R. Devendran and ors. Vs. State of Tamil Nadu and ors.

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SooperKanoon Citation : sooperkanoon.com/818340

Court : Chennai

Decided On : Oct-25-1991

Reported in : (1991)2MLJ616

Appellant : R. Devendran and ors.

Respondent : State of Tamil Nadu and ors.

Judgement :
ORDER

S. Govindasamy, J.

1. The petitioners in all these writ petitions have challenged the land acquisition proceedings initiated by the Government to acquire the lands of about an extent of 1655.92 acres or thereabouts under the provisions of the Land Acquisition Act, 1894, hereinafter referred to as 'the Act', for the purpose of setting up an Aromatic Complex and other petro based downstream projects of Madras Refineries Limited, hereinafter referred to as the 'M.R.L.' at the approximate cost of Rs. 2,500 crores, by invoking the urgency provisions of Section 17(1), and (4) of the Act, while issuing Notification under Section 4(1) of the Act. Since the petitioners have raised common grounds in challenging the acquisition proceedings, all the writ petitions were heard and disposed of together.

2. In view of the heavy demand for the lands In Manali Village for setting up of an Aromatic complex and other petro-based downstream projects, close to M.R.L.,

the Government proposed to acquire a large extent of lands situate in six villages viz., Mathur, Manali, Vaikkadu, Amullavoyal, Kosappur and Elanthacheri Villages. The Government constituted an official Committee and that the Committee made a joint inspection of all these villages and, identified the patta and poramboke lands to the extent of 1655 and odd acres for setting up the aforesaid projects. After analysing the various issues like pollution and environmental implications etc., the Committee took a decision and made recommendations to set up the Aromatic complex and other petro based downstream projects with sufficient safeguard therefor. Thereafter, based on the recommendations, the Government by G.O.Ms. No. 648, Industries (MID-I) Department, dated 16.9.1989, accorded administrative sanction for acquisition/transfer of 1655.92 acres of patta and poramboke lands in the aforesaid villages as detailed hereunder under Part II of the Act.

Name of the Village ExtentMathur 488.79 acresKosappur 331.42 acresMullavoya 1304.36 acresVaikkadu 429.33 acresElanthancheri 5.74 acresManali 96.28 acres_____Total extent 1,655.92 acres_____

3. The Government also requested the District Revenue Officer, Chengai-Anna District to send necessary land acquisition proposals for acquisition of the aforesaid lands under the Act. It is also provided therein that out of the total extent of lands ordered for acquisition the expenses towards cost of an extent of 1015 acres of land including establishment charges thereto could be collected from Madras Refineries Limited and in respect of other organisations, as per the present land policy lease rent could be collected from the industries to whom the lands are allotted. It is also specified that the Government nominated SIPCOT Madras, as NODAL AGENCY to coordinate the work relating to the land acquisition and allotment of lands to various industries.

4. Soon after the administrative sanction was accorded for acquisition, the Government received representations from 'the general public and associations pleading for dropping the acquisition proceedings. The Government, after due consideration of the representations, by their Letter No. 590/90-5 (MIDI), dated 7.11.1990 ordered for the exclusion of 49.91 acres of land in Mathur Village and rejected the request for outright dropping of the acquisition of the entire lands in

Mathur Village. The Government considered that the lands under acquisition are intended for setting up a major industrial aromatic complex and other downstream projects at a then estimated cost of Rs. 1,380 crores in the interest of industrial development of the State and of the public at large. It aims at creation of great employment potential both for skilled and unskilled in addition to the economic development of the State. In order to establish such an industrial complex early, It was felt essential to provide all infrastructural facilities such as road, power supply, water etc., which could be done only on entering upon the land intended for the establishment of the industries. The M.R.L., which is one of the major participants of the industrial complex, obtained letter of intent for the project and requested the land required for the establishment of the project urgently. The aim of the Government was to promote employment potential and the consequent economic development in the field of petro chemicals for which the feed stock was then readily available in the adjacent refinery. In order to establish such an industrial complex early, it was felt that all infrastructure facilities should be provided at the earliest point of time. It was also felt that the establishment of an aromatic complex is a major project and that the project could not brook the delay that might 'be occasioned as a result of holding enquiry contemplated under Section 5-A of the Act. The experience in the past shows that in a number of cases the landowners have indulged iii dilatory tactics thereby delaying the enquiry for a long period and that the provision of infrastructural facilities cannot brook the delay as it will lead to escalation of cost and also affect the economic development of the State. The Government considered that any further delay would hamper the setting up of the project early and consequently invoked the urgency provisions of the Act for acquiring the lands in question. In the circumstances, the Government issued Notification under Section 4(1) of the Act, invoking the urgency provisions under Section 17(1) and (4) of the Act under G.O.Ms. Nos. 1387, 1388, 1389 and 1390, Industries (MIDI) Department, dated 4.12.1990; G.O.M's. No. 1244 to 1247, Industries (MIDI) Department, dated 13.11.1990; G.O.Ms. No. 1314 to 1318, Industries (MIDI) Department, dated 20.11.1990 and G.O.Ms. No. 1398 to 1401, Industries (MIDI) Department, dated 4.12.1990 in respect of the lands situated in Mathur Village; G.O.Ms.Nos.1182 and 1183, Industries (MIDI) Department, dated 31.10.1990 in respect of the lands situated in Manali Village; G.O.Ms. No. 963,

Industries (MIDI) Department, dated 12.9.1990 in respect of the lands situated in Vaikkadu Village; G.O.Ms. No. 1263, Industries (MIDI) Department, dated 14.11.1990, G.O.Ms. No. 774, Industries (MIDI) Department, dated 31.7.1990, G.O.Ms. No. 896, Industries (MIDI) Department, dated 27.8.1990, G.O.Ms. No. 903Industries (MIDI) Department, dated 28.8.1990; G.O.Ms. No. 1187 and 1188, Industries (MIDI) Department, dated 31.10.1990; G.O.Ms. No. 964, Industries (MIDI) Department, dated 10.9.1990; G.O.Ms. No. 1197, Industries (MIDI) Department, dated 1.11.1990 and G.O.Ms. No. 1263, Industries (MIDI) Department, dated 14.11.1990 in respect of the lands situated in Amullavoyal Village; G.O.Ms. No. 703, Industries (MIDI) Department, dated 10.7.1990; G.O.Ms. No. 767, Industries (MIDI) Department, dated 30.7.1990; G.O.Ms. No. 749, Industries (MIDI) Department, dated 24.7.1990 and G.O.Ms. No. 769, Industries (MIDI) Department, dated 30.7.1990 in respect of the lands situated in Kosappur Village and the said Government Order runs as follows:

Whereas it appears to the Government of Tamil Nadu that the lands specified in the schedule below and situated in Mathur Village, Saidapet Taluk, Chengai Anna District are needed for the purpose to wit for the purpose of setting up an aromatic complex and downstream projects of Madras Refineries Limited, notice to the effect is hereby given to all to whom it may concern in accordance with the provisions of Sub-section 1 of Section 4 of the Land Acquisition Act, 1894 (Central Act I of 1894)----

And whereas it has become necessary to acquire the immediate possession of the land specified below the Government of Tamil Nadu hereby directs that the lands be acquired under the provisions of Sub-section 1 of Section 17ofthesaid Act.

Now therefore in exercise of the powers conferred in Sub-section 2 of Section 4 of the said Act, the Government of Tamil Nadu hereby authorised the Special Tahsildar (Land Acquisition) Unit VI Aromatic Complex, (M.R.L.) 4, Jeenis Road, Saidapet, Madras-15, his staff and workmen to exercise the powers concurred by the said sub section.

Under Sub-section 4 of Section 17 of the said Act the Government of Tamil Nadu hereby directs that in view of the urgency of the case, the provision of Section 5(a)

of the said Act shall not apply to this case.

In these circumstances, the petitioners in all these writ petitions have filed the above writ petitions for the issue of a writ of certiorari to quash the Notification under Section 4(1) of the Act in the aforesaid Government Orders, including that of G.O.Ms. No. 648, Industries (MID-I) Department, dated 16.9.1989 wherein the Government accorded administrative sanction in this behalf.

5. Mr. R. Gandhi, learned Senior Counsel appearing on behalf of the petitioner in W.P. No. 1444 of 1991 contended that there is a long delay after the Government Order, G.O.Ms. No. 648, Industries (MID-I) Department, dated 16.9.1989 according administrative sanction for acquiring the lands of about an extent of 1655.92 acres of patta and poramboke lands in the villages specified therein, in issuing Notification under Section 4(1) of the Act invoking therein the provisions of Section 17(1) and (4) of the Act. Learned senior counsel further contended that G.O.Ms. No. 648/89, referred to above, do not state any reason to invoke the urgency clause and that the impugned Notifications deprived the petitioners' right to put forth their objections against the proposed acquisition. Learned Senior Counsel further contended that there is really no need to dispense with the enquiry under Section 5-A of the Act and that the existence of urgency is not furnished and is not explained and that the first respondent, viz., the Government had not applied their mind while issuing Notification under Section 4(1) of the Act by invoking emergency provisions such as Section 17(1) and (4) of the Act. Learned senior counsel also contended that in order to invoke the provision of Section 17(1) and (4) of the Act, it is necessary that there should be a separate Notification for dispensing with the provision of Section 5-A of the Act as well as for invocation of Section 17(1) of the Act. Learned Senior Counsel further contended that the Government of India has not yet given its approval for establishment of the proposed aromatic complex and that the acquisition of a large area is over and above the requirement for the proposed industry and that the public purpose specified in the Notification under Section 4(1) of the Act is vague and that the compensation due and payable is not only from the Government or from M.R.L. but from third parties also.

6. Mr. S. Jagadeesan, learned Counsel appearing on behalf of the writ petition in W.P. No. 1855 of 1991, in addition to the submissions made by Mr. R. Gandhi, submitted that there was really no need to dispense with the enquiry under Section 5-A of the Act.

7. Mr. R. Sundaravaradan, learned Counsel appearing on behalf of the petitioner in W.P. No. 1955 of 1991 contended that the setting up of an industry such as aromatic complex in a vast and extended area does not by itself create the urgency in order to invoke the urgency provisions of the Act under Section 17(1) and (4) of the Act and that the right available to a citizen under Section 5-A of the Act is a very valuable right and such right cannot be defeated by invoking the provisions of Section 17(1) and (4) of the Act and that the invocation of the said urgency clauses should have a nexus to the public purpose for which the lands were sought to be acquired, but cannot be related to the vast extent of the area that are sought to be acquired.

8. Mr. R. Subramaniam, learned Counsel appearing on behalf of the writ petitioner in W.P. No. 160 of 1991 contended that the payment of compensation is not only paid by the Government and the M.R.L., but also by third parties and the said contention was not denied and consequently acquisition proceedings under the provision of Part II is not sustainable.

9. Mr. T. Dhanyakumar, learned Counsel appearing for the petitioner in W.P. No. 7882 of 1991 and Mr. K. Selvaraju, learned Counsel appearing for the petitioner in W.P. No. 5495 of 1991 raised similar contentions as those raised by Mr. R. Gandhi and consequently it is not necessary to reiterate the same once again.

10. Ms. Malini Ganesh, learned Counsel appearing for the petitioners in W.P. Nos. 6725 and 6726 of 1991 vehemently contended that the petitioners in W.P. No. 6725 of 1991 viz. Shin-A-Chemical (India) Private Limited, is a company incorporated oh 31.7.1989 and that the main objects of the company are to manufacture, process, trade and otherwise deal in all polymers including expandable polystyrens resin, plastics and all other articles made up of plastics; to manufacture and market all types of insulation products and all polymers and to manufacture or deal in mineral wool, rock wool, glass wool, expanded polystyrens

etc. The said company has planned to set up a unit at Manali for manufacture of 4000 MT of expandable polystyrens with financial and technical collaboration with Shin-A-Chemical Manufacturing Company Limited, that the company had purchased 14.36 acres of land from various owners, that the said company submitted an application on 25.4.1989 to the Director General of Technical Development for the grant of D.G.T.D. Registration notifying the proposed location of their project at Manali, that the DCTD, Government of India, by its letter dated 11.5.1989 required the petitioners to furnish a certificate from the Director of Industries, Government of Tamil Nadu, stating that the proposed location is developed as an industrial area, that the petitioners by their letter dated 22.5.1989 applied to the Director of Industries and Commerce that the Director of Industries and Commerce requested the Government of Tamil Nadu to issue a letter confirming that the location of the project at Manali falls in an industrial area established by the Government prior to 30.6.1988 and also to recommend the grant of D.G.T.D. registration to the applicant, that the Government by its communication dated 4.7.1989 certified accordingly and forwarded its recommendation for the grant of D.G.T.D. registration and that accordingly D.G.T.D. granted registration on 1.11.1989. It is also contended that while the company was proceeding further with the implementation of the said project, the Government issued the impugned notification for acquiring the lands for the aforesaid purpose of setting up aromatic complex and the petro-based downstream projects. Learned Counsel further contended that the petitioner had also obtained D.G.T.D. registration for setting up an industry and while so the initiation of the acquisition proceedings including the lands belonging to the petitioner for the purpose of setting up another factory, would in turn defeat the petitioners' endeavour to put up a factory there. Ms. Malini Ganesh, learned Counsel, apart from the other contentions raised by others as above, further contended that there was no total application of the mind while invoking the urgency provision, that the Central Government has not given its approval for setting up an aromatic complex, that the public purpose specified in the impugned Notification is very vague and uncertain, and that the compensation for the purpose of acquisition is also payable by third parties and that the instant acquisition should have been initiated under Part VII of the Act and hence vitiated.

11. Mr. V. Prakash, learned Counsel appearing for the petitioner in W.P. No. 5046 of 1991 contended that even assuming that the proposed setting up of an aromatic complex in a total area of 1655.92 acres at a total cost of 2,500 crores of rupees provides not only employment, but also develops the economic interest of the State, that cannot defeat the statutory right of the land owners to raise their objections against the proposed acquisition in an enquiry to be held under Section 5-A of the Act and that dispensation of the enquiry under Section 5-A of the Act has to be explained and must be justiciable.

12. Learned Counsel for the petitioner in W.P. No. 3484 of 1981 contended that the petitioner is a company incorporated under the provisions of the Companies Act, that the said company owned and possessed about an extent of 4.83 acres comprised in S. Nos. 178/2, 178/7 to 14, 178/20, 178/28 and 178/29 in Manali Village, that the petitioner is one of the clearing and forwarding and container handling agents at Madras Port, that the petitioner company proposed to undertake container repairs at its project site, that the petitioner obtained land ceiling clearance from Urban Land Ceiling Authorities in G.O.Ms. No. 1721, dated 12.11.1987, that the M.M.D.A. by their letter dated 16.8.1988 under Ref. No. 916/88 approved the planning permission on making a payment of Rs. 42.000 towards approval charges for land and building-vide Receipt No. 14990 dated 1.8.1988, that Manali Council cleared the proposal after payment of Rs. 67,872 vide receipt No. 751/89-90 dated 1.3.1990, that the petitioner thereafter entrusted the work to a contractor, that the construction of the project work as well as warehouse has been in progress, that site office building had been completed and also obtained electricity connection for the office building. It is further contended that the use of the land for industrial purpose is itself a public purpose and when these lands are already used for public purpose, the acquisition of the said land for the public purpose of another company defeats the very purpose of the petitioners setting up an industrial establishment. Learned Counsel further contended that the cost of the project would be about 1.5 crores of rupees and hence the impugned acquisition proceedings in so far as the petitioner's lands are concerned, by invoking the urgency provisions are not sustainable. Learned Counsel reiterated the other contentions put forth by other counsel as mentioned hereinabove. Learned Counsel further fervently put forth the proposition that the Government

had also committed that if the petitioner seeks an alternative site then the Government, if possible, may provide him an alternative site within the industrial complex. At this juncture, learned Counsel contended that even assuming that in the event of the acquisition proceedings are sustainable, the petitioners should be allowed to continue to carry on the project in the same place either by allotting the same land in question in their favour or otherwise drop the acquisition proceedings in so far as the petitioner's lands are concerned or otherwise by providing alternative site within the complex.

13. In reply, learned Advocate General contended that the proposed acquisition is for setting up an aromatic complex and also for petro-based downstream project of M.R.L. that it is for industrial development in public interest which would create greater employment opportunities, that in order to provide infrastructural facilities, such as road, power supply, water etc., by entering upon the lands, the lands under acquisition were needed urgently, that the M.R.L. a major participant of the industrial complex requests that the land is required urgently for establishment of the project with reference to the letter of intent obtained by it, that to provide opportunities for a large number of downstream industries with considerable employment potential and that to promote economic development in the field of petro chemicals for which the feed stock is readily available in the adjacent refinery and that in order to provide infrastructural facilities which cannot brook the delay as it would lead to escalation of cost and affect the economic development of the State the Government initiated acquisition proceedings by invoking the urgency provisions under Section 17(1) and (4) of the act. Learned Advocate General further contended that the public purpose specified in Section 4(1) Notification is very specific viz., for setting up an aromatic complex and also petro-based downstream industries and it is not necessary that details of all other industries should be specifically stated in the said Notification. Learned Advocate General also contended that the intended acquisition is as a result of the planned development, which requires large extent of area in which case, for the reasons aforesaid, the urgency provisions could be invoked.

14. Learned Advocate General also contended that the contribution for payment of compensation is from the State funds, apart from the contribution made by the

M.R.L. which is a Government company in which 85% of its share-holdings belong to the Central Government. Learned Advocate General further contended that paragraph 3 of G.O.Ms. No. 648, Industries (MID-I) Department, dated 16.9.1989 clearly states that out of the total extent of land ordered for acquisition, the expenditure towards the cost of an extent of 1015 acres of land including establishment charges thereto may be collected from M.R.L. and in respect of other organisations as per the present land policy, lease rent may be collected from the Industries to whom the lands are allotted. Learned Advocate General contended that it is clear from the above that the compensation is being paid by the M.R.L. and the Government and no other third party is under an obligation to pay compensation and hence Part VII of the Act will not apply to the present case. Learned Advocate General also contended that in view of the request made by the M.R.L., that they are not in a position to get the renewal of letter of intent, which was renewed from time to time, the Government had to invoke the urgency provisions of the Act It is the specific case of the learned Advocate General that setting up of the aforesaid aromatic complex and petrobased downstream project cannot brook the delay that may be caused, if an enquiry as contemplated under Section 5-A of the Act is proposed to be held.

15. Mr. R. Krishnamurthy, learned Senior Counsel appearing on behalf of MRL., the fourth respondent herein, impleaded at their instance, contended that the said company had applied to the Central Government for grant of letter of intent under the provisions of the Industries (Development and Regulation) Act, 1956 for the establishment of aromatic project. It is also contended that the said MRL., had also selected another joint sector company viz., M/s. Southern Petro Chemicals Corporation Limited (SPIC) as its partner for the aforesaid Aromatic Project which had been duly approved by the Government of India. The Company had required an extent of about 1,600 acres of land. Having regard to the hazardous nature of the product to be handled and the need for transferring large quantities of naphtha and also receiving back the balance stream to the refinery, the Company requested the Government for acquiring about 1,600 acres of land, adjoining the present location of the MRL., in and around Mathur. The Government of India issued a letter of intent for implementing the Aromatic Project in the year 1987 which was allowed initially for a period of one year and Was extended at the

instance of the MRL. MRL explained the circumstances under which the intent was obtained viz. when there was stiff competition among various States competing to, establish a project of this kind in other parts of the country. In these circumstances, the MRL initiated action to acquire the necessary lands as a first step to establish the project and consequently made repeated requests to the State Government for the acquisition of the lands identified by them without any further delay on an urgency basis. However, the MRL had to make two analysis i.e. to acquire the land identified in this behalf and to obtain clearance from the environmental and pollution point of view from various State level and Central level authorities and that these authorities required maximum credible accident and consequence analysis and environmental impact assessment, it is also contended that these two analyses were made with relevance to a particular area and land and, therefore, unless the identified land was acquired, it was not possible to obtain the clearance from the various authorities for the project and that this was also required for obtaining the extension of the letter of intent without which the project could be implemented. The fourth respondent has furnished detailed of the formalities required to be complied with before setting up the aromatic complex and also the reasons for requiring the lands urgently by invoking the urgency provisions of the Act.

16. In order to sustain the contentions put forward on behalf of the petitioners, Mr. R. Gandhi, learned Senior Counsel refers to the decision in Dora Phalauli v. State of Punjab and Ors. : [1980]1SCR93 , wherein it was held that in order to invoke the provisions of Section 17(1) of the Act two things must be satisfied viz. that the land in respect of which the urgency provision is being applied is waste or arable and secondly that there is an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection under Section 5-A of the Act should not be made available to him. It is also observed that the right of a person having any interest in the property to file an objection under Section 5-A of the Act should not be interfered with in such a casual or cavalier manner.

17. Learned Counsel also refers to the decision State of Punjab and Anr. v. Gurdial Singh and Ors. : [1980]1SCR1071 , wherein it was held as follows:.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 preemptive 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.

18. In Chinnamma and Ors. v. State of Tamil Nadu and Anr. : AIR1986 Mad55 , a Division Bench of this Court held that it cannot be stated as a general proposition that only if the matter cannot brook a delay of 30 days, urgency provisions can be invoked and the invocation of urgency provisions will have to depend upon the circumstances of each case. It was also observed that when there was no application of mind by the Government before the urgency provisions of the Land Acquisition Act were invoked and the enquiry under Section 5-A of the Act had been dispensed with mechanically by the Government without application of their mind, the notifications under Section 17(1) and (4) and the subsequent notification of declaration of acquisition under Section 6 were rendered invalid and as such were liable to be quashed. It is also observed that the compensation is to come out of the public revenues, which is to be paid through the SIPCOT, which has been nominated as an agency to carry out the project in question. It is also observed that since SIPCOT is a company incorporated under the Indian Companies Act, the acquisition should have been done under Part VII of the Land Acquisition Act and not under Part II of the Act, it can be said that-an answer to this question will depend upon the source from where the compensation comes whether from the public revenue or whether it comes from the company and since it has been held already that the compensation is to come out of the public revenues, which is to be paid through the SIPCOT, which has been nominated as an agency to carry out the project in question and in such cases Part VII of the Land Acquisition Act cannot be invoked and only Part II of the Act could be invoked.

19. A Division Bench of this Court in Muthu Gounder v. Government of Madras represented by its Secretary, Home Department and Anr. : (1968)2MLJ349 , held that the dispensation of an enquiry under Section 5-A can mean only avoidance of the delay in waiting for objections and considering the same and making a report thereon and the Government finally deciding to make a declaration under Section 6(1). The question in each case for the Government to consider when it desires to invoke Section 17(4) would be whether facts and conditions exist or require that would not brook the delay which would be caused by applying Section 5-A. A decision on that question will have to be taken on proper material and in an objective manner, neither capriciously nor whimsically. The question of urgency is always for the Government to decide and will not ordinarily be justiciable. But when the Court is called upon to see whether the power in invoking urgency provisions has been properly exercised, it has necessarily to examine whether the decision to invoke the provisions was based on material and was neither arbitrary nor capricious nor mala fide. If there were facts on which a fair and reasonable conclusion can be formed this Court will, decline to interfere, though it may take a different view on the question of urgency. But where ex facie the decision is arbitrary, as the facts cannot possibly furnish a basis for any conclusion to invoke the urgency provisions, this Court has to step in and declare the action to be illegal. It is imperative that Section 4(1) notification should indicate if urgency provision was to be invoked. It is not necessary for the State Government to go further and specify in Section 4(1) notification whether the urgency was under Sub-section (1) or Sub-section (2). It would be open to the State Government to specify the particular provision for urgency for the first time in Section 6 declaration.

20. Learned Counsel also refers to the decision Yesho Nathu Mahajan and Anr. v. The State of Maharashtra and Ors. : AIR1980 Bom221 . That was a case where the acquisition for the purposeof providing house sites for landless workers and their families and for extension of gaothan by invoking the emergency provisions of the Act. While considering the scope of the power of the State in invoking the urgency provisions, a Division Bench of the Bombay High Court observed as follows:.That a given purpose is laudable is not by itself sufficient to vindicate the application of urgency clause so as to obviate even the minimum requirement of a

hearing. Purpose such as providing house sites or extension of gao than cannot be said to spring into existence overnight unless, of course, it is a result of some unexpected, exceptional or extraordinary situation on development such as, for instance, an earthquake or flood or some specific clear-cut time-bound project likely to be rendered ipso facto nugatory and infructuous by even such lapse of time as would occur in the case of an acquisition sans or without the urgency clause. While applying the urgency clause, the State should, indeed, act with considerable care and responsibility..It would normally not be open to this Court to substitute its own judgment in place of that of the acquiring authority on the question of existence of urgency and the consequent application of urgency clause if the Court finds that there were present before the acquiring authority factors and considerations relevant thereto. The acquiring authority is after all the best judge of the situation and its decision, basically subjective, would normally not be interfered with by this Court. But where no factor is disclosed and no consideration revealed, where the Court is left in the dark and the aggrieved person left in the lurch, application of urgency clause is put in serious jeopardy; it stands exposed to Court's interference and renders itself liable to be struck down. The very sine quo non for sustenance of urgency clause is absent. (Para 7).But when application of urgency clause is challenged, the minimum expected from the State is a disclosure of the circumstances that weighed with it while doing so. Abstract justification replete with conjectures is no answer. In the absence of any such relevant facts and circumstances of which the Court even otherwise could have taken judicial notice, conclusion would follow that the urgency clause was applied without any warrant. It is not possible to successfully sustain the State action in that behalf. (Para 9)

21. In Narayan v. State of Maharashtra : [1977]1SCR763 , it is observed as follows:

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. (Para 40)

22. A Division Bench of this Court in the decision The State of Tamil Nadu v. Mohammad Yousuf : (1990)2MLJ149 , held that the public purpose specified in the notification under Section 4(1) i.e., 'for development of the area by construction of houses by the Tamil Nadu Rousing Board' conveys no ideas as to the specific purpose for which the site was to be utilised and that the mere mention in the Notification that the land was being acquired for development of area by construction of houses by the Tamil Nadu Housing Board is wholly insufficient and conveys no idea as to the specific purpose for which the site was to be utilised and as such held that the Notification suffers from the vice of vagueness, indefiniteness or similar grounds.

23. From the ratio deducible from the above authorities, it is clear that before invocation of the urgency provision for initiation of acquisition proceedings, there must be an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection under Section 5-A of the Act should not be made available to him and that it cannot be stated as a general proposition that only in cases where the acquisition of land cannot brook even a delay of 30 days the urgency provision can be invoked and that the invocation of urgency provisions will have to depend upon the circumstances of each case. It is also clear that the question of urgency is always for the Government to decide and will not ordinarily be justiciable and that the Court should examine whether the decision to invoke the provision was based on material and was neither arbitrary nor capricious nor mala fide. The fact that the Court can make a different view on the question of urgency on the available material will not prevail over the formation of the opinion by the Government on the available material. It is purely within the realm of the Government to decide about the urgency on the facts and circumstances of the case. The acquiring authority is the best judge of the situation and its decision, basically subjective, would normally not be interfered

with by the High Court. The Court cannot go into the question of adequacy or sufficiency of the material with which the Government formed the opinion about the urgency.

24. By way of reply, learned Advocate General refers to the decision of the Supreme Court in Narayan's case, wherein it was observed as follows:

Now, the purpose of Section 17(4) of the Act is, obviously, nor 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 be 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. [Page 38]

25. Learned Advocate General also refers to the decision in V. Doraiswami Pillai (died) and Anr. v. The Government of Tamil Nadu and Ors. : AIR1990 Mad321 , where in a Division Bench of this Court held as follows:

These decisions go to show that in the absence of any oblique motive, the question as to whether the purpose is a public purpose or not, and whether the urgency provisions could be invoked or not, are nor for judicial review. Hence, in the light of these authoritative pronouncements of the Supreme Court, the decisions relied upon by the learned Counsel for petitioner, as referred to earlier, cannot be of any assistance to hold that the pre-notification delay or the post-notification delay by officialdom would always constitute a ground to vitiate the invocation of urgency provisions under the facts and circumstances of a particular case. In the instant matter, factual particulars taken into account justify the 'need' to invoke the urgency provisions on the date when the decision was taken i.e., because of the conditions found to be prevailing in the colony, it was felt that if a Section 5-A enquiry is to be held, it would delay in taking possession of the property and that the circumstances were such that there was need to dispense with Section 5-A enquiry.

26. A Division Bench of Allahabad High Court in the decision Brij Bhushan Goswami v. State of Uttar Pradesh and Ors. : AIR1990 All15 , observed as follows:

So far as the third argument to the effect that the Planned Industrial Development cannot be said to be the public purpose, which required urgent section is concerned, it also lacks force. Unemployment is increasing day by day and position is becoming acute and unless State can quickly provide avenues for employment the whole social order might be adversely affected. Establishment of industries is one of the important means for providing, employment to the people. Industrial development, as such is one of the public purposes, which are to be executed with utmost urgency so as to provide opportunities for employment and reduce the social tension in the society. A Division Bench of this Court in the case of Rajbali v. State of Uttar Pradesh A.I.R. 1983 All. 78, has upheld dispensing of the inquiry under Section 5-A of the Act for the purposes of Planned Industrial Development by holding that general interest of the Public requires industrial development to be made so that not only some of the people living there are given employment but also their living standard may be upgraded. Thus, the Government was fully justified in applying the provisions of Section 17(4) of the Act and thereby dispensing with the inquiry under Section 5-A of the Act.

27. In Manubhai Jehtalal Patel and Anr. v. State of Gujarat and Ors. : AIR 1984 SC120 , it was observed as follows:.The first contention canvassed by him on behalf of the appellants is that the Gujarat State Road Transport Corporation is a company within the meaning of the expression in the Companies Act as well as in Part VII of the Land Acquisition Act and this being an acquisition for a company it was obligatory to comply with the provisions contained in Part VII as well as Company Acquisition Rules and that admittedly having not been done, the acquisition is contrary to law, illegal and invalid. Land is indisputably acquired for the benefit of Gujarat State Road Transport Corporation which is a company. Even where land is acquired for a company, the State Government has the power to acquire land for a public purpose from the revenue of the State. In other words, this is an acquisition for public purpose with contribution from the State revenue. The State is acquiring land to carry out public purpose with the instrumentality of

the Gujarat State Road Transport Corporation. It is not an acquisition for a company with the funds exclusively provided by the company which would attract Part VII of the Land Acquisition Act In our opinion, the High Court is right in reaching the conclusion that neither Part VII of the Land Acquisition Act nor the Company Acquisition Riles would be attracted. Therefore, we are in agreement with the conclusions reached by the High Court.

28. Learned Advocate General also refers to the decision in Rajbali and Ors. v. State of Uttar Pradesh A.I.R. 1983 All. 78, wherein it was observed as follows:

The notifications have clearly stated that the purpose of acquisition that is, the planned Industrial Development of district Basti. It was not necessary to mention in these notifications the various industries which were intended to be set up. It could not be possible at the time of issuing of the notifications under Sections 4 and 6 to specify area which would be assigned to each individual industrialist for setting up a particular industry in which he may be interested. The word 'planned' has been defined in the Oxford Dictionary as a scheme for accomplishing a purpose. Anything which is antithesis of haphazard development amounts to planned development. Hence the notifications gave indication of the purpose in sufficient detail and it is, therefore, not possible to hold that either the notifications under Section 4 or the notifications under Section 6 suffer from the defect of vagueness.

29. Learned Advocate General has attempted to distinguish the judgment of the Division Bench of this Court in the State of Tamil Nadu and Anr. v. A. Mohammed Yousuf and Ors. : (1990)2MLJ149 , referred to hereinabove, by stating that the public purpose specified in the impugned notification is specific and contains all the particulars viz., for setting up of an aromatic complex and also petro based downstream project. The project is very well explained and there is no vagueness and consequently the decision of the Division Bench of this Court, referred to above, cannot be said to be applicable to the instant case.

30. The ratio that is deducible from the aforesaid decisions is that the Authority concerned has to apply its mind 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 and it is not just the existence of an urgency but the need to

dispense with all inquiry under Section 5-A which has to be considered. The question as to whether the purpose is a public purpose or not, are not for judicial review. The pre-notification delay or the post-notification delay by officialdom would not always constitute a ground to vitiate the invocation of urgency provisions. It is only the urgency that was prevailing on the date of issue of notification that is relevant for the purpose of consideration of invocation of urgency. It is also not necessary to mention the various industries which were intended to be get up and that it could not be possible at the time of issuing of the Notifications under Sections 4 and 6 to specify area which would be assigned to each individual industrialist for setting up a particular industry in which he may be interested. Establishment of industries is one of the important means for providing employment to the people and that the industrial development as such is one of the public purposes which are to be executed with utmost urgency so as to provide opportunities for employment and reduce the social tension in the society and in which case the Government would be justified in applying the provisions of Section 17(4) of the Act and thereby dispensing with the inquiry under Section 5-A of the Act. If the contribution is made from out of the public revenue, it cannot be considered that the acquisition is for a company, but the State is acquiring the land to carry out public purpose with the instrumentality of the agency of the State and hence Part VII of the Act cannot be attracted.

31. Mr. R. Krishnamoorthy, learned Senior Counsel appearing on behalf of the fourth respondent, refers to the decision, Hari Singh and Ors. v. State of Uttar Pradesh : [1984]3SCR417 , wherein it was held that even the post notification delay will not vitiate the acquisition proceedings initiated by invoking the emergency provision under Section 17(4) of the Act.

32. Learned Counsel for the fourth respondent also refers to the decision in Deepak Pahwa etc. v. Lt. Governor of Delhi and Ors. : [1985]1SCR588 , wherein it was observed as follows:

The other ground of attack is 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 enquiry under Section 5-A. 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 pre-notification delay would render the invocation of the urgency provisions void.

33. In A Venkatachalapathy v. The State of Tamil Nadu represented by the Commissioner and Secretary to Government, Revenue Department and Anr. (1986) 2 M.L.J. 327, this Court held that the question as to whether urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review.

34. In Aflatoon and Ors. v. Lt. Governor of Delhi : [1975]1SCR802 , it was held as follows:

It was contended by Dr. Singhvi that the acquisition was really for the co-operative housing societies which are companies within the definition of the word 'company' in Section 3(e) of the Act and, therefore, the provisions of Part VII of the Act should have been complied with. Both the learned single Judge and the Division Bench of the High Court were of the view that the acquisition was not for 'company'. We see no reason to differ from their view. The mere fact that after the acquisition the Government proposed to hand over or, in fact, handed over, a portion of the property acquired for development to the co-operative housing societies would not make the acquisition one for 'company'. Nor are we satisfied that there is any merit in the contention that compensation to be paid for the acquisition came from the consideration paid by the co-operative societies. In the light of the averments in the counter affidavit filed in the writ petitions here, it is difficult to hold that it was co-operatives which provided the fund for the acquisition. Merely because the Government allotted a part of the property to co-operative societies for development, it would not follow that the acquisition was for

co-operative societies and therefore, Part VII of the Act was attracted.

35. In Ishwarlal Girdharalal Joshi etc. v. State of Gujarat and Anr. A.I.R. 1978 S.C. 870, it was observed as follows:

The Government was not called upon to the answer the kind of affidavit which was filed with the petition because bare denial that Government had not formed an opinion could not raise an issue. Even if Government under advice offered to disclose how the matter was dealt with, the issue did not change and it was only this : Whether any one at all formed an opinion and if he did whether he had the necessary authority to do so.

36. The law deducible from the aforesaid authorities is very clear to the effect that the pre and post notifications delay will not vitiate the proceedings initiated by the Government by invoking the urgency provisions and that the formation of the opinion in invocation of the urgency provision is not open to judicial review and if the contribution is made from the public revenue then the proceedings initiated under the Act would not attract Part VII of the Act even if the lands are allotted to the company and if any person with an authority has formed the opinion that would suffice the purpose.

37. In the instant case, it is well explained that the Government had constituted a Committee and that the Committee made a field inspection and identified the suitable lands to the extent of 1655 acres in Mathur, Manali, Vaikkadu, Amullavoyal, Kosappur and Elanthancheri Villages for establishing an aromatic complex and other petrobased downstream projects of M.R.L. in Manali Area and also obtained clearance from the Pollution Control Board and thereafter the Government by G.O.Ms. No. 648, Industries (MID-I) Department, dated 16.9.1989 accorded administrative sanction for acquisition/transfer of 1655.93 acres of patta and poramboke lands in the villages specified hereinabove under Part II of the Act. Thereafter, on representations received from the villagers to drop the acquisition proceedings the Government had to take the necessary decision and after taking the decision and after having satisfied that the lands should, be taken immediate possession of for the aforesaid purpose, issued notification under Section 4(1) of the Act invoking the emergency provisions under Section 17(1) and (4) of the Act,

which are impugned in these writ petitions.

38. With reference to the contention that there was a long delay of about more than a year between the date of G.O.Ms. No. 648 Industries (MIDI) Department, dated 16.9.1989, according administrative sanction for acquiring lands and the impugned notification under Section 4(1) of the Act, it is well settled that by reason of the pre-notification of the delay the impugned proceedings cannot be said to be vitiated. That apart, it is also explained by the Government that by reason of the representations made requesting the Government to drop the acquisition proceedings, the Government had to take a decision on consideration of the facts and circumstances of the case and ultimately issued the impugned Notification. Hence there is no substance in the said contention.

39. With reference to the contention that the Government Order according administrative sanction for acquiring the lands in question does not disclose any reason for invocation of the urgency provision and there is no need to dispense with the enquiry under Section 5-A of the Act, learned Advocate General relied on the statements made in the counter affidavit filed in W.P. Nos. 1444, 1955 and 5495 of 1991 and that the relevant statements referred to by him are as follows:

It is submitted that the lands under acquisition are intended for setting up a major industrial Aromatic Complex and other downstream projects at a cost of Rs. 1,380 crores in the interest of industrial development of the State and of the public at large. It aims at creation of great employment potential both for skilled and unskilled in addition to the economic development of the State. In order to establish such an Industrial Complex early, it is essential to provide all infrastructural facilities such as road, power supply, water etc., which can be done only on entering upon the land intended for the establishment of the industries. The Madras Refineries Limited which is one of the major participants in the Industrial Complex obtained Letter of Intent for the Project and requested the land required for the establishment of the project urgently with reference to the Letter of Intent obtained by it. Further, the implementation of the project early would create opportunities for large number of downstream industries with considerable employment potential. Hence, the Government issued orders in G.O.Ms. No. 648

Industries Department, dated 16.9.1989 invoking urgency provision..In this case, the acquisition is for establishment of Aromatic Complex with downstream industries at an investment of Rs. 1380 crores. This will provide employment opportunities to a large number of unemployed persons, both skilled and unskilled. All infrastructure facilities such as road, power supply, water etc., have to be provided for early setting up of the industries. These can be provided by only entering upon the land. Hence, urgency provision has to be necessarily invoked. The lands involved under acquisition are arable or waste lands. Hence, there is no restriction to invoke the urgency provisions of the Act for these lands....

The proposed scheme is a major industrial project to be set up at a cost of 1380 crores in the interest of industrial growth of the State. The action of the Government in having decided to have the urgency clause for acquisition is justifiable. The aim of the Government is to promote employment potentiality and the consequent economic development in the field of petro chemicals for which the feed stock is readily available in the adjacent refinery.....that the Aromatic Complex to be established is a major project. It requires all infrastructural facilities such as laying of road, power connection, water supply ere, to be kept ready for construction of Industrial Complex and start industry without delay. Further the 30 days time provided in Section 5-A of the Act is only for the purpose of filing objection by the land owners and not for taking possession of the land. The experience in the past shows that in a number of cases the landowners have indulged in dilatory tactics thereby delaying the enquiry for a long period. The provisions of infrastructural facilities cannot brook delay as it will lead to escalation of cost and also affect the economic development of the State. Hence the contention of the petitioner in this paragraph is untenable.

40. From the above, it is clear that the instant acquisition is for industrial development in public interest, for creation of great employment potential, for providing infrastructural facilities such as road, power supply, water etc., by entering upon the lands, Madras Refineries Ltd., a major participant of the Industrial complex requested that the land is required urgently for the establishment of the project with reference to the Letter of Intent obtained by it; for providing opportunities for large number of downstream industries with

considerable employment; for promoting economic development in the field of petro chemicals for which the feed stock is readily available in the adjacent refinery viz., M.R.L., and for providing infrastructural facilities, which cannot brook the delay as it would lead to escalation of cost and affect the economic development of the State. It is also stated that compliance of provisions of Section 5-A of the Act would enable the land owners to indulge in dilatory tactics thereby delaying the enquiry for a long period and that the provision for infrastructural facilities cannot brook the delay of the minimum period that is required for complying with the provisions of Section 5-A of the Act.

41. Learned Advocate General produced the file relating to the acquisition proceedings. M.R.L., a major participant of the Industrial complex, by their letter dated 14.3.1988 addressed to the Government stated that since the land is required at an early date to start the construction work, the company requested the Government to appoint Special Officer for acquisition and that it also requested the Government to direct the Special Officer to acquire the lands for M.R.L., invoking urgency provisions under the Land Acquisition Act and also enclosed therewith the land plan indicating the lands required in each of the villages and the required form of Schedule for land acquisition. After having had a number of discussions on various aspects, the M.R.L., by their letter dated 4.11.1988, requested, among other things, for early action for sanction and appointment of staff to complete the land acquisition work invoking the urgency clause. Again by letter dated 11.11.1988, the M.R.L. informed the Government that the Committee of P.I.B. of the Government of India had given first stage clearance for setting up aromatic complex of M.R.L. and also requested for acquiring the lands for setting up of the industry at an early date. Under Secretary to Government by his letter dated 11.11.1988, addressed to the Special and Commissioner of Land Administration, requested him to send necessary proposal for sanction of land acquisition staff for Aromatic Complex urgently, taking into consideration the revised proposal of M.R.L. as reported earlier. Again the M.R.L. by their letter dated 24.11.1988 addressed the Government that the lands were required by them very urgently and hence requested the Government to invoke the urgency clause and also requested that if possible poramboke lands, if any, in these areas could be handed over to them even earlier than the acquisition of the rest of the lands requested for.

Again the M.R.L. by their letter dated 13.12.1988 informed the Government that as the Government of India and their joint promoter are pressing them to take urgent steps to start work on this project they require the co-operation and permission from the Government of Tamil Nadu to go ahead with the preliminary operation and also requested the Government for expeditious steps for early completion.

42. On a perusal of the file, it is clear that the matter was considered at various levels on various aspects, including the details of downstream projects, the total lands that were required and for according administrative sanction for acquisition of the lands in question and for nominating the SIPCOT as a Nodal agency to co-ordinate the work and for approval of all the matters. It is also very clear from the proceedings Ka. No. 71031/MIH/84 that a decision has been taken that the lands in question could be taken by invoking urgency provision, by the Governmental authorities and ultimately approved by the Government. From these facts, it is manifest that the Government have considered this aspect of the matter and applied their mind before initiating the acquisition proceedings by invocation of the urgency clause.

43. Considering the aforesaid facts and circumstances of the case, it is also explicit that there is a need for dispensation of enquiry under Section 5-A of the Act. In view of the aforesaid circumstances, the contention on the part of the petitioners that the reasons for invocation of the urgency clause were not explained and that the respondents viz., the Government have not applied the mind before invocation of the urgency provision and that there was no need for dispensation of enquiry under Section 5-A of the Act is devoid of merits. It is also in conformity with the laid down by the Supreme Court that it is not merely urgency that matters, but also that there should be a need for dispensation of enquiry under Section 5-A of the Act and that it is not just the existence of an urgency, but the need to dispense with an enquiry under Section 5-A which has to be considered. It is also relevant to point out that the provisions of the Act do not contemplate that a separate notification should be issued for dispensing with the provisions contained in Section 5-A of the Act for invocation of the provisions of Section 17(4) of the Act. In fact, a Division Bench of this Court in Muthu Gounder's case (supra) observed that it is imperative that Section 4(1) Notification should

indicate if urgency provision was to be invoked. It is also observed that it is not necessary for the State Government to go further and specify in the Notification under Section 4(1) of the Act whether the urgency was under Sub-section (1) or Sub-section (2) and it would be open to the State Government to specify the particular provision for urgency for the first time in Section 6 declaration. In view of the above fact, the contention that there should be separate Notification to dispense with the enquiry under Section 5-A of the Act is not sustainable.

44. With reference to the contention that the Government of India has not given its approval, there is no material whatsoever produced by the petitioners to support the aforesaid contention. In fact, ongoing through the file, it appears that the Government of India had given a clearance for phased programme. In the absence of any material to show that the Government of India has not given its approval the said contention has no legs to stand. Even otherwise, it is to be considered that the project in question is sponsored by the Government of India and that the M.R.L. is a Government of India undertaking, having more than 85% of the shares is the major participant in the proposed complex. Hence the contention in this behalf is devoid of substance.

45. The contention that the public purpose specified in the notification is vague is also not sustainable in law. On a reference to the decision of the Bench of this Court in The State of Tamil Nadu and Anr. v. A. Mohammed Yousuf and Ors. (1990) M.L.J. 149, it may be stated that the public purpose specified therein is for development of the area by construction of houses by the Tamil Nadu Housing Board and that was considered in the absence of any other particulars as vague and indefinite and conveys no idea as to the specific purpose for which the site was utilised. In the instant case, the public purpose specified in the impugned notifications is very clear to the effect that it is for the purpose of setting up an aromatic complex and the petro-based downstream project. It is also well explained that a Division Bench of our High Court in Doraiswami Pillai's case (supra) held that in the absence of any oblique motive the question as to whether the purpose is a public purpose or not and whether the urgency provision is to be invoked or not, are not for judicial review. In the instant case, there is no vagueness in the public purpose specified in the impugned Notification and that

the public purpose is specific for the purpose of setting up an aromatic complex and also for petro-based downstream projects and while so the said contention found no acceptance, apart from the fact that in the absence of any oblique motive the question as to whether the public purpose is a public purpose or not is not for judicial review.

46. With reference to the contention that the compensation is not paid by the Government and the M.R.L. but also by the third parties, it may be said that there is no material produced by the petitioners to show who are the third parties likely to pay compensation for acquisition of the lands in question. A feeble attempt has been made on the part of the petitioners to state that the downstream projects specified in the Notification could be allotted to third parties and that could be inferred from the language employed in paragraph 3 of G.O.Ms. No. 648 dated 16.9.1989, wherein it is stated that in respect of other organisations as per the present land policy, lease rent may be collected from the industries to whom the lands are likely to be allotted for establishing downstream projects, it is not specified in. the aforesaid paragraphs that the industries to whom the lands are allotted should pay compensation for the lands under acquisition. It is specific that only lease rent could be collected and from that no inference can be drawn that the compensation would be payable by the industries to whom the lands are likely to be allotted. It is clear that major part of the compensation, apart from the Governmental contribution, would be made by M.R.L. for payment of total compensation payable for the lands under acquisition to the owners as well as to the persons interested in the lands under acquisition and consequently it cannot be said that the compensation is payable by third parties. That apart, the contention that Part VII alone is attracted for the purpose of initiating acquisition proceedings is also not sustainable for the reason that the definition of the company under Section 3(3) of the Act is that the expression 'company' means, a company as defined in Section 3 of the Companies Act, 1956 other than a Government company referred to in Clause (cc). Under Section 3(cc) the expression 'corporation owned or controlled by the State' means any body corporate established by or under a Central Provincial or State Act, and includes a company as defined in Section 617 of the Companies Act 1956 etc. Explanation 2 to Section 6(1) provides that 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. The observation of the Supreme Court in Aflatoon 's case (supra) is clear to the effect that merely because the Government allotted a part of the property to Co-operative Societies for development, it would not fall that the acquisition was for co-operative societies and therefore, Part VII of the Act was attracted. Having regard to the aforesaid contentions, it cannot be said that Part VII of the Act is attracted for the impugned acquisition proceedings and as such there is no substance in the said contention put forward by the learned Counsel for the petitioners.

47. With reference to the contention that the right available under Section 5-A of the Act is a very valuable right and such right cannot be defeated by reason of the fact that a large extent of the lands were acquired for setting up of an aromatic complex and petro based downstream projects, it may be said that it cannot be disputed that the right available for the owner of the land or the person interested over the land under acquisition is a valuable statutory right to raise effective objection for the proposed acquisition. That does not mean that such right cannot be dispensed with at all whenever the acquisition proceedings are initiated to acquire the lands for a public purpose. If such construction has to be accepted, the provisions contained in Section 17(1) and (4) of the Act would become otiose. In a given case, it is for the Government to form the opinion as to the urgency in relation to the acquisition of the property in question and in the event of forming an opinion as to the existence of an urgency, there cannot be any impediment for invoking' the provisions of Section 17(1) and (4) of the Act. In the instant case, it is well explained about the existence of urgency and the need for dispensation of the enquiry under Section 5-A of the Act. It is not in all cases that the Government invoke the provision of Section 17(1) and (4) of the Act; dispensing with the provisions of Section 5-A of the Act. In the instant case, having due regard to the facts and circumstances explained hereinabove, the Government invoked the provision of Section 17(1) and (4) of the Act dispensing with the enquiry under Section 5-A of the Act. It is not necessary to reiterate the reasons set forth in this behalf already. It may also be considered apart from the reasons set forth hereinabove, the decision of the Allahabad High Court in Brij Bhushan Goswami's

case (supra) wherein the Court had an occasion to consider the fact of unemployment increasing etc. (vide the observations extracted in paragraph 26 of this order).

48. Having due regard to all the facts and circumstances, it cannot be said that the instant acquisition proceedings are vitiated by reason of the invocation of the provision contained in Section 17(1) and (4) of the Act. It is only the subjective satisfaction of the Government as to the existence of the urgency on the available materials that matters and if the Court is satisfied that there exists the urgency, it is not for the court to consider the adequacy or sufficiency of material and that formation of opinion is not subject to judicial review, as laid down by the Division Bench of this Court. The contention that the invocation of the urgency provision cannot have any nexus to the vast extent of land that is sought to be required has no relevance having due regard to the facts and circumstances of the instant case. The said proposition may be considered in so far as Section 17(2) of the Act is concerned, but so far as Section 17(1) of the Act is concerned, no one could comprehend the existence of the facts and circumstances which formed the basis for formation of opinion as to the existence of urgency for invocation of Section 17(1) of the Act.

49. However, with regard to the contention put forward by the learned Counsel appearing on behalf of the petitioners in W.P. Nos. 3484, 6725 and 6726 of 1991 are concerned, the Government may consider the facts and circumstances of those cases where the petitioners have obtained necessary sanction for establishment of an Industry and also spent considerable amount for establishment of such an industry which is also stated to be for public purpose. In view of the fact that the petitioners have not only applied for sanction from the authorities but also have spent huge amount by raising loan for establishment of the industry, the Government has to consider the facts and circumstances set forth in the affidavit filed in support of the above writ petitions and also representations, if any, made in this behalf and decide whether the petitioners' lands in question should either be deleted or allotted in their favour after acquisition or if the said lands form part of the lands where the major complex has to be set in, the Government should think of providing alternative land in order to enable them to

set up their factories.

50. Having due regard to the above facts and circumstances of the case, there are no merits in the contentions put forward on behalf of the petitioners and that there is no warrant for interference with the impugned acquisition proceedings. Hence, all the writ petitions fail and are dismissed. No costs.