Reserved on 31.05.2019
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Court No. - 29

Case :- WRIT - C No. - 64926 of 2011

Petitioner :- Rajeev And Others
Respondent :- State Of U.P.And Others
Counsel for Petitioner :- Shiv Kant Mihsra
Counsel for Respondent :- C.S.C.,Ramendra Pratap Singh

and

Case :- WRIT - C No. - 29430 of 2017

Petitioner :- Rakesh
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- M J Akhtar,V.M. Zaidi
Counsel for Respondent :- C.S.C.,Shivam Yadav

and

Case :- WRIT - C No. - 61779 of 2011

Petitioner :- Ranjeet And Others
Respondent :- State Of U.P. And Others
Counsel for Petitioner :- Pankaj Dubey,Adarsh Bhushan,Kamlesh Kumar Mishra,Shiv Kant Mishra
Counsel for Respondent :- C.S.C.,Ramendra Pratap Singh

and

Case :- WRIT - C No. - 1339 of 2012

Petitioner :- Ram Ratan And Others
Respondent :- State Of U.P. And Others
Counsel for Petitioner :- Shiv Kant Mishra
Counsel for Respondent :- C.S.C.,Ramendra Pratap Singh

and

Case :- WRIT - C No. - 1348 of 2012

Petitioner :- Yaspal And Others
Respondent :- State Of U.P. And Others
Counsel for Petitioner :- Shiv Kant Mishra,Randhir Jain
Counsel for Respondent :- C.S.C.,Rajesh Kr. Dubey,Ramendra Pratap Singh,Vijay Shyam Bhasker

and

Case :- WRIT - C No. - 18482 of 2013

Petitioner :- Ram Prasad And 3 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Pankaj Dubey
Counsel for Respondent :- C.S.C.,Shivam Yadav

and

Case :- WRIT - C No. - 37409 of 2013

Petitioner :- Bhuley
Respondent :- State Of U.P. Thru Chief Secy. And 3 Others
Counsel for Petitioner :- Shiv Kant Mishra
Counsel for Respondent :- C.S.C.,Shivam Yadav

and

Case :- WRIT - C No. - 51980 of 2013

Petitioner :- Kanhaiya Lal And 2 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Shiv Kant Mishra,Kamlesh Kumar Mishra
Counsel for Respondent :- C.S.C.,Shivam Yadav

and

Case :- WRIT - C No. - 65614 of 2013

Petitioner :- Ravindra Kumar And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Pankaj Dubey
Counsel for Respondent :- C.S.C.,Shivam Yadav

and

Case :- WRIT - C No. - 26928 of 2014

Petitioner :- Jasmal Singh And 5 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Shiv Kant Mishra
Counsel for Respondent :- C.S.C.,Shivam Yadav

and

Case :- WRIT - C No. - 63412 of 2014

Petitioner :- Raje And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Shiv Kant Mishra
Counsel for Respondent :- C.S.C.,Shivam Yadav

Hon'ble Pankaj Mithal,J.
Hon'ble Prakash Padia,J.

All these 11 writ petitions relate to the acquisition of land of

village Begumpur, Pargana Dankaur, Teshil Sadar, District Gautam Buddh Nagar.

The State of U.P. vide notification dated 07.11.2007 issued under Section 4 of the Land Acquisition Act, 1894 (*hereinafter referred to as "Act"*) proposed to acquire 108.233 hectares of land of the aforesaid village for the planned industrial development through New Okhla Industrial Development Authority (NOIDA).

In issuing the aforesaid notification, the State Government opined that as there is urgency for acquisition and the provisions of sub-section (1) and (2) of Section 17 are applicable, the holding of an enquiry or hearing of objections to the proposed acquisition as provided under Section 5-A of the Act be dispensed with by virtue of powers conferred under sub-section (4) of Section 17 of the Act.

The aforesaid notification was followed by a declaration under Section 6 of the Act dated 17.03.2008 which stated that the land is required for the planned development in district Gautam Buddh Nagar through NOIDA.

The possession of the 7.559 hectares of acquired land was taken over on 07.06.2008 and the possession of 100.64 hectares of land was taken over on 15.06.2013. Since there were two possession memos, two separate awards were made under Section 11 of the Act on 12.01.2011 and 31.12.2013 in respect of the above two pieces of land.

The two awards provide that most of the tenure holders whose land had been notified for acquisition, have agreed for receiving the compensation in accordance with Uttar Pradesh (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 *(hereinafter referred to as "Karar Niyamawali")*.

The award dated 12.01.2011 offered compensation at the lump sum rate of Rs. 870/- per square meter to the normal tenure-holders and @ Rs. 1,000/- per square meter to the ancestral tenure holders

who agreed to accept compensation as per the *Karar Niyamawali*. The other tenure holders who declined to receive compensation as per the Karar Niyamawali, were offered compensation @ Rs. 135.28/- per square meter with other statutory benefits, such as 30% solatium, 12% additional amount and interest, etc. on the basis of the exemplar sale deed No. 11 dated 28.04.2007.

The award dated 31.12.2013 awarded compensation to the normal tenure holders @ Rs. 1,490/- per square meter & @ Rs. 1,295/- per square meter to the ancestral tenure holders as per the *Karar Niyamawali* and @ Rs. 135.28/- per square meter to those who refused to accept compensation as per the *Karar Niyamawali.*

It may not be out of context to mention that the notification issued under Section 4 of the Act was challenged by the NOIDA Global Special Economic Zone (SEZ) Pvt. Ltd. by filing writ petition No. 7880 of 2008 wherein High Court on 18.02.2008 directed the parties for the maintenance of *status-quo*. The aforesaid writ petition was transferred to the Apex Court and was subsequently withdrawn on 03.08.2012. It is on account of order of *status-quo* operating therein that the possession of 100.64 hectares of land involved therein could not be taken up immediately.

The petitioners in these petitions have challenged the aforesaid acquisition proceedings i.e. the notification issued under Section 4 dated 07.11.2007 and the declaration made under Section 6 of the Act dated 17.03.2008 on the ground that their valuable rights to the property cannot be taken away in violation of Article 300-A of the Constitution of India without giving an opportunity of hearing to them to oppose the proposed acquisition as contemplated by Section 5-A of the Act.

In other words, their grievance is that as there was no urgency to acquire the land, therefore, the State Government is not justified in

dispensing with the enquiry/hearing under Section 5-A of the Act.

The State Government contends that the land was needed urgently for public purpose. There was sufficient material on the basis of which subjective satisfaction was recorded. No prejudice has been caused to the petitioners by the dispensation of the enquiry under Section 5-A of the Act as grant of such opportunity is not an empty formality. The acquisition cannot be held to be bad on mere technicality.

On behalf of NOIDA, it has been contended that after possession was delivered to it, the acquired land has been developed. Most of the tenure-holders, i.e. 65% have accepted the compensation and it is too late in the day to challenge the aforesaid acquisition.

We have heard Sri H.N. Singh, Sri V.M. Zaidi and Sri V.K. Singh, all Senior Counsel and Sri Shiv Kant Mishra on behalf of petitioners in different writ petitions, Sri M.C. Chaturvedi, Additional Advocate General and Sri Ramendra Pratap Singh have been heard on behalf of the State and NOIDA respectively.

The basic argument advanced on behalf of petitioners is that there was no urgency to acquire the land in question and in the absence of any material to establish any such urgency, the State Government dispensed with the enquiry/hearing under Section 5-A of the Act in a routine and a casual manner without application of mind. The invocation of urgency under sub-section (1)/sub-section (2) of Section 17 and Section 17 (4) of the Act is a colourable exercise of power with the malafide intention to convey the acquired land to the private developers.

In addition to the above, Sri Shiv Kant Mishra contended that the State of U.P. was not even sure for what purpose the land was needed to be acquired. In the notification under Section 4 of the Act, the purpose was stated to be planned industrial development whereas

in the declaration under Section 6 of the Act, it was simply stated to be planned development in district Gautam Buddh Nagar.

The respondents have contended that the writ petitions suffer from delay and laches. They are not even maintainable as most of the tenure-holders have accepted the compensation that too on the basis of the *Karar Niyamawali*. The State Government has exercised the power under Section 17 (4) of the Act on the basis of the material on record and the satisfaction so recorded is not open to judicial review. The petitioners have not disclosed any possible objection which they could have taken to the proposed acquisition and as such they have not suffered any prejudice if the land has been acquired without hearing them so as to warrant exercise of extraordinary jurisdiction.

In the light of the above rival contentions, the following two points are before us for adjudication-:

(i) Whether the proceedings for acquisition would stand vitiated and the state authorities were not justified in invoking Section 17(4) read with sub-section (1) and (2) of Section 17 of the Act so as to dispense with the enquiry/hearing of objections under Section 5-A of the Act and;

(ii) Whether the High Court in exercise of its extraordinary discretionary under Article 226 could be justified in interfering with the acquisition in the facts and circumstances of the case.

The right to property which at one point of time used to be the fundamental right is now simply a constitutional right under Section 300-A of the Constitution of India (hereinafter referred to as *"Constitution"*). It provides that no person shall be deprived of his property save by authority of law. Therefore, a property of a person cannot be taken over or acquired by any person or the State without following the procedure that may be prescribed by the relevant enactment.

The aforesaid right to property though simply a constitutional right but is akin to a fundamental right and at the same time is also a valuable human right. Therefore, no person can be deprived of his aforesaid right save by authority of law which implicitly includes the right of hearing. In view of the above, Section 5-A of the Act acquires much greater importance as it gives flavour of a statutory right to the right of hearing before depriving a person of his property. It provides that any person interested in any land which is notified for acquisition has a right to object to the acquisition of it and may file objections before the Collector in writing within the time specified. In case any objections are so filed, the Collector is obliged to give him an opportunity of hearing and only after hearing the objections and making any further enquiry which he deems necessary, submit a report to the Government containing his recommendations on the objections whereupon the Government would take final decision with regard to the acquisition of the land.

In simple terms, a person interested or a person whose land is proposed to be acquired is entitle to file objections regarding proposed acquisition before the Collector who is obliged to give personal hearing to the objector and then to submit a report to the State Government. The State Government thereupon takes a final decision in the matter before issuing a declaration under Section 6 of the Act. This is the minimum which has been provided as a safety valve before depriving a person of his aforesaid valuable right of property.

The said right of hearing, irrespective of Section 5-A of the Act is even otherwise available to the person concerned as the most valuable right of the person i.e. the right to property which is akin to a fundamental right and has been recognized as a human right as well can not be taken away without affording opportunity of hearing. Such a right of hearing is inherent as it visits the person with grave civil consequences having the effect of depriving a person of his property.

The aforesaid right can be dispensed with only in accordance with the procedure provided under the law.

Ordinarily, no one much less the tenure-holders are liable to eviction from the land proposed to be acquired without offering compensation. The final declaration to acquire the land can not also be published unless an enquiry contemplated under Section 5-A of the Act is completed and the objectors are given opportunity of hearing.

The Act, however, vide Section 17 provides that in cases of urgency, the State Government can direct the Collector to take possession of any land needed for public purpose even though award has not been made under Section 11 of the Act. It further provides that in cases of urgency or unforeseen emergency, the State Government

may dispense with the enquiry or the hearing of objections under Section 5-A and proceed to make a declaration under Section 6 of the Act at any point of time after issuance of notification under Section 4 of the Act.

The relevant provision of Section 17 which are material for our purpose are reproduced-:

> ***17. Special powers in cases of urgency-****:*
>
> *(1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [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.

(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).

A bare reading of the aforesaid provisions would reveal that in cases of urgency alone as an exception to the general rule, the Government can direct the Collector for taking possession of the land notified to be acquired even before making of the award and proceed for the declaration to be made under Section 6 of the Act at any time after the issuance of the notification under Section 4 of the Act by dispensing with the enquiry/hearing under Section 5-A of the Act.

In ***Om Prakash***[1], the Apex Court dealing with a similar controversy opined that planned development of a city or town does not invariably justify invocation of Section 17 (4) of the Act nor even

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1 ***Om Prakash and another Vs. State of U.P. and others, 1998 (6) SCC 1***

the possibility of encroachment over the land is a question which is germane to the urgency to acquire the land and to dispense with the enquiry under Section 5-A of the Act. It also holds that in the absence of any material before the state authorities to justify urgency, the provisions of Section 17 (4) of the Act can not be invoked so as not to apply Section 5-A of the Act.

It is tirite to mention here that according to the settled principles where land is acquired by invoking Section 17 (1) and (4) of the Act, the challenge to such acquisition on the ground of non-existence of urgency is not to be thrown out *in-lemini* rather the Court should insist upon filing of counter affidavit by the respondents and for the production of the relevant records. It should carefully examine the reply and the records before coming to any conclusion with regard to the impugned notifications which alone would reveal whether the State Government had formed a *bonafide* opinion on the issue of invoking the urgency provision and excluding the application of Section 5-A of the Act. This becomes all the more necessary where the petitioners assert that there was no urgency to acquire the land and that the State Government had not applied its mind to the relevant factors so as to invoke the urgency provisions which have been used in an arbitrary manner depriving them with the opportunity of hearing.

In ***Radhey Shyam's case***[2] where again the issue was whether the State Government was justified in invoking the urgency clause and dispensing with the enquiry under Section 5-A of the Act in acquiring the land, the Apex Court after elaborate discussion on each aspect of the matter enunciated the following principles-:

> *(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*

2 ***Radhey Shyam and others Vs. State of U.P. 2011 (5) SCC 553***

account of public exigency and for public good.

(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.

(iii) However, 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 landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17 (1) read with Section 17 (4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be

acquired is not a public purpose at all or that the exercise of power is vitiated due to malafides or that the authorities concerned 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 Section 17 (4) 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 Section 17(1) or 17(2). In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A (1) and (2) is not at all warranted in such matters.

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

In ***Darshan Lal Nagpal***[3], it has been held that compulsory acquisition of the property of an individual is a serious matter and has grave repercussions on his constitutional right and he cannot be

3 ***Darshan Lal Nagpal (dead) by Lrs. Vs. Government of NCT of Delhi and others, 2012 (2) SCC 327***

deprived of his property without the sanction of law. Therefore, State must exercise the power to acquire the land with great care and circumspection more particularly where urgency provisions are invoked and Section 5-A is not made applicable. This is so as sometimes compulsory acquisition of land is likely to make the tenure-holders or the land owners landless. The Court also observed that the rule of *audi-alteram partem* i.e. the rule of hearing itself provides that the person affected by the acquisition of the land must have a reasonable opportunity of being heard and the hearing must be a genuine one and not an empty public relation exercise. Thus, it was held that the invocation of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months and in this regard evidence has to be adduced by the State authorities who are in possession of the relevant record pertaining to the proposed acquisition.

In the aforesaid case, the Court found that the documents produced by the parties do not contain anything from which it can be inferred that any conscious decision was taken to dispense with the applicability of Section 5-A of the Act i.e. the right of the land owners to file objections against the proposed acquisition and of being heard before making any recommendations for the purposes of final acquisition.

In the petitions before us, we refer to the pleadings of Writ Petition No. 64926 of 2011. It clearly pleads that the provisions of Section 17 (1) and (4) of the Act have been invoked without there being any urgency and without application of mind so as to dispense with the enquiry under Section 5-A of the Act.

Apart from the pleadings to the above effect contained in paragraph 6 of the writ petition, paragraph 8 of the writ petition categorically asserts that as the land was not surveyed before acquisition, there was certainly no material before the State

Government to enable it to form an opinion that there was urgency in the matter so as not to apply Section 5-A of the Act. It has further been stated in paragraph 9 of the writ petition that there was no urgency in the matter of such a nature which would have caused any loss or prejudice if the proceedings for acquisition would have been delayed for some time for the purposes of enquiry.

The State authorities i.e. the respondents No. 1, 2 and 3 in their counter affidavit apart from explaining the factual aspects relating to the acquisition proceedings have not stated anything to establish the urgency or have referred to any material on the basis of which the State may have formed the opinion for not applying Section 5-A of the Act. The only averments in that regard are contained in paragraph 11 of the counter affidavit wherein it has been stated that before sending the proposal for acquisition of land, entire proposed area was surveyed and since the land was urgently required for public purpose i.e. the planned industrial development, the provisions of urgency under Section 17 were invoked and the enquiry under Section 5-A of the Act was dispensed with. The averment made in the said paragraph also emphasizes that there was sufficient material before the State Government justifying the invocation of urgency clause and it was only after examining the record and on subjective satisfaction that the urgency provisions were invoked and Section 5-A was held to be inapplicable.

The aforesaid reply of the State fails to mention the date or the relevant time on which the land was surveyed and what was the material on record to justify the dispensation of enquiry under Section 5-A of the Act. There is nothing in the reply to establish any urgency to acquire the land.

Respondent No.4 NOIDA in its reply to the aforesaid writ petition has not referred to any urgency on its part to acquire the land. It has not even mentioned when any proposal to acquire the said land

was submitted before the State Government and as to what was the material on record placed by it or any other authority before the State so as to permit invocation of Section 17 of the Act.

The NOIDA even in the supplementary affidavit has not adverted to any factual or legal aspect with regard to urgency for acquiring the land or to any material in that regard except for orally submitting that there was danger of the land being encroached upon frustrating the purpose of acquisition, therefore, there was an urgent need to acquire and to take possession of the said land.

The State of U.P. produced the original record relating to the acquisition of the aforesaid land. The record reveals that one Sri Tanveer Zafar Ali who was the then Deputy Chief Executive Officer, NOIDA vide his letter dated 23.08.2005 addressed to the Additional District Magistrate (Land Acquisition), Gautam Buddh Nagar stated that the proposal to acquire the aforesaid land in 4 copies is being sent. It may be processed at war-footing and the notification be issued under Section 4 and 17 of the Act on priority basis.

The aforesaid letter encloses with it as many as 22 formats starting from Form No. I to Form No. XXII which includes the draft of the notification as well as the declaration. However, neither the said letter of proposal nor any other document enclosed with it mentions any reason for the immediate acquisition and possession of the land proposed to be acquired. It does not even refer to any material which may indicate the urgency for acquisition so as to dispense with the provisions of Section 5-A of the Act.

Form No. X enclosed with the aforesaid proposal is slightly relevant for our purpose as it mentions that the land is required for the scheme of the NOIDA which is to be completed without any delay and therefore it is necessary to acquire and to take possession of the same by utilizing the provisions of Section 17 of the Act and

dispensing with the provisions of Section 5 of the Act, but again it is completely silent as to the reason of urgency or as to why the said scheme is to be completed without any delay or if there is any delay due to holding an enquiry under Section 5-A of the Act, how it will prejudice and damage the purpose of acquisition.

The aforesaid form is signed by Supervisor Kanoongo and Tehsildar, NOIDA and also states that the committee has surveyed the land but fails to mention the date of survey. The report of the Survey Committee is also not available with it.

The aforesaid proposal does not give any indication as to why the acquisition of the land is urgent and the urgency is of such an extreme nature that holding of an enquiry under Section 5-A of the Act would, in some way, frustrate the purpose of acquisition and as such it is necessary not to apply Section 5-A of the Act. The statement that the scheme for which the land is being acquired is to be completed without any delay is also without any basis. There is no explanation or reason as to why the scheme has to be completed without any delay or that there is urgency to complete it.

We have perused the entire record which contains documents up to the month of August, 2018 but apart from the above proposal and the documents as mentioned above, we do not find any document or material which was placed before the State Government to justify the urgency for the acquisition of the land. However, the District Magistrate, Gautam Buddh Nagar while forwarding the said proposal for the acquisition of the land to the Director, Land Acquisition Directorate, Board of Revenue, U.P., Lucknow vide its letter dated 20.09.2006 has again submitted the Forms enclosed with the original proposal and after Form No. IX and before Form No. X has inserted an undated letter signed by Lekhpal, Land Inspector, Naib Tehsildar, Tehsildar, Administrative Officer and Additional District Magistrate, Land Acquisition, NOIDA requesting for applying the provisions of

Section 17 of the Act in issuing notification under Section 4 of the Act. The said letter after narrating certain facts which are not germane to the urgency to acquire it states that looking to the facts mentioned therein, a notification under Section 4 read with Section 17 of the Act is required to be published.

The contents of the said letter are reproduced hereinbelow-:

ग्राम का नाम बेगमपुर परगना दनकौर तहसील सदर

जिला गौतमबुद्धनगर

धारा 4/17 के औचित्य की टिप्पणी

नवीन ओखला औद्योगिक विकास प्राधिकरण की योजनानुसार औद्योगिक क्षेत्र के विकास एवं सड़कों व सीवरेज, विद्युत उपलब्ध कराये जाने का कार्य अपेक्षित है। इसी प्रकार जो क्षेत्र प्राधिकरण की औद्योगिक योजना में प्रस्तावित है, उसके लिये आवंटन न होने के कारण कार्य रुका है। आवेदक उस भूमि का आवंटन चाहते है। जो इस समय भूमि अधिग्रहण होने के कारण नही हो पा रहा है। आवेदकों में विशेष रुप से विदेशों की प्रतिष्ठित औद्योगिक संस्थायें है। जो अपनी पूंजी निवेश उ0प्र0 के क्षेत्र में काफी मात्रा में करना चाहती है। अतः उनको भूमि उनकी योजनानुसार अविलम्ब उपलब्ध कराये जाना अत्यंत आवश्यक है। अगर इन इकाईयों को यह भूमि उनकी आवश्यकतानुसार उपलब्ध नही करायी जाती है तो यह इकाईयाँ अन्य राज्यों में अपनी औद्योगिक इकाईयाँ स्थापित कर लेंगी। अतएव, यह प्रयास किया जा रहा है कि भूमि उपलब्ध कराये जाने के आधार पर कोई इकाई उ0प्र0 राज्य के इस क्षेत्र से दूसरे राज्य में न जाने पायें तभी इस क्षेत्र का औद्योगिक विकास समुचित रुप से सम्भव हो पायेगा।

अतः जनपद गौतमबुद्धनगर में नवीन ओखला औद्योगिक विकास प्राधिकरण के माध्यम से सुनियोजित विकास हेतु भूमि का अर्जन किया जाना अत्यंत आवश्यक है। अतः राजस्व ग्राम बेगमपुर परगना दनकौर तहसील सदर जनपद गौतमबुद्धनगर की 108.223 हे0 भूमि का अधिग्रहण किया जाना है। अधिग्रहण हेतु अनुमानित प्रतिकर की 10 प्रतिशत धनराशि अर्जन निकाय से प्राप्त करके अपर जिलाधिकारी, भू0अ0 द्वारा निर्धारित लेखा शीर्षक में जमा की जा चुकी है। प्रस्तावित भूमि में कोई धार्मिक स्थल/स्मारक आदि नही बताया गया है। ग्राम बेगमपुर में अर्जन से कुल 231 परिवार प्रभावित होंगे। अर्जन के फलस्वरुप 85 कृषक भूमिहीन बताये गये है। प्रस्तावित भूमि में अनुसूचित जाति/जनजाति के खातेदारों की संख्या 05 है। छोटे खातेदारों की संख्या 105 है। प्राधिकरण पर कोई प्रतिकर/डिक्रीटल की धनराशि बकाया न होने का प्रमाणपत्र अपर जिलाधिकारी, भू0अ0 द्वारा दिया गया है। उक्त को दृष्टिगत रखते हुए चयनित भूमि के अधिग्रहण हेतु भूमि अर्जन अधिनियम, 1894 के अंतर्गत धारा 4 (1) के साथ पठित धारा 17 की अधिसूचना निर्गत कराया जाना प्रस्तावित है।

लेखपाल	*भू0निरीक्षक नायब*	*तहसीलदार*	*तहसीलदार*	*प्रशासनिक अधिकारी*
नोएडा	*नोएडा*	*नोएडा*	*नोएडा*	*नोएडा*

अपर जिला मजिस्ट्रेट (भू0अ0), नोएडा, गौतमबुद्धनगर

In addition to the above, there is one another letter dated 27.09.2005 of Sri Tanveer Zafar Ali, Deputy Chief Executive Officer,

NOIDA stating that it is necessary to acquire the above land immediately as there is likelihood of the said land being unauthorizedly encroached upon and chances of illegal constructions which would adversely affect the scheme. Thus, implying that it is necessary that the provisions of Section 17 of the Act be applied and the possession be taken over and handed over to NOIDA forthwith.

The record as produced including the above letter does not reveal any other material which may establish any urgency to acquire the land by ignoring the provisions of Section 5-A of the Act. Thus, by applying the ratio or the principles which have been culled out by the Apex Court in *Radhey Shyam's case,* we have to test whether the aforesaid material is sufficient to establish real urgency to dispense with the requirement of hearing the land holders or the interested persons.

The aforesaid decision categorically lays down that the land of a citizen cannot be acquired without following the mandate of Sections 4, 5-A and 6 of the Act even though the purpose of acquisition may be very laudable in public interest. The urgency provisions can be invoked by the State to deprive the persons interested of their right to be heard only in case of real urgency. The said power is an extraordinary power which can only be exercised when the acquisition cannot brook the delay of even a few weeks or months.

The material on record in no way establishes that there was any urgency of such an extreme nature to exclude the application of Section 5-A of the Act or that if the enquiry would have been allowed to be conducted, it would have frustrated the very purpose of the acquisition. The Government could not have framed any opinion regarding subjective satisfaction about the urgency in the absence of any such material. The mere public purpose of acquisition does not justify the exercise of power under Section 17 of the Act and

exclusion of the rule of *audi alteram partem* which is inherent where a person is likely to be visited with severe civil consequences such as deprivation of his right to property.

The pleadings of the parties, the documents produced by them and the record does not contain anything from which it can be inferred that a conscious decision was taken to dispense with the provisions of Section 5-A of the Act and that there was such a grave urgency to acquire and take possession of the land which could not wait for the enquiry or the hearing of the objections contemplated vide Section 5-A of the Act.

It may be reiterated that the likelihood or possibility of any encroachment or unauthorized construction on the land proposed to be acquired is not at all relevant and germane to establish the urgency to acquire the land as has been held in *Om Prakash* ***(supra)*** by the Apex Court.

Thus, in the absence of any material before the State authorities to justify urgency to acquire the land, we are of the opinion that the State Government applied Section 17 of the Act mechanically without application of mind and had illegally taken away the right of hearing of the persons interested under Section 5-A of the Act without any justification.

In view of the aforesaid facts and circumstances, since the tenure-holders or the person interested have been deprived of the right of hearing on the objections to the proposed acquisition of the land, we are of the opinion that the declaration made under Section 6 of the Act on 17.03.2008 is unsustainable in law.

In connection with the submission that the petitioners are unable to point out any plausible objection to the acquisition and as such denial of opportunity of hearing does not cause any prejudice to them, it is worth noting that the possible objections which the

petitioners could have raised, were to be considered by the authority concerned i.e. the Collector and as such those objections were not necessary to be placed before this Court. The petitioners, therefore, are under no obligation to raise those objections before this Court either by means of the writ petition or otherwise. Any such objections could have been dealt with by the Collector only and it is pointless to raise them before this Court. Thus, the submission is of no avail.

This takes us to the second point as to the scope of the Court in interfering with the acquisition under the facts and circumstances where most of the tenure-holders have accepted the compensation and the land has been developed to a great extent.

The submission that many of the tenure-holders have waived their right to challenge the acquisition proceedings as they have accepted the compensation and have sold their land is devoid of merit. This precise aspect of the matter has been dealt with by the Full Bench of this Court in the case of ***Gajraj***[4]**.** The Court in dealing with a similar proposition relating to the acquisition of land and the jurisdiction of the Court to interfere with such acquisition when the tenure-holders or the person interested have accepted the compensation and have even sold out their land, held that mere acceptance of the compensation and transfer of their land does not mean that such persons have waived their rights to challenge the acquisition proceedings.

In ***P. John***[5], it has been observed that inaction in every case does not lead to an inference of implied consent or acquiescence unless the facts of the individual case are examined. In order to constitute waiver there must be intentional relinquishment of right.

It is important to note that out of the huge track of land which was notified to be acquired, only a very few tenure-holders or person

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4 ***Gajraj and others Vs. State of U.P. and others, 2011 (11) ADJ 1***
5 ***P. John Chandy Company & Co. (P) Ltd. V. John P. Thomas, AIR 2002 SC 2057***

interested have come before the Court to challenge the acquisition on the ground of non-adherence to the principles of natural justice. The rest of the tenure-holders or the persons interested may or may not have accepted the compensation, appears to be satisfied.

In ***Om Prakash (supra)*** itself, it has been observed that the discretionary jurisdiction has to be exercised in the light of the given facts and circumstances of the case and where the acquisition of the most of the land has attained finality, not having been challenged, the notification need not be set aside. That was also a case where the Court came to the conclusion that the provisions of Section 5-A of the Act could not have been dispensed with by invoking Section 17 of the Act.

In the case at hand, it has come on record that the possession of the land was delivered to NOIDA, and that it has been developed and allotted to third parties. Additionally, most of the tenure-holders have accepted compensation according to the *Karar Niyamawali*. Thus, the dispute regarding acquisition that survives is *vis.-a-vis.* the tenure-holders/person interested who have not accepted the compensation as per the *Karar Niyamawali* and are before the Court qua the respondents. These tenure-holders or person interested are very few in number as is reflected from the number of petitions before us. It would not be in public interest to topple the entire acquisition at the behest of these few persons. Therefore, it does not appeal to our conscious to nullify the entire acquisition proceedings except for holding the declaration under Section 6 of the Act to be invalid qua the petitioners herein these petitions only provided they have not accepted compensation as per the *Karar Niyamawali*.

The Court in exercise of its extraordinary discretionary jurisdiction has to dispense with justice in such a manner that it results in justice to all the parties to the *lis* and is in the best interest of the public. Thus, the Court has to maintain an equilibrium between the

statutory rights of an individual and the rights of the people at large keeping in mind the public interest while enforcing the law. In such a situation like this with which we are faced with in this petition, balancing the equities, we feel that interest of justice require not to disturb the acquisition and at the same time to compensate the litigants for the loss they may have suffered due to acquisition of land.

Accordingly, without quashing or disturbing the declaration dated 17.03.2008 issued under Section 6 of the Act, any of the person interested who had not accepted the compensation as per the *Karar Niyamawali* and is before us in this batch of petitions, notwithstanding the fact that the declaration made under Section 6 of the Act is held to be bad, would be entitled to the compensation according to the provisions of the Act as per the rate prevailing on the date of this judgment as the awards in respect of the acquisition were made under the said Act before the enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

All the petitions are ***disposed off*** with directions as above.

The original record submitted on behalf of the State is directed to be returned to the Standing Counsel.

Order Date :- 13.09.2019
Nirmal Sinha