Smt. Manorama Devi and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-25-1994

Reported in : AIR1994All359

Judge : Om Prakash and ;M.P. Kenia, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4(1), 5A, 17,(1), 17(2), 17(1)(4) and 17(4); Uttar Pradesh Krishi Utpadan Samities Act, 1964

Appeal No. : Civil Misc. Writ Petition No. 11374 of 1989 CW 32758 of 1991

Appellant : Smt. Manorama Devi and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Vikram Nath, ;Yatindra Singh ;V.K.S. Chaudhary and ;B.D. Mandhyan, Advs.

Judgement :
ORDER

Om Prakash, J.

1. These writ petitions revolving around one and the same controversy viz. challenging the validity of the two sets of notifications published one after another

under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') in respect of the same land, amply demonstrate that tenure-holders of land sought to be acquired under the Act, for howsoever laudable and urgent purpose, zealously guard their right to land, no more constitutional but legal only, leaving no stone unturned in thwarting the acquisition proceedings and thereby giving rise to hunderd per cent litigation. It is for the legislature to devise such a method with the legal framework for making acqusition lesser painful and disadvantageous as to please the tenure-holders to readily part with their land for the purposes, conducive to the growth and development of the nation without creating legal hurdles. The Krishi Utpadan Mandi Samiti (Samiti for brevity sake) has been struggling hard right from 1984 for having a neet sub-market at Kandhla, district Musaffarnagar, no more a town in oblivion, situate in the agricultural belt of the western Uttar Pradesh known for agricultural productivity, that success has eluded it all these years on account of prolonged and uncertain course of legal battle.

2. The facts as succinctly slated are that petitioners are tenure-holders of plot No. 1133, the toal area of which is 15 bighas, 2 biswas and 5 biswansi, of this are admesuring 14 bighas, 14 biswas and 16 biswansi was sought to be acquired by respondent No. 1 for construction of a new sub-market yard of the Samiti (respondent No. 4) and for that purpose a notification was published by the Government in the Gazette on 15-3-1989 for general information stating that under subsection (1) of Section 4 of the Act the aforesaid land is needed for a public purpose, namely, for the construction of a new sub-market yard of the Samiti under a planned development scheme. The notification further states that the provisions of sub-section (1) of Section 17 of the Act are applicable to the said land, inasmuch as the said land is urgently ..required for the construction of a new sub-market yard of the Samiti under a planned development scheme. The notification further states that the provisions of sub-section (1) of Section 17 of the Act are applicable to the said land, inasmuch as the said land is urgently required for the construction of a new sub-market yard of the Samiti under a planned development scheme and in view of the pressing urgency, it is well necessary to eliminate the delay, likely to be caused by an inquiry under Section 5A of the Act. This is how the Government further directed under sub-section (4) of Section 17 of the Act that the provisions of Section 5A of the Act shall not apply. Later, a

declaration under Section 6 of the Act was published on 30-11-1989. It is not disputed that the notifications published under Section 4 on 15-3-1989 and declaration published under Section 6 on 30-11-1989, both were rescinded by the Government and a notification under Section 4 and a declaration under Section 6 of the Act were published afresh on 19-8-1991 and 18-8-1992 respectively. This fact is fully borne out from the notification dated 19-8-1991. published under Section 4 (Annexure 1 to, the second writ petition), which states that the Governor is pleased to rescind the government notifications dated 15-3-1989 and 30-11-1989. In paragraph 16 of the counter affidavit, filed on behalf of the State in the second writ petition, it is stated that the earlier notification was defective and, therefore, second notification dated 19-8-1991 was published under Section 4. In paragraph 20 of the second writ petition, it is admitted that the previous notifications dated 15-3-1989 and 30-11-1989, published under Sections 4 and 6 of the Act 'suffered from serious errors and have been rescinded by means of notification dated 19-8-1991 .....'. Respondent No. 4, for whose benefit the land is acquired, also pleaded that the first set of notifications was rescinded by the Government, because there was some discrepancy in regard to the description of the subject-matter of the acquisition. This being the admitted position, we need not enter into the details of the error, which crept into the earlier notification.

3. Shri S. N. Varma, learned counsel for the petitioner, urged vehemently though there was no urgency of acquisition, the government illegally professed in both the sets of notifications that there was pressing urgency and, therefore, it was necessary to eliminate the delay likely to be caused by an inquiry under Section 5A of the Act and illegally directed that under sub-section (4) of Section 17 of the Act, the provisions of Section 5A of the Act, shall not apply.

4. The question for consideration is whether from the facts and circumstances of the case and materials available on the record, urgency is established. In the first writ petition, a counter affidavit was filed on behalf of the State by one Salamat Khan, an Ahalmad in the office of the Special Land Acquisition Officer, Muzaffarnagar. In paragraph 15 of the said affidavit, he deposed that the land in question was urgently needed for the construction of the sub-market yard. The Collector, Muzaffarnagar, by letter dated 21-12-1987 wrote to the State

Government for acquiring the land in question applying Section 17(1) of the Act, as the matter was urgent. The Samiti also submitted that the records show that the land in question was urgently needed and certificates justifying applicability of Section 17. By letter dated 21-12-1987 (Annexure 2 to the counter affidavit), Collector, Muzaffarnagar, requested the State Government to acquire the land in question under Sections 4 and 6, read with Section 17(1) of the Act, as that was urgently needed under a planned development scheme. Annexure 3 is a certificate by the Collector, Muzaffarnagar, stating that he was satisfied that the land in question was not being considered in any other matter and that acquisition of land was absolutely necessary to protect the exploitation of the farmers, to provide facilities to them and to ensure that the farmers get proper return of their agricultural produce. In the certificates, (Annexures 4 and 5 to the counter affidavit), the said Collector certified that the land neither belonged to the persons, belonging to Scheduled Caste, nor did that belong to any freedom fighter or ex-military personnel. Annexure 6 to the counter affidavit is a letter dated 13-12-1987, which was addressed by the Chairman of the Samiti to the Special Land Acquisition Officer pressing the need of acquisition of the land in question. By Annexure 7 to this counter affidavit the Secretary and the Chairman of the Samiti urged the Collector that the proceedings for acquisition should be taken by applying Section 17 of the Act, because to that effect, recommendation had been made by the Director of the Mandi Parishad. Annexure 8 to the counter affidavit is the application/proposal made by the Secretary and Chairman of the Samiti for acquiring the land of Khasra No. 1133, admeasuring 14 biswas and 16 biswansi or 7.463 acres for the purpose of construction of the new sub-market yard of the Samiti. By letter dated 13-6-1986 (Annexure 9 to the counter affidavit), the Secretary of the Samiti reiterated that the acquisition of the land was necessary to protect the interest of the farmers and, therefore, Section 17 of the Act should be applied to the acquisition proceedings. All these annexures are part of the counter affidavit, which was filed on behalf of the State in the first writ petition. The urgency has also been reiterated in the counter affidavit filed on behalf of the State in the second writ petition. The question for consideration is whether on these materials, the State Government was justified in dispensing with the requirement of inquiry, contemplated under Section 5A of the Act. It could be taken judicial notice of that in regard to the agricultural produce, there were no proper market facilities. There were innumerable charges, levies and exactions which the agriculturist was required to pay without having any say in the proper utilisation of the amount paid by them. The Government of India and various committees and commissions, appointed to study the condition of agricultural markets in the country, had stressed the need to provide the appropriate market yard for the sale and purchase of agricultural produce. The Planning Commission also stressed long ago in this regard. The U.P. Krishi Utpadan Samities Act, 1964, has been enacted to provide for the regulation of sale and purchase of the agricultural produce and for establishment, superintendence and control of the market,therefore in U.P.. The proposed construction of market and market yard by the Samiti is, therefore, a step forward to ameliorate the conditions of the producer with the representation to them in the Mandi Samiti for fair settlement of dispute relating to their transactions. It is a long felt need, which is said to have been included in the planned development scheme, (see Satyendra Prasad Jain v. State of U.P., 1987 ALJ 965). In the counter affidavit --filed in the second writ petition by the Samiti, it is stated that previously Kandhala was a sub-market yard of Shamti, Kandhla having been declared a separate market area, it has become necessary to acquire land for the construction of a separate market yard of its own; the Samiti made a proposal for acquiring the total area of plot No. 1133, but as there were constructions and a tube-well in the said Khasra number, the proposal was confined only to the land, measuring 14 bighas, 14 bis was and 16 biswansi excluding the construction, tube-well etc; that the land is ideally located and very much suited for the construction of the sub-market yard; that a committee was constituted to select the site of the market yard and that committee selected the land in question for that purpose; that construction of the new market yard at Kandhala becomes necessary, as the existing market at Kandhla is 'in a hapazard condition' non-planned, (sic) having no parking and godown facility or the facility for the stay of producers; market at present suffered from unhygenic conditions and that during rainly season it becomes well nigh impossible for agriculturist to wade through water logged area of the market.

5. India is an agriculture predominant country. It is therefore, the duty of the State to ensure that the agriculturists get fair return of their agricultural produce. It is with

this end in view that the construction of a modern market, having requisite facilities, has become a necessity. No doubt, market of the Samiti is already there at Kandhta, but from the facts, as stated in the counter affidavit by the Samiti in these writ petitions, it is amply clear that the existing market is in a deplorable condition. Considering all these facts and the materials referred to herein before, we unhesitatingly hold that there was urgency when the notifications under Section 4 had been issued and that the State was right in forming the opinion that the provisions of sub-section (1) of Section 17 of the Act are applicable to the land in question, inasmuch as it is urgently required for the construction of a new-market yard of the Samiti under a planned development scheme and that in view of the pressing urgency it was well necessary to eliminate the delay likely to be caused by inquiry under Section 5A of the Act and that the Government was right in further directing under sub-section (4) of Section 17 of the Act that the provisions of Section 5A shall not apply.

6. By now it is well settled that existence of urgency is a matter of subjective satisfaction of the appropriate government and it is not open to the Courts to peep into the propriety or correctness of the satisfaction on an objective consideration of facts. The opinion of the government can only be challenged in a Court of law if it can be shown that the government never applied its mind to the matter or that the action of the government is mala fide. From the materials, referred to hereinbefore, it is amply clear that the State dispensed with the inquiry under Section 5A of the Act only after having applied its mind.

7. Mr. Varma urged that from time to time in various reported decisions, Courts have addressed the aspect of the application by the State Government of its mind not only to the question of the urgency of purpose for acquisition of land but also to the question whether the Urgency was such as to justify dispensing with the inquiry provided for under Section 5A of the Act, under which any person interested in any land, which has been notified under Section 4(1) has been needed or likely to be needed for public purpose or for a company may within thirty days from the date of the publication of the notification (this period of thirty days is, by a State amendr ment, reduced to twenty-one days in its appliction to the State of Uttar Pradesh) object to the acquisition of the land or of any land in the locality

as the case may be. The section makes further provision with regard to the hearing of such objections and clarifies for the purpose of the section a person shall be deemed to be interested in land would be entitled to claim an interest in compensation for the land that was acquired under the Act. Thus, in the case Rajbali v. State of U.P., reported in AIR 1983 All 78, it was noted by the Court that the State Govenment had applied its mind not only to the question whether the urgency was such as to justify dispensing with the inquiry under Section 5A of the Act, which was held by the Court to be essential. Mr. Varma pointed out from the counter affidavit, filed on behalf of the State of Uttar Pradesh, that this application of mind on the part of the State was not to be found anywhere on record before this Court and if anything the affidavit filed by the State seems to point out to the contrary. Mr. Varma stressed that the question of dispensing with Section 5A has to be considered and decided by the State Government and the work cannot be passed to the body for whom acquisition is made.

8. Mr. Varma urged that it is not enough that the Mandi Samiti should come forward with reasons for giving a go-bye to Section 5A; but it is for the State to state and show that they had applied their mind and come to a decision with regard, to dispensing with the applicability of Section 5A of the instant proceedings of acquisition. Significantly, Mr. Varma stressed, the affidavit filed on behalf of the State of Uttar Pradesh does not contain clear cut averments regarding this anywhere. He points out that not a word had been argued on behalf of the State of Uttar Pradesh as and by way of argument and the only argument came on behalf of the learned advocate for the Mandi Samiti. However, in view of the averments is paragraph 17 of the counter affidavit filed by the State, we hold that the State of Uttar Pradesh have indicated, though not in clear terms, that they had applied their mind before coming to the decision with regard to the urgency being of such a nature as to justify the dispensing with the applicability gf Section 5A,

9. Mr. Varma made a serious grievance of the petitioners having been deprived of their right under Section 5A of the Act. From the record he pointed out that in respect of the land, forming subject-matter of the petition, a notification under Section 4 read with Section 17(1)(4) of the Act was issued on the 15th of March, 1989. This resulted in filing a petition, being Civil Misc. Writ Petition No. 11374 of

1989, challenging the said notification on various grounds including the ground of wrong description of land. This was followed by a notification under Section 6 dated the 30th of November, 1989. However, on the 13th of February, 1990, both the aforesaid earlier notifications under Sections 4 and 6 of the Act were withtdrawn and a fresh notification under Section 4 read with Section 17(1)(4) of the Act was issued on the 19th of August, 1991. Pausing here for a moment, Mr. Varma, underlined the fact of the withdrawal of the notification under Sections 4 and 6 of the Act, it took the authorities more than a year and half even for issuing of fresh notification whereas all that was wrong that the earlier notifications, even according to the authorities, was inaccurate/incorrect description of land. What is.more Mr. Varma pointed out that the aforesaid notification under Section 4 read with Section 17(1)(4) and followed by a notification under Section 6 which was issued pending the present petition on the 365th day of issuance of the earlier notification, the notification under Section 6, being issued on the 18th of August, 1992. Based on the aforesaid dates, which, according to Mr. Varma, speak for themselves, Mr. Varma stressed that when the acquiring authorities are themselves in no hurry and take their own time about things with the result that about one year was lost by reason of misdescription or wrong description resulting in the withdrawal of the notifications, -then thereafter it takes over a year and half for the fresh notification under Section 4 read with Section 17(1)(4) to be issued, whereafter a whole year is allowed to elapse before the notification under Section 6 is issued pending the present petition. Mr. Varma submitted that in law it may be permissible on the part of the acquiring authority to permit so much of time to elapse in their taking various' steps in aid of the acquisition proceedings but surely, Mr. Varma, submitted, that this being the sense of urgency demonstrated by them, it is neither fair nor permissible on their part to have effectively deprived the petitioners of their rights under Section 5A of the Act and such deprivation should be discouraged and struck down, Mr. Varma invited our attention to the excuse given by the Mandi Samiti for dispensing Section 5A stating that this was done because it 'will result in delay' (paragraph 19 of the counter affidavit of Makam Singh). Mr. Varma submitted that this facile excuse for taking away a valuable right of the petitioners cannot, in any case ought not to, be made available to a party who, by the very leisurely manner in which it has gone about the job of taking various steps in aid of the acquisition, have divested the matter of all sense of urgency and more so when the laxity on the part of the acquiring body becomes the motivating force for depriving a citizen of a valuable right. However, this is not all --more follows. As pointed out in paragraph 24 of the petittion, according to the office of the Sub-Registrar, Budhana, the plot of land is valued between Rs. 250/-, 300/- per square metres applied that the entire plot is situate in abadi and the commercial purpose. If fact, the petitioners claim to have sold a portion of the plot at the rate of Rs. 400/- per square metres by a sale deed dated the 13th of July 1987, However, even taking the minimum of the aforesaid rate for the purpose of valuation of the plot,the value of the plot sought to be acquired would come to about 1.45 crores. In this behalf, the petitioners have made a reference to the letter dated the 10th of May, 1989, addressed by the Special Land Acquisition Officer to the Director, Mandi Parishad as also to the Chairman of the Mandi Samiti intimating that the land in question was extremely expensive and should not be acquired for the purpose of Mandi Samiti as almost 1.5 crores of rupees would be payable as compensation. The Director, Mandi Pari-shad, by his letter dated the 13th of June, 1990, sent to the District Magistrate, Muzaf-farnagar, inter alia, stated in paragraph 2 thereof that Regional Deputy Director (Administration), Meerut, by his letter dated the 11th of December, 1989, addressed to the District Magistrate, Muzaffarnagar, copy whereof has been forwarded to the Director, Mandi Parishad, stated that by reason of the heavy increase in the compensation payable in respect of the land proposed to be acquired, the Mandi Samiti does not wish to take possession of the land in question and, therefore, the balance of he amount may be returned to the Mandi Samiti after making appropriate deduction therefrom (this presumably having reference to some amount deposited by the Mandi Samiti towards the acquisition of the land). A copy of this letter is enclosed as Annexure 15 to the writ petition. Indeed, as Annexure 1 to the affidevit in rejoinder dated 18th of November, 1991, addressed by Shri K. K. Upadhyay, Additional Director (Administration) of the Rajya Krishi Utpadan Mandi Parishad, to the District Magistrate, Muzaffarnagar, it was in terms stated that the land in question sought to be acquired has been estimated to be of the value of rupees 1.45 crores. Since this land is very expensive hence Director of the Mandi has decided not to acquire this land. By the said letter it was further requested that all the proceedings for the acquisition of the said land be forthwith stopped with intimation to the head office of the Parishad.

10. Mr. Varma argued vehemently that had the petitioners not been deprived of their rights under Section 5A of the Act, the pelitioners would have been in a position to point out the aforesaid facts for consideration along with various other relevant facts, factors and circumstances. Mr. Varma also pointed out by reference to paragraphs 16, 17, 18 and 19 of the counter affidavit of Shri Raja Ram Sharma, an Amin in the office of Special Land Acqusition Officer, filed on behalf of the State of Uttar Pradesh, that all formalities had been completed before the 15th of March, 1989, in spite of this date, given by the State, the State could afford to delay the taking of various steps until as late as 18th of August, 1992, for nearly 3 1/2 years, penalising the petitioners for no fault of theirs. Mr. Varma pointed out that as contrasted with the 3 1/2 years taken by the State as aforesaid, as per the requirement of Section 5A of the Act (had the provisions of Section 5A not being bye-passed) the objections had to be filed, '..... within twenty one days from the date of publication.....', and the same could have taken more than a few months for their final disposal. Bringing out a conflicing picture presented by the three indisputable factors. namely, the delay on the one hand of 314 years on the part of the State as aforesaid, the dispensing with the applicability of the provisions of Section 5A of the Act and the amount of sitting on the fence on the part of the Mandi Samiti and the authorities concerned, as evidenced by the aforesaid letters culminating in the letter dated the 18th of November, 1991, by the Additional Director, Mandi Samities, to the District Magistrate, suggesting that he should 'stop acquisition', Mr. Varma submitted that a gross injustice had been done to the petitioners by dispensing with the provisions of Section 5A of the Act and had there been any application of mind on the part of the authorities, they would not have taken resort to the provisions of Section 17, thus dispensing with the applicability of Section 5A of the Act in a routine and machanical manner. As has already been pointed hereinabove, by now it is well settled that existence of urgency is a matter or subjective satisfaction of the appropriate Government and it is not open to the Courts to go into the question of propriety or correctness of the satisfaction on an objective consideration of the fact. We have, however, recorded Mr. Varma's argument in full. The opinion of the Government can only be

challenged in a Court of law if it can be shown that the Government never applied its mind to the matter or that the action of the Government is mala fide.

11. Mr. Varma then urged that dispensing with the inquiry under Section 5A is mala fide. In paragraph 26(a) of the second writ petition it is stated by the petitioners that the inquiry under Section 5A was dispensed with at the behest of one Shri Raj Kumar a millionaire, who owns a number of cinema houses and other businesses. It is stated that his cinema, 'Raj Palace is adjacent to the acquired land and if the market is constructed on the aquired land, then that would 'supply as a regular feed back to the 'Raj Palace', cinema theatre adjacent to the plot.' This is how the petitioners have pleaded that the notification published under Section 4(1) of the Act, deserves to be quashed. This averment has been completely denied by the respondents in their affidavits. It is stated by the respondents in the counter affidavit that a committee comprising Sub-Divisional Magistrate, Assistant Engineer, Public Works Department and Medical Officer, was set up to select the site of the market and upon its recommendation, the required land was selected. There is no good reason to disbelieve the contention of the respondents in this regard. There is no other averment as to mala fide on behalf of the petitioners.

12. Apart from the aforesaid averment made in the writ petition, Mr. Varma urged that the proposal was made in the year 1984 and second notification under Section 4(1) was published as late as on 19-8-1991, that is, after seven years. The argument is that if urgency were there then publication of notification under Section 4(1) in the official gazette would not have been delayed so much. It is already pointed out that second notification dated 19-8-1991 was necessitated, as the first notification dated 15-3-1989 had to be withdrawn on account of an error having been crept in the description of the land. The first notification was not withdrawn, because the requirement of the land for public prupsoe and the urgency of acquisition ceased to exist, but that was rescinded by the govenment owing to a legal flaw. No doubt there was a gap between the date of propose (sic) first notification under Section 4(1), but no inference can be drawn from such delay that the urgency was not there and the acquisition is mala fide. Since acquisition is done by the Government, delay does take place on account of departmental

internal correspondence.

13. Then Mr. Varma urged that in the first instance, proposal was made for acquiring land admeasuring 10.80 hectares belonging to Jat community but later the requirement was scaled down and proposal was made to acquire much smallar area, belonging to the petitioners. In the counter affidavit both the State and the beneficiary denied in toto that there was ever a proposal for acquiring bigger piece of land admeasuring 10.80 hectares. No proposal relating to acquisition of land admenasuring 10.80 hectares has been filed by the petitioners. Only a sketch map (Annexure 3 to the petition) has been annexed, which does not establish the case of the petitioners that proposal relating to the land of the petitioners was preceded by a proposal relating to 10.80 hactares belonging to Jat community.

14. Lastly. Mr, Varma adverted to a letter dated 10-5-1989 (Annexure 14 of the petition). By this latter, the Special Land Acquisition Officer informed the beneficiary that the total value of the land would come to about 1.5 crores and he, therefore, advised the beneficiary not to pursue the matter any more. Then the Mandi Director sent a reply to the Collector, Muzaffarnag'ar, dated 13-6-1989 (Annexure 15 to the petition) that owing to excessive increase in the estimated value of the acquired land from rupees five lacs to 1.5 crores, a D.O. letter died 19-1 -1990 had been sent by the Mandi Parishad to the Government and he urged the Collector to await the reply thereof. He also states in the said letter that further proceedings should be taken only after the receipt of reply from the Government. Eventually, the Special Land Acquisition Officer determined the price of the land at rupees seven lacs fifty thousand including solatium and interest by letter dated 7-7-1992 (Annexure 2 to the counter affidavit), which was filed to the amendment application made by the petitioners. The argument of Mr. Varma is that when the beneficiary was waivering on account of the exorbitant value of the land on 13-6-1990, that is, before the second notification dated 19-8-1991 having been issued and the value of the land having not been determined until the second notifica-tiondated 19-8-1991 was published, there was no justification for the State Government to dispense with the hearing under Section 5A, Mr. Mandhyan, learned counsel for the Samiti, argued that that the correspondence referred to by

Mr. Varma does not establish mala fide. His contention is that the Samiti is supposed to act in a prudent manner and simply because acquisition was urgent, it could not and should not have paid the compensation for the land which it was not worth of. We find substance in the submission of Mr. Mandhyan, This is matter of great regret that the Special Land Acquisition Officer first estimated the value of the land at about repees five lacs, then escalated it to about Rs. 1.5 crores and then drastically reduced the same to repees seven lacs and fifty thousand. This matter requires serious investigation as to in what circumstances 'the Special Land Acquisition Officer estimated the value of the land as high as about rupees 1.5 crores and then how it was considerably reduced to rupees seven lacs and fifty thousand only. However, the need for acquiring land, which, according to the respondents, was urgent, could not be said to have ceased to exist. All these submissions of Mr. Varma failed to persuade us to accept his contention that the acquisition was mala fide.

15. To point out that there was no urgency, Mr. Varma argued that after the notification having been published Under Section 4(1), no steps were taken by the respondents to take possession of the land and that declaration under Section 6 was published on the last date to save the acquisition procedings from being defeated.

16. It will be seen that the petitioners obtained stay order in the first writ petition vide order dated 4-12-1990 in the following terms:

'In case the petitioners are in possession of the property in dispute, they shall not be dispossessed till 15-1-1991.'

This interim order, undisputably, remained operative until the second writ petition was filed on 14-11-1991, No separate stay order was passed in the second writ petition filed on 14-11-1991, when the Court observed that already there was a stay order in the first writ being Civil Misc. Writ petition No. 11374 of 1989, which was operative. Later, admittedly, the interim order passed in the first writ petition was extended from time to time, it is on account of such stay order, the possession of the land could not be taken by the respondents. No inference, therefore, can be drawn from non-taking of possession that there was no urgency.

17. Then, Mr. Varma vehemently argued that it is not only urgency but the need to dispense with the inquiry under Section 5A has got to be established. He frankly stated before us that he does not dispute the 'urgency' for construction of a new market yard. However, he urged that urgency was not of such a degree as to justify the action of the State to dispense with the inquiry under Section 5A. The scheme of the Act is that when a land is sought to be acquired,theh a noitification to that effect shall be published in the official gezette for general information in the prescribed manner. Section 5A(1) states that any person interested in any land, which has been ntoified under Section 4(1) is needed or is likely to be needed for a public purpose, may within specified time (21 days, as amended by the State of Uttar Pradesh) from the date of the publication of the notification object to the acquisition of land. Sub-section (2) of Section 5A states that every objection under sub-section (1) shall be made to the Collector and he shall give the objector an Opportunity of being heard. Section 17(1) enables the Collector to take possession of any land needed for public purpose even without the award having been made, in cases of urgency whenever the Government so directs such land shall thereupon vest absolutely in the Government. Sub-section (2) of Section 17 also authorises the appropriate Government to acquire immediate possession of any land for the purposes stated therein, which have got to be accomplished withqut having to wait. Sub-section (4) of Section 17 declares that in the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) of subsection (2) are applicable, the appropriate Government may direct that the provisions ok Section 5A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of any land at any time after the publication of the notification under Section 4(1). These provisions enjoin upon the appropriate Government to form opinion regarding the urgency before dispensing with the hearing under Section 5A. Once an appropriate Government is satisfied that acquisition of a land is urgent under subsection (I) or sub-section (2) of Section 17, then it may direct that the provisions of Section 5A shall not apply and a declaration under sub-section (6) can be made straightway after publication of the notification under. Section 4(1). In view of the statutory position as emerging from Section 17 of the Act, we find it difficult to agree with Mr. Varma that urgency is not enough to dispense with the hearing under Section 5A, but the acquiring

authority is enjoined upon further to show that the urgency was of such a degree as to justify taking away the right of hearing. In Ram Naraian Rai v. State of U.P., reported in AIR 1991 All 330, a Division Bench of this Court, taking similar view of the interpretation of Section 17 and Section 5A, held:

'The language of the section does not indicate, that the appropriate Government besides forming the opinion about urgency should form an additional opinion on the need to dispense with the inquiry under Section 5A.'

Even assuming, but not accepting, that the view canvassed by Mr. Varma is correct, on the facts and circumstances of the case, we are fully sataisfied that the urgency was of such a degree as to justify the action of the State in dispensing with the inquiry under Section 5A.

18. To appreciate other submissions of Mr. Varma, it would be useful to scan the case law having bearing on such submissions. In Kasireddy Papaiha v. State of A.P., reported in AIR 1975 AP 269, Chinappa Reddy, J. (as he then was) in his scintillating style observed that greater the delay the more urgent becomes problem. Therefore, the contention of Mr. Varma that proposal for acquiring land was made in the year 1984 and second notification under Section 4(1) was published after seven years on 18-8-1991, urgency, if any, in the beginning, could not be said to have continued, has to be rejected, because by lapse of time, the urgency will not diminish, rather it will augment.

19. In State of U.P. v. Smt. Pista Devi reported in AIR 1986 SC 2025, the Supreme Court held,

'The provision of housing accommodation in the days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5A of the Act.'

When Section 5A can be dispensed with in the case of providing house sites, we fail to understand as to why hearing under Section 5A could not be dispensed with in the case of acquisition of land for constructing a market yard of the Samiti, which is for the benefit of the entire community of the farmers of the area concerned.

20. Also it was held in Pista Devi's case (supra) that the post-notification delay of nearly one year was not by itself sufficient to render the decision taken by State Government under Section 17(1) and (4) at the time of issue of the notification under Section 4(1) of the Act either improper or illegal.

21. In Deepak Pahwa etc. v. Lt. Governor of Delhi reported in AIR 1984 SC 1721, one of the grounds of attack on behalf of the tenure-holders was that if regard is had to the considerable length of time spent on interdepartmental discussion before the notification under Section 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the inquiry under Section 5A of the Act. Their Lordships rejected such contention saying:

'We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that mere prenoti-fication delay would render the invocation of the urgency provisions void.'

22. It will thus appear from these decisions that neither from pre-notification delay nor from post-notification delay, an inference of non-existence of urgency could be drawn. It is undisputed that the instant petitioners filed a writ petition, being Civil Misc. Writ 'Petition No. 219 of 1982, in January, 1988, even before a notification under Section 4(1) was published which was dismissed on 12-1-1988 for the simple reason that no acquisition could be challenged before the notification was published as there was no acquisition before the notification was published. Thereafter the petitioners challenged both the sets of notifications. Legal fight by the tenure-holders and inter-departmental correspondence very often delay the

acquisition proceeding and this is what has happened in the instant case also.

23. In Rajbali v. State of U.P. reported in AIR 1983 All 78, this Court held that, prima facie, the Government is the best Judge for determining which is the more suitable site for achieving the purpose for which acquisition has been started ...... It may be true that the development was not done in the last thirty years, but that could not mean that the purpose of acquisition was not urgent. Merely because that something had not been done in the past did not mean that it was not required to be done urgently at present. If the purpose is urgent, the acquisition would be valid irrespective of the fact that the same could be or ought to have been done earlier.

24. Giving primacy to the purpose, the Supreme Court in the case of Pista Devi (supra) and this Court in the case of Rajbali, held that there was urgency for the acquisition of the land. The purpose of acquisition of land in the case in hand is the construction of a new modern market yard of the Samiti which cannot be said less urgent than providing house site and setting up industries under the planned development scheme.

25. For the reasons, we are of the considered view that the petitioners have failed to establish that the second set of notifications is vitiated on the ground of mala fide and non application of mind. So far as the first set of notifications is concerned, it is suffice to say that these notifications, having already been rescinded by the Government, which fact has been reiterated in the second notification published under Section 4(1) of the Act, the first Writ petition, being Civil Misc. Writ Petition No. 11374 of 1989, has become infructuous and deserves to be dismissed for that reason.

26. In the result, the second writ petition, being Civil Misc. Writ Petition No. 32753 of 1991, fails and is dismissed and Civil Misc. Writ Petition No. 11374 of 1989 is dismissed having become infructuous. There will be no order as to costs.

27. Petitions dismissed.