section 5A of the Act. It is certainly a case in

> which the recital was at least defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry under Section 5A of the Act and that the mind of the Commissioner was applied to this essential question. It seems to us that the High Court correctly applied the provisions of Section 106 of the Evidence Act to place the burden upon the State to prove those special circumstances, although it also appears to us that the High Court was quite correct in stating its view in such a manner as to make it appear that some part of the initial burden of the petitioners under Sections 101 and 102 of the Evidence Act had been displaced by the failure of the State to discharge its duty under Section 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts especially within the knowledge of its officials, which rested upon it under Section 106 of the Evidence Act, taken together with the attendant facts and circumstances including the contents of recitals, had enabled the petitioners to discharge their burden under Sections 101 and 102 of the Evidence Act."
>
> (emphasis supplied)

21. The ratio of the aforesaid judgment was recently followed by the two-Judge Bench in **Anand Singh v. State of Uttar Pradesh** (2010) 11 SCC 242.

22. We shall now consider whether there was any valid ground or justification for invoking the urgency provision contained in Section 17(1) and to exclude the application of Section 5A for the acquisition of land for

planned industrial development of the district. Sections 4, 5-A (as amended), 6 and 17 of the Act which have bearing on this question read as under:

> "**4. Publication of preliminary notification and power 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 authorized by such Government in this behalf, and for his 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 crop, 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.

5A. Hearing of objections. - (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days 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-section (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 authorized 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 section 4, sub-section (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 purpose 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 section 5A, sub-section (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 authorized 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 section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), -

(i) xx xx xx xx
(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 section 4, sub-section (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 manner hereinafter appearing.

17. Special powers in case of urgency. – (1) In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1) take possession of any 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 river-side 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-section (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 that time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and from any other damage sustained by them caused by such sudden dispossession and not excepted in section 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-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (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 some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (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-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of 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-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1).

Section 17 has been amended five times by the Uttar Pradesh legislature. However, the only amendment which is relevant for deciding this case is the insertion of proviso to Section 17(4) vide Uttar Pradesh Act No.8 of 1974. That proviso reads as under:

> "Provided that where in the case of any land, notification under section 4, sub-section (1) has been published in the Official Gazette on or after September 24, 1984 but before January 11, 1989, and the appropriate Government has under this sub-section directed that the provisions of section 5A shall not apply, a declaration under section 6 in respect of the land may be made either simultaneously with, or at any time after, the publication in the Official Gazette of the notification under section 4, sub-section (1)."

23. **ANALYSIS OF THE PROVISIONS:**

Section 4(1) lays down that 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, then a notification to that effect is required to be published in the Official Gazette and two daily newspapers having circulation in the locality. Of these, one paper has to be in the regional language. A duty is also cast on the Collector, as defined in Section

3(c), to cause public notice of the substance of such notification to be given at convenient places in the locality. The last date of publication and giving of public notice is treated as the date of publication of the notification. Section 4(2) lays down that after publication of the notification under Section 4(1), any officer authorised by the Government in this behalf, his servants or workmen can enter upon and survey and take levels of any land in the locality or to dig or bore into the sub-soil and to do all other acts necessary for ascertaining that land is suitable for the purpose of acquisition. The concerned officer, his servants or workmen can fix the boundaries of land proposed to be acquired and the intended line of the work, if any, proposed to be made on it. They can also mark such levels and boundaries by marks and cutting trenches and cut down and clear any part of any standing crops, fence or jungle for the purpose of completing the survey and taking level, marking of boundaries and line. However, neither the officer nor his servants or workmen can, without the consent of the occupier, enter into any building or upon any enclosed court or garden attached to a dwelling house without giving seven days' notice to the occupier. Section 5A, which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. The Collector is required to give the objector

an opportunity of being heard either in person or by any person authorized by him or by pleader. After hearing the objector (s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under Section 4(1) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) 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 a public purpose, then a declaration to that effect is required to be made under the signatures of a Secretary to the Government or of some officer duly authorised to certify its orders. This section also envisages making of different declarations from time to time in respect of different parcels of land covered by the same notification issued under Section 5(1). In terms of clause (ii) of proviso to Section 6(1), no declaration in respect of any particular land covered by a notification issued under Section 4(1), which is published after 24.9.1989 can be made after expiry of one year from the date of publication of the notification. To put it differently, a declaration is required to be made under Section 6(1) within one year from the date of publication of the notification under Section 4(1). In terms of Section 6(2), every declaration made under Section 6(1) is

required to be published in the official gazette and in two daily newspapers having circulation in the locality in which land proposed to be acquired is situated. Of these, at least one must be in the regional language. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places in the locality. The declaration to be published under Section 6(2) must contain the district or other territorial division in which land is situate, the purpose for which it is needed, its approximate area or a plan is made in respect of land and the place where such plan can be inspected. Section 6 (3) lays down that the declaration made under Section 6(1) shall be conclusive evidence of the fact that land is needed for a 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 and measured and planned (Sections 7 and 8). The next stage as envisaged is issue of public notice and individual notice to the persons interested in land to file their claim for compensation. Section 11 envisages holding of an enquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23. Section 16 lays down that after making an award the Collector can take possession of land which shall thereafter vest in the Government. Section 17(1) postulates taking of possession of land without making an award. If the appropriate Government decides that land proposed to be acquired is urgently needed for a 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 15 days period specified in Section 9 (1). Section 17(4) lays down that in cases where appropriate Government comes to the conclusion that there is existence of an urgency or unforeseen emergency, it can direct that provisions of Section 5-A shall not apply.

24. Before adverting to the precedents in which Section 5A has been interpreted by this Court, it will be useful to notice development of the law relating to the rule of hearing. In the celebrated case of **Cooper v. Wandsworth Board of Works** (1863) 143 ER 414, the principle was stated thus:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".

Therein the District Board had brought down the house of the plaintiff's (Cooper), because he had failed to comply with The Metropolis Local Management Act. The Act required the plaintiff to notify the board seven days before starting to build the house. Cooper argued that even though the board had the legal authority to tear his house down, no person should be deprived of their property without notice. In spite of no express words in the

statute the court recognized the right of hearing before the plaintiff's house built without permission was demolished in the exercise of statutory powers. Byles J stated:

> 'Although there are not positive words in a statute requiring that the party shall be heard, yet the justice of the common law shall supply the omission of the legislature'.

25. Perhaps the best known statement on the right to be heard has come from Lord Loreburn, L.C. in **Board of Education v. Rice** (1911 AC 179 at 182), where he observed:

> "Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds…In such cases… they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such questions as though it were a trial …they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial in their view."

26. In **Ridge v. Baldwin** 1964 AC 40 Lord Reid emphasized on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In **O'Reilly v. Mackman** 1983 2 AC 237, Lord Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of

presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement. In **Lloyd v. Mcmahon** 1987 AC 625 Lord Bridge said:

> "My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

27. In the United States, principles of natural justice usually find support from the Due Process clause of the Constitution. The extent of due process protection required is determined by a number of factors; first the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail.

28. The amplitude, ambit and width of the rule of *audi alteram partem* was lucidly stated by the three-Judge bench in **Sayeedur Rehman v. State of Bihar** (1973) 3 SCC 333 in the following words:

> "11…….This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties."

29. In **Mohinder Singh Gill v. Chief Election Commissioner** (1978) 1 SCC 405, Krishna Iyer J. speaking for himself, Beg CJ and Bhagwati J. highlighted the importance of rule of hearing in the following words:

> **"43.** Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has, many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam — and of Kautilya's Arthasastra — the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our

> jurisprudence has sanctioned its prevalence even like the Anglo-American system.
>
> ….. ….. …..
>
> **48.** Once we understand the soul of the rule as fair play in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more — but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

30. In **Maneka Gandhi v. Union of India** (1978) 1 SCC 248, Bhagwati J. speaking for himself and Untwalia and Fazal Ali JJ. observed:

> "14. ……..The *audi alteram partem* rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law "lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation". Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *audi alteram partem* rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the

> urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the *audi alteram partem* should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."
>
> (emphasis supplied)

31. In **Swadeshi Cotton Mills v. Union of India** (1981) 1 SCC 664 the majority of the three Judge Bench held that rule of *audi alteram partem* must be complied with even when the Government exercises power under Section 18AA of the Industries (Development & Regulation) Act, 1951 which empowers the Central Government to authorise taking over of the management of industrial undertaking. Sarkaria J. speaking for himself and Desai J. referred to the development of law relating to applicability of the rule of *audi alteram partem* to administrative actions, noticed the judgments in **Ridge v. Baldwin** (supra), **A.K. Kraipak vs. Union of India** (1969) 2

SCC 262, **Mohinder Singh Gill v. Union of India** (supra), **Maneka Gandhi v. Union of India** (supra) and **State of Orissa v Dr. Bina Pani Dei** 1967 (2) SCR 625 and quashed the order passed by the Central Government for taking over the management of the industrial undertaking of the appellant on the ground that opportunity of hearing has not been given to the owner of the undertaking and remanded the matter for fresh consideration and compliance of the rule of *audi alteram partem*.

32. In **Munshi Singh v. Union of India** (1973) 2 SCC 337, the three Judge Bench of this 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: [See Section 17(4) of the Acquisition Act.]"

33. In **State of Punjab v. Gurdial Singh** (1980) 2 SCC 471, Krishna Iyer J. emphasized the necessity of reasonableness and fairness in the State action of invoking the urgency provision in the following words:

> "16…….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."

34. In **Shyam Nandan Prasad v. State of Bihar** (1993) 4 SCC 255, this Court reiterated that the compliance of Section 5A is mandatory and observed as under:

> "10……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."

35. The ratio of **Munshi Singh v. Union of India** (supra) has been reiterated and followed in **Union of India v. Mukesh Hans** (2004) 8 SCC 14, **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai** (2005) 7 SCC 627 and **Anand Singh v. State of Uttar Pradesh** (supra).

36. The acquisition of land under Section 4 read with Section 17(1) and/or 17(4) has generated substantial litigation in last 50 years. One of the earliest judgments on the subject is **Nandeshwar Prasad v. The State of Uttar Pradesh** (1964) 3 SCR 425. In that case, the acquisition of land for construction of tenements for the 4th phase of subsidized industrial housing scheme sponsored by the State Government, as also for general improvement and street Scheme No.XX of Kanpur Development Board by issuing notification under Section 4 read with Section 17(1), (1-A) and 17(4) was challenged. The learned Single Judge and the Division Bench of the Allahabad High Court negatived the appellants' challenge by observing that once Section 17 is invoked, there was no necessity to hold enquiry under Section 5A. This Court set aside the order of the Division Bench of the High Court and held:

> "It will be seen that Section 17(1) gives power to the Government to direct the Collector, though no award has been

made under Section11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under Section 17(1), taking possession and vesting which are provided in Section 16 after the award under Section 11 are accelerated and can take place fifteen days after the publication of the notice under Section 9. Then comes Section 17(4) which provides that in case of any land to which the provisions of sub-section (1) are applicable, the Government may direct that the provisions of Section 5-A shall not apply and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4(1). It will be seen that it is not necessary even where the Government makes a direction under Section 17(1) that it should also make a direction under Section 17(4). If the Government makes a direction only under Section 17(1) the procedure under Section 5-A would still have to be followed before a notification under Section 6 is issued, though after that procedure has been followed and a notification under Section 6 is issued the Collector gets the power to take possession of the land after the notice under Section 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under Section 17 (4) that it becomes unnecessary to take action under Section 5-A and make a report thereunder. It may be that generally where an order is made under Section 17(1), an order under Section 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order under Section 17(1) or Section 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand."

(emphasis supplied)

37. In **Raja Anand Brahma Shah v. State of Uttar Pradesh** (1967) 1 SCR 373, the Constitution Bench considered the legality of the acquisition

of 409.6 acres of land in village Markundi Ghurma, Pargana Agori for a public purpose i.e. for limestone quarry. The State Government invoked Section 17(1) and 17(4), dispensed with requirement of hearing envisaged under Section 5-A and directed the Collector and District Magistrate, Mirzapur to take the possession of land. The Allahabad High Court dismissed the writ petition filed by the appellant by observing that the Court cannot interfere with the subjective satisfaction reached by the State Government on the issue of urgency. This Court agreed with the High Court that the acquisition was for a public purpose but held that the expression of opinion by the State Government on the issue of invoking urgency provision can be challenged on the ground of non application of mind or mala fides. The Court relied upon the judgments in **King Emperor v. Shibnath Banerjee**, Criminal Appeal No.110 of 1966 decided on July 27, 1966; **Jaichand Lal Sethia v. State of West Bengal** (1958) 1 WLR 546; **Estate and Trust Agencies Ltd. v. Singapore Improvement Trust** (1914) 1 Ch 438; **Ross Clunis v. Papadopoullos** 44 1A 117 and **R. v. Australian Stevedoring Industry Board** 39 1A 133 and observed:

> "It is true that the opinion of the State Government which is a condition for the exercise of the power under Section 17 (4) of the Act, is subjective and a court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government under Section 17(4). The legal position has been explained by the Judicial Committee in King Emperor v. Shibnath Banerjee and by this Court in a recent case – Jaichand Lal Sethia v. State of West Bengal. But even though the power of the State Government

> has been formulated under Section 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a court of law if it could be shown that the State Government never applied it mind to the matter or that the action of the State Government is mala fide. If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of Section 17 are applicable, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the notification of the State Government under Section 17 (4) of the Act directing that the provisions of Section 5-A shall not apply to the land is ultra vires."
>
> (emphasis supplied)

38. In **Narayan Govind Gavate v. State of Maharashtra** (supra), this Court while approving the judgment of the Bombay High Court, which quashed the acquisition made under Section 4 read with Section 17(1) and 17(4) held as under:

> "38. Now, the purpose of Section 17(4) of the Act is, obviously, not merely to confine action under it to waste and arable land but also to situations in which an inquiry under Section 5-A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A which has to be considered.
>
> 40. In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such

> action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under Section 5-A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under Section 5-A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under Section 5-A of the Act.
>
> 42. All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquiries under Section 5-A of the Act……..”
>
> (emphasis supplied)

39. The next judgment which deserves to be mentioned is **Om Prakash v State of U.P.** (supra). In 1976, NOIDA acquired large tracts of land in different villages of Ghaziabad District including village Chhalera Banger for planned industrial development of Ghaziabad. On being approached by NOIDA, the State Government invoked Section 17 (1) and 17(4) on the ground that the land was urgently required. In 1987, more lands were acquired from the same village by issuing notification under Section 4. This time the land owners were given opportunity to file their objections and after considering the same, the State Government issued notification under Section 6 for the acquisition of 353 acres land. In 1988, NOIDA submitted

fresh proposal for the acquisition of land belonging to the appellants and others (total land measuring 294.26 acres). The State Government issued notification under Section 4 read with Section 17(1) and 17(4) of the Act clearly indicating therein that Section 5-A was not applicable. The writ petitions filed by the land owners were dismissed by the High Court. After noticing the arguments of the learned counsel for the parties, this Court framed the following questions.

> "1. Whether the State authorities were justified in invoking Section 17(4) of the Act for dispensing with inquiry under Section 5-A of the Act.
>
> 2. In any case, whether the appellants' lands have to be treated as immune from acquisition proceedings on the ground that they were having abadi thereon and were, therefore, governed by the policy decision of the State of U.P. not to acquire such lands.
>
> 3. Whether this Court should refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India in the facts and circumstances of the case.
>
> 4. What final orders."

While dealing with question No.1, the Court noticed the scheme of Section 17, referred to the pleadings of the parties, and the judgments in **State of U.P. v. Pista Devi** (supra), **Narayan Govind Gavate v. State of Maharashtra** (supra), **Rajasthan Housing Board v. Shri Kishan** (1993) 2 SCC 84, **State of Punjab v. Gurdial Singh** (supra), **Nandeshwar Prasad v. U.P. Govt.** (supra), **A.P. Sareen v. State of U.P.** (1997) 9 SCC 359, **Ghaziabad Development Authority v. Jan Kalyan Samiti** (1996) 2 SCC

365, **Jai Narain v. Union of India** (1996) 1 SCC 9 and held that the decision to dispense with the inquiry envisaged under Section 5-A was not based on any real and genuine subjective satisfaction. In the process, the Court noted that in 1989 the State Government had not resorted to Section 17 and the acquisition proceedings were finalized after holding inquiry under Section 5-A and observed:

> "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 5-A 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 AnnexureCA-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."

(emphasis supplied)

40. We may now notice some recent decisions. In **Union of India vs. Mukesh Hans** (supra), this Court interpreted Sections 5-A and 17 and observed:

"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 along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. 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 inquiry. 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 inquiry 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 inquiry in spite of the existence of unforeseen emergency.

33. An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Sections 17(1) and (2), the dispensation with inquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because sub-section (4) of Section 17 itself indicates that the "Government may direct that the provisions of Section 5-A shall not apply" (emphasis supplied) which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry."

(emphasis supplied)

41. In **Union of India v. Krishan Lal Arneja** (2004) 8 SCC 453, this Court approved quashing of the acquisition proceedings by the High Court and observed:

> "16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A 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 Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 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 landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 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)

42. In **Esso Fabs Private Limited vs. State of Haryana** (supra), the Court again dealt with the question whether the State was justified in invoking Section 17(1) and 17(4) and dispensing with the inquiry under Section 5-A and held:

"53. Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of "urgency" and "unforeseen emergency". In case of "urgency" falling under sub-section (1) of Section 17 or of "unforeseen emergency" covered by sub-section (2) of Section 17, special powers may be exercised by appropriate Government but as held by a three-Judge Bench decision before more than four decades in **Nandeshwar Prasad** and reiterated by a three-Judge Bench decision in **Mukesh Hans**, even in such cases, inquiry and hearing of objections under Section 5-A cannot ipso facto be dispensed with unless a notification under sub-section (4) of Section 17 of the Act is issued. The legislative scheme is amply clear which merely enables the appropriate Government to issue such notification under sub-section (4) of Section 17 of the Act dispensing with inquiry under Section 5-A if the Government intends to exercise the said power. The use of the expression "may" in sub-section (4) of Section 17 leaves no room of doubt that it is a discretionary power of the government to direct that the provisions of Section 5-A would not apply to such cases covered by sub-section (1) or (2) of Section 17 of the Act.

54. In our opinion, therefore, the contention of learned counsel for the respondent authorities is not well founded and cannot be upheld that once a case is covered by sub-section (1) or (2) of Section 17 of the Act, sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections under Section 5-A of the Act. Acceptance of such contention or upholding of this argument

> will make sub-section (4) of Section 17 totally otiose, redundant and nugatory."
>
> (emphasis supplied)

43. In **Babu Ram v. State of Haryana** (2009) 10 SCC 115, this Court reversed the judgment of the High Court and quashed the notification issued by the State Government under Section 4 read with Section 17(1) and 17(4) for the acquisition of land for construction of sewage treatment plant. After noticing the judgments in **State of Punjab v. Gurdial Singh** (supra), **Om Prakash v. State of U.P.** (supra) and **Union of India v. Krishan Lal Arneja** (supra), the Court observed:

> "As indicated hereinabove in the various cases cited by Mr.Pradip Ghosh and, in particular, the decision in Krishan Lal Arneja case, in which reference has been made to the observations made by this Court in Om Prakash case, it has been emphasized that a right under Section 5-A is not merely statutory but also has the flavour of fundamental rights under Articles 14 and 19 of the Constitution. Such observations had been made in reference to an observation made in the earlier decision in Gurdial Singh case and keeping in mind the fact that right to property was no longer a fundamental right, an observation was made that even if the right to property was no longer a fundamental right, the observations relating to Article 14 would continue to apply in full force with regard to Section 5-A of the LA Act."

44. In **Anand Singh v. State of U.P.** (supra), the two-Judge Bench considered the question whether the State Government was justified in invoking Section 17(4) for the acquisition of land for residential colony to

be constructed by Gorakhpur Development Authority, Gorakhpur. The Court noted that notifications under Section 4(1) read with Section 17(1) and 17(4) were issued on November 23, 2003 and February 20, 2004 and declaration under Section 6 was issued on December 24, 2004, referred to 16 judicial precedents including those noticed hereinabove and held:

> "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.
>
> 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.
>
> 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.

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.

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.

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."

(emphasis supplied)

45. In Civil Appeal No.2334 of 2011, **Dev Sharan v. State of U.P.**, decided on March 7, 2011, the acquisition of land for construction of district jails was quashed on the ground that there was no valid ground or justification to exclude the application of Section 5-A of the Act and it was observed:

> "…Admittedly, the Land Acquisition Act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.
>
> 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. 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 pubic 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 pre-Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles.
>
> In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law

> cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.
>
> Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts especially the Higher Courts, cannot afford to act as mere umpires. ”

46. To be fair to the respondents, we may also notice the judgments in which the decision of the State to invoke Section 17(1) and/or 17(4) has been upheld. In **State of U.P. v. Pista Devi** (supra), this Court examined the justification of invoking Section 17(1) and 17(4) of the Act for the acquisition of over 662 Bighas land situated in village Mukarrabpur, District Meerut for providing housing accommodation. The two-Judge Bench distinguished the three-Judge Bench judgment in **Narayan Govind Gavate v. State of Maharashtra** (supra), by observing that after that decision, population of India had gone up by hundreds of millions and it was no

longer possible for the Court to take the view that the schemes of development of residential areas do not appear to demand such emergent action as to eliminate summary inquiries under Section 5-A of the Act.

47. In **Rajasthan Housing Board v. Shri Kishan** (supra), this Court set aside the judgment of the majority of Full Bench of the High Court, which had quashed the acquisition of 2570 bighas land by the State Government by invoking Sections 17(1) and 17(4) of the Act for the benefit of appellant Rajasthan Housing Board and observed:

> "The material placed before the Court disclosed that the Government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs 16 crores under a time-bound programme to construct and utilise the said amount by March 31, 1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the Government had formed the said satisfaction viz., that in view of the time-bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. If must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not under

> Section 17(4) but also generally with respect to subjective satisfaction."

48. In **Chameli Singh v. State of U.P.** (supra), the three-Judge Bench upheld the acquisition of land under Sections 17 (1A) and 17(4) by observing that the problem of providing houses to the dalits, tribes and poor needed emergency measures and so long as the problem is not solved and the need of that segment of the society is not fulfilled, the urgency continues to subsist.

49. In **First Land Acquisition Collector v. Nirodhi Prakash Gangoli** (2002) 4 SCC 160, the Court upheld the acquisition of land for Calcutta Medical College under Section 17(1) and 17(4) and observed:

> "By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as the purpose of acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which were under occupation of the students of National Medical College, Calcutta, were obviously badly needed for the College and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Sections 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned judgment that the acquisition is mala fide, must be set aside and we accordingly set aside the same."

50. In **Tika Ram v. State of Uttar Pradesh** (2009) 10 SCC 689, the two-Judge Bench mainly considered the questions relating to constitutional validity of the Uttar Pradesh Act nos. 8 of 1974 and 5 of 1991 by which amendments were made in Section 17 of the Act. An ancillary question considered by the Court was whether the State Government was justified in invoking the urgency provision. The Bench referred to some of the precedents on the subject and refused to quash the acquisition by observing that the acquired land has already been utilized for construction of houses by third parties.

51. In **Nand Kishore Gupta v. State of Uttar Pradesh** (2010) 10 SCC 282, the acquisition of land for construction of Yamuna Expressway was upheld and challenge to the decision of the State Government to dispense with the inquiry was negatived by making the following observations:

> "We have deliberately quoted the above part of the High Court judgment only to show the meticulous care taken by the High Court in examining as to whether there was material before the State Government to dispense with the enquiry under Section 5-A of the Act. We are completely convinced that there was necessity in this Project considering the various reasons like enormousness of the Project, likelihood of the encroachments, number of appellants who would have required to be heard and the time taken for that purpose, and the fact that the Project had lingered already from 2001 till 2008. We do not see any reason why we should take a different view than what is taken by the High Court."

52. What is important to be noted is that in none of the aforementioned judgments, the Court was called upon to examine the legality and/or justification of the exercise of power under Section 17(1) and/or 17(4) for the acquisition of land for residential, commercial or industrial purpose. In **State of U.P. v. Pista Devi** (supra), **Rajasthan Housing Board v. Shri Kishan** (supra) and **Chameli Singh v. State of U.P.** (supra), the invoking of urgency provision contained in Section 17(1) and exclusion of Section 5-A was approved by the Court keeping in view the acute problem of housing, which was perceived as a national problem and for the solution of which national housing policy was framed and the imperative of providing cheaper shelter to dalits, tribals and other disadvantaged sections of the society. In **First Land Acquisition Collector v. Nirodhi Prakash Gangoli** (supra), the exercise of power under Section 17 was found to be justified because the land was already in the possession of the medical college and the earlier exercise undertaken by the State for the acquisition of land got frustrated due to intervention of the Court. The factor, which influenced this Court to approve the judgment of the High Court in **Tika Ram v. State of Uttar Pradesh** (supra) was that the acquired land had already been utilized for construction of houses by third parties to whom the plots had been allotted and they were not parties to the litigation. In **Nand Kishore Gupta v. State of U. P.** (supra), the acquisition was upheld because the land was urgently needed for construction of Yamuna Expressway and by the time the matter

was decided by this Court, huge amount had been spent on the project. As against this, the exercise of power under Section 17(1) and/or 17(4) for the acquisition of land for residential, industrial and commercial purposes, construction of sewage treatment plant and district jails was held to be legally impermissible in **Raja Anand Brahma Shah v. State of Uttar Pradesh** (supra), **Narayan Govind Gavate v. State of Maharashtra** (supra), **Om Prakash v. State of U.P.** (supra), **Union of India v. Krishan Lal Arneja** (supra), **Esso Fabs Private Limited v. State of Haryana** (supra), **Babu Ram v. State of Haryana** (supra) and **Anand Singh v. State of Uttar Pradesh** (supra).

53. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. – **Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.,** AIR (1954) SC 119, **Chiranjit Lal**

Chowdhuri v. Union of India AIR (1951) SC 41 and **Jilubhai Nanbhai Khachar v. State of Gujarat** (1995) Supp. (1) SCC 596.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly – **DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana** (2003) 5 SCC 622; **State of Maharashtra v. B.E. Billimoria** (2003) 7 SCC 336 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.

54. The stage is now set for consideration of the issue whether the State Government was justified in invoking the urgency provision contained in Section 17(1) and excluding the application of Section 5-A for the acquisition of land for planned industrial development of District Gautam Budh Nagar. A recapitulation of the facts shows that upon receipt of proposal from the Development Authority, the State Government issued directions to the concerned authorities to take action for the acquisition of land in different villages including village Makora. The comments/certificate signed by three officers, which was submitted in the context of Government Order dated 21.12.2006 was accompanied by several documents including proposal for the acquisition of land, preliminary inquiry report submitted by the Amin, Land Acquisition, copies of khasra

khatauni and lay out plan, 10 per cent of the estimated compensation and a host of other documents. In the note dated nil jointly signed by Deputy Chief Executive Officer, Greater Noida, Collector, Gautam Budh Nagar and four other officers/officials, the following factors were cited in justification of invoking the urgency provisions:

(a) The area was notified under Uttar Pradesh Industrial Areas Development Act, 1976 for planned industrial development.

(b) If there is any delay in the acquisition of land then the same is likely to be encroached and that will adversely affect the concept of planned industrial development of the district.

(c) Large tracts of land of the nearby villages have already been acquired and in respect of some villages, the acquisition proceedings are under progress.

(d) The Development Authority urgently requires land for overall development, i.e. construction of roads, laying of sewerages, providing electricity, etc. in the area.

(e) The development scheme has been duly approved by the State Government but the work has been stalled due to non-acquisition of land of village Makora.

(f) Numerous reputed and leading industrial units of the country want to invest in the State of Uttar Pradesh and, therefore, it is

extremely urgent and necessary that land is acquired immediately.

(g) If land is not made available to the incoming leading and reputed industrial concerns of the country, then they will definitely establish their units in other States and if this happens, then it will adversely affect employment opportunities in the State and will also go against the investment policy of the Government.

(h) If written/oral objections are invited from the farmers and are scrutinized, then it will take unprecedented long time and disposal thereof will hamper planned development of the area.

(i) As per the provisions of the Act, there shall be at least one year's time gap between publication of the notifications under Sections 4 and 17 and Section 6.

55. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government under Section 17(1) because the acquisition is primarily meant to cater private interest in the name of industrial development of the district. It is neither the pleaded case of the respondents nor any evidence has been produced before the Court to show that the State Government and/or agencies/instrumentalities of the State are intending to establish industrial

units on the acquired land either by itself or through its agencies/instrumentalities. The respondents have justified the invoking of urgency provisions by making assertions, which are usually made in such cases by the executive authorities i.e. the inflow of funds in the State in the form of investment by private entrepreneurs and availability of larger employment opportunities to the people of the area. However, we do not find any plausible reason to accept this tailor-made justification for approving the impugned action which has resulted in depriving the appellants' of their constitutional right to property. Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Section 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on computer screen. It needs lot of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investment in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/instrumentalities would give them two to three years' to put up their factories, establishments etc. Therefore, time required for ensuring compliance of the provisions contained in Section 5-A cannot, by any stretch of imagination, be portrayed as delay which will frustrate the purpose of

acquisition. In this context, it is apposite to note that the time limit for filing objection under Section 5-A (1) is only 30 days from the date of publication of the notification under Section 4(1). Of course, in terms of sub-section (2), the Collector is required to give opportunity of hearing to the objector and submit report to the Government after making such further inquiry, as he thinks necessary. This procedure is likely to consume some time, but as has been well said, "Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law."

56. In this case, the Development Authority sent proposal some time in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December, 2006 but it took one year and almost three months to the State Government to issue notification under Section 4 read with Section 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making inquiry under sub-section (2) of Section 5-A would have defeated the object of acquisition.

57. The apprehension of the respondents that delay in the acquisition of land will lead to enormous encroachment is totally unfounded. It is beyond the comprehension of any person of ordinary prudence to think that the land owners would encroach their own land with a view to frustrate the concept of planned industrial development of the district.

58 The perception of the respondents that there should be atleast one year's time gap between the issue of notifications under Sections 4 and 6 is clearly misconceived. The time limit of one year specified in clause (ii)) of the proviso to Section 6(1) is the outer limit for issue of declaration. This necessarily means that the State Government can complete the exercise under Sections 5-A and 6 in a shorter period.

59. The only possible conclusion which can be drawn from the above discussion is that there was no real and substantive urgency which could justify invoking of the urgency provision under Section 17(1) and in any case, there was no warrant to exclude the application of Section 5-A which, as mentioned above, represent the statutory embodiment of the rule of *audi alteram partem*.

60. We also find merit in the appellants' plea that the acquisition of their land is vitiated due to violation of the doctrine of equality enshrined in

Article 14 of the Constitution. A reading of the survey report shows that the committee constituted by the State Government had recommended release of land measuring 18.9725 hectares. Many parcels of land were released from acquisition because the land owners had already raised constructions and were using the same as dwelling units. A large chunk of land measuring 4.3840 hectares was not acquired apparently because the same belong to an ex-member of the legislative assembly. The appellants had also raised constructions on their land and were using the same for residential and agricultural purposes. Why their land was not left out from acquisition has not been explained in the counter affidavit filed by the respondents. The High Court should have treated this as sufficient for recording a finding that the respondents had adopted the policy of pick and choose in acquiring some parcels of land and this amounted to violation of Article 14 of the Constitution. Indeed it has not been pleaded by the respondents that the appellants cannot invoke the doctrine of equality because the other parcels of land were illegally left out from acquisition.

61. The argument of the learned senior counsel for the respondents that the Court may not annul the impugned acquisition because land of other villages had already been acquired and other land owners of village Makora have not come forward to challenge the acquisition of their land cannot be entertained and the Court cannot refuse to protect the legal and constitutional

rights of the appellants' merely because the others have not come forward to challenge the illegitimate exercise of power by the State Government. It is quite possible that others may have, due to sheer poverty, ignorance and similar handicaps not been able to avail legal remedies for protection of their rights, but that cannot be made basis to deny what is due to the appellants.

62. In the result, the appeal is allowed. The impugned order is set aside and the writ petition filed by the appellants is allowed. Respondent No.1 is directed to pay cost of Rs. 5,00,000/- to the appellants for forcing unwarranted litigation on them. It is, however, made clear that the respondents shall be free to proceed from the stage of Section 4 notification and take appropriate action after complying with Section 5-A(1) and (2) of the Act. It is needless to say if the appellants' feel aggrieved by the fresh exercise undertaken by the State Government then they shall be free to avail appropriate legal remedy.

……J.
[G.S. Singhvi]

……..J.
[Asok Kumar Ganguly]

New Delhi;
April 15, 2011.