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Gajraj and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-21-2011

Judge : Ashok Bhushan, S.U. Khan &Amp; V.K. Shukla

Appeal No. : Writ - C Nos.37443 of 2011, 48089 of 2011, 37642 of 2011, 62649 of 2008, 75042 of 2010, 18037 of 2011, 28691 of 2011, 32236 of 2011, 39383 of 2011, 39584 of 2011, 44503 of 2011 & 47109 of 2011

Appellant : Gajraj and Others

Respondent : State of U.P. and Others

Judgement :

Ashok Bhushan, J.

Large scale acquisition of agricultural and Abadi land of farmers of different villages of Greater Noida and Noida of District Gautam Buddha Nagar in the name of planned industrial development is the subject matter of challenge in these 471 writ petitions. These writ petitions have been placed before this Full Bench under orders of Hon'ble the Chief Justice dated 6.8.2011 on a reference made by a Division Bench in writ petition No. 37443 of 2011 and other connected matters. Writ petition No. 37443 of 2011 challenges the notifications dated 12.3.2008 issued under section 4 read with Sections 17(1) and 17(4) of Land Acquisition Act and notification dated 30.6.2008 by which declaration was made for acquisition of 589.188 hectares land of village Patwari. Similar notifications under section 4 read

with Sections 17(1), 17(4) and Section 6 of the Land Acquisition Act were issued with regard to different villages. Several writ petitions were filed challenging the land acquisition which writ petitions came for hearing before the Division Bench on 26.7.2011.

One of the submissions made before the Division Bench was that the State had wrongly invoked the provisions of Sections 17(1) and 17(4) of the Land Acquisition Act hereinafter referred to as 'Act' and the right of objection under section 5A was wrongly dispensed with hence, the entire acquisition proceedings deserved to be set aside. The petitioners placed reliance on a Division Bench judgment of this Court dated 19.7.2011 passed in writ petition No. 17068 of 2009 Harkaran Singh Vs. State of U.P. and others in which judgment the Division Bench of this Court held that invocation of the provisions of Sections 17(1) and 17(4) of the Act was not justified and relying on the judgment of the apex Court in Radhey Shyam Vs. State of U.P. reported in (2011) 5 Supreme Court Cases 533 and judgment of the apex Court dated 6.7.2011 in Greater Noida Industrial Development Authority vs. Devendra Kumar reported in 2011 (6) ADJ 480 quashed the notification dated 12.3.2008 and 30.6.2008. Learned Counsel for the State refuting the submissions of the learned counsel for the petitioners relied on another Division Bench judgment of this Court dated 25.11.2008 in writ petition No. 45777 of 2008 Harish Chand and others Vs. State of U.P. and others in which judgment invocation of Section 17(1) and 17(4) was upheld and the writ petition was dismissed in which same notifications dated 12.3.2008 and 30.6.2008 were under challenge.

Faced with large number of writ petitions challenging the land acquisition by farmers of different villages of Greater Noida and Noida and noticing two conflicting views expressed by two different Division Benches on the same notifications, the Division Bench passed following order on 26.7.2011:

"Against this background, prima facie we are of the view that a larger Bench is required to be formed for the purpose of hearing these matters not only in respect of the village in question but also for all the acquisition matters in respect of the New Okhla Industrial Development Authority and Greater Noida Industrial Development Authority for the ends of justice, to reduce the fume and to avoid the

multiplicity of the proceedings.”

In the same order dated 26.7.2011 to protect the interest of the petitioners, the Division Bench passed following order.

“However, petitioners will be protected with their rights in the following manner:

(a) Principle of lis pendens will be applicable in these cases. Therefore, whatever steps will be taken by the respondents in the meantime, the same will abide by the result of the writ petitions.

(b) Willing petitioners may make applications to the State or the appropriate authority to consider their grievances and if it is made, the same will be considered carefully upon giving fullest opportunity of hearing to them, if necessary with the assistance of the pleader, by 12th August, 2011 and a report to that extent will be placed before the Court along with the records of all the acquisition cases on the next date of hearing i.e. on 17th August, 2011. Applications, if any, for such settlement out of the Court are totally optional on the part of the petitioners. Rights, if any, of the unwilling petitioners under Section 11-A of the Act will not be infringed. (c) If the petitioners make such applications for settlement out of the Court with the State or the State authority, the same will be considered by them in the line of the Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997, which is commonly known as ''Karar Niymawali, 1997'. It is pertinent to note that several applications have been made either by the respective builders and/or purchasers of flats and/or the banks for impleadment, which have been strongly opposed by the petitioners by saying that they can not be made parties to these writ petitions as in the cases of land acquisition the land owners and the requiring bodies, sometime acquiring bodies, are the necessary parties and not others. On the part of one of the applicants it is submitted before this Court that as per the Rules of this High Court any aggrieved or affected party can be treated to be intervenor in any of the proceedings, therefore, no one can be restrained from getting opportunity of hearing. In these special circumstances, they are required to be heard. However, at this stage we do not propose to entertain such applications.

The matters will appear on 17th August, 2011. Let it be placed before the Hon'ble the Chief Justice/Hon'ble Senior Judge, as per the Rules and practice of this Court, to take an administrative decision about formation of the larger Bench as early as possible, so that the matters can be placed before such larger Bench on the next date itself."

Hon'ble the Chief Justice passed following order on 6.8.2011 on the aforesaid reference "Hon. R.K. Agrawal, Hon. Ashok Bhushan and Hon'ble V.K. Shukla, J.J.J. are nominated to deal with all connected matters."

The Bench was reconstituted again on 17.8.2011. In view of the aforesaid referring order of Hon'ble the Chief Justice, the main writ petition being writ petition No. 37443 of 2011, Gajraj and others Vs. State of U.P. and others as well as all other connected matters have been placed before this Full Bench.

We heard learned counsel for the parties on 29.8.2011. In some writ petitions. The allottees/builders, who received the allotment letter by the Greater Noida and Noida hereinafter referred to as 'Authority' were impleaded and several applications for impleadment were filed by various allottees/builders. We after hearing learned counsel for the parties by our order dated 29.8.2011 allowed learned Counsel for the State, learned Counsel for the Authority and other parties to file their affidavits. In so far as the applications for impleadment and interventions which were filed by various applicants following orders were passed on 29.8.2011.

"After hearing learned counsel for the parties, we are of the view that the applicants namely; allottes/builders shall be heard by this Court under Chapter XXII Rule 5A of the High Court Rules without being formally impleaded to the writ petition."

Various applications were filed for intervention along with affidavits which were taken on record and we heard learned counsel for the petitioners, learned counsel for the State, learned counsel for the Authority and learned counsel for the interveners. The hearing was completed on 30.9.2011. Along with the main writ petition, there are writ petitions challenging various similar notifications issued

under section 4 read with Sections 17(1) and 17(4) and Section 6 regarding 41 villages of greater Noida and 24 villages of Noida. In main writ petition, counter affidavits, supplementary counter affidavits have been filed both by the State as well as by the Authority. Counter affidavits by private respondents as well as the intervention applications along with affidavits by several interveners have also been filed. Pleadings being complete in writ petition No. 37443 of 2011, the said writ petition is being treated as main writ petition. In so far as other writ petitions of different villages are concerned, learned Chief Standing Counsel has stated that counter affidavits have been filed by State and Authority at least in one writ petition of each village which may be treated to be leading writ petition of the said village. Although in some other writ petitions, counter affidavits have also been filed by State and Authority. The writ petitions relating to different villages are separately grouped and it shall be suffice to refer to the pleadings of the main writ petition as well as leading writ petitions of each village along with pleadings of some other writ petitions which were referred to by different learned counsel during the course of hearing for deciding this bunch of writ petitions. The facts as brought on record in the main writ petition and the reference to the pleadings in the said writ petition are sufficient to comprehend and decide the various issues which have arisen between the parties in these writ petitions. Hence, facts of the case of the main writ petition and pleadings therein shall be noted in some detail. Writ petition No. 37443 of 2011 Gajraj and others Vs. State of U.P. and others have been filed by 27 writ petitioners who claim to be Bhumidhar with Transferable right and owner of different plots of land situated in village Patwari, Pargana and Tahsil Dadri, District Gautam Buddha Nagar. The notification dated 12.3.2008 was issued by the State Government under section 4(1) of the Land Acquisition Act,1894 notifying that the land mentioned in the schedule is needed for the public purpose namely for the planned industrial development in Gautam Buddha Nagar through Greater Noida Industrial Development Authority. It is useful to quote relevant extract of the notification dated 12.3.2008 which is to the following effect:

“Under Sub-section (1) of Section 4 of the Land Acquisition Act,1894 (Act No. 1 of 1894), the Governor is pleased to notify for general information that the land mentioned in the Schedule below, is needed for a public purpose namely for the planned industrial development in district Gautambudh Nagar through Greater

Noida Industrial Development Authority.

2. The Governor, being of the opinion that the provisions of Sub-section (1) of Section 17 of the said Act, are applicable to said land inasmuch as the said land is urgently required, for the planned industrial development in district Gautambudh Nagar through Greater Noida Industrial Development Authority and it is as well necessary to eliminate the delay likely to be caused by an inquiry under section 5-A of the said Act, the Governor is further pleased to direct under Sub-section (4) of Section 17 of the said Act that the provision of Section 5-A of the said Act shall not apply"

The inquiry under section 5A having been dispensed with vide notification dated 12.3.2008, State Government proceeded to issue declaration under section 6 of the Land Acquisition Act dated 30.6.2008 to the following effect:

"In continuation of Government notification No. 664/LXXVII-3-2008-86 Arjan-08, dated March 12, 2008 issued under Sub-section (1) of Section 4 and Sub-section (4) of 17 of the Land Acquisition Act,1894 (Act No. 1 of 1894), and lastly published by giving Public Notice on dated April 18,2008 the Governor is pleased to declare under section 6 of the said Act that he is satisfied that the land mentioned in the schedule below is needed for a public purpose, namely planned industrial development in district Gautam Budh Nagar through Greater Noida Industrial Development Authority and under section 7of the said Act direct the Collector of Gautam Budh Nagar to take order for the acquisition of the said land.

2. The Governor, being satisfied that the case is one of urgency, is further pleased under Sub-section (1) of Section 17 of the said Act to direct that the Collector of Gautam Budh Nagar, though no award under section 11 has been made, may, on the expiration of fifteen days from the date of publication of the notice mentioned in Sub-section (1) of Section-9, take possession of the land mentioned in the schedule for the said purpose"

The petitioners plead in the writ petition that dispensation of the inquiry under section 5A can only be an exception where the urgency cannot brook any delay. The respondents without application of mind dispensed the inquiry. The acquisition

proceedings have been termed as void, unconstitutional, tainted with malafide, abuse of authority, power and non application of mind. The provisions under section 5A is mandatory and embodied a just and wholesome principle that a person whose property is being or intended to be acquired should have occasion to persuade the authorities that his property be not touched for acquisition. Land use of village Patwari was changed in the Master Plan 2021 after the notification under sections 4 and 6, which is colurable exercise of powers and entire exercise is arbitrary, illegal and infringes rights of the petitioners guaranteed under Articles 14, 19 and 300A of the Constitution of India. The petitioners have stated in the writ petition that writ petition is being filed after knowledge that the land use of village Patwari was changed in the Master Plan 2021 after the notifications under sections 4 and 6. The petitioners further claimed that the part of the property of the petitioners is situate in village Abadi. It is pleaded that the authority has executed a lease deed dated 31.3.2010 in favour of respondent no. 4 M/s Supertech Ltd., a company engaged in the construction allotting 2,40,000 square meters land for constructing multi storied complexes. Reference of another writ petition No. 28691 of 2011, Dinesh Kumar Garg and others Vs. State of U.P. and others was made by the petitioners in which the same notification was under challenge and this Court has passeed an order directing the parties to maintain status-quo regarding possession. It has been stated that although land was acquired for industrial development but the same has been allotted to the builders by the Authority which clearly indicates that neither there was any appropriate plan and scheme for industrial development nor there was any urgency in the matter and the whole proceeding was in colourable exercise of power. The state filed a detailed counter affidavit in the writ petition stating that after declaration under section 6, the possession of land was taken on 5.9.2008 and 12.1.2009 and about 87% of tenure holders have taken compensation in accordance with the provisions of U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997, (hereinafter referred to as '1997 Rules'). The award under section 11 has been finalised and submitted to the Divisional Commissioner for his approval. It has been further stated that those petitioners who have not applied for payment of compensation by agreement under 1997 Rules hence, they would be paid compensation in terms of award to be declared under section 11.

The award was pending approval when in writ petition 17068 of 2009, Harkaran Singh Vs. State of U.P. this Court vide order dated 19.7.2011 quashed the notification. It is further pleaded that compensation amount were disbursed in 2009,2010 and 2011 after duly executing the agreement as per 1997 Rules. It is further pleaded that in writ petition No. 38758 of 2008 M/s. Crane Bel International Pvt. Ltd. Vs. State of U.P. and other decided on 26.8.2010 and writ petition No. 4577 of 2008 Harish Chand Vs. State decided on 25.11.2008, the invocation of urgency clause under section 17(1) and 17(4) of the Land Acquisition Act has already been upheld by this Court and the writ petitions were dismissed. It is pleaded that no Abadi was found at the time of survey and only boundary wall and certain trees and boaring in a room was found on some plots. It is pleaded that there was sufficient materials before the State Government for invocation of Sections 17(1) and 17(4). Out of 589.188 hectares of land under acquisition, compensation in respect of 488.998511 hectares of land under the provisions of U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 has been disbursed and the compensation for the tenure holders who have not accepted compensation shall be paid under award under section 11 which is pending approval. Writ petitions have been filed with delay and laches and the writ petitions are liable to be rejected on the said ground. The land is proposed to be acquired for planned industrial development which includes various land uses namely; residential, commercial, industrial, institutional, greens, amenities etc. At the relevant point of time of initiating the acquisition, the development plan 2021 was in force. As per the development plan, the land use of area falling in Sector Tech Zone IV was institutional which was changed subsequently from institutional to residential and similarly the land use of Sector Eco Tech 13 was changed from industrial to institutional. The change in use was effected more than one and half years after the date of acquisition under the approval of the Board of respondent no. 3 dated 11.2.2010 which was also approved by the State Government on 30.3.2010. However, the extent of the land use for the whole area did not alter as the equivalent area was swapped for the respective purposes. State has also filed a supplementary counter affidavit stating that proposal for acquisition of 600.600 hectares of land in village Patwari was submitted by Greater Noida vide letter dated 31.3.2006 along with note of

justification for invoking provisions of section 17. Proposal was thereafter revised by letter dated 21.7.2006 by which area of 590.289 hectare was proposed and the Collector vide letter dated 22.2.2008 forwarded the proposal of 589.188 along with his recommendation to the Directorate of Land Acquisition, Board of Revenue, U.P. Lucknow vide letter dated 22.2.2008 and thereafter notification under section 4 was issued.

A detailed counter affidavit and supplementary counter affidavit have been filed by the respondent no. 3 stating that the respondent authority was constituted vide notification dated 28.1.1991 issued under the U.P. Industrial Area Development Act, 1976 (hereinafter referred to as 1976 Act). It has been pleaded that after declaration under section 6 dated 30.6.2008, the possession of the land was handed over to the Authority by possession memo dated 5.9.2008 and the possession of a small portion of the area was further taken on 12.1.2009 and thereafter on 16.9.2010. It is stated that except the petitioners No. 1,3,14 to 20 and 22 rest of the petitioners have received compensation on various dates in the year 2008-09 and by accepting the compensation, the petitioners have accepted the both factum of acquisition and taking of possession. About 83% in terms of area has already been paid the compensation and out of 1605 persons 1403 have accepted compensation. Development works have been carried out and the area stands demarcated as Sectors 2,3 Tech Zone IV, Eco Tech 13, Sector 10 and 11.

Authority has so far constructed roads, laid down sewer line, electric transmission line. Authority has developed green belts and carried out group housing development works; remaining area of these sectors falls in acquired land of adjoining villages. In Sector 2, individual residential plots have been allotted as well as two group housing plots were allotted on 21.3.2010 and 1.3.2011 under the Scheme Code BRS-01/2010 and BRS-04/2010. In Sector 3 about 2250 individual residential plots were allotted through draw of lots in month of January, 2009 and 625 individual residential plots were allotted through draw of lots in July, 2009 under the scheme XT-01 and BHS. In Sector Tech zone-IV group housing plots were also allotted in March, 2010 and March, 2011. In Tech zone IV some institutional and some information technology plots have also been allotted during the period March, 2008-09. It is pleaded that compensation has been accepted by

some of the petitioners hence, they are stopped from challenging the acquisition. The writ petition is barred by time. The notification under challenge has already been upheld by Division Bench of this Court in writ petition No. 45777 of 2008 Harish Chand decided on 25.11.2008. The petitioners are not in possession of the land in dispute. In addition to compensation special benefits are being extended including 15% rehabilitation bonus and developed residential plots equivalent to 6% of the acquired land subject to a minimum of 120 Square meters and maximum of 2500 square meters. The land use which was changed in two sectors, there was no change in the extent of the land use. It is pleaded that acquisition of land is made for the fulfilment of 1976 Act and it is to be borne in mind that when a new city is to be conceived it could only be developed on the land which is acquired. There was sufficient materials for invoking the urgency clause under sections 17(1) and 17(4). It is denied that acquisition is malafide, illegal or in colourable exercise of powers. It has been further pleaded by the Authority that after order passed by the Division Bench in this case on 26.7.2011 leaving it open to both the parties to inter into settlement between the tenure holders of village Patwari and Authority, the settlement took place and more than 1264 tenure holders have accepted the additional compensation which was offered at the rate of 550/- per square meter as exgratia payment from 26.7.2011 to first week of September 2011. A counter affidavit has been filed on behalf of respondent no. 4, M/s Supertech Ltd. who is impleaded as respondent no. 4 to the writ petition. In the counter affidavit filed by respondent no. 4, it has been stated that respondent no. 4 is a company registered under the Companies Act and has been allotted plot No. GH08 measuring 2,04000 square meters situated in Sector-01 along with other developers namely; Panchsheel Buildtech Pvt. Ltd. for building a cluster of residential units. The allotment was made by letter dated 19.3.2010 and the lease deed had also been executed on 1.4.2010 and the allotment has been made for a sum of Rs. 194.46 crores, out of which Rs. 11 crores have already been paid. 6000 residential units of varying sizes are proposed to be constructed . 4471 members of the public have booked units in the Eco village I project. Out of these 4471 bookings, about 65-70% bookings have been financed by banks/financial institutions and amount of Rs. 67.74 crores have been given towards booking amount. Construction at the site was started in September, 2010

and amount of Rs. 99.33 crores have already been invested towards the actual construction activities. A massive development work is being carried out by the answering respondent at the project site. Photographs of construction at the site have been filed as Annexure-3 which indicates that four floor structures have been constructed on the site.

There are certain other allottees/builders who have made applications along with affidavit for intervention giving similar details. The applications which has been received for intervening in the main writ petition are of following applicants:

i. M/s Amrapali Leisure Valley Pvt. Ltd. which claims allotment of plot GH02 area 419519.20 square meters vide allotment letter dated 6.5.2010 lease deed dated 11.10.2010.

ii. M/s Patel Advance JV, which claims allotment of Plot No. GH 03 in Sector Techzone IV Greater Noida area 96,000 sq. meters. Vide allotment letter dated 27.4.2010.

iii. M/s Elegant Infracon Pvt. Ltd. which claims allotment of Plot No. GH-06B area 17,700 sq. meters vide allotment letter dated 18.8.2010.

iv. M/s Amrapali Leisure Valley Pvt. Ltd. which claims allotment of plot GH01 area 106196.00 square meters vide allotment letter dated 23.4.2010.

v. M/s Nirala Infratech Pvt. Ltd. which claims allotment of plot GH04 area 1,00,000 square meters vide allotment letter dated 23.4.2010.

vi. M/s Artha Infratech Pvt. Ltd. which claims allotment of Plot No. 21 Sector-Techzone-IV area 10,000 sq. meters vide allotment letter dated 3.10.2008.

vii. M/s Good Enough Education Trust which claims allotment of plot No. 6, Tech. Zone-IV area 41282.74 square meters vide allotment letter dated 6.5.2010 lease deed dated 9.3.2009.

viii. M/s Amrapali Leisure Valley Pvt. Ltd. which claims allotment of plot GH02 area 419519.20 square meters vide allotment letter dated 6.5.2010 lease deed dated 11.10.2010.

ix. M/s La Residentia Developers Pvt. Ltd. which claims allotment of Plot No. GH-06 area 97726.62 sq. meters vide allotment letter dated 18.8.2010.

x. M/s Amrapali Dream Valley Pvt. Ltd. which claims allotment of plot GH09, Sector-Techzone-IV area 354298.00 square meters vide allotment letter dated dated 30.8.2010.

All the aforesaid interveners have filed affidavits in support of intervention applications making allegations to the similar effect as have been made by M/s Supertech Ltd. claiming substantial investments and development on the spot. It has been pleaded by the respondent no. 4 and other interveners that the allottees were handed over possession by the Authority and they have carried out substantial development works and invested huge amount and at this stage, the petitioners cannot be allowed to challenge the acquisition proceedings. They having acquiesced to the acquisition, they are now stopped from challenging the acquisition. It is pleaded by them that the respondents obtained the lease deed from the Authority at the time when there was no challenge to the acquisition and at this stage, the petitions filed by the petitioners deserve to be dismissed on the ground of laches alone.

We have categorised the writ petitions in different groups, villagewise. Each village of Greater NOIDA and NOIDA has been allotted one group. In one group if more than one notifications under Sections 4 and 6 are challenged, the same has also been mentioned. Group 1 to 41 relate to different villages of Greater NOIDA and Group 42 to 65 relate to villages of NOIDA.

There are 14 other writ petitions relating to village Patwari (Group-1) apart from Gajraj, the main writ petition in which notification dated 12.3.2008 issued under section 4 read with sections 17(1) and 17(4) and 6 have been challenged. The pleadings in the aforesaid writ petition are also to the similar effect. However, pleadings in few writ petitions which have been specifically referred by learned counsel need to be noted. Writ Petition No. 62649 of 2008 Savitri Devi Vs. State of U.P. was filed challenging the notification dated 12.3.2008 and 30.6.2008 in this Court on 2.12.2008 claiming that petitioner is Bhumidhar of plot No. 687 in Khata No.625 and had constructed pakka dwelling house over the above noted Araji. It is

stated that adjoining plot Nos. 695 and 686 have been exempted from acquisition but petitioner's plot has not been exempted. Invocation of urgency clause has been challenged. It stated that land has been acquired for the purpose of raising multi-storied buildings for business purposes. In Writ petition No. 28691 of 2011 Dinesh Kumar Garg and others Vs. State of U.P. and others, the petitioners' case is that plot No. 407 M Khata No. 111 was purchased by the petitioners by sale deed dated 7.4.2004. There is Abadi of the petitioners which is being used for residential purpose and in Khasra 1412 Fasli Abadi is mentioned. It is stated in the writ petition that objections were filed by the petitioners vide letter dated 25.2.2010 to the Chief Executive Officer for exempting the petitioners' land from acquisition. Information was also obtained under the Right to Information Act 2005 and by letter dated 6.10.2010 the petitioners have been informed to the effect that out of 1.178 hectares of land of plot No. 407, only 0.778 has been proposed for acquisition and rest has already been left for Abadi. Reliance has also been placed on interim orders passed in writ petition No. 30914 of 2009 Madanpal Vs. State of U.P.and others dated 16.7.2009 by which order direction was issued for maintaining status-quo. Challenge to the notification of Sections 17(1) and 17(4) has also been raised stating that there is no justification for dispensing with the inquiry under section 5A. In writ petition No. 32236 of 2011 Satpal Vs. State of U.P. and others almost identical pleadings have been made as has been made in the main writ petition. Learned Counsel for the petitioner submits that petitioner no. 15 and 16 have not accepted even the additional compensation offered by the authority after the order of this Court dated 26.7.2008. In writ petition no. 39584 of 2011, Khem chand Vs. State of U.P., similar pleadings have been made as made in the main writ petition. It has been additionally stated that petitioners no. 1 to 6 have not accepted additional compensation. In writ petition No. 39584 of 2011 an intervention application has also been filed by Noida Extension Flat Buyers Welfare Association in which application, it has been stated that writ petition filed by the petitioner is not maintainable in view of the delay and laches the original tenure holders are not entitled for restitution of possession. It was pleaded that flat buyers who are members of association having faith and belief regarding the marketable title in the land of the builders have booked flats after taking due care and any order quashing the notification shall take away the rights of the members

of the association causing loss to them. It is pleaded that there is acute need of residential units in NCR. A counter affidavit has also been filed by Supertech Limited reiterating the similar pleadings as made in the main writ petition. The writ petitions in Group-2 are the writ petitions of village Sakipur. Writ petition No. 47157 of 2011 Rajendra Singh and others Vs. State of U.P. and others relating to village Sakipur has been filed challenging the notifications dated 31.12.2004, issued under section 4 proposing to acquire 311.3140 acres of land of village Sakipur. Declaration under section 6 was issued vide notification dated 5.9.2005. Similar pleadings have been made in the writ petition challenging the notifications. The petitioners have pleaded that petitioners being law abiding citizen were under impression that the State Government has acquired their land for the public purpose hence, they did not come earlier to challenge the notifications. However, latter petitioners came to know that the very purpose of acquiring the land namely; planned industrial development has now been changed by the respondents by carving plots and the land has now been transferred to private builders for the purpose of commercial complexes and residential under the group housing scheme. The petitioners have annexed one of the lease granted by Noida Authority to one M.I. Builders Pvt Ltd. vide lease deed dated 28.3.2007. It has also been pleaded that the entire acquisition proceedings have lapsed since the award has not yet been declared. Reliance has been placed on the judgment of the apex Court in Greater Noida Industrial Development Authority Vs. Devendra Kumar and others (supra). It has been pleaded that under the impression that land is needed for public purpose namely planned industrial Development by the Authority, the petitioners accepted the acquisition for the said public purpose but in view of the change of land use, the entire acquisition proceedings deserve to be quashed. Reference to writ petition No. 42631 of 2011 Mam Chand Vs. State of U.P. has also been made by which writ petition parties were directed to maintain status quo by interim order dated 20.8.2009. It is pleaded that notification seeking to acquire the land is in colourable exercise of power. It is pleaded that without application of mind, section 17(1) and 17(4) was invoked by dispensing the inquiry. Counter affidavit has been filed by the State Government stating that petition has been filed with great delay and is highly barred by time. It has been pleaded that after issuance of notice under section 9, the possession was transferred on 31.12.2005,

7.3.2008 and 28.1.2011. Out of 649 affected tenure holders 490 tenure holders have already accepted compensation after executing the agreement. The award has been declared under section 11 on 6.8.2011. Copy of certificate issued by the Collector for invoking the urgency clause has been annexed along with the counter affidavit. Copy of the award has also been filed. Counter affidavit has also been filed by the Authority, the respondent no. 3, in which it has been stated that the possession was handed over to the respondent no. 3 on 13.12.2005, 7.3.2008 and 28.1.2011. It is further pleaded that the land owners to the extent of 87% have received compensation under the agreement. With regard to various development works it was stated that in Sector Zeta-I five group housing plots were allotted in the year 2006. In Sector Zeta II, 125 residential plots and Sector Delta II, 700 residential plots and Sector Delta-III, 290 residential plots have been allotted. The writ petition has been filed with great delay. Intervention application has also been filed in the writ petition on behalf of M/s Omex Ltd. which claimed allotment of land in village Sakipur. In other writ petitions of the village Sakipur challenge to the same notifications have been made by raising more or less similar grounds of challenge which need no repetition. The writ petitions in Group 3 are the writ petitions relating to village Ghora Bachheri. Civil Misc. Writ Petition No. 40356 of 2011, Satish Kumar Versus State of U.P. and others, in which counter affidavit has been filed by the State of U.P. as well as respondent No.3, the Authority, is treated to be the leading writ petition. The petitioner claims to be bhumidhar of plots Nos.269, 313 and 1297, which are claimed to be fertile land capable of yielding three crops. On a portion of the said land, there are 200 trees. These plots were recorded in the name of petitioner's late father Chatarveer Singh. Petitioner also claims that on a part of the plots in dispute, he has constructed residential house and has been residing therein. Notification under Section 4 read with Sections 17 (1) and 17 (4) of the Land Acquisition Act was issued on 03.10.2005 for acquisition of 580.1734 hectares of land of village Ghori Bachhera. The land was proposed to be acquired for planned industrial development in district Gautam Budh Nagar through Greater Noida Industrial Development Authority. Declaration under Section 6 of the Land Acquisition was issued on 05.01.2006. The petitioner's case in the writ petition is that land use in the Development Plan-2021 has been shown as 'industrial'. It is pleaded that more than 60% of the acquired land has neither

been developed nor has been used for the purpose specified in the Notification, and particularly not even 1% of the total acquired land has been developed or used for industrial purpose. Most of the land is in possession of the villagers, who are carrying on agriculture relating activities. An application was submitted under the Right to Information Act, 2005 on 20.06.2011, seeking information about the industrial development in the acquired land of the village in question, which was replied by letter dated 11.07.2011. As per the information given by the Public Information Officer (Industries), no land has been allotted for industrial purpose in village Ghori Bacchera. A copy of the letter dated 11.07.2011 has been filed as Annexure-5 to the writ petition. It is pleaded that there was no such urgency so as to invoke the provisions of Sections 17 (1) and 17 (4) of the Act. The aforesaid provisions have been invoked without application of mind and without there being any appropriate relevant material. The only protection given to the person, whose land is sought to be acquired, is an opportunity under Section 5A of the Act, which has been denied. Counter affidavit has been filed by the State, stating that recorded tenure holders by executing agreement have received compensation on 01.12.2006 and the award under Section 11 of the Act has been declared on 25.07.2011. More than 90% of the tenure holders of the village in question have obtained compensation under 1997 Rules. Proposal was submitted by respondent No.3 to the State Government vide letter dated 24.08.2005, and thereafter Notification under Section 4 of the Act was issued on 24.08.2005. Certificates issued in relevant proforma by the Collector have been filed along with the counter affidavit. Possession of land was taken and handed over to respondent No.3 on 14.06.2006 and 06.10.2006. The writ petition suffers from delay and latches. The urgency clause in the notification was invoked on sufficient material. The allegations made in paragraph 11 of the writ petition that land use of the village in question has been shown in the Development Plan as “industrial” has not been denied except with the statement that the land had been acquired for planned industrial development. Counter affidavit has also been filed by respondent No.3 making same pleadings as were made in the counter affidavit of the State. Out of 2285 persons 2210 have accepted the compensation under agreement. Development works have been carried out in the village in question and the area has been demarcated in different sectors. In the village 3189 residential flats have

been allotted under various schemes and in an area of 3672 sq. meter 976 flats were built by the Authority, which have been allotted. Group housing flats as well as facility flats have been allotted. Under 6% scheme for the villagers whose land has been acquired, allotment of land measuring 1357660 sq. meter has been made. Writ petition is barred by latches. None of the grounds made in the writ petition have any substance. It is denied that the land use has been changed. Land use at the time of the Notification under Section 4 of the Act is residential, commercial and recreational, which has not been changed. Intervention application has been filed on behalf of Noida Extension Flat Buyers Welfare Association as well as on behalf of Omax Build Home Private Limited. Allotment of land was made in the year 2009 and 2010. In all 25 writ petitions of village Ghori Bachhera, more or less, similar pleadings have been made by the petitioners, which need not be repeated. Writ petitions in Group 4 relate to village Pali. Writ petition No.46933 of 2011, Raghubar vs. State of U.P. and others writ petition No.47469 of 2011 and writ petition No.25464 of 2011, relate to this village. Writ petition No.46933 of 2011, in which pleadings have been exchanged, is being treated as leading writ petition. In Writ petition No.46933 of 2011, there are 81 petitioners. Notification under Section 4 read with Sections 17 (1) and 17 (4) of the Act was issued on 07.09.2006 proposing to acquire 225.876 hectares of land. The Notification mentions acquisition for planned industrial development in district Gautam Budh Nagar through Greater Noida Industrial Development Authority. Subsequent thereto Notification under Section 6 of the Act was issued ON 28.07.2007. Petitioners claim to be bhumidhars of various plots situate in village Pali. It is alleged that Notification under Section 4 of the Act, invoking the provisions of Sections 17 (1) and 17 (4) of the Act, was issued, without application of mind and it is submitted that the petitioners had been under bonafide belief that the land was being acquired to serve the public purpose as specified in the impugned notification, and the acquiring authority being in dominating position, the petitioners had no choice but to accept the compensation under 1997 Rules. They being law abiding citizen and being under the impression that the State Government has acquired land for public purpose, they did not come forward to challenge the notification. However, the very purpose of acquisition has been changed, the respondents are playing fraud, and they are proposing to use it for

construction of commercial and residential houses, hence they have come in the writ petition. No notice under Section 9 was issued or served upon the petitioners. The petitioners are willing and ready to refund the compensation. They are entitled to return of their land. Counter affidavit has been filed by the State stating therein that the petitioners have not explained the inordinate delay in challenging the notification. Possession of the land in dispute was transferred to the Authority on 01.11.2007 and 10.04.2008. Compensation has been distributed amongst the farmers to the tune of 93.49%. Award under Section 11 of the Act has been declared on 10.08.2011. Possession memo has been filed as Annexure-C.A.-4. Relevant certificates were sent by the Collector with justification to the State Government. Copy of the award has also been brought on record along with the counter affidavit. Counter affidavit has also been filed by respondent No.3 reiterating the pleadings of the State Government. It has also been stated that after taking over possession area has been demarcated as Sector Kappa-II. The authority has constructed roads, laid sewer lines and electricity transmission lines. The area has to be used as Transportation Hubb. Affidavit on behalf of M/S Paramount Vilas Private Limited has been filed along with Intervention Application. It has been stated that there is inordinate delay in filing the writ petition. Lease deed has been executed in favour of the aforesaid company on 11.04.2011 allotting the plots to the company to build cluster of residential units. The Company has made huge investment. Intervention Application has also been filed by M/S Divine Con Build Private Limited, claiming execution of lease deed in favour of the applicant on 11.04.2011. Allotments are claimed by the U.P.S.I.D.C. It is alleged that the land has been acquired for U.P.S.I.D.C., which has launched scheme for group housing. Award under Section 11 of the Act has been made on 10.08.2011. One of the writ petitions, namely, writ petition No25464 of 2008, Prem Hari vs. State of U.P. and others was filed on 21.05.2008, challenging the notification taking similar pleadings. It has also been pleaded that in plot No.305 there is abadi of the petitioner in an area of 1060 sq. meters of land. Writ petitions in Group 5 relate to village Biraundi Chakrasenpur. Writ petition No.46501 of 2011, Jagdish vs. State of U.P. and others is being treated as leading writ petition. In the said writ petition counter affidavits have been filed by the State as well as by the authority. Notification under Section 4 of the Land Acquisition Act was issued on 28.11.2002

proposing acquisition of 163.2208 hectares of land of the village in question. The provisions of Sections 17 (1) and 17 (4) of the Act had been invoked. The purpose mentioned in the notification was planned industrial development. Declaration under Section 6 of the Act was made on 29.01.2003. The petitioners claim to be still in possession of the land. The petitioners claim that there was no application of mind while invoking the provisions of Sections 17 (1) and 17 (4) of the Act. The respondents have not complied with the mandatory provisions of Section 17 (3A) of the Act. The State Government till date has not taken possession of the land. Compensation under agreement was received in the year 2007. Abadi plots of influential persons have been left from acquisition. Abadi plots of illiterate persons have been included in the acquisition. In the land under acquisition there is abadi of the petitioners. Acquisition proceedings are nothing but colourable exercise of power by the State Government. Counter affidavit has been filed by the State stating therein that the possession of land was taken on 07.05.2003 and 94% compensation has already been disbursed. Award under Section 11 of the Act has also been declared on 09.09.2009. 85% of the land owners have accepted compensation under agreement. There is delay in filing writ petition. The petitioners are not in possession of the land. Section 11A of the Act is not attracted since possession was taken after invoking the power under Section 17 of the Act. Counter affidavit has also filed on behalf of the Authority. Land use under the development plan was shown as residential. Construction of flats by the builders has been made. It has been denied that the petitioners were forced to accept the compensation. In writ petition No.46747 of 2011, Kashi Ram Vs. State of U.P. and others, it has been stated that no industry has come up in the area and only some builders have come up. It is stated that no possession has been taken from the petitioners in accordance with law. In other writ petitions relating to village Biraundi Chakrasenpur, grounds of challenge to the notification, more or less, are similar.

Writ petition No.46130 of 2011, Roshan vs. State of U. P. And others has been filed challenging the notification dated 31.07.2007 issued under Section 4 of the Act proposing to acquire plot No.64Kha area 0.8233 Hectares. Urgency clause was invoked by dispensing enquiry under Section 5A of the Act. Declaration under Section 6 of the Act was made on 15.01.2008. Petitioners' case is that they are still in actual possession of the land in dispute. The respondents have not

complied with the provisions of Section 17(3A) of the Act. No award has yet been made. Very nominal sum of money was paid to the petitioners. There was no sufficient material for invoking the provisions of Sections 17 (1) and 17 (4) of the Act. Acquisition of land is nothing but colourable exercise of powers. Counter affidavit has been filed by the State, stating that the possession of the land has been taken on 09.05.2008. The only tenure holder, who has filed writ petition, has already received the compensation under the agreement. There were sufficient materials for invoking the urgency clause under the provisions of Sections 17 (1) and 17 (4) of the Act. Development has been made in the area by constructing roads, laying down sewer lines and electricity transmission lines. Group housing development work has also been done. The writ petition has been filed with delay.

Writ petitions in Group 6 relate to village Tusiyana. Writ petition No.42324 of 2011, Kunwar Pal Bhati and others vs. State of U.P. and others, is being treated to be the leading writ petition. The petitioners claim to be the bhumidhars of different plots of village in question. Notification under Section 4 of the Act read with Sections 17 (1) and 17 (4) of the Act had been issued on 10.04.2006 by the State Government proposing to acquire 379.001 hectares of land of the village for planned development in district Gautam Budh Nagar through Greater Noida Industrial Development Authority. The petitioners claim to have constructed dwelling units and earning their livelihood by carrying agricultural activities. Notification under Section 6 of the Act was issued on 30.11.2006. Petitioners claim to be in possession of their land and carrying on agricultural activities. It is pleaded that invocation of urgency clause under the provisions of Sections 17 (1) and 17 (4) of the Act was without any basis and without sufficient material. Dispensation of enquiry under Section5A of the Act has been made in routine manner. It is further pleaded by the petitioners that the Authority is calling for negotiation only those persons who have filed writ petition in the High Court. Award under Section 11 of the Act has been issued on 27.04.2010. Counter affidavit has been filed by the Authority stating that possession was taken on two different dates, i.e. 02.02.2007 and 25.03.2008. It is further stated that out of 379.001 Hectares of land, compensation in respect of an area of 260.854 hectare has been disbursed and accepted by the land owners. Out of 970 tenure holders 787 have accepted compensation. Development work has been done in the area and the area has

been demarcated as Sector KP-5 and Ecotech-3. The Authority has constructed roads, laid down sewer lines and electricity transmission lines, and made allotment of group housing work. I.T. and Institutional plots have also been allotted between 2007 and 2011. The petitioners have filed rejoinder affidavit, stating that the area acquired in the year 2006 remains vacant. Allotment to certain builders was made in the year 2009 and 2011. It is further pleaded that the petitioners were given assurance that the industries would be set up in their land, under which assumption, the petitioners never approached the court of law and had taken compensation whatever was given to them, since they were under the impression that after establishment of industries, their children would get employment and earn their livelihood. It is further pleaded that industries were established only in the year 1998, and thereafter there is no whisper of any industry being established in the village. It is further stated that the area which has now been demarcated, is for residential colonies to such persons, who would have no concern with the establishment of industry. Now it would be very difficult that any industry would be established, as the Authority itself would not give permission to industries to come up in the residential colonies. Application for intervention has also been filed by the Greater Noida Extension Flat Buyers Welfare Association.

In writ petition No.45672 of 2011, Adesh Chaudhray vs. State of U.P. and others, similar allegations have been made. It has been further pleaded that in village Patwari, the land owners have been given additional compensation of Rs.550/- per sq. yard, which was also publicized in the newspaper dated 07.08.2011. Case of the petitioners is that they have been discriminated by not giving additional compensation. It is stated that the land of the village remains unused and is not being used for the purpose for which it was acquired. Writ petition No.47502 of 2011 has been filed by 76 petitioners challenging the aforesaid notifications dated 10.04.2006 and 30.11.2006. Petitioners have pleaded that after taking possession of the land so acquired under the alleged planned development scheme, entire land has been allotted to property developers and building colonizers. Copy of the allotment order dated 14.08.2007 has been filed as Annexure-6 to the writ petition. The fact of allotment through letter dated 14.08.2007 came to be knowledge of the petitioners in the third week of July, 2011, and thereafter copy of the letter was obtained on 08.08.2011. Petitioners have further pleaded that they were given to

understand that the land acquired would be used for industrial development, which would provide the youths of the village employment and taking of their land would not financially affect their family. It is alleged that the respondent Authority has hatched conspiracy of depriving the farmers of their land under mala fide and colourable exercise of power. The petitioners Nos. 18 and 24 have not received compensation so far. The others have received compensation at the rate of Rs.850/- per sq. yard. It is further alleged that the acquisition proceedings have resulted in pocketing of huge profit limited in few by depriving the bulk of population of their residential abadi and their source of livelihood in the name of development, which is a form of camouflage and false prospective of development. Writ petitions of Group 7 relates to village Dabra. Writ petition No.45450 of 2011, Phundan Singh and others vs. State of U.P. and others, has been filed challenging the notification dated 31.10.2005 issued under Section 4 read with Sections 17 (1) and 17 (4) of the Act. By means of the aforesaid notification land measuring 121.8506 hectares was proposed to be acquired. Declaration under Section 6 of the Act was issued on 01.09.2006. Writ petition has been filed by 49 tenure holders. Petitioners' case in the writ petition is that when their land was acquired, there was no demand for establishing industry in the area. Further the respondents had also no approved scheme or project to establish industry and develop the area as industrial area. Respondent No.3 at the time of acquisition was in possession of vacant land, which was sufficient for development. There is sufficient delay in issuance of notification under Section 6 of the Act, which clearly indicates that there was no urgency for invoking the provisions of Sections 17 (1) and 17 (4) of the Act, which were arbitrarily invoked. The petitioners' land is still vacant and they are in possession. There was no sufficient material before the State Government to direct for dispensation of enquiry under Section 5A of the Act. In the counter affidavit fled by the State, it has been stated that the possession was taken on 31.01.2007 and award has been declared on 23.07.2011. It is further stated that in accordance with 1997 rules out of 552 land owners 490 have accepted compensation. There was sufficient material for dispensing with the enquiry. Possession memo dated 31.01.2007 has also been filed as Annexure with the counter affidavit. Details of construction of different flats have been mentioned in Prapatra-16, which has been filed as

Annexure-C.A.-3 to the counter affidavit. Counter affidavit has also been filed by the Authority reiterating the above pleadings. Under 6% residential scheme 192 flats have been allotted to the villagers. Writ petitions in Group 8 relate to village Dadha. Writ petition No.46160 of 2011, Ranveer Dadha and others vs. State of U.P. and others has been filed challenging the Notification dated 31.12.2004 issued under Section 4 read with Sections 17 (1) and 17 (4) of the Act by the State Government, under which 83.084 hectares of land was sought to be acquired. Declaration under Section 6 of the Act was issued on 01.07.2005. Petitioners' case in the writ petition is that they are still in possession of their land and doing agricultural activities. The respondents are alleged to have taken possession on 28.12.2005, 3.05.2006 and 29.01.2011, whereas petitioners are still in possession of their land. The award having not been issued within two years of the notification, under Section 11A of the Act, entire land acquisition proceedings stood lapsed. It is stated that joint objection was filed on 25.07.2008 praying for exemption of land for abadi purpose. It is stated that similarly placed persons were given benefit by exempting and regularizing their land Reference of writ petition No.54028 of 2006, Kishan Singh vs. State of U.P. and others has been made, in which writ petition same notification was under challenge, and the Division Bench vide its order dated 19.09.2005 had directed the parties to maintain status-quo. Counter affidavit has been filed by the State, stating therein that the writ petition has been filed with delay of 6 years; as such it deserves to be dismissed. Possession of land was taken on 28.12.2005. Award had been given on 15.05.2009 Compensation has been received by all the tenure holders. It is stated that there was sufficient material before the State Government to dispense with the enquiry under Section 5A of the Act. Relevant proposals were submitted by the Collector. Counter affidavit has also been filed by the Authority. Apart from reiterating the pleadings as made by the State, it has been stated that under the residential scheme669 plots have been allotted. I.T. and Institutional plots have been allotted between 2006 and 2011. Residential plots under 6% scheme have also been allotted.

In writ petition No.44181 of 2011, Dharam Pal and others vs. State of U.P. and others, same Notifications have been challenged. Writ petition has been filed by 27 persons. It has been further pleaded that for the satisfaction of the State there should be some material in support of the demand of land for public purpose.

There is no evidence that any reputed industrialist of the country or abroad had approached the respondents or the respondents themselves have any plan or project for establishing industry. Respondent No.3 had no plan or project to establish any industry in the area. Issuance of Notifications under Sections 4 and 6 of the Act are colourable exercise of powers for acquiring the land from the farmers without any concrete plan to develop the area and establish the industry. The respondents have also changed the purpose of acquisition and some part of the land has been given to the private builders to construct the residential premises, and lease deed dated 08.02.2007 has been executed in favour of one M/s Steeler Sprint Private Limited. Petitioners were given compensation at the rate of 270.50/- per sq. yard. Award was declared on15.05.2009. there was no urgency in the matter, which required dispensation of enquiry under Section 5A of the Act. Counter affidavit has been filed by the State, repeating the same pleadings as mentioned in the counter affidavit filed in writ petition No.46160 of 2011. In writ petition No.45345 of 2011, Chand and others vs. State of U.P. and others, same notifications have been challenged. Apart from other pleadings, it has been stated that there was no project or plan with the respondents to establish the industry in the area nor was there any material that any reputed industrialist of the country had approached the respondents and submitted any plan or project for establishing their industry in the said area. 90% of the acquired land is being used for construction of residential colonies.

Writ petitions of Group 9 relate to village Roza Yakubpur. Writ petition No.37119 of 2011, Dal Chand vs. State of U.P. and others, in which pleadings are complete, is being treated as leading writ petition. Petitioners claim to be bhumidhars in possession of plots as detailed in paragraph 3 of the writ petition. Notification under Section 4 of the Act was issued on 31.08.2007, invoking the provisions of Sections 17 (1) and 17(4) of the Act, proposing to acquire 484.836 hectares of land of the village in question for planned development. Notification under Section6 of the Act was issued on 27.02.2008. Petitioners' case in the writ petition is that the land of the petitioner sought to be acquired as per the notification for planned development is in fact camouflage. It is stated that in fact the land has been acquired for the purposes of transferring the same to the private builders. Entire exercise has been termed to be colourable exercise of power. It is pleaded

that there is no project on the part of the respondent Authority for planned industrial development over the said land. By lease deed dated 28.07.2010 an area of 106196 sq. meter being flat No.GH-01, Tech Zone-4 has been transferred to M/s Amrapali Leisure Valley Developers Private Limited for group housing. Similarly by lease deed dated 25.02.2001 an area of 354288 sq. meter of plot No.GH-09, Sector Tech Zone-4 has been transferred to M/S Amrapali Dream Valley Private Limited. By another lease deed dated 17.02.2011 an area of 272916 sq. meter land of plot NO. GH-05, Sector Tech Zone-4 has been transferred to M/S Amrapali Centurion Park Private Limited. Likewise by lease deed dated 11.10.2010 an area of 85202 sq. meter of land has been transferred to M/S Supertech Limited and by lease deed dated 02.04.2011 an area of 86037 sq. meter land has been transferred in favour of M/S Omarnests Private Limited and further by lease deed dated 03.11.2010 allotment has been in favour of M/S Rajesh Project Limited of an area of 74731 sq. meter. It is stated that although the land of the village in question was acquired by the State Government for planned industrial development, but the same is being utilized for construction of colonies. In the rejoinder affidavit, the petitioners have brought on record resolution of the Authority dated 02.02.2010, by which it was resolved that area adjoining 130 meter road towards Noida be changed from industrial to housing scheme, which shall be in the interest of the Authority. The petitioners have stated that the land is not being used for the purpose for which it was acquired, rather land use is sought to be changed by resolution dated 02.02.2010. It is stated that the residential purpose is always connected with industries. There was no reason to dispense with the enquiry under Section 5A of the Act. On the material which was with the State Government, no reasonable person can form an opinion that there was need to dispense with the enquiry under Section 5A of the Act. Under the Right to Information Act, the petitioner was informed that the area of village Roza Yakubpur is included in Tech Zone-4, Sector-2, Sector 16, Sector 16B, Ichotech-12, Ichotech-13 and Ichotech-15. Petitioners claim that they came to know in May, 2011 that their land of village in question will not be used for planned industrial development. Thereafter, they made enquiries and came to know about the lease deeds executed in favour of respondent Nos. 3 to 8. Counter affidavit has been filed by the State, in which it has been stated that possession was taken on

19.03.2008 and 87.164% of the compensation has already been disbursed. Award was declared on 29.11.2010. It has been stated that there was sufficient material forwarded by the Collector, including the relevant certificates on the basis of which the State Government dispensed with the enquiry under Section 5A of the Act. Copy of the award has also been brought on record along with the counter affidavit. Under agreement in accordance with 1997 Rules the land owners were granted compensation of Rs.850/- per sq. yard, whereas under Section 11 (1) of the Act compensation fixed was Rs.370.37/- per sq. meter.

In the writ petition Intervention applications have been filed on behalf of respondent Nos.4, 6,8 and 9. Intervention application has also been filed on behalf of M/S Prem Industries and M/S Unicure India Private Limited as well as on behalf of M/S Ajnara Realtech Limited and M/S S.G.S. Udyog Private Limited. Private respondents seeking intervention have given details of allotment of various plots to them between 2008 and 2011, details of delivery of possession to them and the lease land, details of payments made by them and the developments being carried out by them. Certain photographs depicting developments have also been annexed along with the counter affidavit. Impleadment application on behalf of Indrani Merchandise Private Limited, apart from 15 other applications along with affidavit have also been filed through Adersh Agrawal and Sri Piyush Shukla, Advocates. The applicants claim handing over of possession in the year 2008 and thereafter copies of the lease deeds granted to the aforesaid applicants have been annexed, which indicate that most of the aforesaid applicants were allotted 2100 sq. meters to 5000 sq. meters of land except one Sushil Dung, who was allotted 33362 sq. meter of land. All the aforesaid applicants claim allotment for industrial purpose. It was further pleaded by the applicants that the petitioners are guilty of delay and latches.. About 117 industries have been given allotment in Ichotech-12. The other petitioners have raised more or less the similar submissions, which need not be repeated.

Writ petitions in Group 10, which are two in number, relate to village Roza Yakubpur. These are writ petition No.45328 of 2011, Harish Chandra and others vs. State of U.P. and others and writ petition No.39385 of 201, Baljeet and others vs. State of U.P. and others. In these two writ petitions Notification under Section 4

of the Act dated 27.02.2008 and notification under Section 6 of the Act dated 30.06.008 have been challenged on similar grounds.

Writ petitions in Group 11 relate to village Aimnabad. Writ petition No.43623 of 2011, Chhatar Singh vs. State of U.P. and others, in which pleadings are complete, is being treated as leading writ petition. This writ petition challenges the notification dated 24.08.2006 issued under Section 4 of the Act read with Sections 17 (1) and 17 (4) of the Land Acquisition Act, proposing to acquire 100.428 hectares of land of the village in question for planned industrial development. Petitioner's case is that he is bhumidhar of the land in dispute. Though the land was acquired for planned industrial development, but it has been allotted to private builders for construction of residential complexes. It is pleaded by the petitioner that after coming to know about the acquisition, he filed representation dated 12.08.2006 praying for exemption of the land on the ground that the aforesaid land was the only land, in which the petitioner carried agricultural activities, which was the only source of livelihood of the petitioner. The fact that the land has been allotted to builders came to the knowledge of the petitioner only in July, 2011. There was no ground to invoke the provisions of Sections 17 (1) and 17 (4) of the Land Acquisition Act. Counter affidavit has been filed by the State, in which it has been stated that possession has been taken on 20.07.2007 of 84.578 hectares of land. 81% of the compensation has already been disbursed. Award has been declared on 27.07.2011. There was sufficient material with the State Government for dispensing with the enquiry under Section 5A of the Act. The petitioner, having accepted compensation, could have no grievance regarding acquisition of land. After taking possession, area has been demarcated as Sector-I and Section KP-5. Roads etc. have already been constructed by the Authority. I.T. plots and Group Housing plots have been allotted in the village.

Writ petitions in Group 12 relate to village Khanpur. Writ petition No.39037 of 2011, Mahipal Sharma and others vs. State of U.P. and others, in which pleadings are complete, is being treated as leading writ petition. By means of this writ petition notification issued under Section 4 of the Act dated 31.01.2008 read with Sections 17 (1) and 17 (4) of the Land Acquisition Act, proposing to acquire and area of 187.325 hectares of land, has been challenged. Notification under Section

6 of the Act had been issued on 30.06.2008. Petitioners' case is that plot No.357 is abadi land where the house of the petitioners situate. Petitioners approached respondent No.4 along with relevant khasra, khatuani and photographs of the house praying for exemption of the plot. Petitioners' case is that in pursuance of the direction of respondent No.4 notary affidavit was also filed. There was no ground to invoke urgency clause. Petitioners could not earlier file writ petition, since they were under bona fide impression that the land has been exempted and for the first time on 06.04.2011, petitioners came to know that the land has not been exempted, when they applied for copy of khatauni for getting agricultural loan. Counter affidavit has been filed by the State stating therein that possession was taken on 10.10.2008, and out of 385 tenure holders 345 have accepted compensation under the agreement. Award has also been declared on 10.08.2011. A joint survey was conducted prior to issuance of notification, in which survey no abadi was found in plot No.357. Government Order dated 24.04.2010 has been issued by the State Government for settlement of abadi on the claim of tenure holders by means of lease back of the land on which abadi existed. If the petitioners fulfil criteria and if there is abadi on the land, lease back may be given to the petitioners in accordance with law. Counter affidavit has also been filed by the Authority reiterating the pleadings made by the State. It is further stated that the writ petition is barred by latches. It has been denied that in plot No.357 there is abadi of the petitioners. Intervention application has also been filed by M/S Unitech Limited claiming that lease deed has already been executed by the Authority in favour of the applicant for developing of group housing for HIG, MIG and LIG. In writ petition No.45537 of 2011, Smt. Harbati and others vs. State of U.P. and others, petitioners claim to have purchased the rights of one Dharm Pal Birbal by registered sale deed dated 05.02.2007 and their names have also been mutated. Petitioners claim to have constructed pucca house. Writ petitions in Group 13 there is only one writ petition relating to village Biraunda, i.e., writ petition No.46644 of 2011, Dalip Singh vs. State of U.P. and others, challenging the notification dated 15.12.1999 issued under Section 4 of the Act read with Sections 17 (1) and 17 (4) of the Land Acquisition Act, proposing to acquire 58.893 hectares of land of the village in question for planned industrial development. Notification under Section 6 of the Act was issued on 22.04.2000.

Petitioners claim to be in actual physical possession. Petitioner's case is that instead of utilizing the land for planned industrial development, the land has been allotted to big builders like Green Wood Edico and NLF. Counter affidavit has been filed by the State, in which it has been stated that the writ petition is highly barred by time and it deserves to be dismissed on this ground alone. Possession of land was taken on 28.07.2000 and 11.10.2002 of an area of 55.210 and 3.777 hectares of land respectively. 97% of the compensation has already been disbursed. Award was made on 09.01.2009. The Authority has also filed short counter affidavit stating that Sector PI-I and II and R-Green were developed and the land was allotted way back in the years 2001-2006. Amusement Park had been constructed in the year 2003 and Institutional plot in the year 2003. The writ petitions in Group-14 relate to village Chuharpur Khadar. In Writ Petition No.46127 of 2011 (Bjendra vs. State of U.P. and others) pleadings are complete and the said writ petition is being treated as leading writ petition of the aforesaid village. In this writ petition, the petitioner has prayed for quashing the notification dated 21st June, 2003 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing to acquire 214.598 hectares land of village Chuharpur Khadar. The declaration under Section 6 of the Act was issued on 7th August, 2003. The petitioner claims that he is owner and in possession of the land in dispute. The exercise of land acquisition is said to be arbitrary, malafide and in colourable exercise of power. It is pleaded that acquisition has been made without making any plan. It is further pleaded that provisions of Section 17(3-A) of the Act has not been complied with and no award has yet been made under Section 11 of the Act. It is alleged that petitioner and other villagers have been forced to receive the compensation at lower rate. There was no such urgency in the matter to enable the State to dispense with inquiry under Section 5A of the Act. The petitioner has his house in the land in dispute. A counter affidavit has been filed by the State stating that possession of the land was taken on 4th September, 2004 and 100% tenure holders have received compensation under agreement. The GNOIDA vide letter dated 4th December, 2002 forwarded the proposal for acquisition which was forwarded by the Collector on 18th January, 2003. The petitioner having voluntarily received compensation, he is not entitled to challenge acquisition after six years and the writ petition deserves to be dismissed on the ground of delay. The GNOIDA has also filed its

counter affidavit reiterating the pleadings made by the State Government. It has further been stated that the residential plots under 6% quota has already been allotted. It is also stated that award was declared on 18th March, 2005. An application for intervention has been filed on behalf of Mr. Manmohan Bansal who claims to have purchased a plot from A.T.S. Residential Society which has constructed more than 800 flats in the society. It is stated that various residential colonies have already come up including Army Welfare Housing Organisation Society. The applicant prays that writ petition be dismissed on the ground of delay. In Writ Petition No.48209 of 2011 (Shiva Dutta and others vs. State of U.P. and others) notifications dated 2nd May, 2003 and 21st June, 2003 issued under Section 4 read with Sections 17(1) and 17(4) of the Act by which 135.73 hectares of land was proposed to be acquired, have been challenged. The declaration under Section 6 was issued on 5th June, 2003 and 7th August, 2003, which have also been challenged. By subsequent declaration dated 7th August, 2003 the land to the extent of 214.596 hectares was sought to be acquired.

Writ Petition No.45072 of 2011 (Kartar Singh and others vs. State of U.P. and others) has been filed by 50 tenure holders challenging the notifications dated 2nd May, 2003 and 21st June, 2003 issued under Section 4 read with Sections 17(1) and 17(4) of the Act as well as the notifications dated 5th June, 2003 and 7th August, 2003. An intervention application has been filed in the said writ petition by Mr. Manmohan Bansal stating similar facts as has been stated in Writ Petition No. 46127 of 2011. The writ petitions in Group-15 relate to village Badalpur. In Writ Petition No.42548 of 2011 (Mangat Singh and others vs. State of U.P. and others) pleadings are complete and the said writ petition is treated to be leading writ petition of village Badalpur. This writ petition has been filed by 50 tenure holders of village Badalpur challenging the notification dated 20th June, 2007 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing to acquire 230.554 hectares land of village Badalpur. The declaration under Section 6 of the Act was issued on 18th June, 2008 for acquiring the land for planned industrial development. The petitioners claim to be owners and in possession of the plots mentioned in paragraph 3 of the writ petition. The petitioners claim to be using their land for residential as well as agricultural purposes, which is only source of livelihood for them. It is pleaded that there is no material to indicate that any

reputed industrialist of the country or abroad has submitted any plan or project for establishing industry in the said area. The petitioners further submit that there is delay of about one year in issuance of notification under Section 6 of the Act which itself clearly indicates that there was no urgency in the matter for dispensing with the inquiry under Section 5A of the Act. It is further submitted that issuance of notification is in colourable exercise of power. It is further pleaded that GNOIDA by changing the purpose of acquisition is now inviting private colonisers/builders to built up private colonies. Discrimination has also been alleged that the land of certain influential persons have been released from acquisition. Name of Kishan Lal, who happened to be Chairman of Zila Panchayat, Gautam Budh Nagar whose land situate in Khasra No.774 has been referred. The said Kishan Lal was given land in other plots in the prime location. Further Kishan Lal was also permitted to sell the land. In paragraph 10 of the writ petition details of other persons whose lands were released has been mentioned. A resolution was also passed by the GNOIDA on 20th December, 2010 for adjusting certain persons whose names were mentioned in the resolution on some other plots. The resolution notes that earlier the villagers have made serious demonstration against the acquisition and unless they are adjusted there shall be serious problem. The petitioners' case is that they also raised their objection for release/return of the land. The petitioners have also expressed their willingness to return the amount of compensation and an application submitted to Deputy Chief Executive Officer on 25th May, 2011 has been referred to, copy of which has been filed as Annexure-7 to the writ petition. It is alleged that inquiry under Section 5A of the Act was wrongly dispensed with. It is submitted that about 60% of the land has not been developed. In the supplementary affidavit, it has been pleaded that the land was not needed for any industrial purpose and the same is being acquired illegally for establishing colonies to give benefit to certain local leaders of ruling party. It has been stated that certain persons have been permitted to lease back and they were also permitted to sell the land. Details regarding said fact has been mentioned in Annexure-1 to the supplementary affidavit. The petitioners' case further is that they are being pressurised to accept the amount of compensation under the 1997 Rules. It is pleaded that when the petitioners did not accept the compensation, they were tortured by the local police and their signatures were forcibly obtained on the

agreement. They were also taken away by the police and proceedings under Section 107/116 of Cr.P.C. were initiated against the petitioners on 13th September, 2007. It is pleaded that petitioners and other tenure holders have received compensation under compulsion and pressure. The petitioners have also amended the writ petition by amending paragraphs 30, 31, 31A, 31B and 31C. It is stated by the petitioners that notifications in question have been challenged earlier in Writ Petition No.35509 of 2008 which writ petition was dismissed by this Court on 4th September, 2009 against which judgment special leave to appeal has been filed before the Apex Court which is pending consideration. It is further stated that the respondents have acquired the land in colourable exercise of power and the valuable land is being used for constructing big parks leaving green belt. A counter affidavit has been filed by the State stating that possession of the land was taken on 18th July, 2009 of 226.291 hectares land. It is stated that 86% compensation has already been disbursed. The award has also been declared on 19th August, 2011. It is stated that after following due procedure the inquiry under Section 5A of the Act was dispensed with. Under the 1997 Rules, out of total acquired land of 230.554 hectares, compensation has been received for an area of 182.9985 hectares. The petitioners having entered into an agreement, they have relinquished their right to challenge the notification. Any abadi constructed by the petitioners was without permission of the GNOIDA. The writ petition suffers from delay and laches. The State has already issued a Government order dated 24th April, 2010 regarding lease back for purpose of abadi and a Committee has been constituted to examine different claims. The notifications impugned have already been upheld by a Division Bench of this Court vide judgment and order dated 4th September, 2009 in Writ Petition No.35509 of 2008 (Munshi Singh vs. State of U.P. and others) reported in 2009(8) ADJ 360. A counter affidavit has also been filed by respondent No.3 stating that notifications have already been upheld by a Division Bench of this Court in Munshi Singh’s case (supra). It is denied that land has been allotted to profit colonisers or builders in village Badalpur. It is, however, admitted that by way of settlement of the grievances of the land owners certain land was leased out to land owners. The leases granted to various land owners have been mentioned in paragraphs 9 and 11 of the counter affidavit of the State. The village Badalpur has been notified as part of the industrial development area

way back in the year 1996. The allegation that petitioners are still in possession has been denied. Under the 1976 Act allotment to private builders is not prohibited.

In Writ Petition No.45558 of 2011 (Smt. Savitri Devi vs. State of U.P. and others) aforesaid notifications of village Badalpur have been challenged. The petitioner's grievance is that her Plot No.744 area 150 square yard has not been exempted whereas the respondents have exempted plots of others in the same Plot No.744. In Writ Petition No.43870 of 2011 (Madhuri Saxena and others vs. State of U.P. and others), petitioners' case is that petitioners intended to open an Old Age Day Care Centre on the plot which was purchased by the petitioners on 30th October, 2006. It is submitted that petitioners made representations on 4th August, 2008, 2nd June, 2009 and 27th April, 2011 for exemption of their plot which have not yet been accepted. It is further stated that the respondents have adopted pick and choose policy insofar as petitioners' land has not been exempted and land of similarly situated persons have been exempted from acquisition in the same plot. In Writ Petition No.45454 of 2011 (Likhkhi and others vs. State of U.P. and others) more or less similar grounds have been taken for challenging the acquisition.

The writ petitions in Group-16 relate to village Sadopur. In Writ Petition No.46026 of 2011 (Umesh Chaudhary and others vs. State of U.P. and others) pleadings are complete which is being treated as leading writ petition of village Sadopur. The writ petition has been filed challenging the notification dated 31st August, 2007 issued under Section 4 read with Section 17(1) and 17(4) of the Act for acquisition of area 142.160 hectares of village Sadopur. The declaration under Section 6 was issued on 30th June, 2008. Petitioners' case is that although more than four years have elapsed from the acquisition but no development has taken place. It is further stated that in Khasra abadi of the petitioner exists. There was no ground to invoke urgency clause while issuing notification under Section 4 of the Act. In the counter affidavit filed by the State it has been stated that possession was taken on 16th February, 2009 and award was declared on 13th July, 2010. About 74% of the compensation has already been disbursed in accordance with the 1997 Rules. It is pleaded that there was sufficient materials before the State Government for dispensing with the inquiry under Section 5A of the Act. Apart from payment of

compensation, 6% abadi plot is also allotted subject to minimum of 120 square meters and maximum of 2500 square meters. A short counter affidavit has also been filed by the GNOIDA in which it has been stated that notifications under challenge have already been upheld by this Court vide its judgment in Munshi Singh's case (supra). The other writ petitions of this village raise more or less similar grounds challenging the notifications which need no repetition.

The writ petitions of Group-17 relate to village Gharbara. In Writ Petition No. 46767 of 2011 (Satbir and others vs. State of U.P. and others) pleadings are complete and this writ petition is treated as leading writ petition of village Gharbara. In this writ petition, the petitioners have challenged the notification dated 3rd October, 2005 issued under Section 4 read with Sections 17(1) and 17(4) proposing acquisition of 59.561 hectares land of village Gharbara. The declaration under Section 6 was issued on 20th December, 2005. Petitioners' case is that there was no occasion to invoke urgency clause for planned industrial development. Petitioners' case further is that they have accepted the compensation under the impression that the land is acquired for planned industrial development whereas the GNOIDA has acquired the land and transferred the same to private builders for business purpose. One of the lease deed dated 21st July, 2006 executed in favour of M/s R.C. Info System Private Limited has been brought on the record by which lease of 1,08,057 square meters has been executed for setting up I.T. industry. An application for intervention has been filed on behalf of M/s Paramount Towers Limited along with an affidavit which claim to have been allotted a plot vide letter dated 12th March, 2010 being Plot No. GH-06 area 51000 square meters under Group Housing Scheme. The applicant claims that on 11th May, 2010 lease has been executed. The applicant further claims that constructions have been started on the plot. The applicant in the affidavit has also referred to settlement between the GNOIDA and the farmers of village Patwari after the order of this Court dated 26th July, 2011 in the main writ petition. The applicant has also annexed the newspaper report indicating that farmers of village Patwari shall get Rs.550/- per square yard as additional compensation and 8% abadi land.

In Writ Petition No. 46742 of 2011 (Brahm Singh vs. State of U.P. and others) apart from other grounds it has been stated that compensation has not been accepted for Plot No.589. In Writ Petition No.48067 of 2011 (Niranjan vs. State of U.P. and others), the petitioner has challenged only the notification dated 23rd March, 2009 (Annexure-1 to the writ petition). In Writ Petition No.48068 of 2011 (Niranjan vs. State of U.P. and others), the petitioner has challenged the notification dated 20th December, 2005 issued under Section 6 of the Act acquiring 59.56 hectares land of village Gharbara. Petitioner's case is that compensation at the rate of Rs.800-880 square meter is proposed whereas the respondents are selling the land at the rate of 12000-18000 per square feet. In Writ Petition No.48071 of 2011 (Mahipal and others vs. State of U.P. and others), the petitioners have challenged the notification dated 2nd May, 2003 issued under Section 4 proposing to acquire 124.003 hectares land of village Gharbara. The declaration under Section 6 has been issued on 16th June, 2003. The writ petitions of Group-18 relate to village Chhapraula. In Writ Petition No.46775 of 2011 (Jai Pal And Others vs. State of U.P. and others) pleadings are complete which is treated as leading writ petition of village Chhapraula. This writ petition has been filed by 48 tenure holders challenging the notification dated 12th March, 2008 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing acquisition of 68.129 hectares land of village Chhapraula. The declaration under Section 6 of the Act was issued on 3rd February, 2009. The State Government by Government order dated 8th September, 1997 and 9th February, 2005 has issued specific directions to the acquiring bodies not to include the land covered by abadi in the acquisition and in case it is utmost necessary for acquisition displaced person be given comparable land. The petitioners claim to be in actual possession of the land. It has been pleaded that it has become fashionable to discriminatingly apply the provisions of Section 17(4) of the Act in every case of acquisition. The land has been allotted to private builders whereas the purpose of acquisition was planned industrial development. In the counter affidavit filed by the State it has been stated that possession of the land was taken on 9th March, 2009 and award was declared on 21st March, 2011. Copies of the possession memo and award have been brought on the record. According to paragraph 24 of the counter affidavit, the land use of part of Sector Tech Zone was

changed from institutional to residential and similarly land use of part of Sector Echotech-13 was changed from industrial to institutional which changes were approved by the Board on 11th February, 2010 and also the same were approved by the Government on 30th March, 2010. The compensation has been disbursed to the extent of 76%. An application for intervention has been filed on behalf of M/s Marion Biotech Private Limited which claim allotment of land by allotment letter dated 31st March, 2011 of an area of 10,000 square meters as an industrial plot in Echotech-16. The applicant claims that 200-300 persons shall be employed in the project.

In Writ Petition No.47068 of 2011 (Permanand and others vs. State of U.P. and others), the petitioners have challenged the notification dated 18th September, 2000 issued under Section 4 of the Act proposing to acquire 56.4984 acres land of village Chhapraula for planned industrial development. The petitioners claim to be owner and in possession of the plots mentioned in paragraph 3 of the writ petition. It is pleaded that although urgency clause was invoked but even after 11 years nothing has been done on the spot whereas award was also declared on 14th June, 2002. Petitioners claim to be in actual physical possession. A short counter affidavit has been filed by the GNOIDA stating that industrial Sectors Echotech-14, 15 and 16 were developed and allotment of industrial plots have been made. An application for intervention has also been filed on behalf of M/s Supertech Pre Cast Technologies Private Limited which claimed that large number of industries were given allotment. List of industries which were allotted land in village Roja Yakubpur has been annexed as Annexure-6 to the writ petition. It is stated that development falls in the area known as Roja Yakubpur and Chhapraula. In Writ Petition No.46776 of 2011 more or less similar grounds have been taken as have been taken in Writ Petition No.46775 of 2011 which need no repetition.

The writ petitions of Group-19 relate to village Khairpur Gurjar. In Writ Petition No.46021 of 2011 (Jagdeep Singh and others vs. State of U.P. and others) pleadings are complete, which is treated as leading writ petition of village Khairpur Gurjar. Notification dated 8th November, 2007 issued under Section 4 read with Sections 17(1) and (17(4) of the Act proposing to acquire 334.3417 hectares land of village Khairpur Gurjar has been challenged. The declaration under Section 6 of

the Act was issued on 7th July, 2008. The petitioners' case is that there was no sufficient ground for invoking urgency clause. There is delay of 8 months in issuing notification under Section 6 of the Act. The land covered under the notification is still laying vacant. No award having been given in two years, the acquisition has lapsed. A counter affidavit has been filed by the State stating that possession of the land was taken on 11th October, 2008 and about 78.50% of tenure holders have accepted compensation under agreement. The award has been issued on 25 th July, 2011. There being delay, the writ petition need not be entertained. The other writ petitions of this group raise more or less similar grounds which need no repetition.

The writ petitions of Group-20 relate to village Ajayabpur. In Writ Petition No.46671 of 2011 (Om Prakash alias Omi and others vs. State of U.P. and others) pleading are complete which is being treated as leading writ petition of this village. The petitioners, who are 27 in number, have challenged the notification dated 29th September, 2005 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing to acquire 37.3080 hectares land of village Ajayabpur. The declaration under Section 6 of the Act was issued on 20th December, 2005. The petitioners claim to be bhumidhar and in possession of the plots as mentioned in paragraph 5 of the writ petition. The petitioners' case is that abadi exists on the petitioners' plots and they have been discriminated insofar as their plots have not been left from acquisition. There was no urgency for invoking Sections 17(1) and 17(4) of the Act. The award having not been made within two years, the acquisition has lapsed. A counter affidavit has been filed on behalf of the State stating that possession of the land was taken on 1st June, 2006 and about 95% tenure holders have accepted compensation under agreement. The award has also been declared on 25th August, 2009. There was sufficient material before the State for invoking urgency clause. The petitioners having come with delay, the writ petition is liable to be dismissed. The petitioners are not continuing in possession and averments to the contrary are incorrect. Section 11-A of the Act is not application in view of the law laid down by the Apex Court in the case of Satendra Prasad Jain vs. State of U.P. reported in (1993)4 SCC 369. A counter affidavit has also been filed by GNOIDA in which apart from repeating the pleadings as taken in the counter affidavit of the State, it has been stated that writ petition having been

filed after six years of Section 6 declaration, deserves to be dismissed. The urgency clause was invoked due to valid reasons since there being 185 land owners, going through normal procedure providing them right to file objection would have taken very much time. The residential plots under 6% scheme has been given to tenure holders. The allotment of land to builders does not militate against the concept of planned industrial development. The Writ Petition No.46128 of 2011 (Surendra Singh Bhasti vs. State of U.P. and others) challenges the same notifications on more or less similar grounds which need no repetition.

The writ petition of Group-21 relates to village Namauli in which only one writ petition being Writ Petition No.46418 of 2011 (M/s Bansal Estate Private Limited vs. State of U.P. and others) is there. In the said writ petition petitioner has challenged the notification issued under Section 4 read with Sections 17(1) and 17(4) of the Act dated 11th March, 2008 proposing to acquire 97.317 hectares land of village Namauli. The declaration under Section 6 was issued on 12th June, 2008. The petitioner has prayed for a mandamus directing the respondents to exclude the abadi of the petitioner situate over Plots No.22, 43, 44 and 90. The petitioner's case is that the said plots were got declared as non agricultural land by order of Sub Divisional Officer passed under Section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950 in the year 1991 and the said plots were purchased by the petitioner's company for purpose of plotting and sale. The proposal for acquisition was sent in the year 2003 and the notification under Section 4 of the Act was issued in the year 2008. The land use of the land in question was institutional. It is stated that declaration under Section 6 of the Act has been issued with a view to promote interest of private developers. A counter affidavit has been filed by the State stating in paragraph 11 that possession of the aforesaid land could not be taken due to various interim orders passed by this Court in various pending writ petitions. It has been stated in the counter affidavit that the land under acquisition was a land which was effected by ceiling proceedings. The land of adjoining villages has already been acquired and possession has also been taken. The part of land of village Namauli has already been acquired and certain plots were directly purchased from tenure holders. An application for intervention has been filed by M/s Wegmans Industries Private Limited claiming lease deed dated 14th February, 2005 for an area of 40,011

square meters for I.T. Industry and I.T. Enabled Services. An order was passed by the Additional District Magistrate (Finance and Revenue) on 20th January, 2006 that the land shall vest in the State free from all encumbrances. A counter affidavit has also been filed by the GNOIDA.

The writ petitions of Group-22 relates to village Jaitpur Vaishpur. In Writ Petition No.46399 of 2011 (Mange Ram and others vs. State of U.P. and others) pleadings are complete which is being treated as leading writ petition of this village. By this writ petition notification dated 29th January, 2003 issued under Section 4 read with Sections 17(1) and 17(4) of the Act for acquisition of 304.5154 hectares land has been challenged. The declaration under Section 6 of the Act was issued on 28th February, 2003. The petitioners, who are 13 in number, claim to be tenure holders recorded in revenue record. It is pleaded that although more than 4 years have elapsed but nothing has been done on the spot and instead of using the land for industrial purpose, the same has been sold to Purvanchal University, Paras Nath Developers, Niti Shree Developers, Unitech Developers and Ansal Group. A counter affidavit has been filed by the State stating that possession of the land was taken on 7th May, 2003 and about 93% of tenure holders have accepted compensation under the 1997 Rules. The award was declared on 23rd July, 2009. The Additional District Magistrate has authorised an Ex-Amin to take possession of the land in dispute. There was sufficient materials available with the State Government to justify invocation of urgency clause. A counter affidavit has also been filed by the GNOIDA reiterating almost same facts which have been stated in the counter affidavit of the State. The other writ petitions of this group raise more or less similar grounds of challenge which need no repetition. The writ petitions of Group No.23 relates to village Mathura Pur. In writ petition no.46744 of 2011 - Vinod Kumar vs. State of U.P. the pleadings are complete hence the same is being treated to be as leading petition. The petitioner challenges the notification dated 3.10.2005 issued under Section-4 read with Sections 17(1) and 17(4) of the Act proposing to acquire 122.2699 hectares of land of village Mathura Pur. Declaration under Section-6 was issued on 31st July, 2006. Petitioner claims to be owner of plot nos. 217 and 218. The land has been acquired for the purposes of planned industrial development. Petitioner was under the impression that the land is needed for the public purpose namely planned industrial development hence

accepted the compensation under the agreement. The land was acquired for the planned industrial development and thereafter transferred to private builders for residential purposes which clearly proves that the respondents have acquired the land under colour able exercise of power. A counter affidavit has been filed by the State stating that possession was taken on 27.10.2006 and the award has been made on 25.9.2009. The recommendation of the Collector for acquisition of land was received by letter dated 15.2.2005. Sufficient justification was given for invoking urgency clause. Relevant certificates were send alongwith recommendation which has been annexed alongwith counter affidavit. Possession memo dated 27.10.2006 has also been filed alongwith counter affidavit. Out of 436 tenure holders 425 tenure holders have accepted the compensation after executing the agreement. The inquiry under Section 5-A of the Act has been dispensed with. Petitioner has filed the writ petition with delay. A counter affidavit has also been filed by the authority repeating the same averments as has been made by the State Government. After taking possession development work was carried out and the area has been demarcated by omricron 1, 2 and 3 the authorities have developed green belts and carried out group housing development work. Under the individual residential norm 1708 plots have been allotted and under group housing scheme three plots were allotted. Two institutional plots were also allotted and under 6% scheme allotment has also been made. Other two petitions challenging the same notification more or less on the same grounds being writ petition no. 46422 of 2011 and 46669 of 2011 have been filed on similar grounds which need no repetition.

The petitions under Group No. 24 relate to village Saini. In writ petition no.44233 of 2011 Rishi and others vs. State of U.P. and others pleadings are complete which is being treated as leading petition. The petition has been filed by nine petitioners who claim themselves to be owner and in possession over bhoomidhari plots mentioned in paragraph-3 of the writ petition. Petitioners claimed the land to be fertile and the same is being used for agricultural purposes, which is the only source of their livelihood. There is no project or plan of the Authority for establishing planned industry in the area. There is no evidence that any reputed industrialist of the country or abroad have approached the respondents and submitted any plan or project for establishing any industry. Respondent no.3 also

has no plan or project of its own to establish any industry. The notification dated 24.10.2005 issued under Section-4 read with Section 17 (1) and 17 (4) of Land Acquisition Act proposing to acquire 309.008 hectare land of village Saini has been challenged. The declaration under Section-6 was issued by notification dated 30th June, 2008. Till date neither any industry has been established nor the land has been acquired for such purposes. Total area of land which was acquired, about 90% of the same has been allotted for construction of residential colonies and private builders and coloniers. Only negligible portion of the land is being used for industrial purposes. No award having been given within two years the entire acquisition has lapsed. For the last more than ten years number notifications have been issued but the land so acquired has not yet been used for the purposes for which it was acquired. Dispensation of inquiry under Section - 5-A was not in routine manner and without application of mind.

Writ petition nos. 18303 of 2009, 17478 of 2009, 42386 of 2010 and 24261 of 2011 have been filed challenging similar notification in which this court granted interim order directing for maintaining status quo. Some of the petitioners are still in possession of their land and they have not received compensation and they are approaching respondent nos. 2 and 3 for amicable settlement so that their land may be released. A counter affidavit has been filed by the State stating therein that after publication of notification the possession was taken on 30th October, 2006 for an area of 299.655 hectares. Out of 952 tenure holders 782 has received compensation under 1997 Rules. Award has been declared on 2nd August, 2011. Recommendation was received for acquisition of land having relevant document from the Collector. The writ petition is barred by latches since petitioner has filed it without properly explaining the delay the writ petition deserves to be dismissed. Petitioners themselves having entered into an agreement for receiving compensation, they have no right to challenge the acquisition. The inquiry under Section- 5-A was dispensed with on relevant material. Counter affidavit has also been filed by the Authority. It is stated that after taking possession the authority has carried out the development work and the area is demarcated as Sector 10,11,12 and Sector K.P.-5. Development work in the form of roads, sewerage, drainage water supply, electricity transmission etc have been done at the cost of Rs.35.75 crores. In Sector 10 and 12 two groups housing plots were allotted

measuring 1,83,060 sq. meter. In Sector K.P.-5 six institutional and 10 I.T. plots have been allotted. Allotment has also been made under 6% scheme.

In writ petition no.42200 of 2011 Ajeet Pal and others petitioner claims to be bhoomidhar of plots as mentioned in paragraph-4. The writ petition has been filed by 83 tenure holders. Similar pleadings have been made as has been made in writ petition no.44233 of 2011 - Rishi and others vs. State of U.P. Counter affidavit has been filed by the State as well as the authority making averments to the same effect as has been made in the writ petition of Rishi and and others as above. Application for intervention has been filed on behalf of M/s Sharp Enterprises Pvt. Limited claiming allotment dated 30th August, 2007 for an area of 80,938 sq. meter for I.T. and I.T. enabled services. Applicants claimed to have paid substantial amount to the authority. Another application for intervention has been filed by Empire Parks Pvt. Ltd claiming lease deed dated 12th September, 2008 for a plot of 80,941 sq. meter. Payment of Rs.3,89,07,170.00 has also been claimed. Applicant claimed allotment for establishing an I.T. Project. Another application for impleadment has been submitted by NOIDA Extension Flat Buyers Welfare Association who claimed to be association of flat buyers in the area.

Writ petitions in Group No.25 are of village Murshadpur. In writ petition no.46717 of 2011 Dharam Raj Singh and others vs. State of U.P. the pleadings are complete which is being treated as leading petition. Writ petition filed by 27 petitioners challenged the notification dated 25th June, 2003 under Section-4 read with Sections 17(1) and 17(4) proposing to acquire 322.004 hectare of land for planned development. Declaration under Section-6 was issued on 22nd July, 2003. Petitioners alleged that there was no material before the State to form an opinion that inquiry under Section 5-A deserves to be dispensed with. The notification has been issued in colourable exercise of powers. Petitioners' case is that 100% land of the village was reserved for Night Safari. The petitioners accepted the compensation under the impression that industries would come. The entire area is lying vacant and there was no urgency for invoking Section 17 (1) and 17 (4) of the the Act. In the counter affidavit it has further been stated that 968 land owners being involved hearing and disposing objection would have taken years together due to which inquiry was dispensed with. Counter affidavit has also been filed by

the authority repeating the same allegations as has been made in the counter affidavit by the State. In the counter affidavit it has been stated that the area has been demarcated as Sectortech Zone and Night Safari. An area of 42,75,520 sq. meter has been demarcated as Night Safari. Other writ petitions raise more or less similar grounds which need no repetition.

In possession memo dated 20.1.2005 annexed as Annexure- C.A.-1 along with counter affidavit it has been stated that possession of plot no.28-M area 1.708, plot no. 29-M area 2.263 and plot no. 77 area 9.448, total area 13.419 is not being taken which shall be subsequently taken. In paragraph-14 of the counter affidavit filed by the authority it has been stated that possession was taken on 31.1.2007 whereas petitioners' case is that no possession has yet been taken since the land is acquired for Night Safari. No sufficient materials were placed for invoking urgency clause under Sections 17(1) and 17(4) of the Act. Petitioners further case is that compensation has been paid at the rate of Rs.300/- per sq. meter including solatium and interest. The award has been made on 30.12.2010.

Writ petitions of Group No.-26 relate to village Haibatpur. In writ petition no.41309 of 2011 Jagpal and others vs. State of U.P. since the pleadings are complete hence the same is treated as leading petition. Petitioners challenge the notification dated 16th July, 2008 issued under Section-4 read with Sections 17 (1) and 17 (4) of the Act proposing to acquire 240.481 hectare for planned industrial development. Declaration under Section-6 was issued on 23rd March, 2009. Petitioners claimed that no permission was taken from National Capital Regional Planning Board. It is stated that no land of private person can be taken away for the benefit of another private person. Petitioner further stated that Section-9 notice was issued on 24th August, 2009 and even before expiry of 15 days possession was claimed to be taken on 26th August, 2009 which is against the provision of Section 17 (1) itself. It is further stated that total land acquired was 240.481 hectares and the possession was taken only of 162.918 and 15.2774 hectares rest of the land has not even taken possession. Although proposal was sent on 30th December, 2005 for acquisition but the notification has been issued on 16th July, 2008 that is after about three years which clearly indicate that there was no urgency. The award has been given only on 28th July, 2011. 60% land which has

been acquired by the authority has neither been developed nor used. There was no valid ground for dispensation of inquiry under Section-5-A. The counter affidavit has been filed by the authority stating that possession of the land was taken on 23rd March, 2009 and 11th February, 2010. Out of 2150 land owners compensation was received by 1560 land owners. Development work has been carried out and the area has been demarcated as part of Sector 4 and 16-C. Authority has constructed roads, sewerage, drainage etc. Authority has spent Rs.78.54 crores in Sector 16-C and Sector 41 respectively. Plots have been allotted in the year 2010. It has further been stated in paragraph -19 that initially land use of 16-C was industrial later on land use of 16-C was changed from industrial to the land under the approval of the Board dated 2.2.2010 which was further approved by the State Government on 30th March, 2010. The writ petition has been filed with delay which deserves to be dismissed.

In writ petition no.37109 of 2011 - Jaipal and others vs. State of U.P. both the above notifications dated 16th July, 2008 and 23rd March, 2007 have been challenged on the similar grounds as have been raised in the leading writ petition. It is further pleaded by the petitioners that before the land use was changed the land was allotted to M/s Gaursons. M/s Gaursons was allotted about 50 hectares of land.

In this group writ petition no.40436 of 2009 was a writ petition which was filed on 4th August, 2009 challenging the notification dated 16th July, 2008 and 23rd March, 2009. This court while entertaining the writ petition passed following interim order on 7th August, 2009:

“Until further orders of this court parties are directed to maintain status quo.”

Another ground has been taken in the writ petition that no plan has been got approved by National Capital Regional Planning Board under National Capital Planning Regional Board Act 1985. Reliance of interim order passed in writ petition no.17068 of 2009 dated 7th August, 2009 was placed which writ petition has subsequently been allowed by the Division Bench of this Court. In the counter affidavit filed by the authority it has been stated that possession was taken on 26th August, 2009. It is further submitted that National Capital Regional Planning Board

Act 1985 does not prohibit acquisition of the land nor any permission is required from the Board. Through writ petition no.1592 of 2010 - Satish Kumar and others vs. State of U.P. have also challenged the notification dated 16th July, 2008 and 23rd March, 2009 in which this court passed an interim order on 26.3.2010:-

“As an interim measure without prejudice to the right and contention of the parties, it is directed that till the next date of listing, the parties shall maintain status quo as on date with regard to the need and possession over khasra no.124 area 1.581 hectare of the village Haibatpur Pargana and Tehsil Dadri District Gautam Budh Nagar.”

Similar grounds have been raised in the writ petition as have been raised in other writ petitions. An application for intervention has been filed on behalf of M/s Saim Abhimanyu Housing Scheme claiming allotment and execution of the lease on 25th November, 2010 for group housing. In Writ petition no.17726 of 2010 challenging the same notification interim order was passed on 2nd April, 2010 directing the parties to maintain status quo.

In other writ petitions of 2010 included in the group, writ petitions were filed in the year 2010 which are still pending an interim order was passed which are still continuing. Applications for intervention have also been filed by several interveners claiming allotment of plots.

Writ petitions in Group No-27 relates to Chipyana Khurd. Writ petition no.41017 of 2011 - Jagram Singh and others vs. State of U.P. pleadings are complete hence the same is being treated as the leading petition. Through the said writ petition the petitioners have challenged the notification dated 24th July, 2008 issued under Section-4 read with Sections 17(1) and 17(4) for acquisition of 105.5600 hectares of land of village Chipyana Khurd. Declaration under Section-6 was issued on 29th January, 2009. Petitioners claimed that they have not received any compensation and they are also using some of their area of land for abadi purposes. Some plots of village Chipyana Khurd has not yet been acquired which shows discrimination against the petitioner. There was no sufficient material to dispense with the inquiry under Section 5-A. Neither any need nor any material has been shown by the respondents for acquisition. Purpose for acquisition has subsequently been

changed. In the counter affidavit only proforma has been annexed without any material. Counter affidavits have been filed both by the State as well as by the authority. It has been stated in the counter affidavit of the authority that possession was taken on 9.3.2009. Authority has carried out development work in the area spending more than Rs.14 crores over the land of village Chipyana Khurd. Two groups of plots have been allotted. Residential plots have been allotted under 6% scheme. About 48% of land owner have accepted compensation. An application for intervention has been filed by one M/s Mahagun India Pvt. Ltd who claims allotment of housing plot by lease deed dated 24th November 2010 for an area of 2,49,907 sq. meter. M/s Mahagun claims to have made allotment to various other applicants and invested substantial amount. Another application for intervention has been filed on behalf of M/s Gaursons Parameters Pvt. Ltd claiming lease dated 22nd September, 2010 a group housing plot area 4,54,168 sq. meters, the applicants claimed investment and constructions on the plot. Certain photographs showing the construction work has also been annexed alongwith the affidavit.

In this group writ petition no.18635 of 2009 N.S. Public School vs. State of U.P. was filed on 2nd April, 2009 in which writ petition interim order dated 20th August, 2009 was passed directing the parties to maintain status quo until further orders. The said interim order is still continuing. Counter affidavit has been filed by the State in which it is claimed that possession was taken on 9th March, 2009. Counter affidavit has also been filed by the authority. Application for intervention has been filed on behalf of M/s Mahagun India Pvt. Ltd claiming execution of lease dated 24th November, 2010. Allotment was made to the applicant vide letter dated 23rd July, 2010 for an area 246837 sq. meter at the rate of Rs.11,561/- per sq. meter. With writ petition no.18265 of 2005 writ petition no.38537 of 2010, writ petition no. 38360 of 2010, writ petition no.40668 of 2010, writ petition no.40669 of 2010 and writ petition no.32352 of 2010 have been connected and the interim orders were passed by this court are still continuing. Other petitions of the group raises similar ground of challenge to the notification which needs no repetition.

Writ petitions of Group no.29 relate to village Rithori. In this group there is only one writ petition being writ petition no.46370 of 2011 Jai Prakash and 23 others vs. State of U.P. Notification dated 7th September, 2006 under Section-4 read with

Sections 17 (1) and 17(4) has been challenged by which land of village Rithori was proposed to be acquired. Declaration under Section-6 was issued on 31st August, 2007. Petitioners claim to be in possession of land in dispute. The land use of village is shown as industrial. It is pleaded that there was no material or reason for invoking urgency clause under Section 17(1) and 17(4) of the Act. Counter affidavit has been filed by the State as well as the authority stating that possession of the land was taken on 17.11.2007 and about 82% of tenure holders have accepted compensation. Award was declared on 25th August, 2011. In the counter affidavit filed by the State it has been stated that proposal was sent by the authority to the Collector on 10.2.2005 which was forwarded by the Collector by letter dated 15.9.2005 alongwith relevant certificates. Allotment of residential plot under 6% scheme has already been made and sector has been developed by the authority as per development plan. Writ petitions of Group no.30 relate to village Ithara. In writ petition no.46021 of 2011 the pleading s are complete which writ petition is being treated as leading petition. By the said writ petition notification dated 31st August, 2007 under Section 4 read with Section 17 (1) and 17 (4) proposes to acquire 320.256 hectare of land has been challenged. Declaration under Section-6 was issued on 4th July, 2008. Petitioners claim to be bhoomidhar of plot no.509, 511, 512 and 550 which according to they is only source of their livelihood. In fact the land is sought to be acquired for the purposes of transferring the same to private builders for construction of residential colonies. In-fact there was no intention on the part of authority for any planned industrial development. Leases have been executed in favour of several private builders. There is no application of mind while dispensing with the inquiry under Section 5-A. The document which have been filed alongwith counter affidavit does not show whether Section 17(1) be invoked or Section 17 (4) be invoked. There is absolutely no application of mind by the State. In-fact there is no request from the authority for dispensation of inquiry under Section 5-A. The recommendation for acquisition was send on 11th August, 2005. After about two years notification under Section-4 was issued. Allotments were made in the year 2010. Counter affidavit has been filed by the State which states that possession was taken on 27th August, 2008 and award has been declared on 25th July, 2011. About 73% of the tenure holders have accepted compensation under the agreement. The writ

petition is barred by latches. It is further pleaded that in-fact the acquisition is for company and should have been made in accordance with Land Acquisition (Companies) Rule 1963. Petitioners came to know in the year 2011 that the land of village Ithara will not be used for planned industrial development thereafter they made several efforts and came to know about execution of lease in favour of private builders for construction of residential flats. The delay in the aforesaid circumstances is not deliberate and it ought to be ignored. Petitioners claim to be in possession of the land in dispute. Application for interventions have been filed on behalf of M/s R.M.A. Software Park Pvt. Ltd claiming allotment through letter dated 3.10.2008 by which allotment was made on 1 lac sq. meter plot no.18 in Sector Tech. Zone-4 for setting up I.T.E.S. Writ petition no.42439 of 2011 has been filed by Rajesh and 71 others challenging the notification dated 31st August,2007 and 4th July, 2008. Similar grounds have been taken as has been taken in writ petition of Mamila Sharma. It is further pleaded that acquisition proceedings in the garb of planned industrial development is in-fact are for private persons. The allottees respondent nos. 3 to 9 have been impleaded. Various persons/companies have come up by filing intervention applications. We having already permitted allottees/builders to file intervention applications by our order dated 29th August, 2011 have not issued separate notice to any of the allottees or builders. The allottees and builders who have filed application for intervention and represented by the counsel have been heard in detail. In this writ petition intervention applications have been filed on behalf of M/s Panchsheel Built Tech. Pvt. Limited and M/s A.P.V. Reality Limited and M/s R.M.A. Software Park Pvt. Ltd who have been heard. Another writ petition of this group which need to be mentioned is writ petition no.38184 of 2011 Padam Singh and others vs. State of U.P. challenging the same notifications. It is pleaded that the Khasra no.6 is being used for residential and agricultural purposes and the said land was entitled to be exempted from the acquisition. The notification under Section-4 was issued with delay. No award having been made within two years, the acquisition shall lapse. Land use has been changed. It has further been stated that there is no justification for dispensing with the inquiry under Section5-A. Acquisition proceedings are void and suffers from malafide and non-application of mind. The respondents have changed the purpose of acquisition and the land is being used for residential

colonies by allotting the same to private builders. Applications for intervention has been filed by NOIDA Flats Buyers Association as well as by M/s R.N.A. Software Park Private Limited and M/s Super Tech Limited. M/s Advance Compusfost Pvt. Limited has also filed an intervention application and by one by M/s Amrapali Centurian Park Pvt. Limited which all have been heard. Other petitioners of this group raises more or less similar grounds of challenge to the notifications which need no repetition.

The writ petitions in Group-31 relates to village Luksar. In Civil Misc. Writ Petition No. 46412 of 2011 (Veerpal and others Vs. State of U.P. and others), pleadings are complete, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition has been filed by 35 petitioners challenging the Notification dated 11.07.2008 issued under Section 17 (1) and 17(4) of the Land Acquisition Act, proposing to acquire 181.300 hectare of land of village Luksar. Declaration under Section 6 of the aforesaid Act was issued on 29.01.2009. Petitioners case in the aforesaid group of writ petitions is that petitioners are owner and bhumidhar of the land as mentioned in paragraph 3 of the writ petition. Petitioners case is that Sections 17(1) and 17(4) was invoked by the respondents without applying their mind since there was no urgency for planned Industrial Development. Petitioners were under bonafide belief that their land have acquired to serve the public purpose. Acquiring authority being in dominating position, petitioners were left with no other option but to accept the compensation. However letter on petitioner came to know that the very purpose of acquiring their land has now been changed by the respondents by playing fraud on the statute and the land is being transferred to private builders for the purposes of constructions of commercial complex and residential houses and towers under the Group Housing Scheme, hence petitioners have now challenged the impugned Notification. No award has been passed within two years, as such acquisition in question has lapsed. Counter affidavit has been filed by the State stating that after publication of Notification in question possession of the land was taken on 09.03.2009 and about 98% tenure holders have accepted the compensation and award has been declared on 27.08.2011 and the proposal of acquisition of 181.300 hectares of land was submitted by the Greater Noida Authority vide letter dated 18.01.2006 which was forwarded to the Collector, Gautam Budh Nagar vide

letter dated 09.05.2008. State Government after considering the material placed before it dispensed the inquiry under Section 5 A and payment of compensation was made in accordance with 1997 Rules. Writ petitions were filed with delay. Counter affidavit has also been filed by respondent no. 3 reiterating the pleas taken by the State in its counter affidavit. It has further been stated that development works were carried out in the area and on area of 3436.40 hectares has been allotted to P.A.C., District Jail under 6% scheme the villagers have also been allotted. Petitioners having accepted the compensation, they cannot challenge acquisition. Section 11 A is not applicable in the present case. Other writ petitions of the aforesaid village raises more or less same grounds which need no repetition.

The writ petitions in Group-32 relates to village Badpura. In Civil Misc. Writ Petition No. 36047 of 2010 (Ramesh Chandra Vs. State of U.P. and others), pleadings are complete, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition has been filed challenging the Notification dated 20.10.2001 issued under Section 4(1) read with Section 17(1) and 17(4) of the Land Acquisition Act of plat no. 102 M area 0.7500 acre situated in village Badpura and the declaration under Section 6 was issued 03.12.2009 issued. Notice was published by respondent no. 2 in the newspaper on 19.06.2009 proposing to purchase land on the basis of agreement by tenure holders in which rest of plot no. 102M was notified. Petitioner claims that his land is on the G.T. Road covered with boundary wall and several constructions. Interim order was passed by this Court on 05.07.2011 directing to maintain status quo with regard to possession of land in question. Petitioner filed objection for giving therein market value of the land. Award has been issued on 31.03.2009 fixing Rs. 74.50 per square yard. Award having being made after two years after publication of declaration under Section 6, as such entire acquisition has lapsed. In the counter affidavit filed by the State it has been stated that possession of the land was taken on 16.03.2002. It has further been stated in the counter affidavit that land was acquired for Planned Industrial Development more specifically for constructions of approach road, Railway Over Bridge. Urgency clause was rightly invoked. Writ petition has been filed with delay. Section 11 A is not applicable. In the counter affidavit filed by the Authority it has been stated that petitioners themselves have

not come forward to accept compensation. Possession of plot in question was taken in the year 2001. Writ petition has been filed with great delay. In Civil Misc. Writ Petition No. 32225 of 2010 (Vijendra Kumar Garg and others Vs. State of U.P. and others) same notification has been challenged in which interim order was passed by this Court on 27.10.2010 directing the parties to maintain status quo. More or less similar grounds have been taken. It has been stated in paragraph 10 of writ petition that petitioner could know about the award only in November, 2009.

The writ petitions in Group-33 relates to village Raipur Bangar. In Civil Misc. Writ Petition No. 46483 of 2011 (Gajraj Singh and others Vs. State of U.P. and others), pleadings are complete, as such aforesaid writ petition is being treated as leading writ petition for this Group. By the aforesaid writ petition petitioners who are 171 in number have challenged the Notification dated 30.06.2006 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 180.8114 hectares of land of village Raipur Bangar, declaration under Section 6 was made on 16.01.2007. Petitioners case in the writ petition is that the land was acquired for Planned Industrial Development whereas land has been given to the private builders who are making residential houses and flats. Compensation has been given at the rate of 711/- per square yard but the land has been leased out at the rate of Rs. 20,000/- per square yard. Petitioners claim that all those facility given to the villagers and land holders of village patwari should also be given to the petitioners. Petitioners claim to be entitled for additional compensation alongwith 16% land. Petitioner no. 169 to 171 are entitled to get residential house plot nos. 284 and 285. There was no occasion to dispense with the enquiry under Section 5A. In the counter affidavit filed by the State it has been stated that after publication of Notification under Section 6, possession of land was taken on 15.03.2007 and out of680 tenure holders, 630 tenure holders have already received their compensation. Award has been declared on 25.05.2011. There was sufficient material available for invocation of the urgency clause. There is delay in filing writ petition. Counter affidavit has also been filed by the Authority taking same pleas as have been taken by the State in its counter affidavit and there was no Abadi in the village of the petitioners and as petitioners having taken compensation, they cannot challenge acquisition proceedings.

In Civil Misc. Writ Petition No. 46645 of 2011 (Atar Singh Vs. State of U.P. and others) more or less similar grounds have been taken which needs no repetition.

The writ petitions in Group-34 relates to village Malakpur. In Civil Misc. Writ Petition No. 46289 of 2011 (Charan Singh and others Vs. State of U.P. and others), pleadings are complete, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition 100 has been filed by 37 petitioners challenging the Notification dated 02.05.2003 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 382.4593 acre of land of village Malakpur. Declaration under Section 6 was issued on 02.05.2003. Petitioners claim that land is recorded in their name which is only source of their income and they have no other source of their livelihood. There was no demand of any industrialist for establishing the industry and respondents have no approved scheme or project. Urgency clause was invoked without application of mind. Petitioners claims to have filed their respective objection for denotifying the land which falls in abadi as they have built their house much prior to issuance of the impugned notifications. Counter affidavit has been filed by the State, stating therein that after publication of the Notification under Section 6 possession was taken on 05.08.2004 and out of 295 tenure holders 275 tenure holders have already accepted compensation under the agreement and award has also been declared on 11.09.2009. There was sufficient material before the State Government for invoking urgency claus. Counter affidavit filed by the Authority reiterating the pleas taken by the State Government and it has been stated that writ petitions have been filed with great delay. Further, development work has already taken place and area demarcated sector wise which are institutional Green-1 and Ecotech-2. It has further been stated that Notification of village Malakpur was upheld in Civil Misc. Writ Petition Nos. 22875 of 2003 (Om Pal Singh Vs. State of U.P. and others) and 24654 of 2003 (Harpal Sing and others Vs. State of U.P. others) vide judgement and order dated 08.12.2008.

The writ petitions in Group-35 relates to village Maicha. In Civil Misc. Writ Petition No. 44611 of 2011 (Rajendra and others and others Vs. State of U.P. and others), pleadings are complete, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition has been filed by petitioners,

who are four in number, challenging the Notification dated 17.04.2006 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 343.5881 hectare of land of village Maicha for Planned Industrial Development. Declaration under Section 6 was issued on 09.02.2007. Petitioners case is that State Government has not applied its mind while dispensing with the inquiry under Section 5A. No notice under Section 9 was issued to the petitioners and act of taking of possession is the case of clear cut fraud and 80% of the compensation has not yet been paid. There is violation of Section 17(3A). Petitioners are still in actual possession of land and there has been pick and choose policy and some of the plots have been left over from acquisition and petitioner's plots have been taken into acquisition. No award has been given within two years and acquisition has lapsed. Civil Misc. Writ Petition No. 17363 of 2008 (Veer Singh Vs. State of U.P. and others) was filed challenging the impugned Notification in which this Court granted interim order on 18.08.2008 directing the parties to maintain status quo. Several other writ petitions have been filed challenging the same notification which are pending. In the counter affidavit filed by the State, it has been stated that after publication of Notification under Section 6 possession of land was taken on 11.04.2007 and about 85% tenure holders have already accepted compensation. Award has also been published on 09.08.2011, There was sufficient material before the State Government in invoking urgency clause. Writ petition has been filed with delay. Section 11A is not attracted in the present case. Authority has also filed counter affidavit reiterating same pleas as has been taken in the counter affidavit filed on behalf of State and it has been further stated that authority has so far carried out development works at a cost of Rs. 30.05 crores and allotments were made in the year between 2007-08.

The writ petitions in Group-36 relates to village Kasna. In Civil Misc. Writ Petition No. 46848 of 2011 (Ajay Pal and others and others Vs. State of U.P. and others), pleadings are complete, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition has been filed by petitioners, who are eight in number, challenging the Notification dated 31.12.2004 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 406.2448 acres of land of village Kasna. Declaration under Section 6 was issued on 01.07.2005 and award was made on 23.03.2011.

Petitioners have prayed for quashing of the aforesaid Notification including award dated 23.03.2011. Petitioners claim that without applying its mind urgency was invoked by the State Government although respondents alleged to have taken possession but the petitioners are still in possession of land. Petitioner filed objection on 25.07.2008 for exemption of their land from acquisition. Petitioners claim to have filed several application and reminder. Petitioners further claim that land of several other persons were exempted. Petitioners have also filed supplementary affidavit stating therein that land has been acquired in colourable exercise of power, after issuance of notification by respondent no. 2 has transferred huge portion of acquired land to M/s Amrapali Infrastructure Pvt. Ltd. by transfer deed dated 28.06.2011 and allotment of area one lac sqm. Copy of the allotment dated 31.03.2011 has been filed as Annexure-SA-2 to the supplementary affidavit. Counter affidavit has been filed by the State, stating that after publication of Notification under Section 6 of the Act, possession was taken on 11.04.2007 and about 85%of the tenure holders have accepted compensation under the agreement. Authority has filed counter affidavit reiterating the same pleas as has been taken by the State. It has further been stated that development works were carried out in the area for the amount of Rs. 30.05 crores. Industrial and institutional plots have been allotted in the year between 2007-08. It has further been stated that there is delay in filing writ petition and writ petition deserves to be dismissed.

Civil Misc. Writ Petition No. 45193 of 2011 (Khushi Ram and others Vs. State of U.P. and others) has been filed challenging the same Notification and raises more or less similar grounds.

Civil Misc. Writ Petition No. 40852 of 2011(Chaman Sharma Vs. State of U.P. and others) as well as Civil Misc. Writ Petition No. 46636 of 2011 (Jai Chand and others Vs. State of U.P. and others) have been filed challenging the Notification issued under Section 4 dated 11.07.2008 and declaration dated 16.02.2009 issued under Section 6 of Land Acquisition Act. Petitioner Chaman Sharma submits that after purchasing the land, shop was constructed and petitioner further submits that application for regularization has been moved in the year 2002. Petitioner further submits that he filed Civil Misc. Writ Petition No. 42553 of 2010 regarding

regularization of his shop in which writ petition respondents informed that land has already been acquired, thus, petitioner for the first time came to know in regard to acquisition of his land on 22.07.2010 hence he has filed present writ petition. Petitioner further submits that Civil Misc. Writ Petition No. 48294 of 2009 (Maya Devi Bansal and others Vs. State of U.P. and others) had been filed challenging the acquisition proceedings in which this Court has granted interim order on 09.09.2009. Petitioner further claims that he is still in possession and submits that no notice under Section 9 was issued to the petitioner. Counter affidavit has been filed by the State, stating therein that after publication of Section 6 declaration, possession was taken over on 09.03.2009 and further about 70% of the tenure holders have already accepted compensation under the agreement. Award has also been published on 14.09.2011. In Civil Misc. Writ Petition No. 46636 of the 2011 (Jai Chand and others Vs. State of U.P. and others) more or less similar grounds have been urged. In Civil Misc. Writ Petition No. 46129 of 2011 (Ganeshi and others Vs. State of U.P. and others), Notification dated 11.07.2008 and 16.02.2009 have been changed.

In Civil Misc. Writ Petition No. 41962 of 2007(Natthu Singh Vs. State of U.P. and others), Notification issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act dated 29.12.2001 and declaration under Section 15.03.2002 have been challenged.

Civil Misc. Writ Petition No. 54028 of 2005 (Kishan Singh Vs. State of U.P. and others) has been filed challenging the Notification dated 31.12.2004 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act. Another prayer was made for quashing the Notification dated 28.03.2005 describing it under Section 6. The Notification under Section 4 dated 31.12.2004 is the same Notification which has been challenged in Civil Misc. Writ Petition No. 45193 of 2011 and the Notification dated 28.03.2005 which have been challenged in the writ petition filed by Kishan Singh, was only munadi of Notification dated 31.12.2004. The declaration under Section 6 in continuance of Notification dated 31.12.2004 was issued on 01.07.2005.

In writ petition filed by Kishan Singh, petitioner states that petitioner is bhumidhar of Gata No. 637 in which there are 33 shops for last 20 years. Petitioner case is that Authorities have left out plots of various influential persons and land of various persons but has taken the land of the petitioner over which valuable Pucca constructions have been standing. Shop of one Harish Chandra Bhati was regularized vide order dated 11.02.2003. There was no reason for dispensing with the inquiry under Section 5A and interim order was passed by this Court in writ petition filed by Kishan Singh on 19.09.2005 directing the parties to maintain status quo. Counter affidavit has been filed by the State stating therein that in plot no. 637 which is recorded in the name of petitioner there are 110 eucalyptus trees and sheesham tree. Counter affidavit as well supplementary affidavit has been filed by the authority stating therein that award has been given on 23.03.2011 and possession of land was taken on 28.12.2005, 30.05.32006 and 29.01.2011.

The writ petitions in Group-37 relates to village Rasulpur Rai. In Civil Misc. Writ Petition No. 45748 of 2011 (Surendra Singh Bhati Vs. State of U.P. and others), counter affidavit has been filed, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition has been filed by petitioner challenging the Notification dated 28.11.2002 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 119.2116 hectare of land of village Rasulpur Rai. Declaration under Section 6 was issued on 29.01.2003.

Petitioner raises same grounds which has been raised in Civil Misc. Writ Petition No. 44611 of 2011 (Rajendra and others and others Vs. State of U.P. and others) of village Maicha. Counter affidavit has been filed by the State stating therein that after publication, Notification under Sections 4, Notification under Section 6 has been issued and possession of land was taken on 08.05.2003, 04.03.2005 and 26.12.2007, and out of 433 tenure holders, 416 tenure holders have already received their compensation under agreement. Award has been declared on 05.06.2009. It has further stated that there were sufficient material to invoke urgency clause. Counter affidavit has also been filed by the Authority taking same grounds as has been taken by the State in their counter affidavit. It has further been stated that writ petition has been filed with delay and petitioner having

received compensation, cannot challenge acquisition and further development works were carried out by the authority in the area. Plots have been allotted under Group Housing Scheme between year 2003-08 and allotments of plots under 6% of Scheme has also done in the area of 6220 sq.mt. In other writ petitions challenging same notification raises more or less similar ground which needs no repetition.

The writ petition in Group-38 relates to village Yusufpur (Chak Sahberi). In this group there is only one petition i.e. Civil Misc. Writ Petition No. 17725 of 2010 (Omveer and others Vs. State of U.P. and others). In the said writ petition pleadings are complete. In the aforesaid writ petition, petitioners who are five in number have challenged Notification dated 10.04.2006 issued under Section 4 read with Sections 17(1) and 17(4) proposing to acquire 55.146 heaters of land of village Yusufpur (Chak Sahberi) and declaration under Section 6 was issued on 06.09.2007. It is pleaded that some of plots of aforesaid village was not acquired due to reason of Abadi existing in the aforesaid plots. Petitioners have been discriminated in the matter of acquisition and without application of mind, State Government has dispensed with inquiry and proposal lapsed since no award has been made within two years. Counter affidavit has been filed by the State, stating therein that after publication of Notification under Section 6, possession was taken on 29.11.2007 and award has also been issued on 14.09.2011 and there was sufficient material for invoking urgency clause. Petitioners have filed aforesaid writ petition with delay as such writ petition is liable to be dismissed.

The writ petitions in Group-39 relates to village Khera Chauganpur. In Civil Misc. Writ Petition No. 42232 of 2011 (Subhash Chand Bhati and others and others Vs. State of U.P. and others), counter affidavit has been filed, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition has been filed by petitioners, who are 40 in number, have challenged the Notification dated 31.08.2007 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 94.6923 hectare of land of village Khera Chauganpur. Declaration under Section 6 was made on 27.02.2008. Petitioners claim to be in possession of land and cultivating their land. There was no such immediate urgency to issue notification under Sections 17(1) and17(4). It

has further been pleaded that land is being given to private builders to construct high rise buildings. Reliance has also been placed on the Division Bench judgment dated 30.05.2011 passed in Civil Misc. Writ Petition No. 20156 of 2009 (Smt. Rajni and others Vs. State of U.P. and others) as well as another judgment of this Court in Civil Misc. Writ Petition No. 500 of 2010 (Devendra Kumar and others Vs. State of U.P. and others) of village Shahberi and Surajpur. Counter affidavit has been filed by State, stating therein that after publication of Notification under Section 6 possession of land was taken on 19.03.2008 proposing to acquire an area 86.6613 hectares and out of 220 tenure holders 85 have taken compensation with regard to area 30.7591 hectares. Interim orders have been passed by this Court/Hon'ble Apex Court. Award has been issued on 27.08.2011. Letter dated 30.11.2006 written by Collector, recommending issuance of Notification under Section 4 read with Sections 17(1) and 17(4) has been filed as Annexure-CA-3. Counter affidavit has also been filed by the Authority repeating pleas taken by State. It has further been stated that land has been carved out of the acquired land is institutional, and industrial. Other writ petitions of this group raises more or less same grounds of challenge which needs no repetition.

The writ petitions in Group-40 relates to village Devla. In Civil Misc. Writ Petition No. 31126 of 2011 (Chaval Singh and others and others Vs. State of U.P. and others), counter affidavit has been filed, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition filed by the petitioners who are six in number challenging the Notification dated 26.05.2009 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 107.0512 hectare of land of village Devla. Declaration under Section 6 was made on 22.06.2009. Petitioners claim to be bhumidhar of plot mentioned in paragraph 3 of the writ petition. Some of the plots of village in question have not been acquired because there is abadi existing whereas petitioners have been discriminated There was no urgency in the matter to invoke Section 17(1) and 17(4) of the Land Acquisition Act. It is mandatory on the part of the State Government to afford opportunity of hearing to the persons whose land has been sought to be acquired, plots in question are used for abadi and for other purpose and their plots in question are liable to be excluded from acquisition. Petitioners are living there and abadi in the plots as mentioned above. Affidavit

has been filed by petitioners stating that petitioners have not accepted compensation with regard to the plots no. 215.223.181,218, 64, 320 and 11. Counter affidavit has been filed by State stating therein that after issuance of Notification under Section 6 possession was taken on 14.09.2009, details have been mentioned in paragraph-11 clearly indicating that out of 698 tenure holders 130 tenure holders have already accepted compensation. It has further been stated that there was sufficient material to invoke urgency clause. It has been stated in paragraph 23 that possession has not been taken of those area of which interim orders of any competent Court was granted or where dense abadi or constructions had been found. Possession memo has been filed as Annexure No. CA-4 to the counter affidavit.

Civil Misc. Writ Petition No. 42812 of 2009 (Mohd. Shakil and others Vs. State of U.P. and others) has been filed by three petitioners in which this Hon'ble Court has granted interim order directing for maintaining status quo with regard to khasra nos.451, 452, 453 and 461 of the revenue village Devla, Pargana Dadri, Tehsil Dadri, District Gautam Buddha Nagar. Writ petition has been filed challenging the Notification dated 26.05.2009 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, proposing to acquire 107.0512 hectare of land. Declaration under Section 6 has been made on 22.06.2009. Petitioners' case is that possession has not been taken. Applications were filed before for declaration of land as non-agricultural land. Counter affidavit has been filed by the State stating therein that possession was taken 14.09.2009. Petitioners case is that possession memo filed as Annexure CA-3 to the counter affidavit clearly indicating that possession has not been taken in view of the interim order passed in present writ petition filed by Mohd. Shakil and others. It has further been pleaded by the petitioner that greater Noida Authority has also made recommendation for invoking urgency clause but no details of any material have been given, even 10% of the amount was not deposited at the time of recommendation. Petitioners further alleged that there is no compliance of Section 17(3A). In Civil Misc. Writ Petition No.50417 of 2009 (M/s Tosha International Limited and others Vs. State of U.P. and others), petitioners who are five in number, have challenged the Notification dated 26.05.2009 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, and the declaration under Section 6 has been made on

22.06.2009. Interim order was passed in the aforesaid writ petition directing to maintain status quo which is continuing. The petitioners case is that after purchase of the property by petitioner no. 1 Company was registered and application was moved under Section 143 of U.P. Z.A. and L.R. Act, Sub-Divisional Magistrate, Dadri vide order dated 21.01.1991 declared the land to be non-agricultural. Petitioner no. 1 started manufacturing picture tube since year 1990. Petitioner no. 1 is running industrial unit after having obtained necessary licences. Petitioner claim to have initiated proceedings for declaration of entire land as SEZ and petitioners application for grant of SEZ status is pending consideration in accordance with Special Economic Zones Act, 2005. Further, Government of India has already issued letter on 17.01.2006 to the petitioner requiring incorporation of commitments by the State Government with regard to the matters mentioned therein. State Government has also held meeting dated 20.12.2006 and the matter is under active consideration. Petitioner has also written letter to Greater Noidia for Spot Zoning. However in respect of aforesaid the State Government has chosen to acquire plot 1.499 hectares belonging to the petitioners. Petitioners has challenged the Notification stating that land comprising 26 acres of area has already declared an industrial land and matter regarding declaration of SEZ status is under consideration before the Government of India. Petitioners claim to have sent application to the State Government for exemption of their land on 23.10.2007 on which report was called from Greater Noida Authority vide letter dated 27.02.2008, report was submitted on 11.12.2008 recommending exemption of area 4.5649 hectare from plots nos. 231 to 238. It has further been stated that no allotment has been made in village Devla. Petitioners have also relied on the Division Bench judgment of this Court dated 13.05.2011 passed in Civil Misc. Writ Petition 48204 of 2009 (M/s R.P. Electronics and anr v. State of UP and ors). Petitioner has also relied on the survey report dated 08.11.2007 in which report mention has been made that M/s Tosha International Ltd. has been found which was reported to be closed.

There are other writ petitions relating to village Devla which was filed in the year 2009 itself which are included in this Bunch and in the aforesaid writ petitions interim orders were also passed by this Court directing to maintain status quo. More or less similar grounds have been taken for challenge the Notification.

In Civil Misc. Writ Petition No. 54424 of 2009 (Smt. Shakuntala and others Vs. State of U.P. and others), interim order was passed by this Court on 15.10.2009. Counter affidavit has been filed stating therein that possession was taken on 14.09.2009. However there is no mention of any allotment in the village in question.

In Civil Misc. Writ Petition No. 57032 of 2009 (Manaktala Chemical (Pvt.) Ltd. Vs. State of U.P. and others), petitioners have challenged the Notification dated 26.05.2009 and 22.06.2009. Interim order was granted on 29.10.2009 which is continuing. It has been stated that there does not exist any order of the State Government with regard to dispensation of the inquiry under Section 5-A. Petitioner's company is using the plot for industrial purposes. Report filed as Annexure-6 has been referred to which inspection report indicates that petitioners factory was over plot Nos. 563, 564, 573 and 574 which was reported closed. Petitioners claims that factory is in existence since 1993 and reiterated that license has been granted by the Director Industries. It is further pleaded that the land sought to be acquired by impugned Notification is part of National Capital Region and the authority responsible for approval of the master plan is National Capital Region Planning Board, New Delhi and there is no approval of NCRP Board. In the counter affidavit of the authority it has been pleaded that there is no provision in 1985 Act which required approval of NCRP Board before acquisition of land. Section 19 of the Act, 1985 clearly shows that same is regarding the observation and suggestions. In the rejoinder affidavit it is asserted that prior approval of NCRP Board having not been taken. Authority can not implement any project affecting land use. Counter affidavit has been filed by the State Government in which possession is claim to have been taken on 14.09.2009. It was admitted that factory was established at plot no. 563, 564, 573 and 574. Copy of the survey report has been attached to the counter affidavit as well as possession memo. Rejoinder affidavit has been filed stating therein that possession memo does not disclose that possession was taken and from whom petitioners claim to be still in possession and possession memo is termed to be paper transaction only. Other writ petitions challenging above Notifications raises more or less same grounds which needs no specific mention.

The writ petitions in Group-41 relates to village Junpat. In Civil Misc. Writ Petition No. 48253 of 2011 (Khem Chand and other and others Vs. State of U.P. and others), counter affidavit has been filed, as such aforesaid writ petition is being treated as leading writ petition for this Group. Aforesaid writ petition filed by the petitioners who are ten in number have challenged the Notification dated 31.01.2008 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, and the declaration under Section 6 made on 30.06.2009. Petitioners claim to be bhumidhar of plots mentioned in paragraphs 3 of the writ petition. Petitioners' case is that State Government has wrongly and illegally mentioned that land has been acquired for Planned Industrial Development. In fact land has been sought to be acquired to transfer the same to the Private Builders, as such entire exercise is colourable exercise of power and there was no sufficient material to dispense with the inquiry under Section 5-A. Petitioners under bonafide impression that land of village junpat shall be utilised for Planned Industrial Development have not challenged the acquisition earlier. Counter affidavit has been filed by the Authority stating that after the Notification was issued under Section 6 possession was taken after issuance of notice under Section 9, development work has taken place and there was sufficient material available before the State Government for dispensing the inquiry. There is delay in filing writ petition. Possession was taken on 21.11.2008 and 16.09.2010. It has been specifically stated that land of village Junpat has not been allotted to any of the builders.

Civil Misc. Writ Petition No. 41558 of 2009 (Surendra Singh Vs. State of U.P. and others) has been filed by the petitioner challenging the same Notification. Writ petition was filed on 11.08.2009 in which interim order was also passed by this Court on 13.08.2009 which is still continuing. Counter affidavit has been filed by the State in this writ petition also stating therein that possession was taken on 21.11.2008 and the letter dated 14.02.2009 was written by the Authority alongwith justification for invoking Section 17 and enquiry under Section 5A was dispensed with on the basis of relevant materials available on record. Land is agricultural land and no abadi was there at the time of constructions.

The writ petition in Group 1 to 41 relates to different villages of Greator Noida and Group-42 to 65 relates to different villages of Noida, which shall now be noted. Writ petition of Group 42 relates to Village Asdullapur. There is only one writ petition of this group, being Civil Misc. Writ Petition No. 47486 of 2011 (Rajee and others Vs. State of U.P. and others). By this writ petition, petitioner has challenged notification dated 27.1.2010 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring 39.561 hectares of land, as published in the daily newspaper “Dainik Jagaran” dated 4.2.2010, situated in village Asdullapur, District Gautambudh Nagar. Declaration under Section 6 was issued vide notification 13.7.2010, which has filed as Annexure-5A to the writ petition. Petitioners' case is that they are agriculturists and earning their livelihood from agricultural land. Residential accommodation of the petitioner No.1 over Plot No. 156 is claimed to be valued more than Rs. 21 Lacs. Petitioners represented the matter before the respondent nos. 2 and 3 not to acquire the land. Petitioners' case is that although land has been acquired for Planned Industrial Development, but same has been given to several private builders to construct residential accommodation. Petitioners claimed to be in actual physical possession of the land. It is stated that there was no sufficient material for dispensing with the inquiry under Section 5-A of the Act. Counter affidavit as well as supplementary counter affidavit has been filed by the State Government. It has been stated in the counter affidavit that possession of the land was taken on 24.6.2011 of 22.432 hectares of land. Out of 122 tenure holders, no one has accepted compensation. It has been stated that since 103 tenure holders were involved going through normal procedure would have taken to decide the objection, hence inquiry has been dispensed with. Writ petition has been filed with delay. Award has not yet been declared. Counter affidavit has been filed by Noida Authority repeating the pleadings as has been mentioned in the counter affidavit of the State Government. Possession is claimed to have taken on 24.6.2011.

The writ petition in Group **Group-43** relates Village Aleverdipur. Writ Petition No. 46470 of 2011 (Vinod Kumar Bindal Vs. State of U.P. and others) has been filed challenging the Notification dated 22.3.1983 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring 299.421 hectares of land, situated in village Aleverdipur, District Gautambudh Nagar.

Declaration under Section 6 was issued vide notification dated 23.3.1983. Petitioner claimed to be purchaser from one Kalu by means of registered sale deed dated 31.5.2008. Petitioner's case is that he came to know only few days back that Noida authority has acquired the land by notification dated 22.3.1983 and 23.3.1983. Petitioner claimed to be in possession of the land after sale deed and has come up in the writ petition praying for quashing the aforesaid notifications. Counter affidavit has been filed by the State Government stating therein that in pursuance to the notifications under Section 4 and 6 of the Act, possession was taken on 26.8.1983 and award was also issued on 28.11.1984. Writ petition is highly barred by laches and deserves to be dismissed, on this ground alone. Land having been acquired Kalu could have sold the property in favour of the petitioner. Original tenure holder has already received compensation and got alternative site under scheme. Authority has also filed counter affidavit reiterating the pleadings as taken in the counter affidavit of the State Government. Original tenure holder Kalu had accepted the compensation and has also got residential plot No. C-22 in Sector-49 in the year 1997. Writ petition being highly barred by time, deserves to be dismissed.

The writ petition in **Group-44** relates Village Asgarpurjagir. In Writ Petition No. 46919 of 2011 (Girish Bansal and another Vs. State of U.P. and others), counter affidavit has been filed by the state Government as well as authority, which is being treated as leading writ petition. By the writ petition, petitioners has prayed for quashing of Notification dated 24.8.2007 issued under Section 4 Read with Section 17(1) and 17(4) of the Act for acquiring 17.415 hectares of land, situated in village Asgarpurjagir. Declaration under Section 6 was issued on 12.8.2008. Petitioners' case is that according to the Government Order dated 17.8.1993 and 8.8.1997 land is to be acquired by negotiation and settlement. Reliance has further been placed on Government Order dated 8.2.2005 that for housing purpose lands be not acquired where any construction is standing. Petitioners claim to be still in possession over the land. Petitioner preferred an application dated 29.4.2011 by which petitioners requested the respondents to great their application for receiving compensation as rejected. Petitioners case is that inquiry under Section 5-A of the Act has been wrongly dispensed with. Petitioners have not received any compensation till date. On the land there is abadi of the petitioners. State

Government has also filed counter affidavit stating therein that in pursuance to the notification issued under Section 6 of the Act possession of the land was taken on 16.1.2009 and 14.10.2009. Out of 144 tenure holders, 88 tenure holders had received compensation. Award has also been declared on 3.9.2011. Assertion is that abadi exists on the spot is not correct. No construction was found in 'Prapatra 17. Counter affidavit has also been filed by the authority in which apart from repeating pleadings of State Government, it has been stated that writ petition has been filed with delay. There was sufficient material available with the State Government for invoking urgency clause. Petitioner is not in possession of the land and award has been declared on 3.9.2011.

Writ Petition No. 24295 of 2010 (Mawasi Vs. State of U.P.Thru. P.S. Industrial Devp. and Ors) has been filed challenging the notification dated 24.8.2007 and 12.8.2008. This writ petition was filed on 29.4.2010 and interim order was granted on 5.5.2010 directing for maintaining status-quo with regard to plot No. 183.

Supplementary affidavit has been filed annexing copy of the lease deed dated 31.3.2009 by which land measuring 10951.98 Sq. Meter was allotted to M/s Anushriya Infotech Pvt. Ltd. for development of form house on agricultural land. Petitioner case is that land was acquired for planned Industrial Development and on Plot No. 183 there is abadi of the petitioner. Petitioner submitted that an application dated 14.9.2007 had been moved before Sub Divisional Officer for declaring the land as non agricultural. Petitioner has filed objection before the Additional District Magistrate praying that petitioner's plot No. 183 in which he is owner 1/7th share be kept out of the acquisition. Petitioner's case is that Revenue Officer has written letter dated 24.11.2008 to the Additional District Magistrate for transfer of possession of 17.415 Hectares of land of Village Asgarpur Jagir except the land which was mentioned in the schedule. Petitioner's case is that area of 0.69A hectares was mentioned in the scheduled, copy of which has been filed as Annexure-18 to the writ petition. Petitioner has stated that urgency clause has been wrongly invoked by the State Government. In the supplementary affidavit, petitioner has brought on record, the lease for development of form house. Counter affidavit has been filed by the authority stating that writ petition is barred by the laches. Possession of the land has been taken on 16.1.2009. It has been

stated that since there were 155 tenure holders, hearing their objection would have taken much time, hence urgency clause was invoked. It has been stated that possession of Plot No. 183 has not been taken.

The writ petition in **Group-45** relates to village Badoli Bangar, Pargana Dankour, Tehsil Sadar, District Gautambudh Nagar. In Civil Misc. Writ Petition No. 38057 of 2011 (Ratan Vs. State of U.P. and others), counter affidavit has been filed both by the State Government as well as respondents- authority, which writ petition is being treated as leading writ petition. By this writ petition, petitioner challenges the notification dated 7.11.2007 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act for acquiring 234.448 hectares of land situated in village Badoli Bngar. Declaration under Section 6 of the Land Acquisition Act was made vide notification dated 9.5.2008. Petitioner's case is that petitioner is Bhoomidhar in possession of Plot No. 421 on which he has constructed his house. Petitioner's case is that he having using the land as abadi, same deserved to be left out of the acquisition. Petitioner's case is that inquiry under Section 5- A of the Land Acquisition Act was dispensed with without there being any urgency in the matter. According to Section 11-A of the Land Acquisition Act, acquisition has lapsed, since no award has been issued. Petitioner's case is that proposal was submitted on 24.11.2005 but the notification was issued only in November, 2007 which also shows that that there was no urgency, no compensation has been received by the petitioner. Counter affidavit has been filed by the State Government stating therein that possession was taken on 2.6.2008. Out of 188 tenure holder, 149 tenure holders have received compensation. Award has also been declared on 19.9.2011. It is stated that in Plot No. 421, no abadi was found in the survey. There was sufficient material on the record to invoke urgency clause. In the counter affidavit filed by the authority, plea raised in the counter of State Government have been reiterated. The authority has developed the village Badoli Bangar and spend huge amount on the development of infrastructure. More than Rs. 62 Crores has been spend on the development. Petitioner's case is that no allotment has been made in this village nor any development has taken place. Other writ petitions of this group raises more or less similar grounds to challenge the notification which needs no repletion.

The writ petition in **Group-46** relates to village Basi Brahauddin Nagar, Pargana Dadri, Tehsil Dadri, District Gautambudh Nagar. In Civil Misc. Writ Petition No. 44492 of 2011 (Manoj Yadav and others Vs. State of U.P. and others) counter affidavit has been filed both by the State and the authority, which writ petition is being treated as leading writ petition. By this writ petition, petitioners have prayed for quashing the notification dated 12.4.2005 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act for acquiring 145.849 hectares of land situated in village Basi Brahauddin Nagar. Declaration under Section 6 of the Land Acquisition Act was made vide notification dated 6.10.2005. Petitioners' case is that possession of petitioners is there on part of Khasra No. 373. Petitioners plead that some of the plot of village in question have not been acquired on account of existence of abadi whereas petitioners has been discriminated since their plot having the abadi, have not been released. There was no urgency for invoking Section 17(4) of the Land Acquisition Act. Petitioners claim that no notice has been served under Section 9 of the Act, the acquisition have lapsed under Section 11-A of the Act. Counter affidavit has been filed by the State Government in which it has been stated that possession has been taken on 30.12.2005. Out of 1265 tenure holders, 752 tenure holders have received compensation. Award has also been declared on 29.12.2010. Writ Petition suffers from delay and laches. There was sufficient material for invoking urgency clause under Section 17(4) of the Land Acquisition. Counter affidavit has been filed by the authority repeating the plea taken by the State Government in its counter affidavit. It has been further stated that development work has been carried out and the area in question has been demarcated as Sector No.67,68, and 73. It has been stated that allotment have been made to private individuals for Industrial use and Institutional use. Petitioners are not in possession of the land. Writ Petition No. 46688 of 2011 (Mukesh Vs. State of U.P. and others) raises more of less similar ground which needs no repetition.

The writ petition in **Group-47** relates to village Chaprauli Bangar, Pargana Dadri, District Gautambudh Nagar. There is only one writ petition being Civil Misc. Writ Petition No.43392 of 2011 (Bhushan Singh and others Vs. State of U.P. and others). Petitioners have challenged the notification dated 21.7.2003 issued under Section 6 read with Section 17(1) and 17(4) of the Land Acquisition Act for

acquiring 27.9106 hectares of land, situated in village Chapruli Bangar in continuation of earlier notification dated 4.7.2003. Petitioners claim to be small tenure holder of the village. Petitioners' case is that against the will of farmers, the compensation was paid at the rate of Rs. 378 per square yard in the year 2003, which is now being allotted to the builders'/colonizers for the group housing in the year 2010 on at the rate of Rs. 22440 per sq. yard. Petitioners' case is that acquisition of land is totally illegal, which has been done for earning profit. There was no urgency for invoking Section 17(1) and 17(4) of the Act. Petitioners case is that they came to know in the year 2010 that land was allotted to the builders like 3-C Company, Urbtech and Paras Group Housing. Counter affidavit has been filed by the State Government stating that possession of the land was taken on 22.8.2003 and 11.1.2005. Out of 138 tenure holders, 118 tenure holders have received compensation. Award have also been declared on 19.9.2011. It has been stated that compensation have been accepted by the petitioners. Petitioners having remains silent for such long time, cannot be allowed to challenge the acquisition. Authority has also filed counter affidavit reiterating the plea taken by the State Government. It has been further stated that authority has spend huge amount of Rs. 25 Crores on the development of infrastructure of the village. Petitioners have received compensation at the rate of 378 per sq. Yard.

The writ petition in **Group-48** relates to village Chaura Sadatpur, Pargana Dadri, District Gautambudh Nagar. There is only one writ petition of this group being Civil Writ Petition No. 46407 of 2011 (Liley Ram Vs. State of U.P. and others). Petitioner has challenged the notification dated 16.9.1976 issued under Section 6 of the Act in continuation of Section 4 of the Act issued earlier for acquiring 1008.40 Acres of land situated in Village Chaura Sadatpur, Pargana Dadri, District Gautambudh Nagar. Petitioner claims to be the owner of the Plot No. 760M and 788. Petitioner's case is that now the land has been sold to private builders at the rate of Rs 1,00,000.00 per sq. yard., whereas petitioner was given only nominal compensation. Counter affidavit has been filed by the State Government stating that the land was acquired in the year 1976 of which possession was taken on 28.10.1976. Award was also declared on 29.7.1978. The award has been brought on record. It has been stated that writ petition is highly barred by laches of about 36 years and be dismissed on this ground alone. Counter affidavit has been filed

by the authority reiterating the same facts.

The writ petition in **Group-49** relates to village Dostpur Mangrauli Bangar, District Gautambudh Nagar. In Civil Writ Petition No. 47259 of 2011 (Rajveer and others Vs. State of U.P. and others), 11 petitioners have challenged the notification dated 17.3.2009 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring 66.684 hectares of land situated in village Dostpur Mangrauli Bangar, District Gautambudh Nagar. Declaration under Section 6 was issued vide notification dated 8.4.2010. Plot Nos. 222, 423, 268, 328 are being used by the petitioners as abadi, which is recorded in the revenue record. There is delay of more than one year in issuing of notification under Section 6 of the Land Acquisition Act, which clearly indicates that there was no urgency in the matter. Petitioners claim that possession has yet not been taken. It is stated that there is no material with the State Government to invoke urgency clause. Counter affidavit has been filed by the authority stating that possession was taken by the State Government on 22.5.2010. There was no reason to exempt the land of the petitioners. Petitioners are not in possession of the land.

The writ petition in **Group-50** relates to village Jhatta, District Gautambudh Nagar. Civil Writ Petition No. 47257 of 2011 (Bharte and others Vs. State of U.P. and others) is being treated as leading writ petition. Counter affidavit has been filed by both State Government as well as authority. Petitioners who are 42 in number have approached for quashing of Notification dated 12.4.2005 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring 76.8367 hectares of land situated in village Jhatta, District Gautambudh Nagar. Declaration under Section 6 was issued vide notification dated 28.10.2005. Petitioners claim to be owner in possession of plot as mentioned in paragraph no. 4 and 5 of the writ petition. Petitioners claim that purpose of acquisition shown as Planned Industrial Development is not correct, since the respondent no. 4 is transferring the aforesaid land to builders. Possession have not been taken from the petitioners. Petitioners are peacefully residing on the aforesaid plot and there was no urgency for invoking Section17(1) and 17(4) of the Land Acquisition Act. Under Section 11-A, the acquisition have lapsed. Petitioners have stated that State Government and the authority instead of playing role of facilitator in

acquiring the land, has proceeded to colourable exercise of power. Counter affidavit has been filed by the State Government stating that possession has been taken on 10.7.2006 and out of 165 tenure holders, 122 tenure holders have received compensation. Award under Section 11(1) of the Act has been declared on 10.2.2010. There was sufficient material with the State Government to invoke Section 17(4) of the Act. Survey report as well as copy of the award has been filed along with counter affidavit. Counter affidavit has also been filed by the authority reiterating the same pleadings as has been made by the State Government. It has been stated that development work was carried out by the authority on the acquired land.

Ownership of the villagers has vested in the State by the acquisition, hence petitioners cannot challenge the acquisition. Petitioner No. 6 has received compensation. Authority has spend huge amount more than Rs 8 Crores on the infrastructure development. In Civil Misc. Writ Petition No. 47267 of 2011 (Kanhaiya Lal and others Vs. State of U.P. and others), petitioners have challenge the Notification dated 17.6.2003 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act for acquiring 56.567 hectares of land, situated in village Jhatta, District Gautambudh Nagar. Declaration under Section 6 was issued vide notification dated 21.7.2003. Petitioners who are 39 in number claim to be owner in possession of the plots as mentioned in the paragraph 4 of the writ petition, same grounds have been taken as was taken in Civil Misc. Writ Petition No. 47257 of 2011. An application has been filed by the petitioners for deleting the name of the petitioner Nos. 27,28 and 29 from the array of the parties, which is allowed and aforesaid petitioners are deleted from the parties. In the counter affidavit filed by the State Government, it has been stated that possession of the land was taken on 10.9.2003 and out of 51 tenure holders, 48 tenure holders have received compensation. Award was also declared on 17.12.2007. Writ petition has been filed with delay. In the counter affidavit filed by the authority, same plea has been repeated. It has been denied that the petitioners are in possession of the land. It has been stated that there was no colourable exercise of power in the acquisition. Land has already vested with the State Government, it cannot be reverted back to the original owners.

The writ petitions in **Group-51** relates to village Khoda, Pargana Loni, Tehsil Dadri, (Sadar) District Gautam Budha Nagar. Writ Petition No. 45196 of 2011 Rampat and others Versus State of U.P. and others, counter affidavit has been filed by the respondents-authority, which is being treated as leading writ petition. Petitioners have challenged the Notification dated 17.3.1988 under Section 4 read with Sections 17(1) and 17(4) of Land Acquisition Act. Declaration under Section 6 of the Land Acquisition Act made vide notification dated 11.7.1988. Petitioners claim to be owner in possession of Bhoomidhar of plot as mentioned in paragraph no. 3 of the writ petition. Petitioners allege that invocation of the urgency was not justified. Respondents have illegally changed the purpose of acquisition. Respondent No.3 is making huge profit. Acquisition have lapsed under Section 11-A of the Land Acquisition Act. Counter affidavit has been filed by the respondents authority wherein it has been stated that award was declared on 1.2.1991 and against the award, petitioners have already filed an application for reference being LAR No. 563 of 1998 for enhancement of compensation. It is stated that writ petition is filed in-ordinate delay, and same is liable to be dismissed on this ground alone. Other writ petitions of this group challenges same notification on more or less similar grounds. Civil Misc. Writ Petition No. 45224 (Preetam and others Vs. State of U.P. and others) challenges the Notification dated 12.2.1988, issued under Section 4 as well as Notification dated 27.3.1990 under section 6 of the Land Acquisition Act. Counter affidavit has been filed by the respondents-authority in which it has been stated that award has been declared on 1.2.1991. It is further stated that Village Khoda, Pargana Loni, Tehsil Dadri, (Sadar) District Gautam Budha Nagar is well developed village. Writ petition having been filed with in ordinate delay, same is liable to be dismissed on this ground alone.

The writ petitions in **Group-52** relates to village Kondli Banger, Post Office Kasna, District Gautambudh Nagar. In Writ Petition No. 49093 of 2011 (Beliram Vs. State of U.P. and others), counter affidavit has been filed by authority which writ petition is being treated as leading writ petition. In the present writ petition, petitioners have prayed for quashing of the notification dated 8.9.2008 issued under Section 4 read with Section 17(1) and 17(4) of Land Acquisition Act for acquiring 215.83 hectares of land situated in village Kondli Banger, Post Office Kasna, District Gautambudh Nagar. Declaration under section 6 of the Land Acquisition Act was

made vide notification dated 16.9.2009. Petitioner's case is that they are Bhoomidhar in possession of Plot No. 206. It is stated that some plot of village have not been acquired due to the reason that abadi exist there, whereas petitioner has been discriminated. Urgency clause was invoked without application of mind. Petitioner submitted that there being delay of more than one year in issuing of Notification under Section 6 of the Land Acquisition Act. Ground of urgency is falsified. Counter affidavit has been filed by the authority in which it has been sated that notification under Section 4 dated 8.9.2008 was published in two daily prominent daily news paper namely “Rashtriya Sahara” and “Amar Ujala” on 15.8.2009 and Munadi was made on 21.8.2009. Declaration under Section 6 of the Land Acquisition Act was made vide notification dated on16.9.2009. Petitioner submitted in paragraph no. 13 of the counter affidavit it has been mentioned that publication of Section 6 of the Act having been made after about one year which clearly indicated that invoking of urgency was misused. It is submitted that publication in the news paper on 15.8.2008 and Munadi on 21.8.2009 was made to facilitate the issuance of Section 6 of the Land Acquisition Act.

In Civil Misc. Writ Petition No. 40265 of 2011(Sunil Kumar Vs. State of U.P. and others) notification dated 8.9.2008 and 16.9.2009 has been challenged. It has been stated that notification under Section 6 of the Land Acquisition Act was issued nearly after passing of one year, which shows that there was no urgency and urgency has wrongly been invoked. Counter affidavit has been filed by the State Government in which it has been stated that Notification under Section 4 of the Land Acquisition Act dated 8.9.2008 was published in two local news paper “Amar Ujala” on 15.8.2009 and notice for general information was issued on 21.8.2009 and thereafter declaration under Section 6 was issued on 16.9.2009. Award has been made on 14.9.2011 and to the similar effect counter affidavit has been filed by the authority.

Civil Misc. Writ Petition No. 59121 of 2009 (Ajeet Singh Versus State of U.P. and others) was filed on 4.11.2009 challenging the aforesaid notification dated 15.8.2009 and 16.9.2009 and interim order was passed on 6.11.2009 directing that if the petitioner has not been dispensed with, there shall be status-quo with regard to the petitioner. Interim order was continued by subsequent order passed

by this court. only 9.12.2009, if the petitioner has not been dispensed with, status-quo shall be maintained with regard to the petitioner. Interim order was continuing by subsequent order passed by this court. Apart from Civil Misc. Writ Petition No. 59121 of 2009 (Ajeet Singh Vs. State of U.P. and others), Writ Petition No.59122 of 2009, Writ Petition No. 59761 of 2009, Writ Petition No. 59762 of 2009, Writ Petition No. 64564 of 2009,Writ Petition No. 65544 of 2009, Writ Petition No. 66163 of 2009, Writ Petition No. 68487 of 2009, Writ Petition No. 69329 of 2009, Writ Petition No. 69331 of 2009 and Writ Petition No. 69332 of 2009 were filed in the year 2009 itself immediately after issuing notification under Section 6 of the Land acquisition Act and in all the writ petitions, interim order is still operating. Other writ petitions in this group raises more or less similar grounds which needs no repetition. One Writ Petition No. 48232 of 2011 Charan Singh and others Versus State of U.P. and others challenges although notification under Section 4 of Land Acquisition Act dated 8.9.2008, which has been filed as Annexure-1 in which petitioners plot as mentioned in paragraph 3 of the writ petition are mentioned, but date of notification in the prayer has wrongly been given. Notification under Section 6 of the Act was issued on 16.9.2009 which has been filed in other writ petition of the same group. Writ Petition No. 48232 of 2001 is also to be treated writ petition challenging the notifications under Section 4 and 6 of the Land Acquisition Act dated 8.9.2009 and 16.9.2009 and relief has to be accordingly moulded. In the short counter affidavit, which was filed by the authority it has been mentioned in paragraph 7 that plots in question were not acquired by the declaration as claimed by the petitioner, since the said plots were indicated in the subsequent notification dated 8.9.2008 and 16.9.2009 as observed above; In all the writ petitions of this group challenging notification under section 4 dated 8.9.2008 read with Section 17(1) and 17(4) and declaration dated 16.9.2009 under Section 6 more or less similar ground are raised, which has already been noted, which needs no repetition.

The writ petition in **Group-53** relates to village Nagla Nagli, District Gautambudh Nagar. Only one writ petition in this village being Civil Misc. Writ Petition No. 46469 of 2011 has been filed challenging the notification dated 17.3.2009 issued under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act. Declaration was issued vide notification dated 8.4.2010 under Section 6 of the

Land Acquisition Act. Petitioners, who are 16 in number claim to be Bhoomidhar of plot in possession as mentioned in paragraph nos. 2 and 3 of the writ petition. Petitioners claim that they have old abadi and in spite of their representation land was not exempted. Petitioners have further alleged that respondents with malfide intention has initiated acquisition proceeding, there was no ground for dispensing with the inquiry under Section 5-A of the Land Acquisition Act. Declaration under Section 6 was issued after more than one year which shows that there was no urgency at all. Petitioners has preferred Civil Misc. Writ Petition No. 27366 of 2010 in which interim order was granted on 14.5.2010. Counter affidavit has been filed by the State Government stating therein that possession was taken on 13.7.2010 and out of 82 tenure holders, 20 tenure holders have accepted the compensation. Award relating to the land has not yet been declared. Authority has filed counter affidavit reiterating same submission.

The writ petition in **Group-54** relates to village Nithari, Noida. There are two writ petitions i.e. Writ Petition No. 45933 of 2011 (Ravindra Sharma and others Vs. State of U.P. and others) and Writ Petition No. 47545 of 2011 (Babu Ram and others Vs. State of U.P. and others). In Writ Petition No. 45933 of 2011 (Ravindra Sharma and others Vs. State of U.P. and others) counter affidavit has been filed by both State as well as authority, which is being treated as leading writ petition. Petitioners have challenged the Notification dated 1.6.1976 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring the land, situated in village Nithari (Suthari). Declaration under Section 6 was issued on 16.9.1976. Petitioners claimed to be owner in possession of plot No. 171 and 172. Notification is sought to be challenged on the ground that property is still vacant and has been auctioned in favour of private builders. Land was acquired in 1976, which is lying vacant. Counter affidavit has been filed by the State Government stated that possession of land was taken on 28.10.1976 and award was declared on 15.7.1978. Filing of the writ petition after more than 33 years has not been explained and writ petition deserves to be dismissed on the ground of laches alone. Copy of the award has also been filed as Annexure-1. Counter affidavit has also been filed by authority stating that writ petition is highly barred by laches, after having been filed more than three decades. It has been stated that plots fall in developed Sector-29. Application for intervention has also been filed by

M/s Wave Mega City Ptv. Ltd.

Writ Petition No. 47545 of 2011(Babu Ram and others Versus State and U.P. and others) also challenges the notification dated 1.6.1976 and 16.9.1976 issued under Section 4 and 6 of the Land Acquisition Act. Petitioner had also filed application praying that writ petition be de-linked from the bunch of the writ petition. We do not find any reason to de-link the aforesaid writ petition from bunch of the writ petition. Application for de-link stands rejected. Counter affidavit has been filed by the authority, it has been stated that writ petition is liable to be dismissed on the ground of laches. Award has already been declared in the year 1978.

The writ petition in **Group-55** relates to village Sadarpur, Pargana and Tehsil Dadri, District Gautam Budh Nagar. In Civil Misc. Writ Petition No. 45694 of 2011(Jai Singh and others Vs. State of U.P. and others), counter affidavit has been filed by the State Government as well as authority which is treated as leading writ petition. Writ Petitions have been filed praying for quashing of Notification dated 30.3.2002 issued under Section 4 read with Section 17(1) and 17(4) of Land Acquisition Act for acquiring 779.55 Acres of land situated in village Sadarpur, Pargana and Tehsil Dadri, District Gautam Budh Nagar. Declaration under section 6 of Land Acquisition Act was issued on 28.6.2003 and award has been made on 29.1.2010, which have been sought to be quashed. Petitioners who are 14 in number claim to be owner of plots as mentioned in paragraph 4 of the writ petition, which is being used for agricultural purposes as claimed by them. Petitioners' case is that possession has not been taken and they are residing in their plot. Petitioners case is that they were issued printed notice to appear before the Additional District Magistrate (Land Acquisition), Gautambudh Nagar, who intended to pay compensation @ 378.92 per sq. yard. Petitioners were told that land has vested with the State Government and petitioners shall be deprived from receiving the compensation for long time, hence there is no option except to accept the compensation. Petitioners have accepted 90% compensation and entered into agreement. Petitioners' case is that instead of developing industries on the spot, respondents-authority have allotted the land to various private builders @ 11531/- per Sq. Metre and 21,000 per Sq. Meter and other builders

with different rate. In the present case, even allotment have been made in July, 2011. Petitioners case is that there is no urgency in the matter and entire exercise is tainted with mala fide and colourable exercise of power. Acquisition have lapsed under Section 11-A of the Land Acquisition Act. Counter affidavit has been filed by the State Government stating therein that possession was taken on 3.9.2003 and 3.3.2005. Out of 138 tenure holders, 85 tenure holders have received compensation. There was sufficient material before the State Government for invoking urgency clause. Counter affidavit has also been filed by the authority in which apart from reiterating the fact mentioned in the counter affidavit of the State Government, it is stated that area stand demarcated as Sector 44,45,96,98,46 and 43, which are developed sector. Authorities have developed the sector and has invested huge amount. It has been stated that only 45% of the land is capable of allotment. It is further stated that against the notification impugned, Civil Misc. Writ Petition No. 29031 of 2003 (Amar Singh and others Vs. State of U.P. and others) was filed in this court which was dismissed by the Division Bench judgment dated 11.7.2003. Other writ petitions of this group challenging the same notification are more or less on similar grounds which needs no repetition.

Writ Petition No. 47522 of 2011(Kalu and others Vs. State of U.P. and others) has been filed challenging the Notification dated 28.1.1994 issued under Section 4 read with Section 17(1) and 17(4) of Land Acquisition Act for acquisition 97.219 Acres of land. Declaration under section 6 of the Land Acquisition Act was issued vide notification dated 10.11.1995 and award was also declared on 23.10.2009. Petitioners claim to be owner in possession of the Plot Nos. 281,313,513. It is alleged that inquiry under Section 5-A of the Land Acquisition Act has wrongly been dispensed with. Petitioners' case is that they are in possession and they have not been given any compensation so far. It is further alleged that land has been transferred to builders. Counter affidavit has been filed by the respondents-authority stating therein that possession of the land was taken on 3.9.2003 and 3.3.2005. It is stated that plots have been developed. Writ Petition is barred by laches, it having been filed after long lapse of time.

The writ petition in **Group-56** relates to village Salarpur Khadar, Pargana and Tehsil Dadri, District Gautambudh Nagar. In Writ Petition No. 46682 of 2011

(Begram @ Began Vs. State of U.P. and others), counter affidavit has been filed by the respondents-authority as well as State Government, which is being treated as leading writ petition. Petitioner has challenged the Notification dated 11.9.2008 issued under Section 4 read with Section 17(1) and 17(4) of Land Acquisition Act for acquiring 227.077 Hectares of land situated in village Salarpur khadar. Declaration under Section 6 of the Land Acquisition Act made vide notification dated 30.9.2009. Petitioner's case is that he is Bhoomidhar of plot , as mentioned in paragraph no.4 of the writ petition. Respondents have failed to pay compensation in accordance with law. It has been stated that there was no urgency in the acquisition to dispense with the inquiry. Against the same Notification Civil Misc. Writ Petition No. 23640 of 2011 (Hari Kishan Versus State of U.P. and others) has been filed in which this court has already granted interim order on 4.5.2010. Counter affidavit has been filed by the State Government in which it has been stated that possession of the land was taken on 3.2.2010 and 25.9.2010. Out of 1970 tenure holders 246 tenure holders have received compensation i.e. about 13%. There was sufficient material to invoke urgency clause. Writ petition has been filed with delay. Counter affidavit has been filed by the authority repeating averments made in the counter affidavit of the State Government. It has been stated that development work was carried out and the area has been demarcated as Sector 49,78, 79,81,104,101,106 and 107. Allotment was made to private individual as well as Industrialist, Green Residential and Industrial purpose from time to time. Application for intervention has been filed on behalf of the M/s Three Platinum Softech Pvt. Ltd and therein claims that for allotment of 33 thousand Sq. Meters of land in Sector 107, lease deed was also institute in favour of the applicant on 31.3.2010.

The writ petition in **Group-57** relates to village Shahadara, Pargana Dadari, Tehsil Sadar, District Gautambudh Nagar. In Writ Petition No. 44493 of 2011 (Jagdish Vs. State of U.P. and others), petitioners have challenged Notification dated 16.4.2008 issued under Section 4 read with Section 17(1) and 17(4) of Land Acquisition Act for acquiring 171.0945 Hectares of land situated in village Shahadara, Pargana Dadari, Tehsil Sadar, District Gautambudh Nagar. Declaration under section 6 of the Land Acquisition Act was made on 16.6.2008. Petitioner's case is that he is owner of Bhoomidhar of Khasra No. 589 area 0.9170

hectares. It is stated that there was no urgency for the acquisition of the land for the planned industrial development and respondents in order to fulfil their political obligations/promise to the private builders dispensed with the enquiry under Section 5-A of the Land Acquisition Act. Authority was in dominating position, the petitioners were left with no option but to accept the compensation under the provision of Karar Niyamawaly 1997. Respondents have changed the purpose of acquisition by transferring the land to private builders, copy of the lease deed granted to private builders on 7.7.2011 has been annexed as Annexure, 4,5, and 6 to this writ petition. Counter affidavit has been filed by the State Government as well as authority. In the counter affidavit of the State Government, it has been stated that possession of land was taken on 14.7.2008 and out of 560 tenure holders, 316 tenure holders have already received their compensation under agreement. Award has also been declared on 14.9.2011. There was sufficient material before the State Government for dispensing with the inquiry. Petitioner having accepted compensation, cannot be allowed to challenge the acquisition. In the counter affidavit filed by the Authority it has been stated that petitioners have received compensation to the tune of Rs. 91 Lacs and 17 thousand. Notification impugned was upheld in the Civil Misc. Writ Petition No. 29575 of 2008, against which Special Leave Petition has also been dismissed.

Civil Misc. Writ Petition No. 46037 of 2011(Rishipal Singh Versus State of U.P. and others) raises similar ground to challenge the aforesaid notification which needs no repetition.

Civil Misc. Writ Petition No. 46405 of 2011 (Sri Pal Singh Versus State of U.P. and others) has been filed for challenging the Notification dated 16.4.2008 which has been impugned in other writ petition of this group. Petitioners' plot being included in the aforesaid notification. Declaration under Section 6 of the Act have already been issued on 16.6.2008 which has already been filed in above writ petition, this petition be also treated as the writ petition against both the notification it shall be decided accordingly.

The writ petition in **Group-58** relates to village Soharkha Jahidabad, District Gautambudh Nagar. Civil Misc. Writ Petition No. 42834 of 2011 (Amar Singh Vs.

State of U.P. and others) has been filed challenging the Notification dated 27.7.2006 issued under Section 6 read with Section 17(1) and 17(4) of the Land Acquisition Act for acquiring 4848 hectares of land situated in Village Soharkha Jahidabad. Section 4 notification was issued on 12.4.2005(copy of the notification has been filed alongwith supplementary affidavit). Petitioners' case is that he has 1/7th share in plot No. 719 and whole plot is covered by Pucca construction. Petitioner claims to be moved an application before the Noida Authority for exempting the land from the acquisition. In the revenue Record, plot has been recorded as abadi. Petitioner has not taken compensation under agreement. Respondents after acquiring the land allotted to the private builders. There was no urgency to dispense with the inquiry. Application for intervention in this writ petition has been filed by M/s Unitech Pvt. Ltd., who claims to have invested 53 Crores in the project.

Civil Misc. Writ Petition No. 43825 of 2011 (Nepal and others Vs. State of U.P. and others) has been filed by 34 persons challenging the notification dated 12.4.2005 issued under section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act proposing to acquire 449.412 hectares of of land situated in village Soharkha Zahidabad, Tehsil Dadri, District Gautambudh Nagar. Declaration under Section was made on 27.7.2006. Petitioner claimed to the agriculturalist, dependent on the agriculture income. Petitioner case is that declaration under section 6 was issued after period of 15 months whereas declaration is required to be issued within one year. It is further submitted that issuance of declaration after 15 months clearly indicates that there was no urgency in dispensing with the inquiry. Land is still in possession of the petitioner and now for the year 2010-11 plots have been sought to be allotted to various private builders. In paragraph 19 to 25 of the writ petition details of various plots allotted to the builders of different area have been indicated. M/s Unitech Limited has been transferred an area of 288500.00 sq. meter of Plot No. 001 by lease deed dated 3.3.2008. M/s Ajnara India Limited vide lease deed dated 1.10.2010 has been transferred an area of 49410.00 sq. Meter of Plot No. GH-01/B -Sector 74, Noida. By another lease deed dated 1.9.2010 an area of 20000.00 Sq. Meter of land has been transferred in favour of M/s Express Builders and Promoters Private Limited. Another lease dated 17.6.2010 an area of 2000.00 Sq. meter of Plot No. GH-01/C -Sector 78 has been transferred in favour

of M/s G.S. Promoters Pvt. Ltd. Again vide lease dated 31.8.2010 an area of 20500.00 sq. Meter of Plot No. GH-02/CSector- 77, Noida has been transferred in favour of M/s Civitech Developers Pvt. Ltd. Further vide lease deed dated 28.5.2010 an area of 21393.83 Sq. Meter of Plot No. GH-05/B-Sector 78, Noida has been transferred in favour of M/s Sunshine Infrawell Pvt. Ltd. Further vide lease deed dated 7.10.2010 an area of 200000.00 Sq. Meter of Plot No. GH-01/A-Sector 74, Noida has been transferred in favour of M/s Supertech Limited. All the aforesaid builders have filed intervention application in this writ petition. In the intervention application it has been stated that they have invested huge amount in the development of infrastructure of area and in this regard photograph of the spot has also been annexed. Counter affidavit has been filed by the authority stating therein that possession of land has been taken on 16.10.2006 and cotenure holders have received the compensation amount of an area in percentage 64.14%. Award have already been made on 27.7.2011. Development has taken place in the village land has been vested with the authority. Authority has invested huge amount in the development of the area.

Civil Misc. Writ Petition No.45462 of 2011 (Parsu Ram and others Vs. state of U.P. and others) has been filed challenging the notification under Section 6 dated 27.7.2006. Petitioners claim that they are Bhoomidhar of plot mentioned in paragraph 4 of the writ petition. Notification under Section 6 of the Act has been issued after more than one year of issuance of notification under Section 4 dated 12.4.2005. In the possession memo dated 16.10.2006 is only paper possession, reference of various lease granted to different builders have been given in paragraph no. 14 of the writ petition. Compensation under agreement was paid @ of Rs. 424 Sq. Meter whereas transfer is being made on exorbitantly in order to take huge profit from the petitioners. Transfer was made more than 22 thousand per sq. meter of land in favour of the builders. There was no urgency for dispensing with the inquiry under section 5-A of the Act. Petitioner being illiterate agriculturist and being in possession, after acquiring knowledge have filed writ petition reiterating the full fact. In camouflage of the acquisition for the aforesaid development, respondents have issued impugned notification and thereafter, transferred the land to private builders at huge profit. Application for intervention has been moved on behalf of Mahagun Real Estate also. The writ petition in

Group-59 relates to village Sultanpur, Pargana and Tehsil Dadri, District Gautambudh Nagar. In Civil Writ Petition No. 46764 of 2011 (Ramesh and others Vs. State of U.P. and others) petitioners have challenged the notification dated 11.2.1994 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring the land situated in village Sultanpur, Pargana and Tehsil Dadri, District Gautambudh Nagar. Declaration under Section 6 was issued on 18.7.1994. Petitioners claimed to be Bhoomidhar of the land which has been shown in the Map 11-A (Annexure-1) to the writ petition. Petitioner claims to have received compensation under agreement. Petitioners case is that there was no urgency for invoking urgency clause and in the year 2010-11 land has been transferred to private builders. Counter affidavit has been filed by the State Government stating that possession of the land was taken on 24.8.1995 and award was declared on 9.5.1997. After such long lapse of period, writ petition cannot be entertained, it is highly barred by laches and deserves to be dismissed on this ground alone.

Civil Misc. Writ Petition No. 46766 of 2011 (Jeet Ram and others Vs. state of U.P. and others) challenges the notification dated 2.5.2003 issued under Section 4 read with Section 17(1) and 17(1-A) of the Land Acquisition Act for acquiring the land. Declaration under Section 6 was issued on 29.5.2003. Petitioner case is that they are Bhoomidhar of the land mentioned in paragraph no. 3 of the writ petition. Allegations is that land has not been used for the purposes it was acquired and have been transferred to various builders. There was no urgency for dispensing with the inquiry. Counter affidavit has been filed by the State Government stating that possession of the land was taken on 24.6.2003. Out of 49 tenure holders, 42 tenure holders have received compensation. Award have already been declared on 10.9.2010. Writ Petition is barred by laches. Counter affidavit has been filed by the authority taking similar ground. It is stated that petitioner nos. 1 to 5 have received compensation on 5.3.2003 and petitioner nos. 6 to 9 have nothing to do for plot No. 639 to 646 nor any documents have been filed in that regard.

Civil Misc. Writ Petition No. 46785 of 2011(Jeet Ram and others Vs. State of U.P. and others) has been filed challenging the Notification dated 6.12.1999 issued under Section 4. Declaration under Section 6 of the Act was issued vide

notification dated 9.3.2000. Petitioners claim to be Bhoomidhar in possession of the land as mentioned in paragraph 3 of the writ petition. Petitioners' case is that land was acquired for Planned Industrial Development but same has not been used for the aforesaid purpose, rather it has been transferred to private builders. Counter affidavit has been filed by the State Government stating that possession of the land was taken on 14.12.2000 and award was issued on 18.6.2005. Writ Petition is highly barred by time and deserves to be dismissed on this ground alone.

Writ petitions of **Group No.60** relate to village Suthiyana. In Writ Petition No.43264 of 2011, Hariom and others Vs. State of U.P. and others, counter affidavit has been field by the State as well as by the NOIDA Authority, which is being treated as leading writ petition. By this writ petition, the petitioners have prayed for quashing the notification dated 24.09.2006, issued under Section 4 read with Sections 17(1) and 17(4) of Land Acquisition Act proposing to acquire 189.691 hectares land of village Suthiyana. Petitioners' case in the writ petition is that petitioners are bhoomidhars of Khasra No.258. The petitioners were in bona fide belief that their lands were being acquired to serve the purpose, i.e. Planned Industrial Development and the acquiring body being in dominating position, they were left with no option but to accept the compensation under Rules 1997. The petitioners later on came to know that the very purpose of acquisition i.e. Planned Industrial Development had been changed by playing fraud and the land had been transferred to the private builders to construct commercial complexes. The petitioners are now challenging the acquisition. Petitioners entered into agreement under compulsion. No award had been made. The acquisition has lapsed under Section 11-A. Counter affidavit has been filed by the State Government stating that possession of land was taken on 13.12.2006 and out of 464 tenure-holders, 378 have accepted the compensation, the award has been declared on 05.07.2010, the writ petition filed by the petitioners has been filed with delay and there was sufficient ground for invoking urgency clause. In the counter affidavit filed by the Authority, it has been stated that village Suthiyana has now been developed in Sector No.90, which is industrial sector, Sector No.91 as park and play ground, Sector No.136 as an institutional sector in which 187 plots have been allotted and Section No.137 as residential and institutional, Sector No.140-A as an

institutional sector. The Authority has spent crores of rupees in providing facilities in the area. In this writ petition, intervention application has been filed on behalf of M/s Paramount Towers claiming allotment of land and having carried out huge development. Certain photographs showing under construction buildings have been filed along with supplementary affidavit. Another intervention application has been filed on behalf of NOIDA Extension Flat Buyers Welfare Association.

The other writ petitions of this group raise more or less similar grounds to challenge the aforesaid notifications which need no repetition. Writ petition of **Group No.61** relates to village Wazidpur. In this group there is only one writ petition being Writ Petition No.47256 of 2011, Anoop Singh and others Vs. State of U.P. and others. The writ petition has been filed by five petitioners praying for quashing the notification dated 04.07.2003 issued under Section 4 of the Act proposing to acquire 275.92 acres land of the village Wazidpur. Declaration under Section 6 was issued on 19.07.2003. Petitioners' case in the writ petition is that petitioners are owners of plots mentioned in Paragraph-4 of the writ petition. It is pleaded that notifications under Sections 4 and 6 were issued in colourable exercise of power since the respondent No.4 is transferring the land to builders for constructing residential flats. Possession of the land has not been taken by the State and the petitioners are residing on the said plots. There was no urgency in the matter so as to invoke Sections 17(1) and 17(4) of the Act. Compensation for villagers was fixed @ Rs.378.92 per square yard whereas the plots are being transferred on exorbitant amount by earning huge profit by the respondent No.4. The land has been transferred to builders namely M/s Unitech and M/s Amrapali, who have started constructions recently. Counter affidavit has been filed by the State stating that possession of land has been taken on 22.08.2003, out of 549 tenure-holders, 467 have accepted the compensation, award has already been declared on 08.01.2010 and there is delay in filing the writ petition. To the same effect is counter affidavit filed by the Authority. It has been stated in the counter affidavit that village Wazidpur falls in different sectors namely Sectors No.91, 135 and 136. Third party right has been created. Allotments were made in the year 2005-06 and details of allotment has been filed as Anenxure CA-1 to the counter affidavit of the Authority.

Writ petition of **Group No.62** relates to village Achcheja. Only one writ petition is in this group being Writ Petition No.44985 of 2011, Tejpal Singh Vs. State of U.P. and others. The petitioner has challenged the notification dated 09.05.2011 issued under Section 4 read with Sections 17(1) and 17(4) of the Act. As no notification under Section 6 has been referred to the writ petition, hence it appears to be premature.

Writ petitions of **Group No.63** relate to village Yakubpur. There are two writ petitions being Writ Petition No.5670 of 2007, Keshari Singh and others Vs. Government of U.P. and others and Writ Petition No.6726 of 2007, Hargyan Singh Vs. State of U.P. and others. Writ Petition No.5670 of 2007 has been filed challenging the notification dated 26.09.2006 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing to acquire 74.848 hectares land of village Yakubpur. Declaration under Section 6 was issued on 09.01.2007. This writ petition was filed on 13.01.2007. The writ petition was dismissed by Division Bench through order dated 09.02.2009 as having become infructuous as the land had been vested in the State there being no interim order. It is useful to quote the order of Division Bench dated 09.02.2009 dismissing the writ petition:

“This writ petition has been filed by the petitioners challenging the land acquisition proceedings dispensing with the provisions of Section 5-A, urgency clause 17(4) and notification under Section 4(1) of the Land Acquisition Act. There is no interim order in the writ petition. By efflux of time, the writ petition has rendered infructuous, as the land has vested in the State free from all encumbrances.

The writ petition is dismissed.”

The petitioners filed a special leave petition against the judgment and order dated 09.02.2009 in which leave had been granted and the appeal was allowed by judgment of Apex Court dated 01.02.2010.

Petitioners’ case in the writ petition is that the NOIDA Authority has been constituted with the object of securing Planned Development of the Industrial Area. The primary and basic purpose of the Authority is the planned development of area into industrial area. The commercial or residential development carried out by

the respondent Authority should have direct and cogent nexus with primary and basic object of development. It is pleaded that respondent has started selling residential property which is beyond its purpose and object. It is alleged that Government is working at the instance of developers. Petitioners have prayed for quashing the notifications on the grounds set up in the writ petition. Counter affidavit has been filed by the NOIDA authority seeking that acquisition proceedings have been concluded, the land acquisition proceedings cannot be quashed and notification has rightly been issued invoking urgency clause. A supplementary affidavit has been filed by the petitioners taking ground that invocation of urgency clause was made without any rational basis. Counter affidavit has also been filed by the State stating that possession of the land has been taken on 27.01.2007. It is pleaded that there was substantial material for invoking the urgency clause by the State Government and compensation has been paid to the tenure holders under agreement under Rules 1997. The award has also been given on 21.11.2009, which has been filed along with the counter affidavit.

Another Writ Petition No.6726 of 2007, Hargyan Singh Vs. State of U.P. and others has been filed challenging the aforesaid notifications dated 26.09.2006 and 06.01.2007. Petitioner claims that Plot No.70 is agricultural property of him, which is adjacent to old abadi of the village. Petitioner has purchased 100 square yard by sale deed dated 24.02.2006. Inquiry under Section 5A has wrongly been dispensed with.

Writ petitions of **Group No.64** relate to village Shafipur. Writ Petition No.46011 of 2011, Hari Singh and others Vs. State of U.P. and others has been filed challenging the notification dated 02.05.2003 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing to acquire 86.0427 acres land of village Shafipur. Declaration under Section 6 of the Act was issued on 16.06.2003. Petitioners' case in this writ petition is that petitioners are pushtaini bhoomidhars of Plots No.164, 166 and 167. Petitioners submit that for the village Shafipur the rate notified was Rs.78.92p per square yard for the relevant period. Petitioners were paid compensation at the rate of Rs.204.50p per square yard. Petitioners accepted compensation under some mis-conception. Inquiry under Section 5A has been

dispensed with without any valid reason. Petitioners were misrepresented that land fell within the jurisdiction of respondent No.3 whereas the land fell within the jurisdiction of respondent No.2 and petitioners were entitled for compensation @ Rs.329.76p per square yard. Only on 25% of the area, road has been constructed, rest of the land is in the possession of the petitioners. Counter affidavit has been filed by the State stating that possession of the land was taken on 18.07.2003. Award was also declared on 25.05.2007. Out of 47 tenure-holders, 40 have received compensation in terms of the agreement. For rest, the award has been declared. As petitioners accepted compensation in accordance with the agreement, hence they have no right to challenge the acquisition. The land of the petitioners lies in territorial jurisdiction of Respondent No.3, Greater NOIDA Authority.

Writ Petition No.46393 of 2011, Azaad and others Vs. State of U.P. and others has been filed challenging the notification dated 15.12.1999 issued under Section 4 and the notification dated 22.04.2000 issued under Section 6 for acquiring 57.587 acres land of village Shafipur. Petitioners' case in this writ petition is that they are bhoomidhars of plots mentioned in paragraph 4 of the writ petition. Petitioners claim that the area of village Shafipur falls within the jurisdiction of respondent No.2 and the land should not have been acquired for the purposes of respondent No.3. Petitioners were given the compensation at the rate prescribed by respondent No.3. Inquiry under Section 5A has wrongly been dispensed with.

Writ petitions of **Group No.65** relate to village Khodna Khurd. In Writ Petition No.46602 of 2011, Lekhraj Singh and others Vs. State of U.P. and others, counter affidavit has been filed by the State as well as by the Authority hence the said writ petition is being treated as leading writ petition. The writ petition has been filed by 15 petitioners challenging the notification dated 26.05.2009 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing acquisition of 201.7386 hectares of land of village Khodna Khurd. Declaration under Section 6 was issued on 22.06.2009. Petitioners claim to be owners of plot as mentioned in Paragraphs No.4 to 13 of the writ petition. Petitioners' case in the writ petition is that some of the petitioners have not received compensation and only few have accepted the same under protest. There is no urgency in the acquisition and without application

of mind, the State has invoked Sections 17(1) and 17(4). Although the plot in dispute was acquired for Planned Industrial Development but the same has been allotted to different builders at the rate of Rs.10,000/- per square meter. No notice under Section 9 has been received by the petitioner till date. Same notification was challenged in this Court through Writ Petition No.31611 of 2011, Smt. Neelam Vs. State of U.P. and others in which this Court directed the parties to maintain status quo. Entire acquisition proceedings were tainted with mala fide. Petitioners claim to be in actual physical possession of the land in dispute. The counter affidavit has been filed by the State stating that possession of land was taken on 14.09.2009 of an area of 201.7386 hectares. Out of 679 tenure-holders, 518 have accepted the compensation. There is no mention of declaration of award. In the counter affidavit there is substantial material on record to invoke urgency clause by the State government. Compensation having accepted under the agreement petitioners cannot challenge the acquisition. The compensation of an area 6.3196 hectares has not been taken. It is wrong to say that exercise of power of State Government was mala fide or colourable exercise. Counter affidavit has also been filed by the Authority reiterating the pleas raised in the counter affidavit of the State. It has further been stated that after taking over of the possession of land, land development work has been carried out in Sector 20 as an sport city. Petitioners having taken compensation under the agreement cannot challenge the acquisition. Copy of the possession memo of 14.09.2009 has been filed along with the counter affidavit.

The other writ petitions of this group raise more or less similar grounds to challenge the aforesaid notification which need no repetition. After having completed the narration of facts, we proceed to consider the submissions of learned counsel for the parties as well as learned counsel for the interveners and to decide the contentious issues raised in this group of writ petitions. As noted above, a Division Bench hearing several writ petitions pertaining to land acquisition of villages of Greater Noida and Noida made a reference for formation of the larger Bench to consider issues raised in the writ petitions and to decide other writ petitions raising same issues to avoid multiplicity of the proceedings. The Division Bench referring the matter did not frame specific issues although some of the issues which had arisen have been noted in detail in the order. All the

writ petitions having been placed before the Full Bench for decision, we proceeded to hear learned counsel for the parties and each writ petition was called for hearing. All the learned counsel for the parties had agreed that all the writ petitions be finally decided. By our order dated 29.8.2011, we directed learned Chief Standing Counsel to produce the original records of the State Government pertaining to the land acquisition. Original records of the State Government were produced by learned Chief Standing Counsel. We had also by our order dated 26.9.2011 directed learned counsel for the Greater Noida/Noida Authority to produce original records pertaining to the decision taken by the Authority in preparation of the plan as per 1991 Regulations and to various allotments made in different villages with regard to which land has been acquired. Learned Counsel for the Authority has also placed the original record of the Authority for perusal of the Court. By our order dated 21.9.2011, we directed learned counsel for the Greater Noida to file supplementary affidavit indicating certain details as enumerated in the order. The Greater Noida Authority has filed four supplementary affidavits. Along with 4th supplementary affidavit, the authority has filed chart showing the details of the acquisition and the development of the acquired land and other relevant information in separate folders of each villages which were taken on record.

We have heard Sri H.R. Misra, Sri V.M. Zaidi, Sri W.H. Khan, Sri U.N. Sharma and Sri Ashok Khare, learned Senior Advocates, Sri Pankaj Dube, Sri B.B. Paul, Sri A.P. Paul, Sri Anil Sharma, Sri Dhiraj Singh Bohra, Sri C.K. Parekh, Sri K.K. Arora, Sri Saurabh Basu, Sri Shiva Kant Misra, Sri N.P. Singh, Sri Vinod Sinha, Sri S.K. Tyagi, Sri Kamal Singh Yadav, Sri Ram Surat Saroj, Sri J.J. Munir, Sri Pavan Bhardwaj, Sri Chandan Sharma, Sri Siddharth Srivastava, Sri A. Prasad, Sri Lal Singh Thakur, Sri Anoop Trivedi, Sri Sunil Rai, Sri J.J. Muneer, Sri Manish Goyal, Sri Suneel Kumar Rai, Sri Sidhant Mishra, Sri M.K. Gupta, Sri Ram Kaushik, Sri Neeraj Tiwari, Sri R.S. Saroj, Sri S.C. Verma and several other counsels for the petitioners. Sri L. Nageswara Rao, learned Senior Advocate, Sri Ravi Kant, learned Senior Advocate and Sri M.C. Chaturvedi, learned Chief Standing Counsel have been heard on behalf of the State. For interveners/allottees, we have heard Sri S.P. Gupta, Sri R.N. Singh, Sri Navin Sinha, Sri Sashi Nandan, Sri C.B. Yadav, Sri B.K. Srivastava, Sri Pramod Kumar Jain, Sri R.B. Singhal, learned Senior

Advocates, Sri Ashwini kumar Misra, Sri Adarsh Agrawal, Sri Amit Saxena, Sri S.K. Singh, Sri Rahul Agarwal, Sri Nikhil Agarwal and several other counsels. We have also heard Sri Dhruv Agrawal, learned Senior Advocate appearing for Developers Association. Sri J.H. Khan appeared before us for National Capital Regional Planning Board, we allowed time to file counter affidavit on behalf of the Board, however, subsequently Sri Khan appeared and stated that no counter affidavit is proposed to be filed. In some of the writ petitions, allottees from Noida and Greater Noida Authority/builders were also parties, but no notices were issued to private parties in those writ petitions in view of the fact that we have permitted the allottees/builders to file intervention application along with affidavit by our order dated 29.8.2011 and large numbers of intervention applications along with detailed affidavits have been filed and their counsels were also heard and intervention applications on behalf of the Developers Association of which builders are members have also been heard by us. The writ petition No. 37443 of 2011, Gajraj Singh and others Vs. State of U.P. and others in which reference was made by the Division Bench is the main writ petition. We have treated one writ petition of each village of Greater Noida and Noida as a leading writ petition in which counter affidavits have been filed. Although in different writ petitions different notifications under Section 4 read with Sections 17(1),17(4) and declaration under section 6 have been challenged but issues raised in most of the writ petitions are common issues. The State, Greater Nodia/Noida Authority as well as interveners have also raised similar submissions in all the writ petitions except some differences of facts. The issues arising in this bunch of writ petitions being more or less common, we proceed to note the various submissions raised by learned counsel for the petitioners as well as learned counsel for the State authority and learned Counsel for the allottees/interveners.

SUBMISSIONS

The substance of the submissions raised by learned counsel for the petitioners is as follows:

(1) The Greater Nodia/Noida authority (hereinafter referred to as authority) was constituted for the development of certain areas in the State into industrial and

urban township. The dominant object of the constitution of the authority was industrial development of the area. The authority having been established under the U.P. Industrial Area Development Act, 1976 (hereinafter referred to as '1976 Act), the primary and basic purpose for which the respondent authority has been established is planned development of the area into industrial area. The intention of the Act in establishing the Authority was to promote the industrial development in the area and earmarking the land use as industrial, commercial, residential has only been given to facilitate the Authority in achieving the primary object of industrial development. The Authority instead of promoting the object of the Act has embarked upon the activity of transferring the substantial area of the land acquired to the private builders, colonizers to unduly help them and to earn profit which is not the object and purpose of the Act. The land of the petitioners which was acquired in the name of planned industrial development was not utilized for planned industrial development rather has been diverted to private persons which is impermissible and clearly indicate the malafide and colourable exercise of powers.

(2) The authority is laboring under misconception that only when the authority acquires area falling in the industrial development area it can carry on developments as required under the Act. Without assessing proper requirement and need, the authority has initiated process for acquiring huge area of land with intent and purpose to help private persons.

(3) Various recommendations made by the authority to the State Government for acquisition of the land under the Land Acquisition Act, 1894 were made without any appropriate plan or project for industrial development. The reasons given for acquisition of land were only repeating the set words without there being any genuine need for acquisition.

(4) The invocation of Sections 17(1)and 17(4), while issuing notification under section 4 of the Land Acquisition Act was not valid and the same was done in the routine manner without there being any urgency in the matter. Dispensing the inquiry under section 5A can only be an exception where the urgency cannot brook any delay. The provisions of Section 5A is mandatory and embodied a just

and wholesome purpose that a person whose property is being or intended to be acquired should have occasion to persuade the authority concerned that his property be not touched for acquisition.

(5) There has been considerable delay in several cases in issuing notification under Section 4 of the Act which proves that there was no urgency in the acquisition. Even after publication of notification under Section 4 long delay was caused in issuing declaration under Section 6 which again proves that there was no urgency in these matters which need dispensation of inquiry under Section 5A of the Act.

(6) The Authority while submitting the proposal and the Collector while forwarding the recommendations have not specifically applied their mind as to whether the inquiry under section 5A be dispensed with or not. There was not even specific recommendation by the Authority and the Collector for dispensation of inquiry under section 5A. The State Government without adverting to the relevant materials dispensed with the inquiry under section 5A which again vitiates the whole acquisition process. Dispensation of inquiry under section 5Abeing invalid, the entire acquisition proceedings and consequential actions taken thereon fall on the ground and be quashed with consequential reliefs.

(7) The acquisition of fertile agricultural land of the petitioners in the name of planned industrial development of Gautam Buddha Nagar is in colourable exercise of power to achieve a different purpose and object i.e. to benefit the private persons, builders, colonizers which vitiates the entire acquisition.

(8) The authority has malafide exercised its power to proceed for acquisition of agricultural land which is nothing but fraud on power and to mention a planned industrial development is nothing but was a camouflage.

(9) The possession of the land of the petitioners which was subject matter of acquisition was not taken by the State in accordance with law. Neither actual, physical possession was taken nor Collector went on the spot. No Panchnama as required for evidencing the transfer of actual, physical possession has been prepared nor there are signatures of the land owners or independent witnesses on

the alleged possession memos which have been filed along with the counter affidavit by the State/Authority on the record. The delivery of possession as alleged by the respondents being only paper transactions, the land never vested in the State. Most of the land owners are still in possession of their agricultural/Abadi land which is being used for the aforesaid purpose.

(10) The respondents never offered 80% compensation of the land as mandated by Section 17(3A) of the Land Acquisition Act to the land owners which vitiates the entire acquisition.

(11) No award having been declared within two years from the date of the publication of the award under section 6, the entire proceedings for the acquisition has lapsed under section 11A of the Land Acquisition Act.

(12) The compensation received by land holders under agreement under U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 was under compulsion and in forced circumstances. The land holders were told that unless they accept compensation under agreement in the award which shall be prepared under section 11, they shall be paid very meager amount and even if any proceeding is initiated by them for enhancement of compensation under section 18, the same shall take years which shall make the land holder loose even the amount which is being offered under 1997 Rules.

(13) That State and Authority being in dominating position, the petitioners had to accept the compensation under agreement under force of circumstances which acceptance of compensation cannot prejudice the rights of the petitioners to point out illegality in the acquisition proceedings.

(14) The petitioners being law abiding citizens were under bonafide belief that the acquisition of their land being for planned industrial development, plenty of industries shall come up in their area providing avenues of livelihood and opportunity to their children to get employment in view of which factors some of the petitioners did not initially rush to the Court challenging the acquisition but subsequently when the petitioners came to know that the land which was acquired in the name of planned and industrial development is being transferred to the

builders/colonizers in huge area permitting them to construct multistoried complexes towards huge profit, the petitioners then realized that the entire acquisition was in colourable exercise of powers and a fraud has been played by the authority in acquiring their land. Although some of the petitioners have already filed writ petitions challenging the notifications in question in this Court which writ petitions are still pending and in some of the writ petitions which were filed immediately after the notification, there was no objection of any kind of delay.

(15) The petitioners belong to agriculturist class and are not much familiar to legal proceedings. Further they being in possession of their land and there being no development for years together, they did not rush to the Court immediately. The petitioners never waived their right nor acquiesced to the acquisition but being helpless agriculturist they did not know what to do in such circumstances.

(16) The petitioners land were taken on payment of compensation under Agreement Rules as well as in some cases award given under section 11 for few hundred rupees per square yard which land has been transferred by the Authority to the builders and colonizers for an amount of more than Rs. 10,000 to 20,000 per square yard. The Authority which is statutory authority constituted for industrial development has to carry on development without any intention of earning any profit, has converted itself into broker for private colonizers, builders and other interested parties.

(17) In several writ petitions challenging the notifications under section 4 and 6, this Court has granted interim order directing the parties to maintain status-quo and in spite of their being interim order by this Court, the authority proceeded to allot the land creating third party rights.

(18) The Division Bench judgment of Har Karan Singh lays down the correct law and has rightly taken the view that invocation of urgency in notification issued under section 4 by invoking sections 17(1) and 17(4) was unjustified and has rightly quashed the notifications of acquisition relating to village Patwari. The Division Bench has rightly followed the judgment of the apex Court in **Radhey Shyam Vs. State of U.P.** (2011) 5 SCC 553 and the judgment of the apex Court in 2011 (6) ADJ 480 **Greater Noida Industrial Development Authority Vs.**

Devendra Kumar. The apex Court in the aforesaid cases on similar facts and circumstances had laid down that urgency under section 17(1) and 17(4) cannot be invoked. The Division Bench in Har Karan Singh was bound by the aforesaid pronouncement of the apex Court and did not commit any error in not following the earlier Division Bench judgment in Harish Chand' case. Similarly several other Division Bench judgment of this Court upholding the notifications which are under challenge in some of the writ petitions need not be followed in view of the clear pronouncement of the apex Court in the aforesaid cases. Moreover, the said judgments were between the different parties and are not binding on the petitioners of these writ petitions. The creation of their party right in favour of builders/colonizers and other allottees being result of colourable exercise of power by the respondents cannot come in the way of the petitioners for getting the notifications quashed and restoration of land and these third party rights having been created in spite of entertaining various writ petitions by this Court, the respondents cannot be allowed to claim any benefit. The development as alleged by the interveners of some of the areas of land is on their own risk and cost and cannot be taken as shield to protect the illegal arbitrary actions of the respondents.

(19) After order dated 26.7.2011 in writ petition No. 37443 of 2011, the authority themselves called the land owners of village Patwari and a settlement was entered between them by which additional compensation of Rs. 550/- per square meter was paid by the Authority. The Authority however, has not called the land owners of other villages for any such settlement which is discriminatory and arbitrary.

(20) The authority having not obtained approval of Greater Noida Master Plan 2021 from National Capital Regional Planning Board constituted under National Capital Regional Planning Board Act, 1995, cannot proceed with any development or to allot the land to builders/colonizers as per Plan 2021.

Arguments on behalf of the State were lead by Sri L. Nageswar Rao, Senior Advocate and Sri Ravi Kant, Senior Advocate.

Learned Counsel appearing for the State respondent refuting the submissions of learned counsel for the petitioners contended that most of the writ petitions filed by the petitioners is barred by delay and laches and deserve to be dismissed on this

ground alone. It is submitted that most of the petitioners were prompted by the judgment of the apex Court in the cases of Radhey Shyam and Devendra Kumar (supra) and as a matter of fact the petitioners in the aforesaid two cases were vigilant and approached the Court within time, cannot give a cause of action to others to rush to this Court at this belated stage. The petitioners ought to have challenged the land acquisition proceedings immediately after declaration under section 6 was issued. The petitioners having not approached the Court immediately after issuance of declaration under section 6, the writ petitions are barred by laches. Possession was taken by the State in accordance with law and in consequence of taking possession under section 17(1) of the Land Acquisition Act, the land has vested in the State free from all encumbrances which cannot be divested. The writ petition challenging the acquisition at this stage when the land has already vested in the State cannot be entertained. Taking of possession by the State was by executing a Panchnama which is recognized mode of taking possession where large tract of land is acquired. Taking of actual physical possession is not possible in the circumstances when large tract of land is involved and taking of symbolic possession is sufficient compliance of section 17(1) of the Land Acquisition Act. The majority of the land owners have accepted compensation voluntarily under 1997 Rules. After accepting compensation under 1997 Rules, it is not open for them to challenge the acquisition. The land owners have waived their right after accepting compensation under 1997 Rules. . In the event the land owners were not satisfied with the payment of compensation under Agreement it was open for them to approach the Collector under Rule 6 of 1997 Rules for setting aside of the agreement which having not been done in any case it is not open for the petitioners to contend otherwise. The petitioners having acquiesced to the acquisition proceedings they are stopped from challenging the notifications under section 4 and 6. In most of the cases, award has already been declared and those who have not accepted compensation under 1997 Rules can very well take recourse of Section 18. The Division Bench judgment in the case of **Harkaran Singh Vs. State of U.P.** which is latter judgment to the Division Bench judgment in the case of **Harish Chand Vs. State of U.P.** is per in curium. In **Harkaran Singh's** case, the Division Bench after perusing the records of the State Government returned the finding that invocation of Sections 17(1) and 17(4) was

in accordance with law. The subsequent Division Bench in **Harkaran Singh's** case could not have taken the contrary view and only course open for the subsequent Division Bench was to make a reference for consideration by larger Bench which having not been done, the judgment of **Harkaran Singh's** case has to be ignored. Several notifications which are under challenge in these writ petitions have already been upheld by different Division Benches of this Court, in view of which decisions, the impugned notifications have also to be upheld. In some cases against the Division Bench judgment upholding the notifications under sections 4 and 6, Special Leave Petition have already been dismissed by the apex court. Following the judgment of **Harish Chand's** case, all the writ petitions deserve to be dismissed. After taking possession of land by the Authority, the same was dealt with by the authority in accordance with Master Plan 2021 by allocating it for different uses namely; industrial, commercial, residential, green area etc. Third party rights have been created by making various allotment and allottees are in possession and have carried on various development work. The prayer of the petitioners to quash the acquisition at this stage cannot be allowed. There was no colourable exercise of power by the State. There was sufficient material before the State Government for invocation of Section 17(1) and 17(4). Subjective satisfaction of the State Government in invoking urgency clause can be challenged only on limited grounds of malafide and there being no pleadings or grounds alleging malafide against the State, subjective satisfaction cannot be interfered with by this Court. Non compliance of Section 17(3A) is not fatal to the acquisition proceedings as has already been held by the apex Court in various judgment. Section 11 A is not applicable in the present case since possession was taken by the State under section 17(1) and land has already been vested in the State which cannot be divested. The apex Court in various judgment has already held that Section 11 A is not attracted in the cases where possession is taken under section 17(1). The creation of third party rights and subsequent developments have to be taken into consideration by this Court, while considering the claim of the petitioners for quashing the notifications. The petitioners having allowed creation of third party rights and substantial developments on the spot cannot complain at this stage. Sri L. Nageswara Rao in his concluding submissions has laid much emphasis on this aspect of the matter i.e. creation of

third party rights and substantial development on the spot. He submits that assuming without admitting that urgency clause was wrongly invoked, this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India shall not quash the notifications under sections 4 and 6. The nature of the land has been changed on the spot which is irreversible. Buildings and constructions have come on the spot with huge investments and developments. He submits that in several judgments of the apex Court subsequent developments have taken into consideration by the Courts and the relief of quashing the notifications under sections 4 and 6 have been refused by the High Court and the apex Court. He submits that equitable approach has been applied in cases in which notifications under section 4 and 6 have been found to be illegal. He submits that petitioners were never interested in the land and their grievance is only with regard to quantum of compensation. It is further submitted by learned Counsel for the State that factum of allotment made much subsequent to the acquisition is wholly irrelevant for judging the validity of the acquisition proceedings and validity of the notifications under section 4 read with Sections 17(1) and 17(4) and 6. The correctness of notifications issued under sections 4 and 6 have to be judged according to the materials available at the relevant time and any subsequent action of the Authority in making the allotment cannot be made the basis for challenging the notifications which can neither be looked into nor is relevant.

Sri S.K. Patwaliya, learned Senior Advocate (who appeared only on first day of hearing), Sri Ravindra Kumar and Sri Ramendra Pratap Singh have appeared on behalf of the Authority. Learned Counsel for the Authority has adopted the submissions raised by learned Counsel for the State. It is further submitted by learned counsel for the Authority that there is no error in the notifications issued under section 4 read with Sections 17(1) and 17(4) as well as declaration under section 6. It is submitted that there was sufficient material before the State Government for invoking the urgency clause. The authority has submitted proposal for acquisition in accordance with the Master Plan 2021 and the land acquired has been used in accordance with the Master Plan 2021. He submits that allotment of residential plots to individual as well as for group housing purpose for commercial use, for institutional use for green area are part of development activity as entrusted to Authority. The extent of land use has already been fixed under the

plan as prepared under Regulation 4 of Noida Preparation and Finalization of Plan (Regulations), 1991 which has also been adopted by Greater Noida and all allotments made by Authority is in accordance with the aforesaid plan. Learned Counsel for the Authority submits that after acquisition, the authority has undertaken large scale developments including construction of roads, laying down sewer line, electric transmission line, developing green belts, carving out plots group housing development work and other development activities. Huge amount has been invested by the Authority running in several crores in carrying out the development in different sectors after acquisition. There has been several allotment for industrial plots and large number of industries have already been set up in Greater Noida and Noida. There are large number of I.T. industries and multinational companies which have set up their industrial establishment in the area. The entire area has been fully developed. Most of the petitioners have accepted compensation under 1997 Rules without raising any objection and it is not open for them to raise any objection after taking compensation. The allegation that any force or compulsion was used by the respondents in paying the compensation is without any basis and incorrect. After allotment was made to various allottees including allotment of industrial plots, group housing plots, large scale developments have been carried out. Buildings have been constructed changing the very nature of the land and huge amounts have been invested by the allottees. Group housing allotments have also been made to various private individuals who have booked their flats by taking bank finance. At this stage, the petitioners cannot be allowed to challenge the acquisition nor at their instance acquisition deserves to be quashed. Most of the writ petitions have been filed after judgment of the apex Court in the case of **Radhey Shyam** and **Devendra Kumar** (supra) which judgments cannot give any cause of action to the petitioners to challenge the proceedings. Several writ petitions have been filed even after decade of completion of acquisition proceedings. The petitioners are only interested in obtaining more and more compensation from the respondents out of their greed. Substantial compensation has already been received by the land owners. Land owners whose land has been acquired has been provided Abadi plots to the extent of 6% minimum of 120 square meters and maximums of 25000 square meters as per the policy of the respondents and they having accepted the

Abadi plots which means taking benefit of the acquisition, they cannot be allowed to challenge the acquisition. It is further submitted that several persons who have allotted Abadi plots have sold their plots to third party after taking handsome money. There is no foundation or ground laid down in the writ petition regarding allegations of malafide or colourable exercise of power. Without there being any basis or foundation, the petitioners cannot be allowed to urge the aforesaid grounds.

Learned Counsel for the interveners have also reiterated the submissions as have been noted above. Much emphasis has been laid down on the ground that due to delay and laches, the writ petitions deserve to be dismissed. The acquired land having been put to developmental use and third party rights having intervened, the petitioners are not entitled for any relief. All the allottees have made substantial payment to the authority as well as invested huge amount in developmental activity including construction of building. The interveners after due care and caution have obtained the allotments from the authority who had valid title. It is denied that land which was acquired for planned industrial development is being used for any other purpose. Planned industrial development is a comprehensive term which includes development of residential, commercial, institutional and industrial sites. In any view of the matter the acquisition cannot be faulted even if the authority after acquisition uses the land for any other public purposes. It is not the case that land is not being used for public purpose. Interveners are bonafide purchasers without any notice and has invested huge amount after taking loan from the Bank. The petitioners are not entitled for any reliefs in these writ petitions. The interveners have obtained allotment in open tender proceedings and after getting allotment got possession from the Authority and after getting the necessary approval/sanction of plan have made huge investments towards payment to the Authority. The petitioners have waived their right to challenge acquisition proceedings having accepted compensation under 1997 Rules and having not taken any steps to challenge the acquisition within reasonable time. Subsequent developments after allotment are the relevant factors to be considered, while considering any challenge to the acquisition belatedly made. Learned Counsel for the interveners referred to detail figures of payment made to the Authority and investments made by them in developing the sites allotted to them including

photographs which have been filed along with affidavit showing the developments made on the spot. Leaned Counsel for the developers association has also referred to and given details of allotment made to various allottes, the extent of developments carried out by them.

Learned Counsel for the parties have placed reliance on various judgments of the apex Court and this Court which have been extensively read by them in support of their respective submissions which shall be referred to hereinafter, while considering the respective submissions of the parties. From the pleadings of the parties and submissions of learned counsel for the parties as noticed above, following issues fell for consideration in this bunch of writ petitions:-

ISSUES

1. **Object and Purpose of the 1976 Act:** Whether the development of industries is the dominant purpose and object of U.P. Industrial Area Development Act, 1976?

2. **Whether Acquisition Compulsory:** Whether for carrying out the development of industrial area under 1976 Act, it is compulsory and necessary to acquire the land by the Authority?

3. **Delay and Laches:** Whether the delay and laches in the facts of the present case can bar the invocation of Constitutional remedy under Article 226 of the Constitution of India?

4. National Capital Regional Planning Board Act, 1985, its Consequences: Whether the Authority can carry out development, utilise the land acquired as per its Master Plan 2021 without its approval/clearance by National Capital Regional Planning Board, and what is effect on its function of land acquisition after enforcement of the 1985 Act?

5. **Invocation of Sections 17(1) and 17(4):** Whether invocation of Sections 17(1) and 17(4) of the Land Acquisition Act and dispensation of inquiry under section 5A was in accordance with law in the cases which are under consideration?

6. **Pre-notification and Post-notification delay:** Whether delay caused before issuance of notification under Section 4 and delay caused subsequent to notification under Section 4 can be relied for determining as to whether urgency was such that invocation of Sections 17(1) and 17(4) was necessary?

7. **Colourable Exercise of Power:** Whether acquisition of land are vitiated due to malafide and colourable exercise of powers?

8. **Taking of Possession:** Whether the possession of the land acquired was taken under section 17(1) of the Land Acquisition Act in accordance with law?

9. **Vesting:** Whether after taking possession under section 17(1) of the Act the challenge to the notifications under section 4 read with 17(1) and 17(4) and Section 6 cannot be entertained due to the reason that land which has already been vested in the State cannot be divested?

10. **Section 11A:** Whether acquisition under challenge has lapsed under section 11A of the Act due to non declaration of the award within two years from the date of publication of the declaration made under section 6?

11. **Section 17(3A):** Whether non payment of 80% of the compensation as required by Section 17(3A) of the Land Acquisition Act is fatal to the acquisition proceedings?

12. **Waiver:** Whether the petitioners who have accepted compensation by agreement have waived their right to challenge the acquisition proceedings?

13. **Acquiescence:** Whether the petitioners due to having accepted the compensation by agreement have acquiesced to the proceedings of land acquisition and they are estopped from challenging the acquisition proceedings at this stage?

14. **Third Party Rights, Development and Constructions:** Whether due to creation of third party rights, development carried out by the Authority and developments and constructions made by the allottees on the acquired land subsequent to the acquisition, the petitioners are not entitled for the relief of

quashing the notifications under Sections 4 read with Sections 17(1) and 17(4) and Section 6 of the Act?

15. **Effect of Upholding of some of the notifications in some writ petitions earlier decided:** What are the consequences and effect of earlier Division Bench judgment upholding several notifications which are subject matter of challenge in some of these writ petitions?

16. **Conflicts in views of Division Benchs:** Which of the Division Bench decisions i.e. Harkaran Singh's case holding that invocation of Section 17(1) and 17(4) was invalid or earlier Division Bench judgment in Harish Chand's case holding that invocation of section 17(1) and 17(4) was in accordance with law, has to be approved?

17. **Relief:** To what relief, if any, the petitioners are entitled in these writ petitions?

1. Object and Purpose of the 1976 Act:

Under Constitutional scheme, distribution of legislative powers is provided in Chapter I Part XI of the Constitution of India. According to Article 246 (3) subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule. Before enforcement of the Constitution, the provincial Legislature has enacted several enactments for regulation of municipalities and town. U.P. Municipalities Act, 1916 and U.P. Town Improvement Act, 1919 were two legislations in that regard with object of providing municipal services and improvement of towns in the State. In our State, U.P. (Regulations of Building Operations) Act, 1958 was also an enactment regulating building operations then thereafter came a comprehensive Act namely; U.P. Urban Planning and Development Act,1973 (hereinafter referred to as ‘1973 Act’) to provide for development of certain areas of U.P. according to plans and the matters ancillary thereto. The Act provided for declaration of an area as development area within the State which requires to be developed according to plan. Section 4 of the 1973 Act provided for constituting an Authority for the development area. The Act provided for preparation of Master Plan and Zonal

Development Plan and development of land according to such plan. The State Legislature thereafter enacted the U.P. Industrial Area Development Act, 1976 to provide for constitution of authority for development of certain areas in the State into **Industrial and Urban Township .** Section 3 provided for constitution of the Authority for any industrial development area. Section 6 provided for functions of the authority. Section 12 made applicable certain provisions of the 1973 Act. Section 17 gave overriding effect to the provisions of the 1976 Act. The purpose for enactment of 1976 Act is to be found out from the scheme of the Act. The preamble of a Statute is a part of the Act and it is admissible aid to construction as said by Chief Justice Dyer in **Stowel v Lord Zouch,** (1569) 1 Plowd 353 preamble is a “key to open the minds of the makers of the Act, and the mischief's which they intended to redress…..”

The preamble of the Act is as follows:

“An Act to provide for the constitution of an Authority for the development of certain areas in the State into industrial and urban township and for matters connected therewith.**”**

As noted above in the State of U.P. a comprehensive enactment i.e. 1973 Act was already enacted for development of certain areas of U.P. according to plan and even thereafter 1976 Act was enacted which has to be for a purpose and object as indicated into the preamble. The object of the Act was for the development of certain areas in the State into industrial and urban township. The object of the Act is further delineated from the Statement of Object and Reasons as published in the gazette which is to the following effect:

“With a view to stepping up the industrial development of the State, it is essential to develop suitable areas in the State into industrial township and to constitute an Authority for that purpose. The Authority shall be a body corporate and will have statutory powers similar to those of an Improvement Trust in regard to the development of sites, construction of buildings etc. In the first instance Government's intention is to create such an industrial complex in district Bulandshahr near Okhla and in future to develop similar other areas.

This Bill is, accordingly, being introduced for carrying out the above purposes."

The statement of object and reasons as above clearly spells out the purpose for enactment i.e. to step up industrial development of the State which was possible only when suitable areas in the State were developed into industrial township and to constitute an Authority for that purpose. The main purpose of the Act for which the Act was enacted was industrial development of the State. Legislative intendment was that by developing industrial township in different area of the State, industrial development of the State could only be possible. The dominant purpose and object of the Act was thus to develop industrial township. Section 3 of the Act provided for constitution of the Authority which is to the following effect :

"(1) The State Government may, by notification, constitute for the purposes of this Act, An authority to be called (Name of the area) Industrial Development Authority, for any industrial development area.

(2) The Authority shall be a body corporate.

(3) The Authority shall consist of the following :-

(a) The Secretary to the Government, Uttar Pradesh, Industries Department or his Nominee not below the rank of Joint Secretary ex- officio. -Member Chairman

(b) The Secretary to the Government, Uttar Pradesh, Member Public works Department or his nominee not below the rank of Joint Secretary ex-officio. - Member

(c) The Secretary to the Government, Uttar Pradesh, Local Self- Government Department or his nominee not below the rank of joint Secretary-ex officio. - Member

(d) The Secretary to the Government, Uttar Pradesh, Finance Department or his nominee not below the rank of Joint Secretary-ex officio. - Member

(e) The Managing Director, U.P. State Industrial Development Corporation-ex officio. -Member

(f) Five members to be nominated by the State Government by notification. -Members

(g) Chief Executive Officer. -Member Secretary" Section 6 provided for functions of the Authority. At this very stage, it is useful to quote the constitution of the Authority as provided in Section 4 (3) of the 1973 Act which is to the following effect:

"(3) The Authority in respect of a development area which includes whole or any part of a city as defined in the Uttar Pradesh Municipal Corporation Act. 1959, shall consist of the following members namely-

(a) a Chairman to be appointed by the State Government;

(b) a Vice-Chairman to be appointed by the State Government;

(c) the Secretary to the State Government, in charge of the Department in which, for the time being, the business relating, to the Development Authorities is transferred, ex-officio;

(d) the Secretary to the State Government in charge Of the Department of Finance, ex-officio;

(e) the Chief Town and Country Planner, Uttar Pradesh, ex-officio;

(f) the Managing Director of the Jal Nigam, established under the Uttar Pradesh Water Supply and Sewerage Act, 1975. ex-officio;

(g) the Mukhya Nagar Adhikari, ex-officio: (h) the District Magistrate of every district any part of which is included in the development area ex-officio;

(i) four members to be elected by Sabhasads of the Nagar Mahapalika for the said city from amongst themselves;

Provided that any such member shall cease to hold office as such as soon as he ceases to be Sabhasad of the Nagar Mahapalika;

(j) such other members not exceeding three as may be nominated by the State Government."

There is a marked differences in the constitution of the Authority under 1976 Act and 1973 Act. Constitution of Authority as provided under section 3(3) of the 1976 Act provides that Secretary to the Government of U.P. Industries Department or his nominee be the member chairman. Managing Director of the U.P. State Industrial Development Corporation is also an ex officio member. The object being industrial development of the State, the heading of the authority by Secretary to the Government of U.P Industries Department or his nominee not below the rank of Joint Secretary throws clear light on the purpose and object of the Act. The provisions of 1976 Act came for consideration before the apex Court in a recent judgment pertaining to Noida itself i.e. (2011) 6 SCC 508 Noida Entrepreneurs Association Vs. Noida and others. Noticing 1976 Act following was observed by the apex Court in paragraph 1**:**

"1. The Legislature of Uttar Pradesh enacted the U.P. Industrial Area Development Act, 1976, (hereinafter referred to as `Act 1976') for the purpose of proper planning and development of industrial and residential units and to acquire and develop the land for the same. The New Okhla Industrial Development Authority (hereinafter referred to as the `Authority'), has been constituted under the said Act, 1976. The object of the Act had been that genuine and deserving entrepreneurs may be provided industrial and residential plots and other necessary amenities and facilities. Thus, in order to carry out the aforesaid object, a new township came into existence."

The writ petitions which are up for consideration in these cases, it has been submitted that although 1976 Act was enacted for purpose of industrial development, the authority has forgotten the principal object of the Act and has started functioning a body for acquiring land of farmers and selling it to private colonizers and builders for construction of multi storied complexes which activity of the authority in no way was connected with industrial development of the area. It is submitted that construction of the residential units has to be subservient to the main object of the Act i.e. construction of residential unit may be undertaken as an

aid to industrial development, but instead of industrial development of area the allotment of land to individuals, builders and colonizers have become primary functions of the authority. The aforesaid submission has been forcefully put in some of the writ petitions. Suffice to refer to the pleadings in writ petition No. 5670 of 2007 Kesari Singh and others Vs. State of U.P. which writ petition was filed by the petitioners in this Court on 31.1.2007 challenging the notifications dated 26.9.2006 issued under section 4 read with Sections 17(1) and 17(4) and the declaration dated 9.1.2007 under section 6 in respect of 74.546 hectares of land of village Yakubpur. It is useful to note the specific pleadings in this regard made in the writ petition. Paragraphs 5, 6, 8, 11, 24 of the writ petition are quoted below:

“5. That as set out in Section 6 of UPIADA, the object of respondent Authority was to be to secure 'The Planned Development of the Industrial Development Area'. It is apparent that the primary purpose for which the respondent no. 1 was established, was t develop the area industrially and without prejudice to the generality of the said object, the powers have been vested in the respondent no. 1 to perform certain function sin Section 6(ii) of UPIADA. It is submitted that the powers to demarcate and develop sites for industrial, commercial and residential purposes according to the plan hae been bestowed upon the respondent Authority under the said Act only for the purpose of facilitating the Authority to achieve the main object of 'Industrial Development'. It is submitted that it is apparent from the whole scheme of the said Act that the very purpose of the establishment, the respondent authority is the 'Planned Development' of the 'Industrial Development Area'.

6. That the petitioners submit that the 'planned Development' of the 'Industrial Development Area' is to be distinguished from the 'Planned Development' of the 'Development Area' (simplicitor). The petitioners submit that the same in Uttar Pradesh there is a separate Act namely 'The Uttar Pradesh Urban Planning and Development Act, 1973', which deals with the 'Planned Development' of 'Industrial Development Areas (Simplicitor)' The very fact that a special Act has been enacted by the name of 'Uttar Pradesh Industrial Area Development Act' in spite of the existence of 'The Uttar Pradesh Urban Planning and Development Act, 1973' even prior to the enactment of UPIADA in 1976, clearly demonstrates that the very

purpose of 1976 Act was to develop certain areas industrially. It is apparent that Noida having been established under the '1976 Act' as an 'Industrial Development Area', the primary and basic purpose for which the respondent Authority has been established, is the 'Planned Development' of the area into an 'Industrial Area'.

8. That it follows from the above that the 'Commercial or Residential Development' in the 'Industrial Development Area' carried out by the respondent No. 1 Authority should have a direct and cogent nexus with its primary and ultimate object of 'Industrial Development'. It is submitted that whenever an area is being developed into an 'Industrial Area', it follows that there will be requirement of 'Residential and Commercial Areas' as a consequence of 'Industrial Development'.

11. That the petitioners submit that the respondent Authority is under a mandatory duty to carry out 'Development' of the area, which is acquired primarily for the 'Industrial Township'. It thus follows that if the area acquired by it, is not developed by the Authority, it is against the object, spirit and mandate of the Act of 1976. Also, the 'Development' should be aimed at 'Industrial Development' as per the scheme of the Act. It thus follows that if any land acquired from the farmer is transferred by the respondent Authority to a third party without developing the same that too for carrying out totally 'Residential Development' having no correlation with the 'Development of the Industrial Township' or that of the 'industry', it would be ultra virus the Act and the Constitution of India.

24. That Noida was established as mentioned above for the purpose of 'Industrial Development' of the said area. Admittedly, the land in the above mentioned scheme is being sold by the Authority without developing the said land. Also, such a big area of land is being sold for developing residential units having no nexus with the 'industrial Development'. It is submitted that the Residential Units proposed to be developed, are not going to help the promotion of industry in any manner. The entrepreneur or the industrial worker who may be working or are interested in the industry, will only be discouraged by such unbridled planning off of the property because this single action of the respondent Authority will result in escalation of rates of the residential property taking it totally beyond the capacity of the entrepreneur or the industrial worker. In fact, in place of augmenting the

industrial growth, such people unfriendly schemes are only resulting in discouraging the industry. The industry to be viable needs cheaper land, cheaper infrastructure and cheaper labour. The increase in land prices by allowing the private Developers to have a field day, can only result in increasing the cost of all the inputs in the industry and thus discouraging the industrial growth."

State has filed a counter affidavit and there is no denial to the averments made by the petitioners in paragraphs 5 to 11. Paragraph 8 of the counter affidavit is quoted as below:

"8. That, the contents of paragraph nos. 5,6,7,8,9,10 and 11 of the writ petition, insofar as they refer to the provisions of the U.P. Industrial Area Development Act, 1976, hereinafter referred to as the Act, 1976, need no reply. However, the inference sought to be drawn by the petitioner on the basis of the statutory provisions, are not admitted in the manner as stated."

While replying to paragraph 24 of the writ petition, it was stated by the State that averments contained in paragraph under reply related to respondent no. 3 which may give appropriate reply. The authority has filed counter affidavit in writ petition dated 22.4.2007 in which paragraphs 5 to 24 of the writ petition have been replied in paragraph 9 which is quoted as below:

"9. That the contents of paragraphs 5 to 24 of the writ petition as stated are not correct. Most of the averments are irrelevant for the purposes of decision of the writ petition. It is incorrect to say that the answering respondent -Authority has only been set up for the purposes of industrial development. Section 6(2)(c) and(d) of the Act clearly provides that the Authority shall demarcate and develop sites for industrial, commercial and residential purposes according to the plan. Section 6 further provides the function of the Authority to the infrastructure for industrial, commercial and residential purposes. Hence the Authority not only in its plan earmarks land for the purposes of industrial and commercial development, but also carves out plan for providing residential facilities. Hence it cannot be said that the purpose of the Authority is only industrial development."

In the last line of paragraph 9, the Authority has said “hence, it cannot be said that the purpose of the Authority is only industrial development” Pleadings of the petitioners as made in the aforesaid writ petition in paragraphs 4,5,6,11 and 24 has virtually not been denied. However, the reply given by the Authority indicates the stand of the Authority. Authority is under misconception that purpose of the Act is not only industrial development. It is true that development of the industrial township also contemplate development of residential, commercial, institutional sites for wholesome developments of an area and to provide all necessary facilities to the persons residing in the said area, but other developments have to be in aid of industrial development.

The contention of the petitioners is that Authority has forgotten its main object for which it was constituted i.e. industrial development. The Authority has proceeded with large scale acquisition of agricultural land without any plan and project for industrial development rather with only object to give benefit to private persons including the builders. The Authority in reply had submitted that allocation of land out of the acquired land has been undertaken as per Master Plan 2021, which prescribes percentage of land uses and allotment to different purposes i.e. residential, industrial, commercial etc. Master Plan 2021 has been brought on record as Annexure-3 to the supplementary affidavit. According to Master Plan, land uses have been prescribed per following percentage:

Residential	23.2%
Industrial	19.6%
Commercial	5.6%
Institutional	16.2%
Green Area	23.2%
Transportation	12.1%
SEZ	0.2%
Total	**100%**

The Authority has filed four supplementary counter affidavits bringing on record the details of land acquired by different notifications in Greater Noida and land allocated for different uses in different villages. Along with supplementary affidavit,

the Authority has also brought on record details of each village of Greater Noida along with folder which contains summary of village including land use, total area of sector, area falling in the village and other details. In the residential area, group housing, residential small plots, residential flats, Abadi and 6% settlement as well as “Activities part of residential area facilities” have been mentioned. Details of the industrial land use and allotment have also been given. Since the submission of the petitioners has been that majority of land acquired has been transferred for residential purposes, we, to test the submission of the petitioner have compiled the informations provided by the Authority with regard to each village in a tabular form. The following information included in the tabular form is on the basis of the supplementary counter affidavit and the details submitted by the Authority in folders:

Name of the village

Area of village

acquired in square meter

ResidentialLandUse (Area in square meter)

Group Housing Residential plots/flats Abadi and 6%

Settlement Facility Area (residential land use)

Total Industrial area in square meter

Patwari 5891880 984220 570320 719676 557894 2832110

Sakipur 1260380 397872 303492 753355.43 1454719.43 26600

Ghori Bachhera 5801734 907190.31 404729.06 1412878.21 242310.26 2967107.84

Pali 2258760 883268 883268 55240

Birondi Chakrasenpur 1625507 718923.36 110742.00 364968.21 101755.80 1296389.37

Dadha 3083540 245450.5 165770 597299.68 4698382 5706902.18 1467533

Tusiyana 3732180 599300 599300

Dabra 1218506 23040 646835.37 669875.37 80725

Roja Yakubpur 4848360 1362314.27 503170.20 13000 1878484.47 546178.6

Aimnabad 1004280 171920 488225 12653.75 672798.75

Khanpur 1873250 357199 357199 1853025.28

Biraunda 589830 147153.64 200611.34 75806.99 423571.97

Chuharpur Khadar 3502990 975409.97 531120.25 773397.68 187112.67 2467040.57

Name of the village

Area of village

acquired in square meter

ResidentialLandUse (Area in square meter)

Group Housing Residential plots/flats Abadi and 6%

Settlement Facility Area (residential land use)

Total Industrial area in square meter

Badalpur 2305540 272400 272400

Sadopur 1421600 247200 247200

Gharbara 595610 349040 349040

Chhapraula 909935 177457.8

Khairpur Gurjar 3333062 23780 313505 941927.84 8500 1287712.84

Ajayabpur 373080 162006 162006

Nimauli 973170 281480.40 281480.40 878298.85

Jaitpur Vaishpur 3045154 395693.5 720 424110 820523.5

Mathurapur 1222699 239527 184853 247784.23 52955.95 725120.18

Saini 3048830 982690.94 770070.01 89980 1842740.95

Murshadpur 3088220 186110 186110

Haibatpur 2404810 781949 317947 36073.49 1135969.49

Chhipyana Khurd 1055600 441470.26 186333.69 627803.95

Bisrakh- Jalalpur 6082590 1053612 232000 2207601.75 49008 3542221.75

Rithori 1485391 991739 991739 598757

Itehra 3202560 1097586.91 609653.72 1707240.63

Luskar 1813000 353869 353869 1016192.29

Badpura 3036

RaipurBangar 1808114

Malakpur 1547791 384890 384890 775007.6

Maicha 3435881 1552712 1552712 440514

Kasna 2308880 131717.3 489936 301100 128046.1 1050799.4 2275375.7

Rasulpur Rai 1192116 97532 569860 6220 128717 802329

Yusufpur Chaksaberi 551460

Khera Chauganpur 946923 333330 333330 011109.26

Devla 1006214

Junpat 1218829 123700

Total 87071292 11156012.96 3900087.31 19427708.76 6382196.01 40866005.04 10325714.38

55% of the total acquired area 47889210.6

Percentage of the Group housing 23.30%

percentage of the land earmarked for residential including Group Housing, Residential Plots/Flats, Abadi and 6%

settlement and facility area for residential use 85.33%

percentage of land earmarked for industrial 21%

use percentage of the residential area excluding facility 72%

As noted above, the Master Plan 2021 provides for land use residential only as 23.2%. The Authority in its counter affidavits have stated that out of total area acquired only 55% is saleable area i.e. only 55% area is allocated for different land use and the rest of the area is used for roads and other amenities. In this context, it is relevant to refer to the pleadings of the Authority in counter affidavit filed in writ petition No. 42455 of 2011, Ram Kumar and others Vs. State of U.P. and others. In paragraph 49 of the aforesaid counter affidavit, following has been stated:

“At this stage, it is reiterated that the net saleable land does not exceed 55% of the acquired land. Remaining area goes for infrastructure, amenities, roads and other land uses”

In view of the above pleadings, the allocation of land for different land uses according to Master Plan has to be only to the extent of 55% of the total acquired land. Thus, the percentage of land which was allocated to the residential and industrial purposes have been computed on the basis of the 55% of the total land acquired. The figures as noted above, clearly indicate that Authority is not even

proceeding to allocate the land according to its Master Plan 2021. The residential use of the land as noted above, is 85.33% including all residential uses and the builders alone have been allotted to the extent of 23.30%. In the information which has been supplied by the Authority in different folders, there are certain information's which are not complete and certain areas were under planning. This indicates that area of land of the residential use as well as industrial use may further increase. The above figures clearly supports the submission of the petitioners that Authority has proceeded to allocate maximum land for residential uses even against its own Master Plan 2021.

In one of the writ petitions pertaining to Greater Noida being writ petition No. 37119 of 2011, Dal Chand and others Vs. State of U.P. and other relating to village Roja Yakubpur, the petitioners have brought on record the resolution of the Authority dated 2.2.2010 by which Authority took a decision to change land use of the area adjoining to 130 meter road. The decision to change the land user was taken with the object that if the said area is made for group housing scheme for the purpose of marketing the Authority shall earn big profit. The said resolution has been brought on record as Annexure to the rejoinder affidavit and has also been placed by the authority along with its supplementary affidavit. The apex Court in (2007) 9 Supreme Court Cases 593 **M/S Popcorn Entertainment and Anr vs City Industrial Development Corporation and others** laid down following in paragraph 48"

"It has been held by several decisions of this Court that while developing a new township the objective of the planning authorities is not to earn money but to provide for systematic and all-round development of the area so that the purpose of setting up the township is achieved"

From the materials brought on the record by the Authority it appears that in several villages, the land use of the acquired land was subsequently changed into industrial. Details of those villages in which the land use was admittedly changed by the authority are as follows:

i. Patwari

ii. Junpath

iii. Ghori Bachera

iv. Chapraula

v. Pali

vi. Yusufpur Chak Saberi

vii. Kasana

viii.Haibatpur

ix. Chipiyana Khurd

x. Itehra

xi. Roja Yakubpur

xii. Bisrakh Jalalpur

It has not even been tried to explain in any of the affidavits filed by the Authority that what purpose of industrial development shall be served by permitting change of land use from industrial into residential. From the above discussion, it is clear that 1976 Act was enacted with the purpose and object of industrial development of the State. Various areas which according to the State were fit to be notified for industrial development were declared by the State as industrial development area. The notifications for declaring an area as an industrial development area under 1976 Act presupposes appropriate exercise to find out potentiality of industrial development in the area. State was conscious that industries cannot be developed in the entire areas of the State and certain substantial pockets have to be identified and consciously developed. We have no doubt in our mind that development of industries being primary object the activities of the Authority has to wear round along with industrial development. Any activity dehors the industrial development cannot be said to be within the bonafide and legitimate purpose of the Act. The development of the residential area, commercial area and other areas

have to be developed as subservient to industrial development. It is useful to note that in preamble of the Act two words have been used i.e. “industrial and urban township”. The words “industrial and urban township” are conjunctive and not disjunctive. The development of urban township is a corollary and conjunctive to industrial development. We thus are of conclusive opinion that dominant purpose of the Act is industrial development and the authority in its action has not bonafide and truthfully followed the objective of the Act and its several actions do not fall in line with the object of the Act which shall be referred to in this judgment in some detail hereinafter.

Reference may also be made to a Division Bench judgment of this Court in the case of **Sundar Garden Welfare Association and another vs. State of U.P. and others** reported in 2008(5) ALJ 29. In the above case land was acquired by the State Government for the purpose of industrial development of Ghaziabad through Uttar Pradesh State Industrial Development Corporation, Kanpur. A society of residents challenged the acquisition. It was stated in the writ petition that land was no more required for industrial purposes and acquisition has been made subject to Ghaziabad Development Authority. In the aforesaid context, the Division Bench held that when the land was acquired and taken over by the acquiring body for the purposes of industrial development, then it can be public or commercial and residential accommodation connected with the said industrial development but it cannot be enter into simple housing development scheme performing the job of the development authorities and Nagar Nigams. Following was laid down in paragraph 30 of the said judgment:-

“**13.** We are of the view that once the land was acquired and taken over by the requiring body for the purposes of industrial development, then it can be public or commercial and residential accommodation connected with the said industrial development but it cannot enter into simple housing development scheme performing the job of the development authorities and Nagar Nigams etc., which are authorised under the U.P. Urban Planning and Development Act, 1973 and other similar Acts.”

2. Whether Acquisition Compulsory:

The next issue to be considered is as to whether it is compulsory and necessary for the Authority to acquire the land for carrying out the development as contemplated under 1976 Act. Section 6 of the Act provides for the object of the Authority which is to secure the planned development of the industrial development area. Sub Section (2) provides that without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions.

“(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions :-

(a) to acquire land in the industrial development area, by agreement or through proceedings under the Land acquisition Act, 1894 for the purposes of this Act;

(b) to prepare a plan for the development of the industrial development area;

(c) to demarcate and develop sites for industrial, commercial and residential purposes according to the plan;

(d) to provide infrastructure for industrial, commercial and residential purposes;

(e) to provide amenities;

(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

(g) to regulate the erection of buildings and setting up of industries: and

(h) to lay down the purposes for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.”

The functions provided in sub section (2) thus are not exhaustive but only enumerative. The object of the Act as provided is for development of certain areas in the State into industrial and urban township. In the main writ petition No. 37443 of 2011 Gajraj Singh and others Vs. State of U.P. and others, Authority has filed its counter affidavit. The stand of the Authority is clearly mentioned in paragraph 40 of

the counter affidavit which is to the following effect:

" ..... It is also pertinent to mention that upon declaration of the industrial development area, which includes village Patwari, the acquisition of land for the fulfillment of the legislative intent of 1976 Act was always imminent. The notification declaring the industrial development area which included the village Patwari was never challenged by any of the petitioners. It is also be borne in mind that when a new city is to be conceived and developed it can only be developed on land which is acquired....."

Sri Ravindra Kumar, learned counsel for the Authority has categorically submitted that for carrying out the development it is necessary to acquire land and it is only after acquisition of the land that development as contemplated by 1976 Act is possible. Learned Counsel for the Authority has referred to Section 6(2)(a) as well as Section 7 . Section 7 of the Act provides as follows:

"**7. Power to the Authority in respect of transfer of land.-**The authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act think fit to impose."

Section 2(e) defines "occupier" and Section 2(f) defines "transferee". Section 2(e) and 2(f) which have been used in subsequent sections are quoted below:

2.(e) 'Occupier' means a person (including a firm or body of individuals whether incorporated or not) who occupies a site or building with the industrial development area and includes his successors and assigns;

2.(f) 'Transferee' means a person (including a firm or other body of individuals whether incorporated or not to whom any land or building is transferred in any manner whatsoever, under this act and includes his successors and assigns,

The Act does not contemplate that after industrial development area has been declared under 1976 Act all land situate therein shall stand transferred to the Authority. The declaration of the industrial development area does not mean that

all area within the said development area comes in the ownership of the Authority. The Authority is empowered to prepare a plan for development and carry out the developments providing amenities as contemplated under the Act. The development activities of the authority are not confined only to the land which is acquired by the Authority or only to the transferees of those land and their successors. The development of land and buildings covered under the development area is under statutory and regulatory control of the Authority and development is fully contemplated of entire area irrespective as to whether the Authority is owner of the area or not. The use of the two specific words namely; “transferee” or “occupier” clearly contemplate that there are other persons apart from transferee in the industrial development area when section 9(1) uses the words “ no person shall erect or occupy any building in the industrial development area..” It clearly contemplate that the persons may be transferee or occupier likewise Section 11 which provides for levy of tax mentions both the words “transferee” or “occupier”. Section 11 (1) is quoted below:

“**11. Levy of tax.- (**1) For the purposes of providing, maintaining, or continuing any amenities in the industrial development area, the Authority may with the previous approval of the State Government, levy such taxes as it may considers necessary in respect of any site or building on the transferee or occupier thereof, provided that the total incidence of such tax shall not exceed one percent of the market value of such site including the site of the building.”

The scheme of the Act thus clearly delineate that Authority is not to compulsory or necessary acquire the entire land falling in the development area and further the stand taken by the Authority in paragraph 40 of the counter affidavit as quoted above that unless it acquires the land it cannot carry out the development is also misconceived. From the stand taken by the Authority, the mindset of the authority is clear that it is necessary to acquire the land to carry out development which stand is not in accord with the object and purpose of the Act. The object and purpose of the Act is much more than only to acquire the land and thereafter carry on developments. The Legislature intended that authority may be constituted to step up the industrial development of the State. Appropriate measures and planning in that regard is contemplated. The Authority under misconception that

industrial developments could be done by it only when it acquires the land has proceeded with the acquisition of land in routine manner.

One more aspect in this regard is necessary to be noticed Section 12A was inserted under the 1976 Act by U.P. Act No. 4 of 2001 which provides that there shall be no Panchayat for industrial township. Section 12A is quoted below:

“12-A. No Panchayat for industrial township.- Notwithstanding anything contained to the contrary in any Uttar Pradesh Act, where an industrial development area or any part thereof is specified to be an industrial township under the proviso to clause (1) of Article 243-Q of the Constitution, such industrial development area or part thereof, if included in a Panchayat area, shall, with effect from the date of notification made under the said proviso, stand excluded from such Panchayat area and no Panchayat shall be constituted for such industrial development area or part thereof under the United Provinces Panchayat Raj Act, 1947 or the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, as the case may be, and any Panchayat constituted for such industrial development area or part thereof before the date of such notification shall cease to exist.”

Learned Counsel for the State during his submissions has submitted that Authority has already been declared as industrial township under proviso to clause (1) of Article 243 Q of the Constitution of India.

Part IXA of the Constitution of India provides for the Municipalities.

Article 243 Q of the Constitution is as follows:

“**243Q.** Constitution of Municipalities.-

(1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

The proviso to Article 243Q(1) is an exception for requirement of constituting a Municipality in every State. Exception has been provided in cases where municipal services are being provided by an industrial establishment in that area. Neither any Panchayat nor any municipality has been constituted in the area of the Authority in view of the proviso to Article 243Q (1). The proviso to Article 243Q(1) is for a purpose and object. The purpose and object being that industrial establishment in an area, which is looking after the area should be left free to carry on its activities unhindered by constitution of any Municipality or Panchayat, which may adopt their own regulatory measures to hamper the industrial development. This scheme goes to indicate that purpose and object for giving such exemption to the Authority is again to be industrial development. Article 243Q(1) proviso came for consideration before the apex Court in (1999) 2 Supreme Court Cases 366 **Saij Gram Panchayat vs The State Of Gujarat and Ors.** In the State of Gujrat, under Gujarat Industrial Development Act, 1962 notified industrial area were converted by notification into industrial township. Saij Gram Panchayat filed a writ petition challenging the notifications issued under Gujrat Industrial Development Act. Further notification was issued excluding the notified area from Saij Gram Panchayat under section 9(2) of the Gujrat Gram Panchayat Act, 1961. The Gram

Panchayat challenged the notifications on the ground that Gujrat Industrial Development Act is contrary to part IX and Part IXA of the Constitution of India. The above argument was rejected. The apex Court further held that Gujrat Industrial Development Corporation has been given power to develop land for the purpose of facilitating the location of industries and commercial sectors. The plea of violation of the Constitutional provision was rejected and following was laid down in paragraph 16:

“16. The contention is based on a misconception about the relationship of the provisions of Parts IX and IXA of the Constitution with any legislation pertaining to industrial development. The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 - the latter being provisions dealing with local self Government while the former being an Act for industrial development, and orderly establishment and organisation of industries in a State. The industrial areas which have been notified under Section 16 of the Gujarat Industrial Development Act on 7.9.1993 were notified as industrial areas under the Gujarat Industrial Development Act long back in the year 1972. These industrial areas have been developed by the Gujarat Industrial Development Corporation and they can hardly be looked upon as rural areas covered by Part IX of the Constitution. It is only such industrial areas which can be notified under Section 16 of the Gujarat Industrial Development Act, 1963. If by a notification issued under Section 16, these industrial areas are deemed to be notified areas under the Gujarat Municipalities Act and are equated with industrial townships under the proviso to Clause (1) of Article 243Q, the constitutional scheme is not violated. In fact, under Chapter 3 of the Gujarat Industrial Development Act, 1962, the Gujarat Industrial Development Corporation, has been given power, inter alia, to develop land for the purpose of facilitating the location of industries and commercial centers. It has also been given the power to provide amenities and common facilities in such areas including provision of roads, lighting, water supply, drainage facilities and so on. It may do this either jointly with Government or local authorities or on an agency basis in furtherance of the purposes for which the corporation is established. The industrial area thus has separate provision for municipal services being provided by the Industrial

Development Corporation. Once such an area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IXA of the Constitution, where municipal services may be provided by industries. We do not see any violation of a constitutional provision in this scheme."

From the above discussions, it is clear that the stand of the Authority that unless the land is acquired by the Authority, it cannot carry any developmental works under 1976 Act is misconceived and incorrect. It is not far to seek that Authority labouring under above misconception has concentrated only on acquisition of land without taking care of other modes and means of industrial development and excessive acquisition of fertile agricultural land is due to above mindset of the Authority.

3. Delay and Laches:

Whether delay and laches, in the facts of the present cases can bar invocation of constitutional remedy under Article 226 of the Constitution of India is the question to be considered.

From the facts of different cases, as noted above, it is clear that the delay has occasioned on the part of the petitioners in invocation of jurisdiction of this Court under Article 226 of the Constitution, except in few cases where the petitioners have filed the writ petition without any delay. In some of the cases, there are inordinate delay in invoking the jurisdiction of this Court.

For illustrating the issue, the facts of the main Writ Petition i.e.

37443/2011, Gajraj and Ors Vs. State of U.P. and Ors, be taken first. In the said case the notification under Section 4 of the Land Acquisition Act, 1894 read with Sections 17(1) and 17(4) was issued on 12/3/2008, which was published in the local newspaper 'Amar Ujala' on 20/3/2008 and in 'Dainik Jagaran' on 20/3/2008 and declaration under Section 6 of the Act was issued on 30/6/2008 which was published in the newspaper 'Amar Ujala' on 09/7/2008 and in 'Dainik Jagaran' on 09/7/2008. The possession is claimed to have been taken by the State and the

Authority under Section 17 of the Act, 1894 on 05/9/2008 and 12/1/2009. The compensation was paid to the tenure holders under the 1997 Rules to the extent of 87 percent. Out of 2048 tenure holders 1624 tenure holders have accepted compensation under the 1997 Rules. With regard to petitioners following has been stated in paragraph 24 of the counter affidavit which is quoted below:

“The petitioners have not applied for payment of compensation under the agreement, hence they would be paid compensation in terms of the Award to be declared under the terms of the Section 11 which has already been finalised and submitted for approval of the competent authority”.

The counter affidavit of the State was sworn on 09/9/2011. Thus, according to the own case of the respondents the award under Section 11 of the Act with regard to Village in question has not yet been declared. The writ petition has been filed on 07/7/2011. Petitioners in the writ petition pleads that the respondents in order to fulfil their political obligations/promise to the private builders have dispensed with the inquiry under Section 5A of the Act,1894.

In paragraph 14 of the writ petition, it has been pleaded that although the land was acquired for “Planned Industrial Development” in District Gautam Bugh Nagar, but they have transferred the same to private builders for construction and sale and since May, 2011 the employee of the respondents and private builders are trying to dispossess the petitioners from their Abadi Land. One of the copy of the lease deed by which M/s Supertech Ltd was allotted Builders Residential/Large Group Housing Plot No.GH08, area 204000 Sq meter has been annexed as Annexure 4 to the writ petition. It is useful to quote paragraph 14 of the writ petition which is to the following effect:

“14.That, the respondents acquired the land for the public purpose, namely for the “Planned Industrial Development in District Gautam Budh Nagar through Greater Noida” and on another hand they transferred the some acquired area to the private builders for construction and sale and in the May, 2011 the employee of the Respondents and Private Builders are trying to dispossess the petitioner from his Abadi Land”.

In the writ petition, notifications issued under Section 4 read with Sections 17 (1) and 17 (4) as well as Section 6 have been termed as fraud and in colourable exercise of power. As per the averments made in paragraph 24 of the counter affidavit, it is clear that the petitioners did not accept the compensation under the 1997 Rules. However, the learned counsel for the petitioners has stated that some of the petitioners have accepted the additional compensation which was offered to the petitioners after the order of this Court on 26/7/2011 in the main writ petition. From the facts stated above, the dates of notifications of different villages in which the land was acquired as well as the dates during which the compensation was accepted by majority of land owners under the 1997 Rules are different. However, the dates of notifications indicate that in majority of cases award under Section 11 of the Act, 1894 has been declared in the year 2011, in some of the cases after filing of the writ petition, and in some cases even during the course of hearing of these writ petitions. The dates of notifications, the date on which possession is claimed to have been taken and the percentage of disbursement of compensation and the date of award is being given in following Tabular chart:

Name of village Dates of Notifications under Sections 4 and6

Dates on which possession claimed to be taken Period during which compensation received Percentage of tenure holders receiving compensation Percentage of total compensation disbursed Status of award

Patwari 12.3.2008 and 30.6.2008 5.9.2008 (572.592 hect.)

12.1.2009 (1.453 hect) August 2008 to Feb.

2011 87% 82% Award not declared.

Sakipur 31.12.2004 30.12.2005, December 76% The award

Name of village Dates of Notifications under Sections 4 and6

Dates on which possession claimed to be taken Period during which compensation received Percentage of tenure holders receiving compensation Percentage of total compensation disbursed Status of award

5.9.2005 7.3.2008, 28.1.2011. 2006 to 2007 and one in April, 2009.

under section 11 of the Land Acquisition Act has been declared on 6.8.2011.

Ghori Bachchera 3.10.2005 5.1.2006 14.6.2006 and 6.10.2006

December 2006 to 2007 and one in October 2008 2210/2285 tenure holder

Date of Award 25.7.2011 Pali 7.9.2006 23.7.2007 1.11.2007 and 10.4.2008

March, 2008 to August 2008

470/558 93.49% Award under section 11 has been declared on 10.8.2011.

Biraundi- Chakrasenpur 28.11.2002 29.1.2003 7.5.2003 December 2003 to April 2005

85% 94% 9.9.2009

Tusiyana 10.4.2006 30.11.2006 2.2.2007 and 25.3.2008 February 2008 to 31.3.2010

88% 81% 27.4.2010 under section 11

Dabra 31.10.2005 1.9.2006 31.1.2007 March 2007 to December 2008

94% 88.76% Award declared on 23.7.2011

Dadha W.P. 46160 of 2011 31.12.2004 1.7.2005 28.12.2005 January 2006 to December, 2007

100% 100% 15.5.2009

Dadha W.P. 45345 of 2011

3.10.2005 11.8.2006 27.10.2006 December 2006 to January 2007

536/588 tenure holders.

96% 23.7.2011

Roja Yakubpur 31.8.2007 27.2.2008 19.3.2008 May 2008 to March, 2011

1278/1533 tenure holders 87.164% 29.11.2010 Amnabad 24.8.2006 12.12.2006 20.7.2007 March, 2008 to September, 2010

75.80% 81% 27.7.2011

Khanpur 31.1.2008 30.6.2008 10.10.2008 September 2008 to September 2009

89.6% 90.51% 10.8.2011

Biraunda 15.12.1999

22.4.2000 28.7.2000 and 11.10.2002

February 2002 to March, 2009

51/80 tenure holders 97% 9.1.2009

Chuharpur Khadar 21.6.2003 7.8.2003 4.9.2004 October, 2003 to December, 2008

100% 100% 18.3.2005

Badalpur 20.6.2007

18.6.2008 18.7.2008 July 2008 to November 2008

86% 80.86% 19.8.2011

Sadopur 31.8.2007 30.6.2008 16.2.2009 May 2009 to February 2011

74% 13.7.2010

Gharbara 3.10.2005 20.12.2005

1.6.2006 July, 2006 to May 2008 and 88% 95% 6.9.2011

Name of village Dates of Notifications under Sections 4 and6

Dates on which possession claimed to be taken Period during which compensation received Percentage of tenure holders receiving compensation Percentage of total compensation disbursed Status of award

two in

February

2009

Chhapraula W.P.

No. 47068/11

18.9.2000

31.10.2000

23.12.2000 15.6.2002 80.5% - 14.6.2002

Chhapraula w.p.

46775/11

12.3.2008

3.2.2009

9.3.2009 June 2009 to

March, 2010

82% 76% 21.3.2011

Khairpur Gujar 8.11.2007

7.7.2008

11.10.2008 - 78.50% 82.50% 25.7.2011

Ajayabpur 29.9.2005

20.12.2005

1.6.2006 August 2006

to

September,

2009

95% About 95% 25.8.2009

Namoli 11.3.2008

12.6.2008

Due to

interim order

possession

not taken

- - - -

Jaitpur Vaishpur 29.1.2003

28.2.2003

7.5.2003 May, 2003 to

July, 2009

93% - 23.7.2009

Mathurapur 3.10.2005

31.7.2006

27.10.2006 December

2006 to

February

2007

94.48% 99.31% 25.9.2009

Saini 24.10.2005

30.6.2006

30.10.2006 January,2007

to december

2008

82% 92% 2.8.2011

Mursadpur 25.6.2003

22.7.2003

22.01.2005

and

16.03.2005

March 2005

to june 2008

88.22% 93.27% 30.12.2010

Haibatpur 16.7.2008

23.3.2009

28.8.2009

and

11.2.2011

November

2009 to june

2011

1560/2150 71.29% 25.7.2011

Chipiyana khurd 24.7.2008

29.1.2009

9.3.2009 July 2009 to

february 2010

187/389 58.34% 27.8.2011

Bisrakh jalalpur 12.3.2008

30.6.2008

26.2.2009 May 2009 to

may 2011

1296/1905 80.79% 12.8.2011

Rithori

7.9.2006

31.8.2007

17.11.2007 May 2008 to

october 2008

82% 91% 5.8.2011

Itehara 31.8.2007

4.7.2008

27.8.2008

and

16.9.2010

August 2008

to january

2010

72.45% 84.79% 25.7.2011

Luksar 11.7.2008

29.1.2009

9.3.2009 May 2009 to

june 2011

82.98% 87% 27.8.2011

Badhpura 20.10.2001

3.12.2001

16.3.2002 Nott received

compensation

31.3.2009

Raipurbangar 30.6.2006

16.1.2007

15.3.2007

November

2007 to

august 2009

630/680 92% 25.52011

Malakpur 2.5.2003

22.7.2003

5.8.2004 August 2004

to august

2006

93% 93% 11.9.2009

Maicha 17.4.2006 11.4.2007 May 2008 85% 85% 9.8.2011

177

Name of village Dates of

Notification

s under

Sections 4

and6

Dates on

which

possession

claimed to

be taken

Period

during

which

compensati

on received

Percentage

of tenure

holders

receiving

compensati

on

Percentage

of total

compensati

on

disbursed

Status of

award

19.2.2007

Kasna w.p

no.46848/11

31.12.2004

1.7.2005

28.12.2005,3

0.12.2006

and

29.1.2011

February

2005 to

august 2006

81.50% 83% 23.3.2011

Kasna

w.p.no.40852/11

11.7.2008

16.2.2009

9.3.2009 April 2009 to

june 2009

70% 80% 14.9.2011

Rasoolpur rai 28.11.2002

29.1.2003

8.5.2003 October 2004

to january

2005

416/433 96% 5.6.2009

Yusufpur

chakshahberi

10.4.2006

6.9.2007

29.11.2007 none none 14.9.2011

Kheda Chauganpur 31.8.2007

27.2.2008

19.3.2008 June 2008 to

january 2009

85/220 32.80% 27.8.2011

Devla 26.5.2009

22.6.2009

14.9.2009 13 may 2011 19% 34.62% Pending for

approval

before

commissioner

Junpath 31.1.2008

30.6.2008

21.11.2008 September

2008

632/678 93.21% 1.9.2011

VILLAGES OF

NOIDA

Asdullapur 27.1.2010

13.7.2010

24.6.2011 - Not received - -

Asgarpur Jageerpur 24.8.2007

12.8.2008

16.1.2009,

14.10.2010

- 60.96% 92.31% Award

published on

3.9.2011.

Basi Brahauddin

Nagar

12.4.2005

6.10.2005

30.12.2005 59.45% - -

Nithari 1.6.1976

16.9.1976

28.10.1976 10

August,1978

510/588

tenure holders

95.56% 15.7.1978

Kondly Banger 8.9.2008

16.9.2009

3.12.2009 Apri 2010 to

June 2010

62.2% - 14.9.2011

Salarpur Khadar 11.9.2008

30.9.2009

3.2.2010,

25.9.2010

- 19% 19% 14.9.2011

Sadarpur w.p.

45379/11

30.2.2002

26.6.2003

3.9.2003,

3.3.2005

February

2003 to

September

2008

75% 91% 29.1.2009

Sadarpur w.p.

47523/11

28.1.1994

10.11.1995

28.6.1999 September

2002 to Nov.

2003

139/200

tenure holders

69.5% 23.10.2009

Wazidpur 4.7.2003,

19.7.2003

22.8.2003 - 85.06% 96.30% 8.1.2010

Jhatta w.P.

47257/11

12.4.2005

28.10.2005

10.7.2006 30.12.2006 74% 77% 10.2.2010

Jhatta w.p.

47267/11

17.6.2003

21.7.2003

10.9.2003 March 2003

to Nov. 2003.

96% 97% 17.12.2007

Chhaprauli Bangar 4.7.2003

21.7.2003

11.1.2005 September

2003 to

Dec.2006

34/40 tenure

holders

85% 19.9.2011

178

Name of village Dates of

Notification

s under

Sections 4

and6

Dates on

which

possession

claimed to

be taken

Period

during

which

compensati

on received

Percentage

of tenure

holders

receiving

compensati

on

Percentage

of total

compensati

on

disbursed

Status of

award

Khoda 17.3.1988

11.7.1988

1.6.1989,

1.9.1995,

12.7.1995,

15.3.1995

March 19919

to Nov. 1997

715/870

tenure holders

- 1.12.1991

Shahdara w.p.

44493 of 2011

16.4.2008

16.6.2008

14.7.2008 July 2008 to

October 2008

316/560

tenure holders

65% Award has

been

proposed.

Shahdara w.p.

46248 of 2011

17.6.2003

21.7.2003

22.8.2003 September

2003

280/284

tenure holders

- 7.9.2011

Sultanpur w.p.

46764 of 2011

10.2.1994

18.7.1994

24.8.1995 October,

1995 to June,

1997

179/229

tenure holders

- 9.5.1997

Sultanpur w.p.

46785/11

6.12.1999

9.3.2000

14.12.2000 July 2000 to

March 2001

179/197

tenure holders

92% 18.6.2005

Sultanpur w.p.

46766/11

2.5.2003

29.5.2003

24.6.2003 nil 42/49 85% 10.9.2009

Nagli Nagla 17.3.2009

8.4.2010

13.7.2010 - 16.4% 16.4% Award not

declared.

Sorkha Jahidabad 12.4.2005

27.7.2006

16.10.2006 February

2007 to

November

2009

83.86% 86.83% 27.7.2011

Badaoli Bangar 7.11.2007

9.5.2008

2.6.2008 Feb. 09 to

June 09

72.48% 96.95% 19.9.2011

Suthiyana w.p.

43264/11

26.9.2006

21.11.2006

13.12.2006 May 2008 to

June 2008

82% 82% 5.7.2010

Suthiyana w.p.

46295/11

29.1.2003

28.3.2003

7.5.2003 October 2004

to Dec.2004.

97.56% 97.56% 15.3.2007

Chaura Sadatpur 1.6.1976

16.9.1976

28.10.1976 - 100% - 25.9.1978

Dostpur Mangrauli 17.3.2009

18.4.2010

22.5.2010 Not received -

Alaverdipur 21.3.1983

22.3.1983

31.5.1984 Full paid -

A perusal of the above chart also indicates that insofar as the Villages of Noida are concerned in certain writ petitions notifications issued even 20 years ago have also been sought to be challenged. It is useful to note some of the notifications which have been sought to be challenged with inordinate delay.

Name of Village Date of notifications

under Sections 4 and

6

Date of taking

possession

Date of award

Nithari @ Suthari 1/6/1976 28/10/1976 15/7/1978

16/9/1976

Sadarpur 28/1/1994

10/11/1995

28/6/1999 23/10/2009

Khoda 17/3/1988

11/7/1988

01/6/1989,

01/9/1995

12.7.1995,

15.3.1995

01/12/1991

Sultanpur 10/2/1994

18/7/1994

24/8/1995 09/5/1997

Sultanpur 06/12/1999

09/3/2000

14/12/2000 18/6/2005

Chaura Sadatpur 01/6/1976

16/9/1976

28/10/1976 25/9/1978

Alaverdipur 21/3/1983

22/3/1983

Learned counsel appearing for the State as well as the learned counsel appearing for the Authority have vehemently submitted that most of the writ petitions having been filed with great delay and laches deserve to be dismissed on this ground alone. It is submitted that the petitioners who have been not vigilant of their rights cannot be allowed to invoke the writ jurisdiction of this Court after a long delay. It is further contended that after taking possession the land was validly allotted to the third parties/allottees/builders who have made huge investments in pursuance of the allotment and have changed their position which is an additional factor for not entertaining the writ petition. It is contended that the equitable jurisdiction under Article 226 can be exercised in favour of only those persons who have been vigilant of their rights and for not those who were indolent. Furthermore, the mere fact that in cases of some vigilant persons, judgments were given by this Court or the Apex Court cannot be a ground for permitting the petitioners to invoke the jurisdiction of this Court. It is contended that most of the petitioners have filed the writ petition only after the judgment given by the Apex Court in **Greater Noida Industrial Development, Authority Vs. Devendra Kumar and Ors, 2011 (6) ADJ 480,** decided on 06/7/2011.

Shri L. Nageshwar Rao, learned Senior Advocate appearing for the State suggested that a cut off date be fixed taking the date of judgment of the above case i.e. 06/7/2011 and all the petitions filed after 06/7/2011 who have got impetus of filing the writ petition should be dismissed as barred by time.

Learned counsel appearing for the intervenors have also vehemently argued that the petitioners who have been sleeping over their rights and have invoked the jurisdiction of this Court with delay and laches should not be entertained and their petitions be dismissed on the ground of delay and laches alone.

Learned counsel for the petitioners on the other hand has submitted that in the facts of the present case the petitioners claim be not rejected on the ground of delay and laches. It is submitted that the petitioners have acted bonafide in invoking the jurisdiction of this Court on a valid ground. Petitioners were aggrieved from acquisition since very beginning because their agricultural land which was source of their livelihood and part of their land on which they have constructed “Abadi” and were residing have been taken away by acquisition by making payment of a meagre amount, but the petitioners were under bonafide belief that their land has been acquired for Planned Industrial Development of the District and the establishment of the industries of the area shall provide source of livelihood to their children in getting employment in these industries which shall suitably mitigate their miseries hence they accepted the compensation as their fate despite they being aggrieved and dissatisfied. In some of the writ petitions, allegations have also been made that farmers resorted to agitations which was crushed by police force. It is useful to refer to the pleadings in some of the cases by which the petitioners have given justifications for approaching the Court with delay. We have already referred to the pleadings in the main writ petition.

In **Writ Petition No.47502/2011, Jugendra and 75 others Vs. State of U.P.and Ors.** which relates to the acquisition of Village Tusiyana, petitioners have stated following in paragraphs 7,8 and 31 which are quoted below:

“7. That, after having taken possession, and as against the purpose or which the lands in dispute was alleged to have been acquired namely Planned industrial Development the entire land was allotted to different property developers, colonizers and builders. The petitioners bring on record a copy of allotment letter dated 14.8.2007 which is being filed herewith and is marked as **Annexure-6** to this writ petition. A perusal of allotment letter dated 14.8.2007 would clearly indicate that the land which was agricultural in nature belonging to the petitioners and

which was acquired for Planned industrial Development was actually allotted to various construction companies, Builders and Colonizers. A reference of 9 such builders and colonizers has been mentioned in the allotment letter dated 14.8.2007. The fact of allotment letter made through letter dated 14.8.2007 has come to the knowledge of the petitioners on the 3rd week of July 2001 which they also made an enquiry and as to which was the fate of their land specially in view oif the judgment of this Hon'ble Court in Shah berries Case (Ref. Devendra Kumar Versus State of U.P.). they obtained a copy of letter dated 14.8.2007 which was made available to them on 8th August, 2011 and are ow filing the present writ petition.

8. That, at the time when the land in dispute was acquired the petitioners were given to understand that on account of acquisition of the land there would be Industrial Development in the area which would accommodate youths of the village who would all be getting employment therein and that taking away of their agricultural lands, would not financially effect them. The petitioners were further informed that on such acquisition being finalized the land belonging to the petitioners would be allotted to the Industrial interpenors, on understanding that they would be employing the youth of the village and that no body was to remain unemployed and there would be industrial development in the area.

31. That, it has now come on record that it is for the benefit of certain individual that the large population of farmers and entrepreneurs are put to sword and are mad to suffer on account of malice of the respondents. In this context it may not be lost sight that various farmers and entrepreneurs have lost their land and although they have been paid some compensation but the said compensation could not be equated with an alternative arrangement for a recurring source of income. It is a matter of common knowledge that on account of such acquisition and depriving the local youth in meaningful activity of engaging themselves in some business including business in industrial sector, the local youth is finding its future rudderless and are now frequently engaging themselves in criminal activities and that it is for this reason that murders ad kidnapping etc. galore in that part of the world. Planned development 'of the society' should be matter of concern for the State and not benefit of 'certain individuals.' The acquisition proceedings result in

pocketing of huge profits in the limited few by depriving the bulk of population either of their residential abode or their source of livelihood. Averments relating to advancements, development and such other 'colourful phrases' is in effect of camouflage and is a false perspective of development. It may be noticed that the acquisition of petitioners land would not only deprive them of their property and business but also result in depriving the person who have been working with the petitioners of their right of livelihood."

In **Writ Petition No.45672/2011, Adesh Choudhary and Ors Vs. State of U.P. and Ors,** one more ground was taken for approaching the Court. Following was laid down in paragraph 19:-

"19. That the petitioners wish to bring to the notice of this Hon'ble Court news item dated 7.8.2011 published in the daily newspaper 'Dainik Jagran' in which it has been reported that the land owners of village Patwari have been awarded an additional compensation of Rs. 550/- per sq. yards of their land; and it has been further reported that the land of village Tusiyana along with land of other villagers have been allotted to the private builders by respondent no.3 for developing residential colonies. The petitioners submit that the action of respondent no.3 in treating the petitioners differently is arbitrary, illegal and violative of the fundamental rights guaranteed to the petitioners under article 14 and 19 (1) (g) of the Constitution of India. A photocopy of the news item dated 7.8.2011 is being filed and marked as **Annexure no.4** to this writ petition."

In **Writ Petition No.37119/2011, Dal Chand and Ors. Vs. The State of U.P. and Ors,** the petitioners have also come up with the case that the acquisition of land was made for Planned Industrial Development through the Authority, but the authority has transferred the land to private builders by various lease deeds executed in the year 2010 and 2011. Details of various lease deeds granted by the Authority in favour of private builders have been made in paragraphs 12 to 17. Petitioners have further submitted that the lease deeds clearly reveal that the land of the petitioners in Village Roja Yakubpur is not to be used for Planned Industrial Development, hence the land be restored back to the petitioners. More pleadings have been made in paragraph 27. It was further pleaded in paragraph 31 that the

petitioners were under bonafide impression that their land of Village Roja Yakubpur will be utilised for Planned Industrial Development and when they came to know that the same is being transferred to private respondents they have approached to this Court and the delay caused is neither deliberate nor intentional. It is useful to quote the pleadings made in paragraphs 7, 8, 12, 31 and 32:-

“7. That the purpose for which the land of petitioners is sought to be acquired as per the notifications is Plan Industrial Development through the Authority which, on the face of it, is incorrect and is, in fact, a camouflage. It may be stated here that State Government wrongly and illegally mentioned in the notification that the land is being acquired for Plant Industrial Development through the Authority while, in fact, the land is sought to be acquired for the purposes of transferring the same to private builders (in the present case respondents No.3 to 8) for construction residential colonies/flats. Thus the entire exercise which has been done is colourable exercise of powers and on this ground alone the impugned notifications and acquisition proceeding pursuant thereof, are liable to be quashed.

8. That it is significant to note that since 2006 no steps whatsoever have been taken by Respondent- Authority for making Plan Industrial Development on the land in question inasmuch as the land of petitioners was acquired on nominal payment of compensation to them and in the acquisition proceeding urgency provision was invoked but the land throughout remained in possession of petitioners and they are still in possession thereof.

12. That vide lease deed dated 28-07-2010 an area of 106196.00 sq. meter of plot No.GH-01, Techzone-IV Greater Noida is transferred in favour of Respondent No.3 Amarpali Leisure Valley Developers Pvt. Ltd. for the development and marketing of Group Housing Pockets/flats/plots. A photocopy of the said lease deed dated 28-07-2010 is being filed as **ANNEXURE-4** to this writ petition.

31. That entire acquisition proceeding in the garb of Planned Industrial Development by respondent no.2 is illegal and against provisions of the Act. The petitioners were under bonafide impression that their land of Village Roja Yakubpur will be utilized for Planned Industrial Development by Respondent No.2 but the Respondent No.2 illegally transferred the land of petitioners to private

builders. The land acquired for Planned Industrial Development, will be used by respondent No.3 to 8 for illegal gain.

32. That when petitioners came to know in the last week of May, 2011 that their land of village Roja Yakubpur will not be used for Planned Industrial Development, they made frantic efforts to know the details and then they came across lease deeds (Annexure- 4 to 9) in favour of respondents No.3 to 8 the land acquired for Planned Industrial Development was transferred to respondents No.3 to 8 for construction of residential flats and respondent no.2 realized huge consideration from respondents no.3 to 8. Thus a little delay has been caused in filing instant writ petition which is neither intentional nor deliberate and as such delay in challenging the notifications U/s. 4 and 6 of the Act is liable to be ignored."

In **Writ Petition No.40356/2011, Satish Kumar Vs. State of U.P. and Ors,** petitioner who belongs to Village Ghoribachera has challenged the notifications issued under Section 4 and 6 of the Act,1894 dated 03/10/2005 and 05/1/2006. Petitioner in the writ petition has pleaded that although the land was acquired for Planned Industrial Development, however 60 percent of the acquired land has neither been developed nor used for industrial purpose and the land is still in possession of the resident/villagers. Petitioner has also pleaded in the writ petition that after the publication of the notification in the newspaper, the land owners objected to the acquisition which objections were however not considered and in fact the objections were refused to be entertained on the ground that acquisition is under the provision of urgency clause and the opportunity of hearing shall not be granted. Peaceful demonstration of the villagers have also been referred to on 13/8/2008, which is claimed to be published in the prominent newspapers. It is useful to quote the pleadings in paragraphs 23 of the writ petition:-

"23. That it is specifically stated here that the Respondent did not pay any heed to the above mentioned objections, as the Petitioner were neither been called for personal hearing nor any notice has ever been issued over the above mentioned objections, by the Respondent authorities. It is also worth to mention here that the respondents had even refused to entertain the objections of the residents/villagers of the village Ghori Bachera after publication of Sec. 4 of the Act on the Ground

that the acquisition Notification, is under the provisions of urgency clauses of the Act and the opportunity of hearing shall not be granted by the authorities/respondents to the concern Villagers/land owner/Agriculturist. It is also important to mention here that the villagers/residents/Agriculturist of the village Ghoribachera had also protested the arbitrary and unlawful acts of the respondents by way of peaceful demonstration, which was brutally crushed by the Lathi Charge and even Firing, resulting into Six killing of innocent farmers as admitted by the respondents and causing bullet injuries to more than 400 poor Farmers/land owners/demonstrate including the women, children on dated 13.8.2008, that this incident has been widely published in the prominent newspapers of the country as well as State of U.P. The petitioner reserves his valuable right to produce the relevant documents before this Hon'ble Court, during the course of hearing of the present writ petition."

The substance of the pleadings in different writ petitions is to the effect that the petitioners were under the belief that the land is being acquired for Planned Industrial Development which shall serve the public purpose and provide employment to their children due to establishment of several industries in the area. The land owners accepted the same as their fate and did not immediately rush to the court. The reason given by most of the petitioners for coming to the Court is that subsequently when the land was started being transferred to private builders and colonisers it transpired that the land is not being utilised for the purpose for which it was acquired and instead of industries coming in the area only builders have come up. Petitioners have also pleaded that the authority has given meagre some of few hundred rupees per square yard to the land owners, but they have been transferring the land to the builders for hefty amount ranging from Rs. 10,000 to 20,000 per square metre. On the aforesaid ground and other grounds as noticed above, petitioners have approached the Court with delay, but the petitioners case is that since the facts elaborated above indicate that the respondents have played fraud and the acquisition was in colourable exercise of power, the delay in approaching the Court may not stand in their way in granting relief to them for which they are entitled in law. It is also relevant to note that in some of the cases in this bunch there are cases where the petitioners have immediately rushed to this Court and there is no delay in filing the writ petition for

example with regard to Village Patwari which is under challenge, there are some writ petitions which were filed within the reasonable time and there is no delay in such writ petitions at all. For example **Writ Petition No.62649/2008, Savitri Devi Vs. State of U.P. and Ors,** same notifications dated 12/3/2008 and 30/6/2008 are under challenge. Similarly, with regard to Village Pali, **Writ Petition No.25464/2008, Ghyanendra Singh Vs. State of U.P. and Ors,** there is no delay. There are writ petitions of Village Aimnabad i.e. **Writ Petition 26162/2008, Shripal Singh and Ors. Vs. State of U.P. and Ors, 26159/2008, Lakhi Ram Vs. State of U.P. and Ors,** and writ petition of Village Khanpur being **20227/2009, Parag and Anr. Vs. State of U.P. and Ors.,** which cannot be said to have been filed with laches.

We have referred to **Writ Petition No.5670/2007, Keshari Singh and Anr Vs. State of U.P. and Ors.**, of Village Yakubpur, in which declaration under Section 6 was issued on 06/1/2007 and the writ petition was filed in the Month of January, 2007 itself.

The issue to be answered is as to whether the writ petitions filed with delay in the facts of the present case be not entertained and be thrown out or the Court may consider to examine their grievance on merits inspite of the petitioners having approached this Court with delay. Learned counsel for the parties have referred to various judgment of the Apex Court and this Court in support of their submissions. It is necessary to refer to the principles laid down by the Apex Court in context of entertainment of the writ petitions which have been filed with delay.

The first judgment which needs to be considered is the judgment of the Apex Court in **Moon Mills Ltd Vs. R. Meher, A.I.R 1967 SC 1450**, in which the Apex Court has reiterated the principle as has been laid down by Sir Barnes Peacock in Lindsay Petroleum Company Vs. Prosper Armstrong Hurd, Abraham Farewell, and John Kemp, (1874) 5 P.C. 221. Following was laid down in para 36 which is quoted below:

"36. In the circumstances of this case, we do not consider that there is such acquiescence on the part of the appellant as to disentitle it to a grant of a writ under Art. 226 of the Constitution. It is true that the issue of a writ of certiorari is

largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp, (1874) 5 PC 221 at p. 239, as follows:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as related to the remedy."

“In the present case, we are of opinion that there is no such negligence or laches or acquiescence on the part of the appellant as may disentitle it to the grant of a writ."

Another judgment which needs to be considered is **(1974) 1 SCC 317, Ramchandra Shankar Deodhar and Ors Vs. The State of Maharashtra and Ors (Constitution Bench).** Following was laid down in paragraph 10:-

“10**.** It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reasons of the delay in filing the petition should not be

allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C.J. in Tilokchand v. H. B. Munshi (supra):

"The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

Sikri, J., (as he then was), also restated the same principle in equally felicitous language when he said in R. N. Bose v. Union of India: "It Would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years." Here as admitted by the State Government in paragraph 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystallised to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petition were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdar/Tehsildar; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors. Moreover it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under. Art. 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

The judgment on which much reliance has been placed by the learned counsel for the respondents is the Constitution Bench judgment of the Apex Court in **Aflatoon and Ors. Vs. Lt. Governor of Delhi and Ors., (1975) 4 SCC 285.**

In the aforesaid case, writ petitions were filed challenging the notification issued under Section 4 of the Act, 1894 in the year 1959. The argument which was put forward was that the public purpose as specified in the notification issued under Section 4, namely, the 'planned development of Delhi" was vague as neither a Master Plan nor a Zonal Plan was in existence on the date of the notification and as the purpose specified in the notification was vague, the appellants were unable to exercise effectively their right under Section 5A of the Act. The Apex Court noted in the judgment that after notification under Section 4 of the Act was issued about 6000 objections were filed under Section 5A by interested persons and several writ petitions were also filed in the year 1966 and 1967, but the petitioners choose to wait till 1972 on the ground that particulars of the public purpose were not specified. In the above, background, the Apex Court laid down following in paragraphs 11,12 and 13:-

"11.Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Tilokchand Motichand and Others v. H. B. Munshi and Rabindranath Bose v. Union of India).

12. From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.

13. As regards the second contention that there was inordinate delay in finalizing the acquisition proceedings and that the appellants and writ petitioners were deprived of the appreciation in value of the land in which they were interested, it may be noted that about 6,000 objections were filed under Section 5A by persons interested in the property. Several writ petitions were also filed in 1966 and 1967 challenging the validity of the acquisition proceedings. The Government had necessarily to wait for the disposal of the objections and petitions before proceeding further in the matter. Both the learned Single Judge as well as the Division Bench of the High Court were of the view that there was no inordinate delay on the part of the Government in completing the acquisition proceedings. We are not persuaded to come to a different conclusion."

The next judgment relied on by the learned counsel for the respondents is the judgment of the Apex Court in **General Manager, Telecommunication and Anr. Vs. Dr. Madan Mohan Padhan and Ors, 1995 Supp (4) SCC 268.**

In the aforesaid case, the notification under Section 4(1) of the Act was published in the year 1973 and thereafter declaration under Section 6 of the Act was issued on 30/6/1975. Possession of the land was taken on 12/4/1976 and the award was given on 02/11/1976. Writ Petition No.1139/1976 was filed challenging the validity of notification under Section 4(1) of the Act which was disposed of on 16/3/1982, directing the Government to consider the representation of the land owners for exclusion of the land from acquisition. The representation was rejected on 03/6/1987. Then Writ Petition No.435/1988 was filed again challenging the notifications. In the above background of facts following was laid down by the Apex Court in paragraph 4 which is quoted below:-

"4. It is already seen that the possession having already been taken on April 12, 1976 and vested in the Government free from all encumbrances and many others

having accepted the award and some had received the compensation under protest, the High Court was wholly unjustified in interfering with the acquisition. We have seen the plan produced before us which would indicate that the land acquired comprises the establishment of Officers' building and 2000 electronic exchange. Under theses circumstances, it would be highly inconvenient to exclude this land from acquisition. The purpose of enquiry under Section 5A is only to show that any other convenient and suitable land would be available other than the land sought to be acquired, or there is no public purpose. This issue would become an academic once the construction started and was in progress. The ratio in the case of Oxford English School v. Govt. of T.N. has no application to the facts of these appeals. In that case, neither the award was made before the amendment act has come into force nor was possession taken. In these circumstances, this Court held that declaration under Section 6 was invalid and direction given by the High Court to conduct enquiry under Section 5A, after three years had expired, is illegal. Section 4(1) also stood lapsed by operation of proviso to Section 6 of the Act. Therefore, the ratio is clearly inapplicable to the facts of these appeals."

Another judgment relied on by the learned counsel for the respondents is the judgment of the Apex Court in **Senjeevanagar Medical and Health Employees' Co-operative Housing Society Vs. Mohd Abdul Wahab and Ors,** (1996) 3 SCC 600.

In the aforesaid case, the Apex Court held that the property under acquisition having vested in the State, exercise of power to quash notification under Section 4 (1) and the declaration issued under Section 6 of the Act would lead to incongruity. Therefore, the High Court should not have interfered with the acquisition and quashed the notification and declaration under Sections 4 and 6 respetively. Following was laid down in paragraph 12 which is quoted below:-

"12. That apart, as facts disclose, the award was made on November 24, 1980 and the writ petition was filed on August 9, 1982. It is not in dispute that compensation was deposited in the court of the Subordinate Judge. lt is asserted by the appellant- Society that possession of the land was delivered to it and the

land had been divided and allotted to its members for construction of houses and that construction of some houses had been commenced by the date the writ petition was filed. It would be obvious that the question of division of the properties among its members and allotment of the respective plots to them would arise only after the Land Acquisition Officer had taken possession of the acquired land and handed it over to the appellant- Society. By operation of Section 16 the land stood vested in the State free from all encumbrances. In Satendra Prasad Jain and Ors. v. State of U.P. the question arose: whether notification under Section 4 and the declaration under Section 6 get lapsed if the award is not made within two years as envisaged under Section 11A? A Bench of three Judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to the owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48(1) gives power to withdrew from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the appellants, in the absence of any power under the Act to have the title of the appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. The exercise of the power to quash the notification under Section 4(1) and the declaration under Section 6 would lead to incongruity. Therefore, the High Court under those circumstances would not have interfered with the acquisition and quashed the notification and declaration under Sections 4 and 6 respectively. Considered from either perspective, we are of the view that the High Court was wrong in allowing the writ appeal."

To the same effect there is another judgment of the Apex Court in **State of Rajasthan and Ors. Vs. D.R. Laxmi and Ors, (1996) 6 SCC 445.** This is a three judge judgment. The Apex Court in the said case held that when the award was passed and the possession was taken the Court should not have exercised its power to quash the award. Following was laid down in paragraph 9 which is quoted below:-

“9. Recently, another Bench of this Court in Municipal Corporation of Greater Bombay Vs. Industrial Development and Investment Co. (P) Ltd. Reexamined the entire case law and held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of latches. It is thus, well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition or the ground of latches.”

The next judgment which needs to be considered is of the Apex Court in **Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd.and Ors,** (1996) 11 SCC 501. In the aforesaid case the appellant has approached the High Court after 4 years of passing of the award and possession was taken. The Apex court laid down that although the High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification issued under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award. Following was laid down in paragraph 29 which is quoted below:-

“**29.** It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no

doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches."

Another judgment relied on by the learned counsel for the respondents is **Swaika Properties Pvt. Ltd. and Anr. Vs. State of Rajasthan and Ors, AIR 2008 SC 1494.** The Apex Court in the said case referring to its earlier judgment as noticed above laid down following in paragraph 17 which is quoted below:-

"**17.** In the present case also, the writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the order of the learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the writ petition and the special appeal without going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs."

The Apex Court again had an occasion to consider the question of delay and laches in **Sawaran Lata and Ors. Vs. State of Haryana, (2010) 4 SCC 532.** Considering the earlier judgments the Apex court laid down following in paragraph 11 which is quoted below:

"**11.** Reference in this case may be made to the decision of the National Commission rendered in United India Insurance Co. Ltd. v. Gian Singh. In the decision of the National Consumer Disputes Redressal Commission (NCDRC) it has been held that in a case of violation of condition of the policy as to the nature of use of the vehicle, the claim ought to be settled on a non-standard basis. The said decision of the National Commission has been referred to by this Court in National Insurance Co. Ltd. v. Nitin Khandelwal."

Another judgment of the Apex Court relied on by the learned counsel for the respondents is **Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Ors, (2010) 8 SCC 467.**

In the aforesaid case, suit land was acquired under Urban Land (Ceiling and Regulation) Act 1976, in the years 1978-1979. A Bus Depot was constructed on the part of the suit land. The appellant preferred revision under Section 34 of the Act,1976 on 06/4/1998, to the State Government on the ground that the land ought not to have been acquired under the Act,1976 that on the date of commencement of the Act, 1976 i.e. 17.2.1976, the suit land was not within the limits of urban area. The revision was allowed on 29/9/1998. The Apex court in the aforesaid case considered the provision of Section 34 of the 1976 Act, which empowers the State Government on its own motion, call for and examine records of any order passed or proceeding taken under the provisions of the Act. The Apex Court held that undoubtedly Section 34 does not prescribe any limitation during which the Revisional power can be exercised by the State. However, the Apex Court laid down that the revisional power can be exercised only within a reasonable time. Following was laid down in paragraphs 28 and 29 which are quoted below:-

"**28.** The legislature in its wisdom did not fix a time limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the Act, 1976. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute.

29. In view of the above, we reach the inescapable conclusion that the Revisional powers cannot be used arbitrarily at belated stage for the reason that the order passed in Revision under Section 34 of the Act, 1976, is a judicial order. What

should be reasonable time, would depend upon the facts and circumstances of each case."

Recent judgment of the Apex Court in **Banda Development Authority, Banda Vs. Moti Lal Agarwal and Ors, (2011) 5 SCC 394** has also been relied by the learned counsel for the respondents. In the aforesaid case, there was a delay of 6 years between the passing the award and filing of the writ petition. Following principles were laid down in paragraphs 16,17,18,19 and 26 which are quoted below:-

"**16.** In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of the BDA and the State Government, the High Court was duty bound to take cognizance of the long time gap of 9 years between the issue of declaration under Section 6(1) and filing of the writ petition and declined relief to respondent No.1 on the ground that he was guilty of laches because the acquired land had been utilized for implementing the residential scheme and third party rights had been created. The unexplained delay of about six years between the passing of award and filing of writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

18. In State of Madhya Pradesh v. Bhailal Bhai, the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held: (AIR pp.1011-12, paras 17 and 21)

"**17.**.....It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to

issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.....It is not easy nor is it desirable to lay down any Rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

* * *

21. The learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

26. In this case, the acquired land was utilized for implementing Tulsi Nagar Residential Scheme inasmuch as after carrying out necessary development i.e. construction of roads, laying electricity, water and sewer lines etc. the BDA carved out plots, constructed flats for economically weaker sections and lower income group, invited applications for allotment of the plots and flats from general as well as reserved categories and allotted the same to eligible persons. In the process, the BDA not only incurred huge expenditure but also created third party rights. In this scenario, the delay of nine years from the date of publication of the declaration

issued under Section 6(1) and almost six years from the date of passing of award should have been treated by the High Court as more than sufficient for denying equitable relief to respondent No.1."

Another recent judgment relied on by the learned counsel for the respondents of the Apex Court is **State of M.P. Vs. Narmada Bachao Andolan,** (2011) 7 SCC 639.

In the aforesaid case, writ petition was filed in the High Court of Madhya Pradesh in the year 2007, for issuing directions in terms of the Rehabilitation and Resettlement Policy. Construction of Omkareshwar Dam had started in the year 2002 and stood completed in October, 2006. In the writ petition, prayer was made restraining the appellant i.e. State of M.P. from closing sluice gates of the dam contending that the rehabilitation and resettlement was not complete. The Court took the view that in the aforesaid fact the Court ought not have examined any issue other than relating to rehabilitation. Certain other decisions have also been referred to by the learned counsel for the parties which reiterate the same proposition and it is not necessary to burden this judgment by referring all such cases were the same propositions were laid down.

To meet the attack of the respondents on the ground of delay and laches as noticed above, petitioners come up with the plea that the petitioners were under bonafide belief that the land acquired for Planned Industrial Development shall be utilised for Planned Industrial Development, they bonafide believing the purpose of acquisition accepted the same as their fate, but subsequent events reveal that true intention of the authority and the State Government was that the land was acquired to transfer it to private builders and colonisers and the acquisition was nothing, but a fraud and colourable exercise of power. The petitioners have come up in these writ petitions for redressal of their grievances and grant of relief. The allegations of the petitioners as has been noted above in several writ petitions are that the acquisition proceedings were undertaken in colourable exercise of power. Reliance has been placed by the learned counsel for the petitioners on the judgment of the Apex Court in **Vyali Kaval Housebuilding Coop. Society Vs. V. Chandrappa,** (2007) 9 SCC 304.

In the said case, notification under Section 4 was issued on 22.12.1984, declaration under Section 6 was issued on 21.2.1986 and award was passed on 16.11.1987. The possession of land was taken on different dates up to the year 1992. The writ petitions were filed in the year 1998 challenging the land acquisition proceedings. An objection was taken by the society in whose favour the land was acquired contending that writ petition was hopelessly barred by time being delayed by 14 years from the date of the issue of the notification under Section 4. It was further contended that petitioners have participated in the inquiry under Section 5-A and have received substantial amount from the appellant society pursuant to the agreement executed in their favour. Learned Single Judge dismissed the writ petition on the ground of delay and on the ground that the petitioners have participated in the proceedings and they shall be treated to have acquiesced. Appeal was filed by the respondents which was allowed by the Division Bench. The Court held that acquisition was colourable exercise of the power therefore, the delay cannot be a good ground to dismiss the writ petition. Against the Division Bench judgment, the society filed Civil Appeals challenging the Division Bench judgment. The Apex Court upheld the judgment of the Karnataka High Court and dismissed the appeal. The Apex Court laid down that when the acquisition was totally malafide and not for bonafide purpose, the ground of delay and acquiescence had no substance. It is useful to quote the relevant observations of the apex Court made in paragraphs 3, 4 and 9 which are quoted below:

"**3.** This writ petition was contested by the appellant society as respondent and it was alleged that it was hopelessly barred by time being delayed by 14 years and it was also submitted that the writ petitioners had participated in the inquiry under Section 5A of the Act and have also received substantial amount from the appellant-society pursuant to the agreement executed in their favour. Learned Single Judge dismissed the writ petition on the ground of being hopelessly barred by time and the writ petitioners participated in the proceedings therefore they have acquiesced in the matter. Aggrieved against this order passed by learned Single Judge, a writ appeal was filed by the respondents which came to be allowed by the Division Bench for the reasons mentioned in another writ appeal decided by the same Division Bench headed by the Chief Justice of the High Court on 17.1.2000. In that writ appeal the Division Bench held that the entire acquisition on

behalf of the appellant society was actuated with fraud as held in Narayana Reddy v. State of Karnataka [ILR 1991 Kar 2248]. In that case it was held as follows :

"As seen from the findings of G.V.K.Rao Inquiry Report, in respect of five respondent societies and the report of the Joint Registrar in respect of Vualikaval House Building Co-operative Society, these Societies had indulged in enrolling large number of members illegally inclusive of ineligible members and had also indulged in enrolling large number of bogus members. The only inference that is possible from this is that the office bearers of the societies had entered into unholy alliance with the respective agents for the purpose of making money, as submitted for the petitioners otherwise, there is no reason as to why such an Agreement should have been brought about by the office bearers of the Society and the agents. Unless these persons had the intention of making huge profits as alleged by the petitioners, they would not have indulged in enrolment of ineligible and bogus members. The circumstance that without considering all these relevant materials the Government had accorded its approval, is sufficient to hold that the agents had prevailed upon the Government to take a decision to acquire the lands without going into all those relevant facts. The irresistible inference flowing from the facts and circumstances of these cases is, whereas the poser conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide housing scheme but is substantially for the purpose of enabling the concerned office bearers of respondent- societies and their agents to indulge in sale of sites in the guise of allotment of sites to the Members/ Associate members of the society to make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus the decision of the Government to acquire the lands suffers from legal mala fides and therefore the impugned Notifications are liable to be struck down."

4. In view of aforesaid observation, their Lordships of Division Bench held that since the acquisition was colourable exercise of the power, therefore, delay cannot be a good ground to dismiss the writ petition. The said judgment of the Division Bench of the High Court of Karnataka was affirmed by this Court in Special Leave Petition Nos.(c)..CC 525-532 of 1999 and Special Leave Petition Nos.(c) ..CC 504-

522 of 1999 decided on 14.7.1999 and it was held that the appellant-society is a bogus house building society and accordingly, the order passed by the learned Single Judge was set aside by Division Bench. Against the order of the Division Bench passed in Writ Appeal No.2294 of 1999 a review petition was filed which was dismissed on 22.3.2002. Hence both these appeals.

9. Learned counsel for the respondents has also invited our attention that same notification was set aside by the High Court and the said order of the High Court was also upheld by this Court by dismissing the S.L.P.(C) No.6196 of 1998 on 7.4.1998 and S.L.P.(c) ..CC 495- a498 of 1999 on 14.7.1999 concerning the very same appellant society. In this background, when the acquisition has been found to be totally mala fide and not for bona fide purpose, the ground of delay and acquiescence in the present case has no substance. Learned counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatever money that the appellant has paid, is at its own risk. Once the notification goes, no benefit could be derived by the appellant. We are satisfied that issue of notification was mala fide and it was not for public purpose, as has been observed by this Court, nothing turns on the question of delay and acquiescence.

Learned Counsel for respondents raised other pleas like decree for partition was granted among brothers and they were not made parties, we are not going into those questions when we are satisfied that when acquisition stand vitiated on account of mala fide, nothing remains further."

In the above case the challenge to acquisition proceedings was contested firstly on the ground that there is great delay in challenging the acquisition proceedings and secondly that the compensation has already been accepted by the land owners, hence the challenge is unsustainable. The Apex Court repelled both the

objections and has laid down following in paragraphs 9, "(i) ..... when the acquisition has been found to be totally malafide and not for bona fide purpose, the ground of delay and acquiescence in the present case has no substance.... and (ii) ..... learned counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatever money that the appellant has paid, is at its own risk. Once the notification goes, no benefit could be derived by the appellant". The Apex Court in the above case (Vyalikaval Housebuilding Coop. Soceity vs. V. Chandrappa) approved the view of the Division Bench of the High Court that since the acquisition was in colourable exercise of the power, delay cannot be a good ground to dismiss the writ petition.

Allegations of the petitioners are that the action of the Authority in sending the recommendation for acquisition of land was fraud on power and the acquisition is in colourable exercise of power which are to be thoroughly examined.

Shri Dhruv Agarwal, learned Senior Advocate appearing for the Developers Association has also placed reliance on a recent judgment of the Apex Court in **A.P. Industrial Infrastructure Corpn. Ltd. Vs. Chinthamaneni Narasimha Rao and Ors, 2011 (10) Scale 460.** The Apex court in the said case observed that challenge to acquisition proceedings be made after a declaration under Section 6 of the Act, and the land owners need not wait for years. Following was laid down by the Apex Court in paragraphs 10 and 11 which are quoted below:-

“**10.** We see no reason for the land owners to wait for a few years for challenging the declaration made under Section 6 of the Act on the ground of delay. If the land owners had been really aggrieved, they ought to have challenged the proceedings immediately after declaration made under Section 6 of the Act.

11. This Court has held in several judgments that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same at least before an

award is made and the possession of the land in question is taken by the government authorities.

It has been held in Swaika Propeties (P) Ltd. and Another vs. State of Rajasthan and Others [(2008) 4 SCC 695] as under:

"**6.** This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In Municipal Corpn. Of Greater Bombay v. Industrial Development Investment Co. (P) Ltd. (1996) 11 SCC 501 where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held: (SCC p. 520, para 29)

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226.The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches." Similarly, in the case of State of Rajasthan and Ors. vs. D.R. Laxmi and Ors. [(1996) 6 SCC 445] following the decision of this Court in the case of Municipal Corporation of Greater Bombay (supra) it was held :

".... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of

laches. ...."

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".....When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the leaned Single Judge dismissing the writ petition on the ground of laches....."

To the similar effect is the judgment of this Court in Municipal Council, Ahmednagar and Another vs. Shah Hyder Beig and Ors. [(2000) 2 SCC 48] wherein this Court, following the decision of this Court in C. Padma and Others vs. Dy. Secy. to the Govt. of T.N. and Others [(1997)2 SCC 627] held: (Shah Hyder case SCC p. 55, para 17)

"17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C. Padma v. Dy. Secy. to the Govt. of T.N. [(1997) 2 SCC 627]...."

The Division Bench judgment of this Court in **Puran and Ors Vs. State of U.P. and Ors, 2009 (10) ADJ, 679,** in which one of us (Justice Ashok Bhushan) was a party has been heavily relied on by the learned counsel for the petitioners. In the said case, bunch of writ petitions were filed by farmers of District Ghaziabad challenging the acquisition of their agricultural land by the State of U.P. for public purpose. The ground of challenge in the writ petition was that the acquisition by the State of U.P. was in colourable exercise of power and the acquisition was not for public purpose and the acquisition was really for private Company. The notification under Section 4 was issued on 11/2/2004 and declaration under Section 6 was issued on 25/6/2004. The writ petitions were filed after more than 4

years. One of the ground taken by the learned counsel for the respondents in opposing the writ petition was that the petitions having been filed with delay and laches, the same deserve to be dismissed on the aforesaid ground. The Division Bench judgment in Puran Singh's case (supra) proceeded to examine the said submission in detail. The Division Bench noticed the submission in the aforesaid case and laid down following in paragraphs 49, 52 and 56 which are quoted below:-

"**49.** To recapitulate, the submissions of the petitioners in these writ petitions are that land acquisition by the State in the present case was in a colourable exercise of power. The application was made by the company after depositing part of the compensation and no part of the compensation was to be paid by the State Government when the application had been moved by the company or till the agreement was executed by the Company and State under Section 41 of the Act. Acquisition by the State as an acquisition for public purpose by invoking section 17 was a colourable exercise of power. The acquisition being acquisition for a company, part VII of the Act and Land Acquisition (Companies) Rules, 1963 were required to be adhered to. The State with an intention to bye pass the statutory provisions and to unduly help the respondent no. 2 had proceeded to acquire the land as acquisition for public purposes.

52. The acquisition in question was acquisition proceedings initiated by State by dispensing inquiry under Section 5-A denying opportunity of filing objections. It is true that petitioners have signed Kararnama and taken whatever compensation was given by the respondents but it is clear that petitioners have been raising their protests and continued their agitations. Agitation was started being noticed since May, 2006. The compulsory acquisition of land is a serious matter and the persons, who were pitted against the petitioners were the mighty State and respondent no. 2 company, the petitioners being thousands in number, took time in approaching the Court raising their grievance specially when the farmers had no opportunity and the inquiry under Section 5-A had been dispensed with. It is relevant to quote the observations of the apex Court in (1980) 2 SCC 471, State of Punjab Vs. Gurdial Singh and others following was laid down in paragraph 16:

".....It is fundamental that compulsory taking of a man's property is serious matter and the smaller the man the more the serious matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness and denial of this administration fairness is constitutional anathema except for good reasons....."

56. Taking into consideration over all facts and circumstances, we are not inclined to throw the writ petitions on the ground of delay and laches. The writ petitioners have made out a case for consideration of various issues by this Court which have arisen in these writ petitions. Thus, the submissions of learned counsel for the respondents that writ petitions be thrown out on the ground of delay and laches and other submissions need not be considered, does not merit acceptance."

A very recent judgment of the Apex Court in **Civil Appeal No.7588/2005, M/s Royal Orchid Hotels Ltd and Anr. Vs. G.Jayarama Reddy and Ors,** decided on 29/9/2011 by Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Justice Sudhansu Jyoti Mukhopadhaya considering the issue of delay and laches in the land acquisition case needs to be considered. It is useful to note the facts in detail. On a request made by the Karnataka State Tourism Development Corporation, the State Government of Karnataka acquired the land of Village Kodihalli and Challaghata for the purpose of "Golf-cum-Hotel Resort". Notification under Section 4 (1) was issued on 29/12/1981 and declaration under Section 6 was issued and thereafter an award was passed by the Special Land Acquisition Officer on 07/4/1986. However, instead of utilising the acquired land for the purpose specified in the notification, Corporation transferred the same to private parties. Writ Petitions were filed in the year 1995, praying for quashing the notifications dated 29/12/1981 and 16/4/1983 issued under Section 4 of the Act and praying for a mandamus directing the respondents to redeliver the possession of the said land. The writ petition was dismissed by the learned Single Judge as barred by time, against which writ appeal was filed by the respondents which was allowed. Against the said judgment, the appellants who were private transferee of acquired land had filed civil appeal before the Apex Court. Submission was made by the appellants that the writ petitions being highly barred by laches was rightly dismissed by the learned Single Judge and the Division Bench committed error in

allowing the writ appeal. The question of delay was considered by the Apex Court in the said case. Following was laid down in paragraphs 16, 17, 21 and 22 which are quoted below:-

"**16.** The first question which needs consideration is whether the High Court committed an error by granting relief to respondent No.1 despite the fact that he filed writ petition after long lapse of time and the explanation given by him was found unsatisfactory by the learned Single Judge, who decided the writ petition after remand by the Division Bench.

17. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

21. Another principle of law of which cognizance deserves to be taken is that in exercise of power under Article 136 of the Constitution, this Court would be extremely slow to interfere with the discretion exercised by the High Court to entertain a belated petition under Article 226 of the Constitution of India.

Interference in such matters would be warranted only if it is found that the exercise of discretion by the High Court was totally arbitrary or was based on irrelevant consideration. In Smt. Narayani Debi Khaitan v. State of Bihar [C.A. No.140 of 1964 decided on 22.9.1964], Chief Justice Gajendragadkar, speaking for the Constitution Bench observed:

“It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.” (emphasis supplied)

22. In the light of the above, it is to be seen whether the discretion exercised by the Division Bench of the High Court to ignore the delay in filing of writ petition is vitiated by any patent error or the reasons assigned for rejecting the appellants' objection of delay are irrelevant and extraneous. Though it may sound repetitive, we may mention that in the writ petition filed by him, respondent No.1 had not only prayed for quashing of the acquisition proceedings, but also prayed for restoration of the acquired land on the ground that instead of using the same for the public purpose specified in the notifications issued under Sections 4(1) and 6, the Corporation had transferred the same to private persons. Respondent No.1 and other landowners may not be having any serious objection to the acquisition of

their land for a public purpose and, therefore, some of them not only accepted the compensation, but also filed applications under Section 18 of the Act for determination of market value by the Court. However, when it was discovered that the acquired land has been transferred to private persons, they sought intervention of the Court and in the three cases, the Division Bench of the High Court nullified the acquisition on the ground of fraud and misuse of the provisions of the Act."

The Apex Court approved the Division Bench judgment which had ignored the delay in filing the writ petition challenging the acquisition. The Apex Court further laid down that where it was subsequently discovered that the acquired land has been transferred to private persons and then petitioners sought intervention of the Court, the Division Bench has rightly entertained the writ petition ignoring the delay.

The aforesaid judgment of the Apex Court fully supports the contention of the writ petitioners that writ petitions filed by the petitioners after knowing about the transfer of land to private builders cannot be thrown out on the ground of delay and laches.

We, however, cannot loose sight of the fact that the above grounds taken are not applicable to those writ petitioners, where the acquisition was finalised decades ago and allotment of private builders and colonisers which were complained of were not applicable in the aforesaid cases. We, now proceed to refer to cases in which there are inordinate delay and the aforesaid ground pleaded are not applicable to them. These petitions with inordinate delay relate to Noida. There are two writ petitions of Village Nithari namely; **Writ Petition No.45933/2011, Ravindra Sharma and Anr Vs. State of U.P. and ors, 47545/2011, Babu Ram and Ors Vs. State of U.P. and Ors.** These two writ petitions have been filed in the year 2011, where as the notification under Section 4 was issued on 01/6/1976 and declaration under Section 6 was issued on 16/9/1976. The possession was taken by the respondents on 28/10/1976 and the award was also declared on 15/7/1978. The writ petitions have been filed after more than 2 decades. There are no grounds in the writ petitions to entertain such highly barred writ petitions in exercise of writ jurisdiction. Both these writ petitions deserve to be dismissed on

the ground of laches alone.

The next writ petition challenging the notification of 1976 is relating to Village Chaura Sadatpur being **Writ Petition No.46407/2011, i.e. Liley Ram Vs. State of U.P. and Ors.** The writ petition was filed challenging the notifications dated 01/6/1976 under Section 4 and 16/9/1976 under Section 6. Possession was taken on 28/10/1976 and the award was also declared on 25/9/1978. The writ petition having been filed after more than 2 decades deserves to be dismissed on the ground of laches.

There are 13 writ petitions relating to Village Khoda. The notification under Section 4 was issued on 17/3/1988 and notification under Section 6 was issued on 19/7/1988. Possession of the land was taken on 01/6/1989, 01/9/1995, 12/7/1995 and 15/3/1995. The award was declared on 01/12/1991. There are no grounds in any of the writ petitions on the basis of which such highly barred writ petitions vsm be entertained by this Court in exercise of its discretionary jurisdiction. The aforesaid writ petitions of Village Khoda also deserves to be dismissed.

Writ Petition No.46764/2011, Ramesh and Ors. Vs. Vs. State of U.P and Ors., relates to Village Sultanpur in which notification under Section 4 was issued on 10/2/1994 and notification under Section 6 was issued on 18/7/1994 which has been challenged. The possession of the land was taken on 24/8/1995 and the award under Section 11 was declared on 09/5/1997. There are no such grounds in the writ petition which may deserve entertaining the writ petition which has been filed with such an inordinate and unexplainable delay. This writ petition also deserve to be dismissed on the ground of laches.

There is another **Writ Petition No.46785/2011, Jeet Ram and Ors. Vs. State of U.P. and Ors,** relating to Village Sultanpur, in which notification under Section 4 was issued on 06/12/1999 and notification under Section 6 was issued on 09/3/2000. Possession was taken on 14/3/2000 and the award was declared on 18/6/2005. There is no explanation worth considering in the writ petition of inordinate delay and laches in approaching this Court. The said writ petition also deserves to be dismissed.

In view of the foregoing discussions apart from writ petitions which have been specifically mentioned above in which there are no satisfactory explanation for inordinate delay and laches, we proceed to examine the other writ petitions on merits taking over all facts and circumstances and the grounds pleaded in the aforesaid writ petitions. We are not inclined to throw the writ petitions on the ground of delay and laches.

4. National Capita l Region Planning Board Act, 1985.

As noted above, the Greater Noida Authority as well as the Noida Authority were constituted under the Uttar Pradesh Industrial Development Act, 1976, hereinafter referred to as “Act,1976”. The area of Noida or Greater Noida is included in the National Capital Region. For co-ordinating and monitoring the implemention of plan for development of National Capital Region and for evolving harmonised policies for the control of land uses and development of infrastructure in the National Capital Region, Parliament enacted an Act namely, National Capital Region Planning Board Act, 1985 hereinafter referred to as “NCRPB Act, 1985”. The NCRPB Act, 1985 was enacted by the Parliament on the resolutions passed by the legislature of State of Haryana, Rajasthan and Uttar Pradesh under Article 252 of the Constitution of India.

The NCRPB Act, 1985 is on the subject which is included in the State list of VIIth schedule of the Constitution of India. The Act, 1976 was enacted for industrial development and urban township of the area and the NCRPB Act, 1985 was also enacted for co-ordinating and monitoring the control of land uses and development of infrastructure, hence it is very necessary to examine the effect and consequence of NCRPB Act, 1985 on the ambit and scope of Act, 1976 and the actions of the Authority have to be tested on the aforesaid basis.

The statement of objects and reasons of the NCRPB Act, 1985 as published in the Gazette of India on 27/8/1984, throws light on the objects and reasons of enactment which is to the following effect:

“STATEMENT OF OBJECTS AND REASONS

The objective of the Delhi Development Act, 1957 (61 of 1957) was to promote and to secure the development of Delhi in accordance with the Master Plan and Zonal Development Plans. The Master Plan approved by the Central Government in 1962, recommended that the plan for planning the metropolis could not be considered complete without its metropolitan regional dimensions; it highlighted among other things the need for integrated planning and co-ordinating, development of the Delhi Metropolitan Area and the National Capital Region to achieve an orderly and balanced growth of Delhi and its surrounding areas. Taking cognizance of this recommendation in the Master Plan for Delhi, Government of India had set up a High Powered Board in 1961 for the co-ordination of the regional planning activities in the National Capital Region so as to secure the collaboration of the State Governments concerned in the formulation and the implementation of regional plan. This Board, being only advisory in its capacity, could not effectively tackle the programme of preparation and implementation of the regional plan. In 1980 it was decided that the National Capital Region concept should be revitalised and the regioin as a whole should be taken up for coordinated development. An agreement was reached in August, 1982, between the Chief Ministers of the States of Uttar Pradesh, Haryana and Rajasthan and Lt. Governor of Delhi on the one hand and the Union Minister of Works and Housing on the other on the need for a coordinating statutory machinery at the central level for the planning monitoring and development of the National Capital Region and also of need for the harmonised policy for land-uses and other infrastructure to avoid haphazard developments in the region.

2. The Bill seeks to replace the aforesaid High Powered Board by a statutory Board, to be known as the National Capital Region Planning Board, which shall consist of the Union Minister of Works and Housing as its Chairman, the Administrator of Union territory of Delhi, the Chief Ministers of the States of Haryana, Uttar Pradesh and Rajasthan and 11 other members to be nominated by the Central Government in consultation with the participating States and Union territory of Delhi.

While the objects of the statutory Planning Board would be the preparation, modification, revision and review of a regional plan for the development of the

National Capital Region and also for the preparation of functional plans for the proper guidance of the participating States and the Union territory of Delhi, the power to prepare sub-regional plan and project plan shall remain with the participating States and the Union territory of Delhi. The functions of the Planning Board would also include the power to co-ordinate and monitor the implementation of the regional plan and the power to evolve harmonised policy for the control of land-users and development of infrastructure in the National Capital Region so as to avoid any haphazard development of the region.

With a view to enabling the Planning Board to discharge its functions, the Bill provides for the establishment of Planning Committee consisting of the officers and town planners of the participating States and the Union Territory of Delhi, to assist the Planning Board to discharge its functions.

The Bill also contains the provisions which are necessary to give effect to the aforesaid objects."

NCRPB Act, 1985 contains following preamble which also throws considerable light on the object and reasons of the NCRPB Act, 1985:

"An Act to provide for the constitution of a Planning Board for the preparation of a plan for the development of the National Capital Region and for coordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land-uses and development of infrastructure in the National Capital Region so as to avoid any haphazard development of that region and for matters connected therewith or incidental thereto.

Whereas it is expedient in the public interest to provide for the constitution of a Planning Board for the preparation of a plan for the development of the National Capital Region and for coordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land-uses and development of infrastructure in the National Capital Region so as to avoid any haphazard development thereof ;

And whereas Parliament has no power to make laws for the States with respect to any of the matters aforesaid, except as provided in articles 249 and 250 of the Constitution;

And whereas in pursuance of the provisions of clause (1) of article 252 of the Constitution, resolutions have been passed by all the Houses of the Legislatures of the States of Haryana, Rajasthan and Uttar Pradesh to the effect that the matters aforesaid should be regulated in those States by Parliament by law;

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:-"

Now, a quick look on the scheme of NCRP Board Act, 1985 is needed. The NCRPB Act, 1985 is constituted under Section 3. A planning committee is constituted by the Board for assisting the Board for discharge of its function. Section 7 of the NCRPB Act, 1985 defines Functions and Power of the Board and of the Committee whereas Section 8 defines the Powers of the Board. Sections 7 and 8 are quoted below:

“7. FUNCTIONS AND POWERS OF THE BOARD AND OF THE COMMITTEE

Functions of the Board.- The functions of the Board shall be -

(a) to prepare the Regional Plan and the Functional Plans ;

(b) to arrange for the preparation of Sub-Regional Plans and Project Plans by each of the participating States and the Union territory;

(c) to co-ordinate the enforcement and implementation of the Regional Plan, Functional Plans, Sub-Regional Plans and Project Plans through the participating States and the Union territory ;

(d) to ensure proper and systematic programming by the participating States and the Union territory in regard to project formulation, determination of priorities in the National Capital Region or sub-regions and phasing of development of the National Capital Region in accordance with stages indicated in the Regional Plan ;

(e) to arrange for, and oversee, the financing of selected development projects. In the National Capital Region through Central and State Plan funds and other sources of revenue.

8.Powers of the Board.- The powers of the Board shall include the powers to -

(a) call for reports and information from the participating States and the Union territory with regard to preparation, enforcement and implementation of Functional Plans and Sub-regional Plans ;

(b) ensure that the preparation, enforcement and implementation of Functional Plan or Sub-Regional Plan, as the case may be, is in conformity with the Regional Plan ;

(c) indicate the stages for the implementation of the Regional Plan ;

(d) review the implementation of the Regional Plan, Functional Plan, Sub-Regional Plan and Project Plan ;

(e) select and approve comprehensive projects, call for priority development and provide such assistance for the implementation of those projects as the Board may deem fit ;

(f) select, in consultation with the State Government concerned, any urban areas, outside the National Capital Region having regard to its location, population and potential for growth, which may be developed in order to achieve the objectives of the Regional Plan ; and

(g) entrust to the Committee such other functions as it may consider necessary to carry out the provisions of this Act.

Functions of the Committee."

Section 9 of the NCRPB Act, 1985 deals with The functions of the Committee. Section 9 is quoted below:

"9. (1) The functions of the Committee shall be to assist the Board in -

(a) the preparation and co-coordinated implementation of the Regional Plan and the Functional Plans ; and

(b) scrutinizing the Sub-Regional Plans and all Project Plans to ensure that the same are in conformity with the Regional Plan.

(2) The Committee may also make such recommendation to the Board as it may think necessary to amend or modify any Sub-Regional Plan or any Project Plan.

(3) The Committee shall perform such other functions as may be entrusted to it by the Board."

Section 10 sub-section 2 of the NCRPB Act, 1985 provides that the Regional Plan shall indicate the manner in which the land in the National Capital Region shall be used, whether by carrying out different development thereon or by conservation or otherwise. Section 10 is quoted below:

"**10. Contents of the Regional Plan**.- (1) The Regional Plan shall be a written statement and shall be accompanied by such maps, diagrams, illustrations and descriptive matters, as the Board may deem appropriate for the purpose of explaining or illustrating the proposals contained in the Regional Plan and every such man, diagram, illustration and descriptive matter shall be deemed to be a part of the Regional Plan.

(2) The Regional Plan shall indicate the manner in which the land in the National Capital Region shall be used, whether by carrying out development thereon or by conservation or otherwise, and such other matters as are likely to have any important influence on the development of the National Capital Region and every such Plan shall include the following elements needed to promote growth and balanced development of the National Capital Region, namely:-

(a) the policy in relation to land-use and the allocation of land for different uses ;

(b) the proposals for major urban settlement pattern ;

(c) the proposals for providing suitable economic base for future growth ;

(d) the proposals regarding transport and communications including railways and arterial roads serving the NCR ;

(e) the proposals for the supply of drinking water and for drainage ;

(f) indication of the areas which require immediate development as "priority areas"; and

(g) such other matters as may be included by the Board with the concurrence of the participating States and the Union territory for the proper planning of the growth and balanced development of the National Capital Region."

Section 16 of the NCRPB Act, 1985 provides for Preparation of Functional Plans as may be necessary for the proper guidance of the participating States and of the Union Territory and Section 17 of the NCRPB Act, 1985 provides for Preparation of Sub-Regional Plans. Each participating State shall prepare a Sub-Regional Plan for the sub-region within the State.

Sections 16 and 17 are quoted below:

"16. **Preparation of Functional Plans**.- After the Regional Plan has come into operation, the Board may prepare with the assistance of the Committee, as many Functional Plans as may be necessary for the proper guidance of the participating States and of the Union territory.

17. **Preparation of Sub-Regional Plans.-** (1) Each participating State shall prepare a Sub-Regional Plan for the subregion within that State and the Union territory shall prepare a Sub-Regional Plan for the sub-region within the Union territory.

(2) Each Sub-Regional Plan shall be a written statement and shall be accompanied by such maps, diagrams, illustrations and descriptive matters as the participating State or the Union territory may deem appropriate for the purpose of explaining or illustrating the proposals contained in such Sub-Regional Plan and every such map, document, illustration and descriptive matter shall be deemed to be a part of the Sub-Regional Plan.

(3) A Sub-Regional Plan may indicate the following elements to elaborate the Regional Plan at the sub-regional level namely:-

(a) reservation of areas for specific land-uses which are of the regional or sub-regional importance ;

(b) future urban and major rural settlements indicating their area, projected population, predominant economic functions, approximate site and location ;

(c) road net-work to the district roads and roads connecting major rural settlements ;

(d) proposals for the co-ordination of traffic and transportation, including terminal facilities ;

(e) priority areas at sub-regional level for which immediate plans are necessary ;

(f) proposals for the supply of drinking water and for drainage ; and

(g) any other matter which is necessary for the proper development of the sub-region."

Section 19 of the NCRPB Act, 1985 provides for Submissions of Sub- Regional Plans to the Board to ensure that such Plan is in conformity with the Regional Plan and Section 20 of the NCRPB Act, 1985 provides for Implementation of Sub-Regional Plans. etc. Sections 19 and 20 are quoted below:

" 19.**Submission of Sub-Regional Plans to the Board:-**

(1) Before publishing any Sub-Regional Plan, each participating State or, as the case may be, the Union territory, shall, refer such Plan to the Board to enable the Board to ensure that such Plan is in conformity with the Regional Plan.

(2) The Board shall, after examining a Sub-Regional Plan, communicate, within sixty days from the date of receipt of such Plan, its observations with regard to the Sub-Regional Plan to the participating State or the Union territory by which such Plan was referred to it.

(3) The participating State, or, as the case may be, the Union territory, shall, after due consideration of the observations made by the Board, finalize the Sub-Regional Plan after ensuring that it is in conformity with the Regional Plan.

20.**Implementation of Sub-Regional Plans, etc.**-Each participating State, or, as the case may be, the Union territory shall be responsible for the implementation of the Sub-Regional Plan, as finalized by it under subsection (3) of section 19, and Project Plans prepared by it."

Section 27 of the NCRPB Act, 1985 provides for an Act to have overriding effect and Section 29 of the NCRPB Act, 1985 deals with violation of Regional Plan. Sections 27 and 29 are quoted below:

" **27**.**Act to have overriding effect.-**The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act; or in any decree or order of any court, tribunal or other authority.

29. **Violation of Regional Plan.-**(1) On and from the coming into operation of the finally published Regional Plan, no development shall be made in the region which is inconsistent with the Regional Plan as finally published.

(2) Where the Board is satisfied that any participating State or the Union territory has carried out, any activity which amounts to a violation of the Regional Plan, it may, by a notice in writing, direct the concerned participating State or the Union territory, as the case may be, to stop such violation of the Regional Plan within such time as may be specified in the said notice and in case of any omission or refusal on the part of the concerned participating State or the Union territory to stop such activity, withhold such financial assistance to the concerned participating State or the Union territory, as the Board may consider necessary."

Section 40 of the NCRPB Act, 1985 deals with Acquisition of land and determination of rights in relation to land to be made by the Government of the participating State or Union territory. Section 40 is quoted below:

“ **40. Acquisition of land and determination of rights in relation to land to be made by the Government of the participating State or Union territory.-** For the removal of doubts, it is hereby declared that the acquisition of land or the determination of any right or interest in, or in relation to, any land or other property, where necessary to give effect to any Regional Plan, Functional Plan, Sub-Regional Plan or Project Plan, shall be made by the Government of the concerned participating State, or, as the case may be, the Union territory, in accordance with the law for the time being in force in that State or Union Territory.”

Before we proceed to consider the purpose and objects of the NCRPB Act, 1985, it is necessary to have a look on the pleadings of the petitioners in different writ petitions regarding NCRPB Act, 1985.

In **Writ Petition No.57032/2009,Manaktala Chemical (Private) Ltd. Vs. State of U.P.and Ors,** filed on 24/10/2009 the petitioners have impleaded Greater Noida Industrial Development Authority as respondent no. 4 and National Capital Region Planning Board, New Delhi as respondent no.5. In paragraph 24 following pleading was made which is quoted below:

“24. That the land sought to be acquired by impugned notifications is part of National Capital Region and the authority responsible for approval of the Master Plan is respondent No.5. To the best knowledge of the petitioner company there is no approval of the Master Plan of respondent No.4 from respondent No.5. As such, acquisition of land for industrial development without due approval of respondent No.5 is impermissible. This is sufficient to quash the impugned notifications.”

However, in **Writ Petition No.41339/2011, Ramesh Kumar Bhagchandka @ Ramesh Chand Bhagchandka Vs. State Of U.P. and Others,** a detail Supplementary affidavit has been filed by the petitioners on 08/9/2011, in which specific pleadings were made with regard to NCRPB Act, 1985. Following pleadings are made in paragraphs 41 to 45 which are quoted below:

“41. That a master plan prepared by NOIDA does not have any approval of the National Capital Regional Planning Board which is a statutory body constituted

under the Act, 1985. The development proposed by the respondents is, therefore, contrary to the law and there is no approval by the National Capital Regional Planning Board.

42. That there is no permission accorded under Section 25 and 27 of the said Act and hence the entire development conceived by the respondents is illegal and no township can come into existence without concurrence of the National Capital Regional Planning Board.

43. That Section 40 of the 1985 Act provides that firstly a plan will be prepared and if necessary the acquisition will be done. In the present case firstly the acquisition proceedings have been undertaken and thereafter the land is sought to be utilized by allotment to builders for raising construction that go contrary to the plan. Under such circumstances the acquisition proposed is totally illegal and is liable to be set aside.

44. That town of Ghaziabad falls within the National Capital Region. So far as the development in the town of Ghaziabad is concerned, the same can take place under the provisions of National Capital Regional Planning Board Act, 1985 where under a Regional Plan is to be prepared and the States are to prepare a respective sub-regional plans. The provisions of National Capital Regional Planning Board Act, 1985 overrides the provisions of any other Act. Moreover, development in the area falling within the National Capital Region take place only with prior concurrence of the National Capital Region Board. The National Capital Regional Planning Board has already prepared regional plan upto 2021. The same will be produced before this Hon'ble Court at the time of hearing of the present writ petition.

45. That as per the provisions under the National Capital Regional Planning Board Act, 1985 no change or amendment can be done in the Regional plan once it is prepared. The regional plan 2021 does not cover any Hi-tech township or development in a similar form. The policy therefore, is hit by specific provisions of the National Capital Region Planning Board Act, 1985inasmuch as neither any approval has been obtained for said policy from the National Capital Region Board nor the Regional Plan so prepared by the Board contains any such concept of

Hitech Township policy. Thus the policy as such is contrary to the provisions contained under the National Capital Regional Planning Board Act, 1985."

While hearing these writ petitions, we noted the submission made by the learned counsel for the petitioners that there has been no approval of the plan by the National Capital Regional Planning Board as required by the NCRPB Act, 1985. On 14/9/2011 we passed following order:

"Hearing pertaining to village Patwari, including the hearing of interveners has been concluded. Regarding village Ghodi Bachhera and village Sakipur hearing has also been completed.

One of the submissions of the learned counsel for the petitioner is that there has been no approval of the plan by the National Capital Regional Planning Board as required by National Capital Regional Planning Board Act, 1985. Reliance has also been placed on a decision of Hon'ble Apex Court in Writ Petition (Civil) No.67 of 2007, Jai Prakash Tyagi and others vs. State of U.P. and others, decided on 23.08.2011. Learned counsel appearing for Greater Noida Authority may file supplementary counter affidavit explaining the position.

Hearing in rest of the cases will continue tomorrow at 10 A.M."

In pursuance of the order of the Court dated 14/9/2011, supplementary counter affidavit has been filed by Vijay Shankar Mishra sworn on 20/9/2011.

Learned counsel appearing for the Authority Shri Ravindra Kumar has pleaded that there is no requirement in getting the master plan of the authority approved by the National Capital Regional Planning Board. Referring to para 17.5.1 of the Regional Plan 2021, prepared by National Capital Region Planning Board, it is submitted that it is a local authority which is empowered to prepare plan for detail land uses within the urbanizable area. In the Supplementary Affidavit, National Capital Regional Planning Board of proposed land uses 2011 has been brought on record in which the learned counsel for the Authority submits that substantial area of Noida and Greater Noida has been indicated as urbanizable area and it is for the Authority to prepare a detail land uses plan.

Learned counsel appearing for the Authority Shri Ravindra Kumar has also placed reliance on a Division Bench judgment of this Court dated 12/11/2010, in **Writ Petition No.69432/2009, Natthi Vs. State of U.P. and Ors,** for the proposition that the NCRPB Act, 1985 does not prohibit acquisition of land before any approval is granted by NCR Board and further the NCRPB Act, 1985 does not require any prior approval by the Board of the Master Plan 2021 prepared by the Authority.

The first issue to be dealt is as to whether the plan prepared by Greater Noida requires consideration and approval of the Board or not. Reverting to NCRPB Act, 1985, it is to be noted that Sub-Regional Plans are to be prepared by each participating State and is required to be submitted to the Board and the Board is required to communicate within 60 days its observation with regard to Sub-Regional Plans and thereafter the participating State after consideration of the observation is required to finalise Sub-Regional Plans after ensuring that it is in conformity with the regional plan and thereafter it can be implemented under Section 20 of the NCRPB Act,1985. The Sub-Regional Plan has to be in conformity with the Regional Plan and functional plans.

Section 17 (3) of the NCRPB Act, 1985 requires that the Sub-Regional Plan may indicate the elements to elaborate the regional plan at the sub-regional level namely:-. (a) reservation of areas for specific land-uses which are of the regional or sub-regional importance ;and (b) future urban and major rural settlements indicating their area, projected population, predominant economic functions, approximate site and location.

Section 7 (b) of the NCRPB Act, 1985 further provides for Functions of the Board shall include arranging for the preparation of Sub-Regional Plans and Project Plans by each of the participating States and the Union territory and Section 19 of the Act, 1985 gives power to the Board to scrutinise Sub- Regional Plans and issue appropriate directions which are required to be implemented. It is clear that unless the directions of the Board are implemented in Sub-Regional Plan, the Sub-Regional Plans cannot be implemented. The provisions of the NCRPB Act, 1985 thus has to be interpreted to mean that there is complete control over the Sub-

Regional Plans prepared by the participating State and the mechanism provided is such that unless the Sub-Regional Plan is completely cleared by the Board, the said plan can neither be implemented nor can be said to be enforceable. In this context, it is relevant to refer to the Division Bench judgement of this Court in **Writ Petition No.26737/1993, Ravindra Singh and Ors. Vs. State of U.P. and Ors., (1997) 1 AWC 54** decided on 01/10/1996.

In the said writ petition land acquisition proceedings initiated by the Greater Noida Authority under the 1976 Act were challenged. One of the issue which arose for consideration was as to whether under the NCRPB Act, 1985, the plans prepared by the Greater Noida Authority are required to be approved.

The Division Bench in the said case has held that unless the National Capital Region Planning Board gives a green signal nothing can go ahead. The Court in the said case even called the Chairman of the Greater Noida and Member Secretary of the Board and when they appeared before the Court it was informed that the Master Plan has not been submitted to the Board. The Court adjourned the hearing to enable the authorities to take appropriate action. Following order was passed on 27/2/1996.

“The crucial question which was facing the Court is whether of every aspect regarding plans for Greater Noida, approval has been had from the National Capital Region Planning Board. The Court refers to the different types of plans as are mentioned in the 'definition' clause of the Act and references to which are reiterated subsequently in the Act, for review, approval or consultation with the Board within the meaning of Section 8, for discussion Under Section 12, for modifications to be considered Under Section 14, review and revision Under Section 15 and then preparation of the National Plans, Sub- Regional Plans and Project Plans under Chapter v within the meaning of Sections 16, 17, 18 and 20.

One stipulation is inescapable that unless the National Capital Region Planning Board gives the green signal nothing can go ahead. The necessary implication of this is also that at every stage in reference to the plans, aforesaid, each constituent State as part of the National Capital Region Plan has to keep a close consultation with, the federal agency which is the Board. The Petitioners challenge

the acquisition of certain areas for the development of Greater Noida, particularly of village Tugalpur and Rampur Jagir.

Prima facie upon perusal of the record and upon hearing the parties, the Court at present is not satisfied that the contention of either parties can be objectively considered without the development plans attaining finality without consultation of the National Capital Region Planning Board. On behalf of Greater Noida much emphasis was laid on certain correspondence which was exchanged between the Chairman of the Greater Noida and the Member Secretary of the Board. Yesterday after submissions were made by Member Secretary and today by Counsel for the Board, Mrs. Sheila Sethi it is clear that the Board had not had an occasion, as of date to approve any detailed development plan for the simple reason that these have neither been submitted nor has there been any occasion for the Board to scrutinise these plans which have yet to be sent to the Board. In these circumstances and on the statement which has now come from the National Capital Region Planning Board the doubts of the Court have not been unfounded.

The issues which remain in the petition are, to the effect, that a possibility cannot be ruled out that of the acquisition of land which have been made, it may be a subject of scrutiny by the National Capital Region Planning Board and possible the merits and the purpose of the acquisition may need a revision. The claim of some of the Petitioners that they have a certificate of an appropriate authority Under Section 143 of the U.P.

Zamindari Abolition and Land Reforms Act, 1950 may not be of much help because if the conforming use of the area is agriculture, and the Regional Plan 2001 respects agricultural areas any diversion from the conforming use to urbanization may violate the spirit of Regional Planning 2001. The question is the scope of these proceeding on a writ of certiorari by the High Court. One authority whose business it is to go into these matters has yet to engage its attention to it. This is the N.C.R.P., an authority specially vested with functions to discharge Its obligations under the Act. Clearly before the Court, today, there is no document to verify that the plans on which the Greater Noida may yet proceed have the seal of approval by the National Capital Region Planning Board and this aspect stands

confirmed by the submission which was made on behalf of the Board by its Member Secretary, yesterday, and its learned Counsel today. The National Capital Region Planning Act, 1985 Under Section 27 in no uncertain term makes it clear that the provision of Act, aforesaid, shall have effect notwithstanding any other law. This implies that the Board while examining this matter must have absolute discretion notwithstanding that a notification Under Section 4 of the Land Acquisition Act has been issued. The Board may thus, examine the Plans of Greater Noida, In contest, without inhibition and come to an independent decision while scrutinising plans lot-development of Greater Noida, suffice it to say that the reservations which have been provided to the Board Under Section 27 could not be reservations for a High Court when matters are examined under a prerogative writ.

Thus, to permit aspects, in context, to be examined by the Board, the Court adjourns these proceedings for a period of two months to enable the Board to approve, review, consult, affirm or confirm the plans which are the subject-matters of these writ petitions In total freedom notwithstanding that a notification has been issued for acquisition of land by the State of Uttar Pradesh or for that matter that these proceedings are pending before the High Court. The only guidance which this Court gives to the Board is to give effect to the intentions of the Act co-coordinating, monitoring and scrutinising the implementation of the plans and for harmoniously building urban planning with excellence without disturbing the ecological balance of nature and by respecting the green cover, agriculture and not abdicating either in favour of urbanisation but with a dedicated effort to respect the forests and strive to retain the balance of nature and ecology and at every given occasion not loosing the perspective in so far as the Board it concerned in these matters, of the fundamental duties as enshrined in Article 51A (g) (h) and (j) read with 48A of the Constitution of India."

Subsequently, when the matter was heard again by the division Bench, Court noted the statement of the Chairman of the Greater Noida that plans were submitted and the process under the Act, 1985 was complete. The Division Bench further held following in paragraphs 13 and 14 and ultimately issued direction in paragraph 21 which are quoted below:

13. A very pertinent question arises whether taking recourse to Section 5A would have been a composite exercise where the matter would have been examined on whatever the Petitioners contend as objections not in acquisition proceedings, but in these writ petitions. There are still many aspects which need to be sorted out and this cannot be done as a fact-finding spree in the jurisdiction of prerogative writs. Not going into this question will also leave a void and encourage further litigations and bog planned development. Seeing the totality of the circumstances, in generality, the Court Is of the view that where planned development has been undertaken as part of an exercise as a statutory obligation, the dominant purpose of this planned development is the National Capital Region. The Petitioners would like to resist this and prevent their property from being wrested out of their hands. The Greater Noida does not desire to see anything beyond the land acquisition proceedings which has been initiated In Its favour. The State of U.P. has taken no interest in these proceedings, planning urban development itself, regard being had to the National Capital Region has come to stay. The Petitioners cannot dislodge this exercise. There are certain cardinal principles in executing plans within the National Capital Region which are sacrosanct. Confirming uses, whatever they may be, have to be respected. The Petitioners forgot that their abadi is only consequential to agriculture and it cannot stay independently so as to lake up rivalry with planned urban development. Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, recognises that within an agricultural holding, there may be a habitat. Declaring an area as abadi is not in Juxtaposition to agriculture, it is compatible with it. Thus, the Petitioners cannot challenge the acquisition proceedings to submit that for the abadi which the Greater Noida will develop, they also are entitled a proprietary right in the abadi which has been declared by the Sub-Divisional Magistrate in their favour Under Section 143. The Greater Noida is developing the region as a consequential aspect of preventing the construction and asphyxiation of Delhi. Except that this exercise has a method In Its madness. Delhi cannot be contained and yet it cannot eat up, as a routine the sprawl of what lies in its hinterland.

14. But, if agriculture and forestry is a recognised conforming use and it is to be protected and there are several references to this aspect in the report referred to in the order of 27 February, 1996, entitled Urban Plan 2001, itself an off-shoot

directly of the Greater Noida under the U.P. Industrial Areas Development Act, 1976, and indirectly of the National Capital Regional Planning Act, 1985, then, the spirit of the sanctity given to these areas, as greens, forests and agriculture, is to be respected. These areas were not meant to disappear, but protected with bias towards increasing them. The constitution says so.

21. Thus, to remove doubts and further to ensure that planning of the National Capital Region is not jeopardised nor any conforming uses which have been given sanctity within it and further to eliminate racketeering in real estate, let the State Government appoint an officer In the rank of Secretary to the Government, State of U.P., to enquire and ensure certain aspects of:

(a) Conforming uses as are part of the National Capital Region, the plans having been approved by the National Capital Region Planning Board are given their due sanctity and respect without compromising on them notwithstanding that industry is being developed. ....."

The aforesaid Division Bench judgment clearly indicates that the Greater Noida Authority was well aware that the master plan prepared by it is required to be submitted and approved by the Board. Thus, the submission of Shri Ravindra Kumar appearing for the Authority that no approval is required from the Board does not appear to be correct.

In the Supplementary Counter Affidavit which has been filed by the Authority on 20/9/2011, it has been stated that the master plan 2021 was approved by the Authority on 09/11/2001 and was submitted to the National Capital Regional Planning Board. It was also stated in the affidavit that minor suggestions of the Board **which do not at all relate to the land uses were also incorporated.**

Paragraphs 6, 7 and 8 of the Supplementary Counter Affidavit are quoted below:

"6. That, without prejudice to what is submitted in para 5 above, it is further submitted that the Greater Noida Industrial Development Authority was constituted on 28.1.1991 and the Development Plan, 2001 was prepared in the year 1991-92 by the School of Planning and Architecture. This Plan was approved by the

Greater Noida Authority on 4.2.1992. The said plan, though not required under the law, was also sent to the by National Capital Regional Planning Board, which Board on 01.10.1992 formally approved the same. Subsequently, in the year 2001, the Master Plan, 2021was prepared and approved by the Authority in its 40th meeting. Public objections were invited and the final approval was granted by the Authority on 09.11.2001. As stated earlier, this plan was also submitted to the National Capital Regional Planning Board. The minor suggestions of the NCRPB, which do not at all relate to the land use were also incorporated. This plan was approved by the State Government. Under the Plan Regulations, it is the Authority which not only formulates the Plan but is also authorised and empowered to effect changes therein. It is reiterated that the Metro centre of Greater Noida and Noida have clearly been demarcated in the NCR Plan-2021 but the land use within the area of the Authority is to be demarcated fixed by the Authority concerned.

7. That, Development Plan of the respondent Authority has been duly published and is a public document. It is incorrect on the part of the petitioners to state that there is no Development Plan made by the GNIDA. It is wholly incorrect on the part of the petitioners to allege that the city of Greater Noida has no approval of the National Capital Regional Planning Board. Further legal submissions with regard to the provisions of law shall be advanced at the time of hearing.

8. That after the acquisition, the land was developed and demarcated in accordance with the Master Plan-2021 has been clearly stated in the Counter Affidavit filed on behalf of the Authority. The petitioners ought to have pointed out this while making (an incorrect) submission that there is no plan. It is clarified that land use is fixed sectorwise and not village wise. Therefore, the land use percentage is taken of the city as a whole and not village wise. The village boundaries, for the purpose of planning and its implementation looses its colour as the Development is done as per the demarcated sector."

While hearing all the matters by our order dated 22/9/2011 following order was passed:

"Learned counsel for the petitioners submit that although the original records of the State Government have been directed to be produced but since no orders have

been passed for producing the original records of the authority, hence an appropriate order may be passed so that original records may be available for perusal of the Court. In view of the aforesaid,we direct that Greater NOIDA authority/ NOIDA authority shall also produce original records pertaining to the decisions taken by the authority, preparation of plan as per 1991 Regulations and the various allotments made in different villages with regard to which land has been acquired."

Authority in pursuance of the aforesaid directions has submitted original records being File No.M-II,V and VI Planning and Architecture. The Booklet of Regional Plan-2021 (Published in September 2005 of National Capital Regional Planning Board) has also been submitted by Shri Ramendra Pratap Singh, learned counsel appearing for the Authority. Before we refer to the original files of Planning and Architecture submitted by Noida Authority, it is useful to refer to certain features of Regional Plan-2021.

Part 17 of the Book contains Regional Land uses. It is relevant to note that National Capital Regional Planning Board has relied on two Division Bench judgments of this Court which were dealt with regard to Planning and Development and the Division Bench judgments noticed by the Board was to the following effect:-

"Land uses cannot be changed except with the tacit permission and close scrutiny of the National Capital Regional Planning Board."

Paragraph 17.1.2 of the chapter is quoted below:

"**17.1.2 Legal Status of Regional Land Use**

The Regional Plan-2001 of NCR was prepared with the active participation, inputs and guidance by the concerned Central Ministries and participating State Governments through their departmental experts, and was approved on November 3, 1988. This Plan came into force from January 23, 1989. The actual implementation of the Regional Plan policies is being undertaken by the concerned Central Ministries and participating State Governments through their

various departments.

The Allahabad High Court, while going through the various Plan-enabling provisions under the NCRPB Act, 1985, considered the Regional Plan a major instrument of development. In a judgment dated 18.12.1998 in the Civil Misc. Petition No.13899 of 1998, it observed:

“The National Capital Region Plan Act, 1985 is a central legislation. The intention of this central legislation is to decongest Delhi, and yet retain the conforming uses of agriculture and greens, and to harmoniously coordinate and monitor industry and urbanisation without compromising with the conforming area and usage.....”

“.....land uses cannot be changed except with the tacit permission and close scrutiny of the National Capital Region Planning Board.....Development of industry or urbanisation by purchase of land reserved for conforming uses of agriculture, forests or greens within the area eclipsed by the National Capital Region, is prohibited. whatever development is permissible must be strictly monitored under the National Capital Region Plan Act, 1985 by the authorities named ad constituted under it.”

In the judgment dated 01.10.1996 in Civil Misc. Writ Petition No.26737 of 1993, the Hon'ble Allahabad High Court observed:

“.....One stipulation is inescapable that unless the National Capital Region Planning Board gives the green signal nothing can go ahead. The necessary implication of this is also that at every stage in reference to the plans, aforesaid, constituent State a part of the National Capital Region Plan has to keep a close consultation with, the federal agency which is the Board.....”

“.....Thus, to permit aspects, in context, to be examined by the Board, the Court adjourns these proceedings for a period of two months to enable the Board to approve, review, consult, affirm or confirm the plans which are the subject-matters of these writ petitions in total freedom notwithstanding that a notification has been issued for acquisition of land by the State of Uttar Pradesh or for that matter that

these proceedings are pending before the High Court. The only guidance which this Court gives to the Board is to give effect to the intentions of the Act co231 coordinating, monitoring and scrutinising the implementation of the plans and for harmoniously building urban planning with excellence without disturbing the ecological balance of nature and by respecting the green cover, agriculture and not abdicating either in favour of urbanisation but with a dedicated effort to respect the forests and strive to retain the balance of nature and ecology and at every given occasion not loosing the perspective in so far as the Board it concerned in these matters, of the fundamental duties as enshrined in Article 51A (g) (h) and (j) read with 48A of the Constitution of India....."

At this juncture, it is also relevant to consider the relevant paragraph which has been referred to by Shri Ravindra Kumar, learned counsel appearing for the authority claiming that the land use according to the Master Plan is in the domain of the Authority itself which have been left free in this regard.

Paragraphs 17.5 and 17.5.1 (a) which are relevant are quoted below:

"**17.5 ZONING REGULATIONS**

Keeping in view rapid urbanisation, environmental degradation and to ensure orderly development in the region, a legislative tool in the form of Zoning Regulation is required. In view of this, four broad zones have been identified for application of strict land use control ad development and enabling preparation for detailed Plans such as Sub-regional/Master/Local Area Plans. The elaboration of the land use details and zoning regulations would be incorporated in the Sub-regional Plans ad Mas/Development Plans by the respective State Governments. Four broad zones and major activities/uses permitted in these zones are given below:

17.5.1 Controlled/Development/Regulated Zone

(a) Urbanisable Areas (including existing builtup/urban areas)

Within the urbanisable area proposed in the Master/Development Plan of the respective town, the functions and uses designated as under be continued:

i)Residential

ii) Commercial

iii) Industrial

iv) Government offices, public and semi-public

v) Recreational

vi) Utility Services

vii) Transport and communications

viii) Open spaces, parks and playgrounds

ix) Graveyards/cemeteries and burning ghats

x) Man-made heritage areas

xi) Natural heritage areas/eco-sensitive areas/conservation areas

The local authority according to the prescribes uses in the Master/Development Plans will govern detailed land uses within the urbanisable area. The Master/Development Plans of all the towns will be prepared within the framework of the Regional Plan-2021 and Sub-regional Plans. In case any amendment is required in the acts to implement the policies of Regional Plan-2021 that be done by the respective State Governments appropriately".

The Regional Plan-2021 approved and notified on 17.9.2005 contains provision for keeping strict control over the land use. Paragraph 17.5.1 which has been referred to by Shri Ravindra Kumar, cannot be read to mean that with regard to land uses in the area the Authority/State Government is free to fix land use, the land uses have to be in accordance with the Regional Plan and Sub-Regional Plan. Thus, the submission of Shri Ravindra Kumar, that the authority is free to determine and change the land uses within the development area cannot be accepted.

At this juncture, it is necessary to refer to the judgment of the Apex court in **Ghaziabad Development Authority Vs. Delhi Auto and General Finance Private Ltd, (1994) 4 SCC 42.**

In the aforesaid case, the master plan was prepared by the GDA under the U.P. Urban Planning and Development Act, 1973 in which land uses of the area in question was recreational. The said land uses was changed by the GDA as 'residential' at the instance of the State Government. Subsequently, within a short span of time it was again changed as recreational. The respondents Delhi Auto and General Finance Ltd, had submitted a plan which was rejected by the GDA. Writ petitions were filed in the High Court claiming that the rejection was arbitrary. The High Court allowed the writ petition filed by the respondents. Against the order of the GDA an appeal was filed before the Apex Court. In the above context the provisions of the NCRPB Act, 1985 came up for consideration before the Apex Court. In the Master Plan which was approved by the NCR Board, the land uses was recreational. The Supreme Court in the aforesaid context stated that the change of land uses from recreational to residential cannot confer any right. It was further held that each participating State is under obligation to prepare Sub-Regional Plan and is responsible to implement the Sub-Regional Plan.

Following was laid down in paragraph 16 which is quoted below:

“16. The four villages in question in which the lands of Delhi Auto and Maha Maya are situate form part of the U.P. Sub-Region of the National Capital Region. In the Master Plan of 1986 operative till 2001 A.D.(An-nexure I) the lands of Delhi Auto and Maha Maya are included in the area set apart for 'recreational' use only. On this basis the Regional Plan was prepared and approved under the NCR Act on 3.11.1988 and finally published thereunder on 23.1.1989 according to which the area in question was set apart for 'recreational' use only. Admittedly no change in this Regional Plan to alter the land use of that area to 'residential' purpose was made any time thereafter in accordance with the provisions of NCR Act. The overriding effect of the NCR Act by virtue of Section 27 therein and the prohibition against violation of Regional Plan contained in Section 29 of the Act, totally excludes the land use of that area for any purpose inconsistent with that shown in

the published Regional Plan. Obviously, the permissible land use according to the published Regional Plan in operation throughout, of the area in question, was only 'recreational' and not residential since no change was ever made in the published Regional Plan of the original land use shown therein as 'recreational'. This being the situation by virtue of the overriding effect of the provisions of NCR Act, the amendment of land use in the Master Plan under U.P. Act from 'recreational' to 'residential' at an intermediate stage, which is the main foundation of the respondents' claim, cannot confer any enforceable right in them. However, if the first amendment in the Master Plan under the U.P. Act altering the land use for the area from 'recreational' to 'residential' be valid, so also is the next amendment reverting to the original land use, i.e., recreational'. Intervening facts relating to the private colonisers described as planning commitments, investments, and legitimate expectations do not have the effect of inhibiting the exercise of statutory power under the U.P. Act which is in consonance with the provisions of the NCR Act, which also has overriding effect and lays down the obligation to each participating State to prepare a Sub-Regional Plan to elaborate the Regional Plan at the Sub-Regional level and holds the concerned State responsible for the implementation of the Sub-Regional Plan. The original land use of the area shown as 'recreational' at the time of approval and publication of the Regional Plan under the NCR Act having remained unaltered thereafter, that alone is sufficient to negative the claim of Delhi Auto and Maha Maya for permission to make an inconsistent land user within that area."

As noticed above, in the Supplementary Affidavit which was filed by the Authority in pursuance of the direction of this Court to explain its stand under the 1985, Act in which the fact mentioned was that 2021-Plan has been submitted to the Board and certain minor suggestions of the of the Board which do not relate to land use were incorporated. In this context, it is also useful to refer to the pleading of the Authority in **Writ Petition No.57032/2009, Manaktala Chemical (Private) Ltd. Vs. State of U.P.and Ors.**

As noticed above, in the aforesaid writ petition there was a specific pleading that no approval has been obtained from the Board.

In paragraph 12 of the counter affidavit filed by the Authority following was observed which is quoted below:

“12. That the contents of Para 24 of the writ petition are not admitted hence specifically denied. It is submitted that the National Capital Regional Planning Board Act, 1985 (hereafter referred to as the Act 1985) does not prohibit the acquisition before its permission for acquisition. There is no provision in the Act 1985, which requires that if the State Government acquires the land prior permission should be taken. Both the Acts 1985 and 1894 operate in different fields. the Act 1894 is not dependant upon the Act 1985. The acquisition proceedings will not be vitiated if prior approval of the Board under the Act 1985 has not been taken before the acquisition. Any development on the land acquired will have to be done in accordance with law. However The notification has been issued under the Land Acquisition Act, 1894. The National Capital Region Planning Board Act 1985 does not prohibit, the acquisition of land. Nor any permission is required for acquisition of land. The National Capital Region Planning Board Act 1985 is to give suggestions and observations on the Master Plan, Sub regional plan, which are incorporated by the Greater Noida Authority from time to time according to the Drafted Master Plan. It is further clarified, the Section 19 of the Act 1985, clearly shows that is for regarding the observations and suggestions. The paper clip and relevant documents showing the letters and correspondence with the National Capital Region Planning Board is collectively being marked as **Annexure CA-2** to this Counter Affidavit.”

In the aforesaid counter affidavit, the Authority itself has brought on record the letter dated 09/5/2007 of the National Capital Region Planning Board in context of draft of Greater Noida Master Plan 2021. In the said letter following was directed:

“To

Ms. Rekha Devyani

General Manager (Planning)

Greater Noida Industrial Development Authority,

169, Chitvan Estate, Sector Gamma, Greator Noida

City, Distt. Gautam Budh Nagar-201308.

Madam,

Please refer to your letter No.Niyojan/MI(iv)/2007/479 dated 2.2.2007 regarding the draft Greater Noida Master Plan 2021. the point wise replies on the observations and suggestions of Planning Committee have been examined. It is observed that certain suggestions of NCRPB have not been incorporated which is enclosed.

It is requested that the suggestions of NCRPB may be incorporated in the draft Greater Noida Master Plan-2021 and revised Plan document may be sent to the Board at the earliest for consideration of Planning Committee.

Yours faithfully 9/5/07

(Rajeev Malhotra)

Chief Regional Planner"

The proceeding of 54th meeting of the Planning Committee of NCR Planning Board held on 04/9/2006, was forwarded to Greater Noida containing several observations and directions of Planning Board. In the counter affidavit letter dated 02/2/2007 has been brought on record by which a request was made on behalf of the Greater Noida Authority that observations have been incorporated and on the basis of the amendment as approved on 21/12/2006, by the Authority approval of Board be obtained. In none of the pleadings on behalf of the authority any subsequent event has been referred to or dealt with. The original proceedings which were submitted by the Authority for our perusal contains the developments which took place subsequent to 09/2/2007, which we have noticed from the original records submitted by the Authority itself. Following facts emerged from the original records:

25/10/2007-Additional Chief Executive Officer of the Greater Noida wrote to the State Government that amendments have been incorporated in Draft Master Plan

2021 in Board Meeting 21/8/2007 which after approval be forwarded to N.C.R.P Board for approval.

14/1/2008- Board requested the Greater Noida Authority for finalisation of Master Plan for Phase-II.

14/2/2009-N.C.R.P. Board wrote to Greater Noida to send Master Plan for Phase II and updated proposed Land use plan 2021 be sent to Board.

13/5/2009-Board wrote to the Greater Noida that inspite of several reminders, no response has been received from Greater Noida with regard to Draft Master Plan-2021. (Phase II).

27/5/2009-State Government forwarded the letter of the Board dated 13/5/2009, to the Chief Executive Officer, Greater Noida for compliance.

16/6/2009-The State Government wrote to the Board forwarding letter dated 21/5/2009 of the Greater Noida Authority for examining the amendments passed in 76th meeting and to include in the Master Plan 2021.

25/6/2009-Board again wrote to the Greater Noida to submit all details with regard to change of land use as taken in the 76th Board meeting along with all details necessity of change of land use to the Board.

29/12/2009-Meeting of the Planning Committee was held in which the draft master plan for Greater Noida 2021 and following conclusion was recorded by the Board. “After detailed deliberation, it was decided that the Commissioner, NCR Cell, U.P. will interact with the Greater Noida Authority and ensure that the observations of the Planning Committee are incorporated in the draft master plan for Greater Noida Phase-I and Phase-II before submitting the master Plan to the NCR Planning Board for consideration”.

06/8/2010-The Divisional Commissioner NCR Planning Board and Monitoring Cell as well as the Chief Executive Officer of the Greater Noida Industrial Development were requested to submit status preparation of draft master plan for Greater Noida-2021 and incorporation of the observations of the Planning Committee may

be intimated to the NCR Planning board.

26/5/2011-The State Government wrote to Chief Co-ordinate Planner NCR Planning Board, Ghaziabad forwarding the letter dated 08/4/2011, to incorporate the proposed amendment in the Master Plan 2021 which may be included in the Master Plan of the Greater Noida-2021.

09/6/2011-The Board wrote to the State Government referring to its earlier letter dated 11/8/2010, to take further steps towards incorporation of observations of Board dated 04/9/2006.

17/6/2011-The State Government wrote to Greater Noida to take appropriate action as per letter dated 09/6/2011 of N.C.R.P. Board. From the aforesaid facts, as is revealed from the original records submitted by the Authority it is clear that the draft Master Plan 2021 of the Greater Noida has not yet received clearance from the board.

We, however, are constraint to observe that in spite of our order to the Authority passed on 14/9/2011, to file affidavit giving details pertaining to NCRPB Act, 1985, in the Supplementary Affidavit dated 20/9/2011, all above mentioned facts were concealed from the Court which the original records have revealed. The issue pertaining to compliance of NCRPB Act, 1985 being germane and relevant, the Noida Authority was obliged to place all relevant facts before the Court. Concealment of facts by the Authority is with the intent and object to cover its lapses and to conceal the fact that its Master Plan 2021 has not yet been cleared by N.C.R.P. Board. In the counter affidavit the Authority has come up with the case that according to Master Plan 2021, it has carried out developments. Petitioners have also stated in their affidavit and pleadings that the authority has made allotment to various builders after effecting land use changes. The magnitude to which the land use which was earlier proposed in the Master Plan 2021 and has been changed by the Authority subsequent to the approval of the said Master Plan by the Authority is clearly depicted in the letter dated 30/3/2010 of the State Government by which the State Government has accorded approval to the change of land use as prayed for by the Authority.

Letter dated 30/3/2010, has not been brought on record by the Authority but has been brought on record in the intervention application filed on behalf of the Developers Association. A perusal of the said letter indicates that 900 Hectares of land which was earlier marked as industrial was changed and out of 900 Hectares of land 608.94 Hectares of land has been converted for residential purposes, the various land uses which were for recreation/green area were also changed. The issue is not that the Authority cannot recommend any change in its proposed Master Plan or its land use , but the question is as to whether the said change in land use is in accordance with the regional Plan and Functional plan of the Board which issue is to be examined by the Board and unless the Board gives clearance and approves such changes, the Authority cannot proceed with the development of land or allotment of land to various private persons and companies.

In the present case, although the draft Master Plan-2021 prepared by Greater Noida Authority is yet to be cleared by the Board, but the Authority is proceeding to carry on development including allotments and creating 3rd Party rights which is nothing but a brazen act of the Authority in complete violation of the provisions of the NCRPB Act, 1985.

The sequence of events suggests that the Authority is not acting bonafide and has been acting to achieve certain ulterior motives and objects which are not far to seek.

We have already noticed that the Division Bench of this Court in **Ravindra Singh's** case (supra) has already directed the State Government to appoint an Officer of the rank of Secretary to the Government to inquire and ensure conforming uses of the National Capital Region and they are given their due sanctity.

There does not appear to have any serious deliberation at the State Level to find out whether the changes in the land uses as proposed by the Authority are in conformity with the NCRPB Act, 1985.

The State as well as the Authority and interveners have made much emphasis on the submission that the change of land use was subsequent to acquisition, the

allotment to various private parties/companies were much after acquisition which shall have no effect on the acquisition of land and the relevant time is the date of issue of notification under Section 4 read with Sections 17(1) and 17(4) and Section 6 of the Act, 1894. We are of the view that since the allegations of the petitioners are that the Authority is proceeding with the land acquisition malafide without their being any genuine urgency or need for land and there is colourable exercise of power, the said facts even though are subsequent to the land acquisition notifications under Sections 4 and 6 are relevant. Thus the submission of the respondents that subsequent events have no bearing has to be rejected.

The Apex Court in a recent judgment in **Devender Kumar Tyagi and Ors. Vs. State of U.P. and Ors, 2011 (8) ADJ 173,** had an occasion to consider the provisions of the NCRPB Act, 1985 in context of Land Acquisition. In the aforesaid case, notification issued under Sections 4 and 6 of the Act, were challenged by the land owners and one of the ground taken was that the land which was acquired for planned development of the Leather City Project did not have approval of the Board under Section 19, hence the acquisition was liable to be struck down on the said ground also. In the said case the the Board has issued draft Sub-Regional Plan whereas the leather city project was not mentioned. The Authority in that case made several request to the Board to include the leather city project, but no reply was given approving the request. In the said context the acquisition was held to be vitiated. Paragraphs 20 and 23 are relevant which are quoted below:

“20. Admittedly, the Respondents had not obtained the approval of the NCRPB for construction of the Leather City Project as Sub-regional plan in terms of Section 19(2) of the NCRPB Act. The purpose or aim of the NCRPB Act is to provide for co-ordinated, harmonized and common plan development of the National Capital Region at the central level in order to avoid haphazard development of infrastructure and land uses in the said region, which includes the district of Ghaziabad in the Uttar Pradesh. Under this Act, the NCRPB has been constituted with the Union Minister for Urban Development as the Chairperson and the Chief Ministers of Haryana, Rajasthan and Uttar Pradesh and Lt. Governor of Delhi as its members in order to undertake the task of development of the National Capital Region. The object of the NCRPB is to prepare, modify, revise and review a

regional and functional plan for the development of said region and, further, to co-ordinate and monitor its implementation. Section 19(1) mandates the State government or Union Territory to submit their sub-regional plan to the NCRPB for examination in order to ensure that it is in conformity with the regional plan. Once the NCRPB affirms the conformity of the said plan with regional plan, only then the State government can finalize it. Thereafter, the State Government is entitled to implement the Subregional plan by virtue of Section 20 of the NCRPB Act. In M.C. Mehta v. Union of India : (2004) 6 SCC 588, this Court has discussed the purpose and overriding effect of the NRCPB Act thus:

27. The National Capital Region Planning Board Act, 1985 (for short "the NCR Act") was enacted to provide for the constitution of a Planning Board for the preparation of a plan for the development of the National Capital Region and for coordinating and monitoring the implementation of such plan and for evolving harmonised policies for the control of land uses and development of infrastructure in the National Capital Region so as to avoid any haphazard development of that region and for matters connected therewith or incidental thereto. The areas within the National Capital Region are specified in the Schedule to the NCR Act. The National Capital Region comprises the area of entire Delhi, certain districts of Haryana, Uttar Pradesh and Rajasthan as provided in the Schedule. "Regional plan" as provided in Section 2(j) means the plan prepared under the NCR Act for development of the National Capital Region and for the control of land uses and the development of infrastructure in the National Capital Region. What the regional plan shall contain is provided in Section 10. Section 10(2) provides that the regional plan shall indicate the manner in which the land in the National Capital Region shall be used, whether by carrying out development thereon or by conservation or otherwise, and such other matters as are likely to have any important influence on the development of the National Capital Region....

28. Section 27 provides that the provisions of the NCR Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the NCR Act; or in any decree or order of any court, tribunal or other authority.

23. In the facts and circumstances of the present case, the Respondents, vide its resolution dated 19.04.2005, had authorized the NCRPB to prepare Sub-regional plan of construction of the Leather City Project at Hapur in the district of Ghaziabad for the HPDA. Subsequently, the NCRPB issued a draft Sub-regional plan, wherein the Leather City Project was not mentioned. The Respondents had made several requests to NCRPB to include Leather City Project but No. reply granting approval has come in terms of Section 19(2) of the NCRPB Act. Section 19 of the NCRPB Act contemplates the grant of approval by the NRCPB, and finalization by the State Government, of the Sub-Regional Plan if it is in consonance and consistent with the Regional Plan for the National Capital Region. Furthermore, Section 29 of the NCRPB Act contemplates that the State Government shall not undertake any development activity, which is inconsistent with the Regional Plan for the National Capital Regional. Also, Section 27 of the NCRPB Act has overriding effect on any other inconsistent law or instrument. The overall scheme of the NCRPB Act contemplates common plan, coordination and harmony in the formulation of policy of land uses and development of infrastructure in the National Capital Region. Therefore, in our opinion, the acquisition of land in the absence of express approval in terms of Section 19 and operation of Section 27 of the LA Act renders the entire acquisition proceedings illegal and hence vitiated."

Shri Ravindra Kumar, learned counsel appearing for the Authority sought to distinguish the above judgment stating that the Authority in the said case had passed a resolution authorising the NCRP Board to prepare the Sub-Regional Plan for construction of Leather Project at Hapur, hence the said case is distinguishable since in the present case Greater Noida Authority has not passed any such resolution. The above submission is misconceived. The preparation of "Sub-Regional Plan and approval by the NCRP Board is not at the option of the Authority, rather it is the obligation under the Statute. More so, from the facts as noticed above, it is clear that the Authority vide its resolution approving the various amendment in the draft Master Plan-2021 and the State Government through its letters as noted above had requested the NCRP Board to grant approval to draft Master Plan-2021 as amended and the State Government after approving proposed amendments had forwarded the draft Master Plan 2021 sent by Greater

Noida Authority to the N.C.R.P. Board for its inclusion in the Master Plan 2021, which is clearly a request for approval of Master Plan 2021. Thus, the distinction as drawn by Shri Ravindra Kumar, learned counsel for the Authority is non-existent. Furthermore, when the Authority and the State Government are forwarding Draft Master Plan 2021 to the N.C.R.P. Board for approval and subsequently again forwarded the Master Plan 2021 after incorporating amendments pertaining to land use to the N.C.R.P. Board for approval as noted above, it is not open for the Authority to contend before us that the Master Plan 2021 framed by it needs no approval from N.C.R.P. Board. Now, the provisions of Section 40 of the NCRPB Act,1985 needs to be considered.

Section 40 of the NCRPB Act, 1985 provides that Acquisition of land shall be made by the Government of the concerned participating State where necessary to give effect to any Regional Plan, Functional Plan, Sub-Regional Plan or Project Plan.

Section 40 of the NCRPB Act, 1985 has to be interpreted in a manner so as to promote the object of the Act. When the land use in the NCR Region is controlled by various plans as contemplated by the NCRPB Act, 1985 the acquisition of land has also to be in line and conformity with the aforesaid Act, 1985. This can be illustrated by giving a small example i.e. supposing an area in the NCR is reserved for agricultural use and actual agricultural is taking place in the said area, any exercise by the Authority to acquire land for residential purpose shall be simply prohibited. The Authority in the present cases have indiscriminately proceeded to acquire the land in the name of Planned Industrial Development. In event where agriculture is the reserved purpose acquiring the land of the agriculturist shall be with no object since the Authority itself shall not carry on agriculture and there shall be no purpose to create hindrance in the right of the agriculturists to carry on their agriculture in the said area.

At this juncture, it is also to be noted that in the Regional Plan-2021, the NCRP Board has expressed concern and alarm on conversion of agricultural land to other uses indiscriminately. The Board in paragraph 17.3.1. has noticed large scale conversion of agricultural land to nonagricultural land. It is useful to quote

paragraph 17.3.1:

“**17.3.1. Large-scale Conversion of Agricultural Land to Non-Agricultural Use.**

The land use analysis indicates that from 1986 to 1999, the land under agriculture shrank by 8.12% i.e., from 87.64% to 79.52%. This drop of 8.12% is considerable when compared with the proposed drop of only 3.8% (87.64% to 83.84%) stated in Regional Plan-2001. This has resulted not only into over-conversion of agriculture into non-agriculture land but also non-conformity with the proposed settlement pattern of the Regional Plan-2001.”

Section 40 of the NCRPB Act, 1985 as noticed above has to be given some meaning and purpose. Section 40 of the Act, 1985 has to be read as a precondition for participating State to acquire the land, condition being that acquisition be made in NCR only to give effect to any regional, functional plan, sub-regional plan or project plan framed under the 1985 Act.

Learned counsel for the petitioners submitted that according to the judgments of the Apex Court in **Aflatoon and Ors. Vs. Lt. Governor of Delhi and Ors., (1975) 4 SCC 285 and Bhagat Singh Vs. State of U.P. and Ors, (1999) 2 SCC 384,** even if there is no plan prepared or the land use as per the existing plan is different there is no restraint on the Authority to acquire the land.

It is useful to quote paragraph 23 of the judgment in the case **Aflatoon and Ors**. (supra) :

“23. The planned development of Delhi had been decided upon by the Govt. before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see the decision in Patna Improvement Trust v. Smt. Lakshmi Devi). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Govt. from acquiring the

land for planned development under the Acts. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property-, acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in sec. 12(3). The Central Govt. could acquire any property under the Act and develop it after Obtaining the approval of the local authority. As already held the appellants and the writ petitioners cannot be allowed to challenge the validity of notification under Section 4 on the ground of laches and acquiescence. The plea that the Chief Commissioner of Delhi had no authority to initiate the proceedings for acquisition by issuing the notification under Section 4 of the Act as Section 15 of the Delhi Development Act gives that power only to the Central Govt. relates primarily to the validity of the notification. Even assuming that the Chief Commissioner was not so authorized, since the appellants and the writ petitioners are precluded by their laches and acquiescence from questioning the, notification, the plea must be negatived and we do so."

It is useful to quote paragraphs 19 and 20 of the **Bhagat Singh's case** (supra):

"19. The next question relates to the contention of the appellants that under the Master Plan for Agra City, the land of the appellants which is proposed for acquisition is in an area where the permitted use is for 'light industries' and therefore it will not be permissible to use the acquired land for purposes of a market Yard. It is pointed out that, in fact, later on the permitted use was modified and the land is now shown as 'green belt'. On the other hand, it is submitted for the respondents that if the land is proved to have been acquired for a valid public purpose, then the beneficiary of the land acquisition can later on move the authority concerned for change of land use.

20. An analogous issue arose in the case Aflatoon v. Lt. Governor of Delhi. In that case a notification was issued Under Section 4(1) of the Act for acquisition of a vast extent of land for the planned development of Delhi. The said acquisition was questioned. On of the contentions was that for such a purpose, development, action had to be taken only under the Delhi Development Act, 1957 and that too by the Chief Commissioner of Delhi under that Act and not by the Central

Government under the Land Acquisition Act. It was there argued that inasmuch as there was no Master Plan nor Zonal Plan in existence on the date of notification, the acquisition was bad. This Court rejected objection raised by the owners and observed, after referring to Sections 12 and 15 of the Delhi Development Act. 1957, as follows (para 23):

"23. The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of the Delhi Development Act after that Act came into force but there is no inhibition in acquiring land for planned development of Delhi under the act before the Master Plan was ready. (See the decision in Patna Improvement Trust v. Smt. Lakshmi Devi, [1963] Suppl. 2 SCR 312). In Other Words, the fact that actual development is permissible in an area other than a development area with the approval of sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development."

This Court observed :(para 23)

"For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. "

There cannot be any dispute to the proposition as laid down by the Apex Curt in the aforesaid cases. It is however, relevant to note that when the case of **Aflatoon** was delivered the NCRPB Act, 1985 was not enacted and in the case **Bhagat Singh's case** (supra) also the Court had no occasion to consider Section 40 of the NCRPB Act, 1985. Even if it is accepted that there is no prohibition on the right of the State to acquire the land for planned industrial development, in N.C.R. the proceeding of acquisition has to take place keeping in view the purpose and object of Section 40 of the Act, 1985. The Division Bench judgment in **Natthi's** case

(supra) (in which one of us Ashok Bhushan,J was also a party) although observed that the provisions of the 1985 Act does not require any prior approval by the Board but the earlier Division Bench judgment in **Ravindra Kumar's** case (supra), which had categorically held that without clearance from Board the Authority cannot proceed with the matter, was not brought into the notice of the Division Bench nor had been referred to. The view taken by Division Bench judgment in **Natthi's** case that no approval is required of N.C.R.P. Board cannot be approved, in view of our observations and discussion as made above. Another Division Bench of this Court had considered the issue as to whether the Master Plan 2021 of the Greater NOIDA had approval of the Board under the 1985 Act in the case of **Sri Ram Chaudhary etc. vs. M/s Technology Park and others** reported in 2010(7) ADJ 172. In the said case acquisition was also challenged pertaining of a village of Greater NOIDA, which was initiated by Section 4 notification dated 10th April, 2006 and Section 6 notification dated 30th November, 2008. One of the issues raised was that Master Plan 2021 of Greater NOIDA (which is being relief by the respondents in the present bunch of writ petitions) had not been approved by the Board.

The Division Bench noted following in paragraph 136 of the said judgment, which is quoted below:-

"**136.** By citing all these sections Mr. Shashi Nandan has contended before this Court that let the records be produced by the authority to show that the Master Plan-2021 has been approved by the National Capital Region Planning Board but the respondents authority in spite of bringing the record failed to establish before the Court that the Master Plan-2021 is approved by the National Capital Region Planning Board."

In view of the foregoing discussion we are of the view that no clearance has yet been obtained by the Authority to its draft Master Plan for Greater Noida-2021 and steps taken by the Authority towards the acquisition of land as well as carrying on development activities including the creation of third party rights were not in conformity with the NCRPB Act, 1985. We are also of the considered view that the Authority has acted in a manner which is nothing but a deliberate violation of the

NCRPB Act, 1985 and in spite of the directions given by this Court in the the case of Ravindra Singh (supra) on 01/10/1996 that an Officer at the level of Secretary of the Government should enquire conforming uses of land according to the NCRPB Act, 1985 no serious efforts have been taken by the State. We are of the view that a thorough inquiry is necessary in the whole exercise undertaken by the Greater Noida by the Officers of the highest level at the State Government. We direct the Chief Secretary of the State to appoint officers not below the level of Principal Secretary (except the officers of Industrial Development Department who has dealt with the relevant files) to conduct a thorough inquiry regarding the acts of Greater Noida in proceeding to implement Plan 2021 without approval of N.C.R.P. Board and decisions taken to change the land use and builders' allotments made as well as indiscriminate proposals for acquisition of land and take an appropriate action in the matter. We are further of the view that Greater Noida Authority cannot proceed to implement Master Plan 2021 till it is permitted by N.C.R.P. Board. Greater Noida Authority shall ensure that no development by it or by its allottees be undertaken as per draft Master Plan 2021 till the same receives clearance by N.C.R.P. Board. We make it clear that it shall be open to carry on developments by Authority and its allottees as per earlier plan approved by N.C.R.P. Board.

5. Invocation of Urgency Clause under Section 17(1) and 17(4):

One of the main ground of attack to the notifications issued under Section 4 read with Sections 17(1) and 17(4) in almost all the writ petitions is that the State Government in routine manner without there being any urgency invoked Section 17(4) of the Act dispensing with the inquiry under Section 5A of the Act. It is further submitted that the acquisition of land which was alleged to be planned industrial development in district Gautam Budh Nagar was not such a matter which required invocation of Section 17(4). The submission of learned counsel for the petitioners is that the provisions of Section 5A is mandatory and embodies a just and wholesome principle that a person whose property is being or is intended to be acquired should have an occasion to pursue the authority concerned that his property be not touched for acquisition. In the main writ petition (Gajraj and others vs. State of U.P. and others) specific pleadings have been made taking the aforesaid ground. It is useful to refer to paragraphs 9, 11, 12, 14, 20 and 26 of the

main writ petition, which are as under:-

“**9.** That, the said notification under Section 4 of the Act issued by the respondent no.1 without application of mind and there was no urgency in the acquisition of land for the planned industrial development on the ground of which the respondent invoked Section 17(1) and 4 of the Act by dispensing with an enquiry under Section 5A of the Act. The respondents in order to fulfil their political obligations/promise to the private builders have dispensed with the enquiry under Section 5A of the Act as well as overlooked the Master Plan concerned.

11. That, there is no acute scarcity of land and there is not a very heavy pressure/demand of land for public purpose in question. The engineers and other subordinate staff for carrying out the scheme have neither been appointed nor any advertisement for the such appointment has been made till the date. Neither any inquiry on the spot has been conducted nor any survey of the plots sought to be acquired has been got done and thus it transpires that there was no material before the State Government to make an opinion to direct that the provisions of Section 5-A shall not apply in the facts and circumstances of the present impugned notification under Section 4(1) read with Section 17(1) as well as under subsection (4) of Section 17 of Land Acquisition Act. Notification No.664/77-3-08-86Arjan/08 Lucknow dated 12.03.2008 and there was no application of mind by State Government.

12. That, it is relevant to mention here that excluding the enquiry under Section 5-A can only be an exception where the urgency cannot brook any delay. The enquiry provides an opportunity to the owner of land to convince the authorities concerned that the land in question is not suitable for purpose for which it is sought to be acquired or the same sought to be acquired for the collateral purposes. It is pertinent to mention here that the respondents No.1 without the application of mind dispensed with the enquiry on the ground of urgency invoking the power conferred by Section 17(1) or (2) of the Act. Further, the respondent no.1 without application of mind did not consider the survey report of the village aforesaid.

14. That, the respondents acquired the land for the public purpose, namely for the "Planned Industrial Development in District Gautam Budh Nagar through Greater Noida" and on another hand they transferred the some acquired area to the private builders for construction and sale and in the May, 2011 the employee of the Respondents and Private Builders trying to dispossess the petitioner from his Abadi Land. A photo copy of the agreement to lease is being filed herewith and marked as ANNEXURE NO.4 to this writ petition.

20. That, it is further submitted that it is settled law that the proceedings before the Land Acquisition, Collector for filing and hearing of objections under Section 5-A is a blend of public and individual enquiry. The person interested or known to be interested in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. The provision of section 5-A is mandatory and embodies a just and wholesome principle that a person whose property is being or is intended to be acquired should have the occasion to persuade the authorities the authorities concerned that his property be not touched for acquisition. The Hon'ble Apex Court in the case of **Nandeshwar Prasad vs. U.P. Government has recognised the said right reported in AIR 1964 SC 1217** and held that right to file objections and the right to hearing under Section 5-A of the Act has been recognized as valuable right.

26. That, the impugned notification seeking to acquire the land under the Land Acquisition Act, is a colorable exercise of power and the entire exercise is based upon political considerations, which are of no legal consequences, arbitrary, illegal and infringes the fundamental rights of the petitioners as enshrined in Article 14, 19 and 300-A of the Constitution of India."

Almost similar pleadings have been made by the petitioners in all the writ petitions challenging the notifications for acquisition of their land. The submission of learned counsel for the petitioners is that alleged planned industrial development is not such a matter in which there was such extreme urgency that right of objection of the land holders required to be dispensed with. It is submitted that there has to be application of mind on the issue as to whether right of objection under Section 5A

be dispensed with and without there being application of mind to the above aspect, the invocation of Section 17(4) in a routine manner is illegal and arbitrary. It is submitted that the State Government did not apply his mind to the relevant materials and has directed for invocation of Section 17(4) which is unsustainable. It is further submitted that there was no sufficient material before the State Government on the basis of which any reasonable opinion can be formed that the matter was of such urgency that right of objection should be dispensed with. The submission has also been made that there has been pre-notification as well as postnotification delay which clearly proved that there was no such urgency as to invoke Section 17(4) of the Act. In the main writ petition, learned counsel for the petitioners submitted that the fact that land was allotted to various private builders for construction of multi-storey building and group housing flats in the year 2010 clearly proved that there was no such urgency which required invocation of Section 17(4). The petitioners have filed copy of one of the leases dated 31st March, 2010 granted to one Supertech Limited by which Group Housing Plot No.GH-08 area 2,04,000 square meters was allotted for residential/large housing plots.

The submission made by counsel for the petitioners has been refuted by learned counsel for the State as well as learned counsel for the GNOIDA. It is submitted by learned Senior Counsel for the State that there was sufficient materials before the State Government to form an opinion that it was a fit case where direction under Section 17(4) was required to be issued. It is submitted that opinion formed by the State Government under Section 17(4) of the Act is subjective opinion which can be challenged only on the ground of malafide and there being no allegation of malafide against the State, the subjective opinion formed by the State under Section 17(4) cannot be challenged. It is submitted that insofar as the allotment made to the builders in 2010 is concerned, the said fact is wholly irrelevant for the purposes of formation of opinion of the State Government at the relevant time since the above event is a subsequent event which could not have been taken into consideration at the relevant time. On any subsequent event subjective satisfaction of the State arrived at the relevant time can neither be faulted with nor can be challenged. It is submitted that pre-notification delay and post-notification delay cannot be a basis for invalidating the notification. It is submitted that delay

caused by lethargic officials has been held to be not relevant for determining as to whether there was urgency or not at the relevant time. The delay in taking steps itself accelerate the urgency. Learned counsel for the respondents submits that notifications issued under Section 4 read with Sections 17(1) and 17(4) of the Act cannot be faulted and the challenge made by the petitioners to the said notifications deserves to be rejected. Learned counsel for interveners repeated the same submissions. Learned counsel for the parties have referred to and relied on various decisions of the Apex Court as well as this Court which shall be referred to hereinafter while considering the submission in detail. For appreciating the above issue, it is sufficient to refer to the notifications in the main writ petition and the original records perused by us of village concerned. All the notifications which are under challenge, are similarly worded except the area and the village. Section 4 notification dated 12th March, 2004, which is under challenge in the main writ petition, is to the following effect:-

“No.664/LXXVII-3-08-86 Arjan.-08

Dated Lucknow, March 12, 2008

Under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (Act no.1 of 1894), the Governor is pleased to notify for general information that the land mentioned in the Schedule below, is needed for a public purpose namely for the planned industrial development in district Gautambudh Nagar through Greater Noida Industrial Development Authority.

2. The Governor, being of the opinion that the provisions of sub-section (1) of section 17 of the said Act, are applicable to said land inasmuch as the said land is urgently required, for the planned industrial development in district Gautambudh Nagar through Greater Noida Industrial Development Authority and it is as well necessary to eliminate the delay likely to be caused by an inquiry under section 5-A of the said Act, the Governor is further pleased to direct under sub-section (4) of Section 17 of the said Act that the provision of section 5-A of the said Act shall not apply.”

Before we proceed to consider pleadings in the main writ petition and the materials brought before the Court including the original records, it is necessary to refer to relevant principles which have been laid down by the Apex Court on interpretation of Sections 17(1) and 17(4) of the Act, which principles can thereafter be applied in the facts of the present case. The Land Acquisition Act, 1894 initially did not provide for any opportunity to land holders to file objection against the acquisition of their land. Eminent domain is a right recognised and accepted in every sovereign to take appropriate property belonging to citizens for public use. The sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without owner's consent provided that such assertion is on account of public exigency and for public good. Section 5A of the Act providing for filing objection by any person interested in any land was inserted in the Act by Act No.XXXVII of 1923. The scheme of the Act provides that after issue of a preliminary notification under Section 4 any person interested in the land, within 30 days from the date of publication of the notification, object to the notification. By U.P. Act No.XXII of 1954 the period of 30 days has been substituted by 21 days. Every objection under Section 5A made to the Collector is considered by giving an opportunity to the objector of being heard and thereafter a report is submitted to the appropriate Government containing recommendation. The competent authority after considering the report, if any, if satisfied that any particular land is needed for public purpose, may issue declaration under Section 6 of the Act after which declaration land is required to be marked and measured and thereafter a notice is issued by the Collector inviting claims to compensation from all interested persons. After hearing the objection inquiry is made by the Collector and award is given under Section 11 and thereafter under Section 16 of the Act, after the Collector has made the award, he may take possession of the land which thereupon vest in the Government free from all encumbrances. The exception to the aforesaid general scheme is provided in Section 17 of the Act. Section 17 of the Act contains special power in cases of urgency. Section 17(1) provides that in cases of urgency whenever the appropriate Government directs the Collector, though no award has been made, to take possession of any land on expiration of 15 days from publication of the notice. Section 17(2) of the Act enumerates emergent situation which requires taking of possession of any land

like owing to any sudden change in the channel of any navigable river or other unforeseen emergency. Under the said section the Collector is empowered to take possession immediately after publication of notice with the previous sanction of the appropriate Government provided the occupier is given at least 48 hours notice. Section 17(4) of the Act provides that in case any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) and sub-section (2) are applicable, the Government may direct that provisions of Section 5A shall not apply. Section 17(1), 17(2) and 17(4) of the Act, which are relevant, are quoted below:-

"**17. Special powers in case of urgency**. -

(1) In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, subsection (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from

such building without unnecessary inconvenience.

(3) .....

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

It is relevant to note at this stage that prior to amendments made in Section 17 of the Act by Act No.LXVIII of 1984 the power under Section 17(1) could have been exercised only for waste and arable land. By U.P. Act No.XXII of 1954 after Section 17(1), Section (1-A) has been added, which is to the following effect:-

"**17(1-A)**. The power to take possession under sub-section (1) may also be exercised in the case of land other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development."

By U.P. Act No.I of 1966 in sub-section (4) of Section 17 of the Act sub-section (1-A) was also substituted. The submission, which has been much pressed by the learned counsel for the petitioners is regarding invocation of Section 17(4) dispensing with the inquiry under Section 5-A. The question to be considered is as to whether in facts of the present case dispensation of inquiry under Section 5A was valid or not. The opinion of the State Government to be formed under Section 17(4) is based on subjective satisfaction. Whether such subjective satisfaction is subject to judicial review is the scope of inquiry in these cases. There has been several judgments of the Apex Court in which ambit and scope of Section 17(4) came for consideration, which shall hereinafter be considered. The first judgment of the Apex Court which need to be noted is in the case of **Raja Anand Brahma Shah vs State Of Uttar Pradesh** reported in AIR 1967 SC 1081 = 1967(1) SCR 373. In the aforesaid case notification under Section 4(1) of the Act was issued for acquisition of 409.6 acres of land for limestone quarry. The notification provided

that the case being one of urgency, the provisions of sub-section (1) of Section 17 of the Act applied and it was therefore directed that provisions of Section 5A would not apply to the land. The declaration under Section 6 was issued on 12th September, 1950. The possession of the land was taken by the Collector on 19th November, 1950 and the award was made by the Land Acquisition Officer on 7th January, 1952. On 2nd May, 1955 writ petition was filed in the High Court challenging the notifications taking ground that the land was not for public purpose and the acquisition proceedings were consequently without jurisdiction. It was pleaded that the State Government had no jurisdiction to apply the provisions of Section 17(1) of the Act to the land in dispute. The Apex Court in facts of the above case had occasion to consider the opinion of the State Government formed under Section 17(4) which was said to be subjective opinion. Following was laid down by the Apex Court in paragraph 8 of the said judgment:-

"8. It is true that the opinion of the State Government which is a condition for the exercise of the power under s. 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification for the opinion formed by the State Government under S. 17(4). The legal position has been explained by the Judicial Committee in King Emperor v. Shibnath Banerjee and by this Court in a recent case-Jaichand Lal Sethia v. State of West Bengal and Ors. But even though the power of the State Government has been formulated under s. 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of Law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is malafide. If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-s. (1) of s. 17 are applicable, the ,Court may legitimately draw an inference that the State Government ,did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the notification of the State Government under S. 17(4) of the Act directing that the provisions of s. 5A shall not apply to the land is ultra vires. The view that we have expressed is borne out by the decision of the Judicial Committee in Estate and Trust Agencies Ltd. v. Singapore Improvement Trust in

which a declaration made by the Improvement Trust of Singapore under S. 57 of the Singapore Improvement Ordinance 1927 that the appellants' property was in an insanitary condition and therefore liable to be demolished was challenged. Section 57 of the Ordinance stated as follows:

"57. Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary".

The Judicial Committee set aside the declaration of the Improvement Trust on two grounds; (1) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said Ordinance and therefore the declaration was liable to a challenge if the authority stepped beyond those terms and (2) that the ground on which it was made was other than the one set out in the Ordinance...."

The Apex Court in the said case laid down that opinion of the State Government formed under Section 17(4) can be challenged in court of law if it could be shown - (i) that the State Government never applied its mind to the matter and (ii) that the action of the State Government is malafide. Further it was observed that Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question in issue. The Apex Court in the aforesaid case relied upon the judgment of High Court of Australia in the cases of **R. v. Australian Stevedoring Industry Board** reported in (1952)88 C.L.R. 100 and **Ross Clunis v. Papadopovllos** reported in (1958)1 W.L.R. 546. In the said case the relevant regulations empowered the Commissioner to levy fine when the Commissioner “has reasons to believe”. It was contended on behalf of the appellant in the aforesaid case that only duty cast upon the Commissioner was to satisfy himself of the facts set out in the Regulation that the test was a subjective one and that the statement as to the satisfaction in his affidavit was a complete answer to the contention of the respondents. The aforesaid contentions were rejected by the Judicial Committee and the observations of the Judicial

Committee has been quoted with approval by the Apex Court, which are to the following effect:-

“Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts.”

The ratio which is culled out from the aforesaid case is that the opinion of the State Government under Section 17(4) can be challenged in a court of law if it could be shown- (a) that the State Government never applied its mind to the matter, (b) or that the action of the State Government was malafide, (c) or that there were no ground upon which the State Government could form such an opinion, (d) or that in forming such opinion it did not apply its mind to the relevant facts. In the aforesaid case the Apex Court held that forming of opinion under Section 17(4) was erroneous. The Apex Court laid down following in paragraphs 22 and 23 of the said judgment:-

“**22.** For the reasons already expressed we hold that the State, Government has no jurisdiction to apply the provisions of s. 17 (1) and (4) of the Act to the land in dispute and to order that the provisions of s. 5A of the Act will not apply to the land. We are further of the opinion that the State Government had no jurisdiction to order the Collector of Mirzapur to take over possession of the land under s. 17(1) of the Act. The notification dated October 4, 1950 is therefore illegal. For the same reasons the notification of the State Government under s. 6 of the Act, dated October 12, 1950 is ultra vires.

23. We accordingly hold that a writ in the nature of certiorari should be granted quashing the notification of the State Government dated October 4, 1950 by which the Governor has applied s. 17(1) and (4) to the land in dispute and directed that the provisions of s. 5A of the Act should not apply to the land. We further order that the notification of the State Government dated October 12, 1950 under s. 6 of the Act and also further proceedings taken in the land acquisition case after the issue of the notification should be quashed including the award dated January 7, 1952 and the reference made to civil Court under s. 18 of the Act.”

The Apex Court in the case of **Nadeshwar Prasad vs. U.P. Government and others** (three Judge Bench) reported in A.I.R. 1964 SC 1217 had laid down that it is not necessary that even where the Government makes a direction under Section 17(1) that it should also make a direction under Section 17(4). Following was observed in paragraph 11:-

"**11.** ..... It will be seen that it is not necessary even where the Government makes a direction under S. 17(1) that it should also make a direction under S. 17(4)....."

The Apex Court in the aforesaid case further laid down that right to file objection under Section 5A of the Act is a substantial right. Following was laid down in paragraph 13:-

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

A three Judge Bench in the case of **Narayan Govind Gavate vs. State of Maharashtra** reported in 1977 S.C. 183 has elaborately considered the ambit and scope of Section 17 of the Act. The Apex Court also considered the scope of judicial review of the opinion formed by the State Government under Section 17(4). Following was laid down in paragraph 10 of the said judgment:-

"**10.** It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than Courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which Courts do impose. That test basically is: was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the Courts should not and will not interfere. There might, however, be

cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a Court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, what was legally imperative for it to consider."

The Apex Court in the aforesaid case further laid down that the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such nature that even the summary proceedings under Section 5A of the Act should be eliminated. Followings were laid down by the Apex Court in paragraphs 38, 40, 41 and 42 of the said judgment:-

"**38.** ..... The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under s. 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under s. 5A which has to be considered.

40. In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under section 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under section 5A 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 5A of the Act.

41. Again, the uniform and set recital of a formula, like a ritual or mantara, apparently applied mechanically to every case, itself indicated that the mind of the Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed. Nothing beyond that seems to have been considered. The recital itself shows that the mind of the

Commissioner was not applied at all to the question whether the urgency is of such a nature as to require elimination of the enquiry under section 5A of the Act. If it was, at least the notifications gave no inkling of it at all. On the other hand, its literal meaning was that nothing beyond matters stated there were considered.

42. All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquires under section 5A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry under section 5A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under section 5A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under section 5A of the Act....."

The Apex Court in the aforesaid case has clearly laid down that public purpose, namely, development of an area for industrial and residential purpose does not call for any such action, barring exceptional circumstances, for dispensation of summary inquiry under Section 5A.

Justice V.R. Krishna Iyer in the case of **State of Punjab and another vs. Gurdial Singh and others** reported in (1980)2 S.C.C. 471 had laid down that authority should not invoke the provisions of Section 17(4) unless there is real urgency. Following was laid down in paragraph 16:-

"**16.** The fourth point about the use of emergency power is well taken. Without referring to supportive case-law it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities

should not, having regard to Arts. 14 (and 19), burke an enquiry under Sec. 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."

Justice Krishna Ayer further observed , "... At times, natural justice is the natural enemy of intolerant authority..."

A two Judge Bench of the Apex Court had occasion to consider invocation of Section 17(4) of the Act in context of Meerut Development Authority in the case of **State of U.P. vs. Pista Devi** reported in (1986)4 S.C.C. 251. In the aforesaid case the Apex Court observed that provision of housing accommodation in these days has become a matter of national urgency and judicial note of that can be taken. The three Judge bench judgment in **Narayan Govind Gavate's** case (supra) was referred to but was distinguished on the premise that the said matter related to the year 1963 and due to increase of population it is no longer possible for the Court to take a view that scheme for development of residential areas do not appear to demand such emergent action as to eliminate summary inquiries under Section 5-A of the Act. Following was observed in paragraph 5 of the said judgment:-

"**5.** .....The provision of housing accommodation in these 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 acquisition 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 5-A of the Act. Perhaps, at the time to which the decision in Narayan Govind Gavate etc. v. State of Maharashtra, [1977] (1) S.C.R. 768 related the situation might have been that the schemes relating to development of residential areas in the urban centres were not so urgent and it was not necessary to eliminate the inquiry under section 5-A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of million and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not 'appear to demand such emergent action as to eliminate summary inquiries under Section 5-A of the Act'....."

Another judgment of the Apex Court which needs to be noted is in the case of **Rajasthan Housing Board and others vs. Shri Kishan and others** reported in (1993)2 S.C.C. 84. In the said case also the Government had issued direction for dispensation of inquiry under Section 17(4). The Apex Court examined materials which were before the Government on the basis of which it formed its opinion for directing dispensation of inquiry. The Apex Court approved the action of the Government after referring to relevant materials which were found sufficient for invoking Section 17(4) of the Act. It is useful to quote following observations of the Apex Court which are in paragraph 14 of the judgment:-

"**14.** ..... Secondly, we are satisfied that there was material before the government in this case upon which it could have and did form the requisite opinion that it was a case calling for exercise of power under Section 17(4). The learned Single Judge has referred to the material upon which the government had formed the said opinion. The material placed before the Court disclosed that the government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs. 16 crores under a time-bound programme to construct and utilise the said amount by 31.3.1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the government had formed the said satisfaction viz., that in view of the time bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. It must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which the government could have formed the said satisfaction fairly, the court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this court not only under Section 17(4) but also generally with respect to subjective satisfaction."

A three Judge Bench in the case of **Chameli Singh and others vs. State of U.P. and others** reported in (1996)2 S.C.C. 549, again considered the question as to whether providing housing to the members of schedule caste (Dalit) under the scheme funded by the State, Section 17(4) of the Act can be invoked. In paragraph 14 of the judgment, relying upon the judgment in the case of **State of U.P. vs. Pista Devi** (supra) it was observed that housing accommodation to the Dalits and Tribes is in acute shortage hence invocation of Section 17(4) for providing shelter cannot be said to be arbitrary. In paragraphs 14 and 15 of the judgment following was laid down by the Apex Court:-

"**14.** What was said by Chinnappa Reddy, J. in the context of provisions of housing accommodation to Harijans is equally applied to the problem of providing housing accommodation to all persons in the country in State of U.P. v. Pista Devi [1986 (4) SCC 251] holding that today having regard to the enormous growth of population, urgency clause for planned development in urban areas was upheld by a two-Judge Bench. The ratio of Kasireddy Papaiah case 1975 AIR(AP) 269 : 1975 (1) APLJ 70] was quoted with approval by a three-Judge Bench in Deepak Pahwa v. Lt. Governor of Delhi [1984 (4) SCC 308 : 1985 (1) SCR 588]. The delay by the officials was held to be not a ground to set at naught the power to exercise urgency clause in both the above decisions. It would thus be clear that housing accommodation to the Dalits and Tribes is in acute shortage and the State has undertaken as its economic policy under planned expenditure to provide shelter to them on a war footing, in compliance with the constitutional obligation undertaken as a member of the UNO to the resolutions referred to hereinbefore.

"**15.** The question, therefore, is whether invocation of urgency cause under Section 17(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In Aflatoon v. Lt. Governor of Delhi [1975 (4) SCC 285] (SCC at p. 290), a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17(4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In Pista Devi case [1986 (4) SCC 251] this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned

development of Meerut, had held that providing housing accommodation is national urgency of which court should take judicial notice. The pre-notification and postnotification delay caused by the officer concerned does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till date and is a fact of which courts are bound to take judicial notice. The ratio of Deepak Pahwa case [1984 (4) SCC 308 : 1985 (1) SCR 588] was followed. In the at case a three- Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to interdepartmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In Jage Ram v. State of Haryana [1971 (1) SCC 671] this Court upheld the exercise of the power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Pahwa case [1984 (4) SCC 308 : 1985 (1) SCR 588] this Court held that very often person interested in the land proposed to be acquired may make representations to the authorities concerned against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. In Rajasthan Housing Board v. Shri Kishan [1993 (2) SCC 84] (SCC at p. 91), this Court had held that it must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In State of U.P. v. Keshav Prasad Singh [1995 (5) SCC 587] (SCC at p. 590), this Court had held that the Government was entitled to exercise the power under section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the

facts available on record. In Narayan Govind Gavate case a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A, inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasized that : (SCC p. 148, para 38)

"... The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A which has to be considered."

Another three Judge Bench judgment in the case of **Meerut Development Authority and others vs. Satbir Singh and others** reported in (1996)11 S.C.C. 462 considered the question of invocation of urgency clause in land acquisition for housing development. In paragraph 19 of the said judgment, relying on the Constitution Bench judgment in the case of **Aflatoon vs. Lt. Governor of Delhi** reported in (1975)4 S.C.C. 285 and two Judge Bench judgment in **State of U.P. vs. Pista Devi** (supra), it was observed that housing development is an urgent purpose and invocation of Section 17(1) dispensing with the inquiry is not invalid. It is relevant to note that earlier three Judge judgment in **Narain Govind Gavate's** case (supra) was not noticed and reliance was placed on Constitution Bench judgment in **Aflatoon's** case (supra) whereas in the Constitution Bench judgment in **Aflatoon's** case (supra) Section 5A of the Act was not dispensed with and objections were invited and about 6000 objections were filed. In the case of **Om Prakash and another vs. State of U.P. and others** reported in (1998)6 SCC 1 the Apex Court had occasion to consider invocation of urgency clause under Section 17(4) in context of acquisition of land of village Chhalera Banger situate in

district Ghaziabad in State of Uttar Pradesh in which notification the public purpose was for the planned industrial development of district Ghaziabad through New Okhla Industrial Development Authority as in the present case. The notifications were challenged in the High Court and the High Court came to the conclusion that the land acquisition proceedings were not vitiated and the writ petitions were dismissed. The Apex Court looked into the all relevant materials which were before the Government including the proposal submitted by the GNOIDA for acquisition. The Apex Court also noticed one year delay from the submission of proposal recommending invocation of urgency clause and further delay of 9 months in issuing declaration under Section 6. The Apex Court observed that above conduct of the respondents falsify their claim of urgency for acquisition. After considering the materials, which were before the State Government, the Apex Court came to the conclusion that there was no relevant material before the State Government when it invoked the power under sub-section (4) of Section 17 dispensing with the inquiry. The three Judge judgment in **Narayan Govind Gavate's** case (supra) as well as two Judge judgment in **State of U.P. vs. Pista Devi** (supra) were referred to. The Apex Court also made observation that the later Bench of two learned Judges of the Apex Court in **State of U.P. vs. Pista Devi's** case (supra) could not have laid down any legal proposition contrary to the earlier decision of three Judge Bench. Following was laid down in paragraphs 20, 23 and 25 of the said judgment:-

"**20.** It is no doubt true that the aforesaid decision of three Judge Bench of this Court was explained by latter to Judge Bench decision of this Court in State of U.P. v. Smt. Pista Devi (supra) as being confined to the fact situation in those days when it was rendered However, it is trite to note that the latter Bench of two learned judges of this court could not have laid down any legal proposition by way of a ratio which was contrary to the earlier decision of three Judge Bench in Narayan govind Gavate (supra). In fact, both these decisions referred to the fact situations in the light of which they were rendered.

23. It is now time for us to refer to certain latter decisions of this Court to which strong reliance was placed by Shri Mohta, learned senior counsel for NOIDA. In the case of A.P. Sareen and Others Vs. State of U.P. and Others [(1997) 9 SCC

359], a two Judge Bench of this Court consisting of Ramaswamy J. and G. T. Nanavati J, had to consider the question whether the need for urgent possession underlying acquisition proceedings could cease to exist only because of bureaucratic inadvertence. It was held on the facts of that case that urgency continued so long as the scheme was not initiated, action taken and process completed. It is, of course, true that while deciding this question, it is observed that it is well settled legal position that urgency can be said to exist when land proposed to be acquired is needed for planned development of the city or town, etc. The said observation clearly shows that in appropriate cases when acquisition is needed for planned development of city or town urgency provisions can be invoked. This aspect is legislatively recognised by enactment of Section 17(1A) by U.P. legislature. But the said observations cannot be read to mean that in every case of planned development of city or town necessarily and almost automatically urgency clause has to be invoked and inquiry under Section 5-A is to be dispensed with. It will all depend upon the facts and circumstances of each case. The aforesaid observations cannot be held to be laying down nay absolute proposition that whenever any acquisition is to take place for planned development of city or town, section 5-A should be treated to be almost otios or inoperative. Such is not the ratio of the aforesaid decision and nothing to that effect can even impliedly be read in the aforesaid observation which is of general nature. It only suggests that in appropriate cases, urgency clause can be invoked when the land is proposed to be acquired for planned development of city or town.

25. In the light of the aforesaid discussion, therefore, the conclusion becomes inevitable that the action of dispensing with inquiry under Section 5-A of the Act in the present cases was not based on any real and genuine subjective satisfaction depending upon any relevant data available to the State authorities at the time when they issued the impugned notification under section 4(1) of the Act and dispensed with Section 5-A inquiry by resorting to Section 17 sub-section (4) thereof. The first point is, therefore, answered in the negative, in favour of the appellants and against the contesting respondents."

A three Judge Bench of the Apex Court had occasion to consider invocation of urgency clause under Section 17(4) in the case of **Union of India vs. Mukesh**

Hans reported in 2004(8) SCC 14. The three Judge Bench laid down in the said case that invocation of Section 17(4) of the Act is not automatic on invocation of Section 17(1) of the Act. It has been held that there has to be separate and independent application of mind as to whether there is such an urgency for dispensation of inquiry. Following was laid down by the Apex Court in paragraphs 32, 33 and 34 of the said judgment:-

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency under Section 17 (1) or unforeseen emergency under Section 17 (2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17 (1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case when there is an urgency contemplated under Section 17 (1) and unforeseen emergency contemplated under Section 17 (2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is

inherent in the two types of urgencies contemplated under Section 17 (1) and (2) of the Act.

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

34. A careful reading of the above judgment shows that this Court in the said case of Nandeshwar Prasad's case (supra) has also held that there should an application of mind to the facts of the case with special reference to this concession of 5A inquiry under the Act."

To the same effect there is a judgment of the Apex Court in the case of **Union of India and others vs. Krishan Lal Arneja** reported in 2004(8) SCC 453 in which same proposition was laid down. The Apex Court laid down following in paragraph 16 of the judgment which is as under:-

"**16.** Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immoveable property to file objections for the proposed acquisition and

it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."

In a later case reported in (2010)11 S.C.C. 242; **Anand Singh vs. State of U.P. and others** all earlier cases have been referred to and the principles of invoking Section 17(4) of the Act have been restated. It was further laid down in the said judgment that, generally speaking, development of an area for residential purpose or planned development takes many years and in every case of planned development dispensation of inquiry under Section 5A of the Act is not required. The Apex Court in the aforesaid case further observed that ratio of two Judge Bench in **State of U.P. vs. Pista Devi** case (supra) is contrary to the ratio laid down in earlier three Judge Bench judgment in **Narayan Govind Gavate's** case (supra). As noted above, in **Narayan Govind Gavate's** case (supra) the three Judge Bench has laid down that scheme for housing development or industrial development, barring exceptional cases, does not satisfy the invocation of Section 17(4) whereas in **State of U.P. vs. Pista Devi** case (supra) it was held that housing scheme is a national urgency. The principles, after referring all earlier

cases, were laid down in paragraphs 42, 43, 44, 45, 46, 47 and 50 of the judgment which are as under:-

"**42**. When the government proceeds for compulsory acquisition of particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time under Section 5A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose etc. Moreover, the right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice.

43. The exceptional and extraordinary power of doing away with an enquiry under Section 5A in a case where possession of the land is required urgently or in unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5A. Exceptional the power, the more circumspect the government must be in its exercise. The government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5A.

44. A repetition of statutory phrase in the notification that the state government is satisfied that the land specified in the notification is urgently needed and provision contained in Section 5A shall not apply, though may initially raise a presumption in favour of the government that pre-requisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which power has been exercised. Upon challenge being made to the use of power under Section 17, the government must produce appropriate material before the court that the

opinion for dispensing with the enquiry under Section 5A has been formed by the government after due application of mind on the material placed before it.

45. It is true that power conferred upon the government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary.

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry under Section 5A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realizing that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

47. The special provision has been made in Section 17 to eliminate enquiry under Section 5A in deserving and cases of real urgency. The government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5A. We have already noticed few decisions of this Court. There is conflict of view in the two decisions of this Court viz.; Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that decision in Pista Devi must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate.

50. Use of the power by the government under Section 17 for `planned development of the city' or `the development of residential area' or for `housing' must not be as a rule but by way of an exception. Such exceptional situation may

be for the public purpose viz., rehabilitation of natural calamity affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation of persons affected by time bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for immediate possession of the land for carrying out the stated purpose, heavy onus lies on the government to justify exercise of such power." In the case of **Dev Saran and others vs. State of U.P. and others** reported in 2011(4) SCC 769, invocation of urgency under Section 17(4) of the Act, where the land was acquired for construction of District Jail, was held not to be so urgent so as to invoke Section 17(4) of the Act. Following was laid down in paragraphs 19, 20, 35, 36, 37, 38 and 39, which are as under:-

"19. Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

20. While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires. In this context we reiterate the principle laid down by this Court in Authorised Officer, Thanjavur and another vs. S. Naganatha Ayyar and others reported in (1979) 3 SCC 466, wherein this Court held:

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

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

35. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's letter dated 4th of June, 2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of the suitable site for construction was held on 27th June, 2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2nd of July, 2008. This was in turn forwarded to the State Government by the Director on 22nd of July, 2008. After due consideration of the forwarded proposal and documents, the State Government issued the Section 4 notification, along with Section 17 notification on 21st of August, 2008. These notifications were published in local newspapers on 24th of September, 2008.

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

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

38. In paragraph 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.

39. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section 17. If so advised, Government can initiate acquisition proceeding by following the provision of Section 5A of the Act and in accordance with law." The two recent judgments given by the Apex Court, both relating to planned industrial development in district Gautam Budh Nagar through Greater NOIDA, are very relevant and need to be referred in some detail. The case of **Radhy Shyam (dead) through Lrs. and others vs. State of U.P. and others** reported in (2011)5 SCC 553, was a case where notification of village Makaura issued on the same date i.e. 12th March, 2008 under Section 4(1) read with Sections 17(1) and 17(4) of the Act were under challenge. The notification issued in the aforesaid case was in the same term as is apparent from the notification quoted in paragraph 2 of the judgment in **Radhy Shyam's** case (supra). The declaration under Section 6 of the Act was issued thereafter on 19th November, 2008. The writ petition was filed in the High Court challenging the notifications. Specific ground was taken in the writ petition that respondents without application of mind dispensed with the inquiry on the ground of urgency. It was also pleaded in the writ petition that acquisition was made with the motive to deprive the owners from their houses in order to fulfil their political obligations and promises to private builders taking shelter of Section 17. The Apex Court issued direction to the respondents to file counter affidavit in the special leave petition. Along with the affidavit of the relevant documents including the letter dated 15th February, 2008 sent by the Commissioner and Director, Directorate of Land Acquisition, Revenue Board, U.P. to the State Government and the certificate issued by the Collector were brought before the Court. The Apex Court noted all

the relevant facts, certificates and the ground for justification as was given by the respondents and laid down that there was no valid ground for invoking Section 17(4). The earlier three Judge Bench judgment in **Narayan Govind Gavate's** case (supra) was relied. Following was laid down by the Apex Court in paragraph 22 of the said judgment:-

"**22.** In cases where the acquisition is made by invoking Section 4 read with Section 17(1) and/or 17(4), the High Court should insist upon filing of reply affidavit by the respondents and production of the relevant records and carefully scrutinize the same before pronouncing upon legality of the impugned notification/action because a negative result without examining the relevant records to find out whether the competent authority had formed a bona fide opinion on the issue of invoking the urgency provision and excluding the application of Section 5-A is likely to make the land owner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when land is required to meet really emergent situations like those enumerated in Section 17(2). If the acquisition is intended to benefit private person(s) and the provisions contained in Section 17(1) and/or 17(4) are invoked, then scrutiny of the justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land, the pleadings should be liberally construed and relief should not be denied to the petitioner by applying the technical rules of procedure embodied in the Code of Civil Procedure and other procedural laws."

At this stage, it is relevant to refer to the materials, which have been referred to in the counter affidavit by the Sate as justification for invocation of Section 17(4) of the Act in the present case as well as scrutiny of original records as have been produced by the learned Chief Standing Counsel for perusal of the Court. The State in its supplementary counter affidavit dated 11th September, 2011 filed in Writ Petition No.37443 of 2011 (main writ petition) has brought on the record letter dated 21st July, 2006 which was sent by the Special Officer on Duty, Greater NOIDA to the Additional District Magistrate forwarding proposal for acquisition of 590.289 hectares land of village Patwari. The Note of justification for issuing notification under Section 4/17 of the Act submitted by the Greater NOIDA and counter signed by the Collector as well as Prapatra-10, which has been signed by

the Collector have also been enclosed along with the supplementary counter affidavit. Paragraph 3 of the supplementary counter affidavit notes the Justification given for invoking Section 17(4). Paragraph 3 of the aforesaid supplementary counter affidavit is extracted below:-

"**3.** That, as detailed in paragraph 12(b) of the counter affidavit dated 09.09.2011, a proposal for acquisition of 600.600 hectares of land in village Patwari, Pargana and Tehsil Dadari, district Gautam Budh Nagar was submitted by Greater Noida Industrial Development Authority vide letter No.266 dated 31.3.2006 to the office of A.D.M. (L.A.)/OSD, Greater Noida, along with Note of justification for invoking the provisions of Section 17(4) of the L.A. Act as the land was needed urgently. The proposal was, thereafter, revised and vide letter No.660 dated 21.07.2006, submitted by Greater Noida Industrial Development Authority, it was proposed to acquire an area of 590.289 hectares. The urgency for acquiring the land or the purpose of planned industrial development was reiterated. It was further stated that in absence of acquisition there was possibility of illegal constructions/ encroachments over the land proposed for acquisition, and accordingly it was necessary that the urgency provisions under section 17 of the L.A. Act may be invoked along with issuance of notification under Section 4(1) of the L.A. Act. True copy of letter dated 21.07.2006 is being filed herewith and marked as Annexure SCA-1 to this supplementary counter affidavit."

The learned Chief Standing Counsel assisted by several Additional Chief Standing Counsel, during course of hearing, placed the original records of the State Government pertaining to land acquisition proceedings. We have perused the original records of village Patwari and records of some other village of the State Government. In the supplementary counter affidavit reference was made to the letter dated 31st March, 2006 of GNOIDA by which proposal was submitted to the Additional District Magistrate. In the record of the State Government, there is proposal submitted by the Commissioner and Director, Land Acquisition Directorate to the Special Secretary dated 25th February, 2008 along with which the Note of Justification as well as Prapatra as have been filed along with the supplementary counter affidavit are also there. A perusal of the original records of the State Government reveal following:-

(i) The proposal submitted by Greater NOIDA for acquisition of land of 20 villages of Greater NOIDA including villages Patwari and Makaura was placed before the District Level Committee for consideration of the proposal. The Committee approved the proposal 2.2.2007. The Committee noticed in its proposals that with regard to 5 villages 20% amount has been deposited, for one village 70% amount has been deposited and for rest of the villages proposal be sent after amount is deposited. The Committee made recommendation for issuing notification under Sections 4/17 and 6/17 of the Act and forwarded resolution.

(ii) The said resolution of the District Level Committee, it appears, was forwarded to the Divisional Level Committee by letter dated 19th February, 2007. The Divisional Level Committee considered the proposal of 16 villages of Greater NOIDA and 3 villages of NOIDA. The Divisional Level Committee also granted its approval to the recommendation. On the same date, i.e. 20.2.2007, a letter was sent to the District Magistrate that the Divisional Level Committee has granted its approval to the proposal which is being sent for further action.

(iii) The District Magistrate vide letter dated 22nd February, 2008 forwarded the proposal of village in question i.e. Patwari for issuing notification under Section 4(1)/17 to the Commissioner and Director, Land Acquisition Directorate, Board of Revenue, U.P., Camp Gautam Budh Nagar.

(iv) The Director and Commissioner vide its letter dated 25th February, 2008 forwarded the proposal received from Collector to the Special Secretary of the State Government which was received on 26th February, 2008 itself.

(v) On 26th February, 2008 the Secretariat submitted a Note to the Deputy Secretary making reference of certificates which were annexed along with the proposal dated 25th February, 2008. In the Note submitted by the Secretariat to the Deputy Secretary neither any recommendation has been made for dispensing with the inquiry under Section 5A of the Act nor any reason has been referred to on the basis of which notification under Section 17 be issued.

In the Note only following was mentioned by the Secretariat in paragraph 3, which is as under:-

“Hindi”

On the aforesaid Note, the Deputy Secretary on the same day, i.e. 26th February, 2008 put following endorsement:-

“Hindi”

Thereafter the file was marked to Principal Secretary. The said Note was also countersigned by Special Secretary on 27th February, 2008 and on 3rd March, 2008 the Principal Secretary, Industrial Development marked the file to the Chief Minister. On 10th March, 2008 the Secretary to the Chief Minister has put endorsement that Hon’ble the Chief Minister as Departmental Minister has approved.

From the Notings which were made at the level of the State Government it is clear that there is no specific recommendation by the Secretariat for dispensation of inquiry under Section 5A. The letter dated 25th February, 2008 of the Commissioner and Director, Land Acquisition Directorate also does not have any recommendation that the case is of such nature that inquiry under Section 5A of the Act be dispensed with. There is no recommendation by the Commissioner and Director, Land Acquisition Directorate except that Government may issue notification under Section 4(1)/17 and sent a copy to the Directorate and the Collector. Along with the letter of the Collector dated 22nd February, 2008 which was forwarded to the Commissioner and Director, Land Acquisition Director, certificates required to be sent have been annexed. In the letter of the Collector the recommendation made, is to the following effect:-

“Hindi”

In the Note of Justification submitted by the GNOIDA which was countersigned by the Collector, following reasons were given:-

“Hindi”

In his certificate, the Collector has only observed that for completion of the project possession of the land is urgently required to be taken. The Collector has further

observed that by invoking Section 17, the provisions of Section 5A shall come to an end and he is satisfied that for completing the project possession of land is required to be urgently taken. Along with the proposal of the Collector dated 22nd February, 2008 there is Prapatra No.1, which is a proposal submitted by GNOIDA to the Collector for issuing of notification under Section 4/17 of the Act. Column No.9 and comments on it in Prapatra No.1 is as under:-

"Hindi"

From the original records as noted above, it is clear that proposal from Commissioner and Director, Land Acquisition dated 25th February, 2008 was received by the State Government on 26th February, 2008. On 26th February, 2008 itself note was submitted by the Secretariat as well as the Deputy Secretary which was forwarded to the Principal Secretary and the Principal Secretary forwarded the same to the Chief Minister. The Secretariat and its Deputy Secretary examined the proposals submitted by the Commissioner and Director on the same day and gave their comments and note on the same day. The aforesaid facts clearly point out that application of mind of the officials of the Government was in mechanical manner and in the Note there was no recommendation for dispensation of inquiry under Section 5A. On the aforesaid Note approvals were obtained from all concerned and thereafter notification under Section 4 read with Sections 17(1) and 17(4) was issued. As noticed above, the Divisional Level Committee which has been constituted by the Government order to examine the proposal for land acquisition received the recommendation from the Collector vide letter dated 19th February, 2008 and on 20th February, 2008 the Committee approved the proposal of 16 villages including village Patwari which indicates mechanical and cursory manner in which the whole issue was dealt with. The acquisition of huge agricultural land of 16 villages running in several thousands hectares was involved and the proposal was pushed through by completing only formality without application of mind.

Now we revert to the judgment of the Apex Court in **Radhy Shyam's** case (supra) which relate to village Makaura (one of the villages of Greater NOIDA) for which proposal was submitted by District Level Committee along with the village Patwari.

The Apex Court in the aforesaid case had examined the question regarding invocation of Section 17(4) and in paragraph 78 of the judgment the reason given for justification for invocation of urgency clause in the aforesaid case has been noted in detail. In paragraphs 79 and 80 of the judgment the Apex Court has held that factors which were mentioned in the certificates submitted to the State Government do not furnish legally acceptable justification for exercise of power by the State Government under Section 17(1) of the Act. Paragraphs 78, 79 and 80 of the said judgment are quoted below:-

"**78.** The stage is now set for consideration of the issue whether the State Government was justified in invoking the urgency provision contained in Section 17(1) and excluding the application of Section 5-A for the acquisition of land for planned industrial development of District Gautam Budh Nagar. A recapitulation of the facts shows that upon receipt of proposal from the Development Authority, the State Government issued directions to the concerned authorities to take action for the acquisition of land in different villages including village Makora. The comments/certificate signed by three officers, which was submitted in the context of Government Order dated 21.12.2006 was accompanied by several documents including proposal for the acquisition of land, preliminary inquiry report submitted by the Amin, Land Acquisition, copies of khasra khatauni and lay out plan, 10 per cent of the estimated compensation and a host of other documents. In the note dated nil jointly signed by Deputy Chief Executive Officer, Greater Noida, Collector, Gautam Budh Nagar and four other officers/officials, the following factors were cited in justification of invoking the urgency provisions:

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

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

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

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

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

(f) Numerous reputed and leading industrial units of the country want to invest in the State of Uttar Pradesh and, therefore, it is extremely urgent and necessary that land is acquired immediately.

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

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

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

79. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government under Section 17(1) because the acquisition is primarily meant to cater private interest in the name of industrial development of the district. It is neither the pleaded case of the respondents nor any evidence has been produced before the Court to show that the State Government and/or agencies/instrumentalities of the State are intending to establish industrial units on the acquired land either by itself or through its agencies/instrumentalities. The respondents have justified the invoking of urgency provisions by making assertions, which are usually made in such cases by the executive authorities i.e. the inflow of funds in the State in the form of investment by private entrepreneurs and availability of larger employment opportunities to the people of the area. However, we do not find any plausible reason to accept this tailor-made justification for approving the impugned action which has resulted in

depriving the appellants' of their constitutional right to property.

80. Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Section 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on computer screen. It needs lot of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investment in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/ instrumentalities would give them two to three years' to put up their factories, establishments etc. Therefore, time required for ensuring compliance of the provisions contained in Section 5-A cannot, by any stretch of imagination, be portrayed as delay which will frustrate the purpose of acquisition." As quoted above, the reasons given for invoking urgency clause were the same which were given in **Radhy Shyam's** case (supra). The Apex Court considered the aforesaid reasons and has categorically held that the said ground do not furnish justification for invoking urgency clause under Section 17(4) of the Act. The present case is also thus fully covered by the judgment of the Apex Court in **Radhy Shyam's** case (supra) and in view of clear pronouncement made in the aforesaid case, the conclusion is inescapable that in the present case no ground was made out for invoking Section 17(4) dispensing with the inquiry under Section 5A of the Act.

One of the justifications given in the Note of Justification for invoking Section 17 was that if there is delay in acquisition of land, the land is likely to be encroached which would adversely affect the concept of planned development. The said reason was also given in **Radhy Shyam's** case (supra) which was disapproved. In this context, learned counsel for the respondents has submitted that in the judgment of the Apex Court in the case of **Nand Kishora Gupta and others vs. State of U.P. and others** reported in (2010)10 SCC 282, the said ground was held to be a relevant ground for invoking urgency clause. In **Nand Kishore Gupta's** case (supra) the High Court noticed the materials which were submitted for invoking urgency clause. The High Court had noticed one of the reasons as "in

case of delay there is strong possibility of encroachment of the land which will affect the project". The Apex Court in **Nand Kishora Gupta's** case (supra) made following observations in paragraph 93, which are as under:-

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

On the basis of the above observation made in paragraph 93 of the aforesaid judgment, learned counsel for the respondents submits that likelihood of encroachment is relevant material and the State cannot be said to be at fault in relying on the said paragraph. In this context, it is relevant to refer to the judgment of the Apex Court in **Om Prakash's** case (supra). In the said case the Apex Court had specifically held that possibility of unauthorised encroachment is wholly irrelevant factor for invoking urgency under Section 17(4) of the Act. Following was laid down by the Apex Court in paragraph 15 of the judgment in **Om Prakash's** case (supra), which is as under:-

"**15.** So far as the present proceedings are concerned, the situation was tried to be salvaged further in the counter- affidavit filed on behalf of NOIDA. Its working secretary Ram Shankar has filed a counter-affidavit in the present proceedings explaining the necessity to apply emergency provisions. It has been averred in para 9 of the counter to the effect that what necessitated application of emergency provisions was imminent possibility of unauthorised construction and/or encroachment upon the suit land which would have hammered the speedy and planned industrial development of the area which was the purpose of acquisition proceedings. This stand is in line with the earlier stand of NOIDA in its written requisition dated 14th December, 1989. We have already seen that the said stand

reflects a ground which is patently irrelevant for the purpose of arriving at the relevant subjective satisfaction by the State authorities about dispensing with Section 5-A inquiry. ....."

In **Nand Kishore Gupta's** case (supra) the judgment in **Om Prakash's** case (supra) has not been noticed. In this context, it is relevant to refer to a Division Bench judgment of this Court in the case of **Smt. Manju Lata Agarwal vs. State of U.P. and others** reported in 2007(9) ADJ 447 and judgment of the Apex Court in the case of **Sibban Lal Saxena vs. State of U.P. and others** reported in AIR 1954 SC 179 in which it has been held that even in event of the grounds on the basis of which subjective satisfaction has arrived is held to be irrelevant, the entire satisfaction is vitiated. Following was laid down by the Apex Court in paragraph 8, which is as under:-

"**8.** ..... The Government itself, in its communication dated the 13th of March, 1953, has plainly admitted that one of the grounds upon which the original order of detention Was passed is unsubstantial or nonexistent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under section 3 (1) (a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subject decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole. Principle, which was order as a whole. This principle, which was recognised by the Federal Court in the case of Keshav Talpade v. The Kingb Emperor (2), seems to us to be quite sound and applicable to the facts of this case. (1) Vide state of Bombay v. Atma Ram Sridhar Vaidya, [1951] S.C.R."

The next recent judgment of the Apex Court to be noticed is the judgment in the case of **Greater Noida Industrial Development Authority vs. Devendra Kumar and others** reported in 2011(6) (SC) ADJ 480. The aforesaid case also was a case pertaining to village Shahberi of district Gautam Budh Nagar in which notifications were issued for the same purpose. The writ petition was filed challenging the notifications which was allowed by the High Court holding the invocation of urgency clause as illegal. The Greater NOIDA filed the appeal which was dismissed. The judgment of **Radhy Shyam's** case (supra) was referred to and relied. In the aforesaid case the ground of unauthorised colony and illegal construction was put forward by the appellant which was not accepted. Following was observed in paragraph 24 of the said judgment:-

"**24.** At the outset, we deem it proper to observe that none of the Senior Counsel appearing for the petitioners assailed the finding recorded by the High Court that the decision of the State Government to invoke the urgency provisions contained in Section 17(1) and to dispense with the application of Section 5A was vitiated due to arbitrary exercise of power and non application of mind. Of course, Shri L.N. Rao and Shri Dushyant A. Dave, learned Senior Counsel did suggest that Section 17(1) and (4) was invoked to check mushroom growth of unauthorized colonies in the area around Greater Noida Phase I, but in our view, this did not provide a valid justification to invoke Section 17(1) and to dispense with the application of Section 5A and the High Court rightly nullified this exercise by relying upon the judgments of this Court in Anand Singh's case and Radhy Shyam's case. We may add that unauthorised plotting of agricultural land or large scale illegal constructions could not have been possible without active or tacit connivance of the functionaries and officers of the State and/or its agencies/instrumentalities. If the Authority wanted to prevent unauthorised colonization of agricultural land or illegal constructions, then nothing prevented it from taking action under Section 9 of the 1976 Act. No explanation has been given by the State Government and the Authority as to why appropriate measures were not taken to prevent unauthorized colonization of land in Shahberi and elsewhere. The inefficiency of the State apparatus to take action in accordance with law cannot be used as a tool to justify denial of opportunity of hearing to the landowners and other interested persons in terms of Section 5A of the 1894 Act."

Apart from the original record of village Patwari, we have perused the original records of other villages. For example, land acquisition proceedings of village Roja Yakubpur along with the proposal of land acquisition forwarded by Director, Land Acquisition Directorate dated 14th February, 2006, certificate in Prapatra-10 by the Collector in which same wordings were repeated that for completion of project the possession of the land is to be immediately taken and on invocation of Section 17 the provisions of Section 5A are dispensed with and he is fully satisfied with the justification for dispensation of inquiry. In the Note submitted by Greater NOIDA regarding justification for issuing notification under Section 4/17 it was mentioned that several applicants want allotment of plots which is not being possible due to acquisition of the land. It was stated that specially the reputed industrial organisations of foreign countries want allotment and to invest in the State and in case the land is not allotted immediately, the units might go to other States. These were the reasons which have been repeated in all such certificates. It is also to be noticed that all the certificate, which have been submitted in all the case, does not bear any date and appears to have been mechanically prepared using the same words. It is also relevant to notice that petitioners in the writ petition have pleaded that there was no such need of the GNOIDA which necessitated such large scale acquisition of fertile agricultural land. It has further been pleaded that the respondents in their counter affidavit had not given details of any such industrial unit of foreign country which has applied for allotment. Reference is made to Writ Petition No.45450 of 2011 (Phundan Singh and 48 others vs. State of U.P. and others), which has been filed challenging the notifications for acquisition of land of village Dabra. Following pleadings were made in paragraphs 6, 7 and 9 of the writ petition:-

"**6.** That the petitioners are holding the lands of the aforesaid khasra and using the same for agricultural purposes. The said land is the only source of their income, they have no other source of their livelihood. The petitioners are also using some of the area of their lands for abadi purposes and purpose which are connected with their agriculture. The respondents no.1 to 3 have illegally failed to consider the said aspect and to exempt their lands which are covered for abadi purposes and upon which their constructions are situated, prior to issuance of the impugned notifications.

7. That it is pertinent to mention here that when the lands of the petitioners were acquired by the respondents, there was no demand of any industrialist in establishing the industry in the said area. The respondents have also no approved scheme or project to establish and develop the industrial area. The respondent no.3 at the time of the said acquisition was in possession of vacant area which was sufficient and can be utilized for planned industrial development but, in spite of the same the respondent no.1 has issued the aforesaid notifications at the request of respondent no.3.

8. That there is no evidence on record regarding the requirement of the respondent no.3 to develop the planned industrial area. The notification under Section 4 of the Act was issued on 31.10.2005 while the notification under Section 6 of the Act was issued on 1.9.2006. The delay in issuance of the notification shows that there was no urgency to acquire the land of the petitioners, but the respondent no.1 illegally and arbitrarily by showing the urgency has dispensed with the provisions of section 5 of the Act by invoking the power under section 17 of the Act."

Paragraph 7 of the writ petition has been replied by the GNOIDA by filing a counter affidavit in paragraph 39. Paragraph 39 of the counter affidavit filed by GNOIDA is to the following effect:-

"**39.** That the contents of para 7 and 8 of the writ petition are wrong and denied. That it is denied that there was no demand for establishment of any industry. It is also denied that no scheme was approved at the time of acquisition. The purpose of the U.P. Industrial Area and Development Act, 1976 is to ensure the planned development of the notified industrial development area and the village Dabara was notified as part of the industrial development area. The Authority has been constituted for the planned development and has adequate staffs and officers which have either being posted on the deputation by the State Government or directly appointed by the Authority. It is wrong and denied that prior to acquisition no enquiry or survey was conducted."

In above context, it is relevant to note that the reason that several industrial Units belonging to foreign country have applied for allotment and unless the land is not

immediately allotted to them they will establish their industries in another State, has been taken in every acquisition. A Division Bench of this Court, while hearing challenge to the acquisition of village Tusiyana (which is also subject matter of challenge in this bunch of writ petitions) in the case of **Sudhir Chandra Agarwala vs. State of U..P. and others** reported in 2008(4) ALJ 315, had occasion to consider the above reason. Although the Division Bench had upheld invocation of Sections 17(1) and 17(4) but on the aforesaid reason the Division Bench held that the Greater NOIDA could not demonstrate or give the name of any foreign industry which may have shown their interest for allotment of land in Greater NOIDA. Following was noted in paragraph 25 of the said judgment:-

"**25.** On our request, a list of industries with their proposals was provided by the GNIDA along with their first supplementary counter affidavit. A perusal of the list of the industries would show that the GNIDA relied upon names of some of the industries, which have already set up their industrial units in other parts of Greater Noida and that there were no foreign companies or institutions, which had proposed to set up an industrial unit in the area. In fact GNIDA could not demonstrate or give the name of any foreign industry, which may have shown their interest for allotment of land in Greater Noida."

Moreover, the fact that allotments were made to builders and colonisers in the year 2010 of the acquired land and allegation is being made by the respondents that after allotment the allottees have started construction on the spot itself proves that there was no such urgency of acquisition as was claimed by the GNOIDA or by the State that after taking possession on 5.9.2008, as alleged by the respondents, nothing was done for years although learned counsel for the respondents submits that allotment was made in the year 2010 to builders and colonisers have no bearing on the question of urgency at the relevant time when State Government exercised its power under Section 17(4) of the Act. It may be true that event which happened subsequent to exercise of power by the State Government under Section 17(4) can have no effect on forming any opinion which was formed earlier but the fact that land was allotted years after acquisition and taking possession proves the case of the petitioners that there was no urgency in the matter as to invoke Section 17(4) of the Act dispensing with inquiry. This Court

even subsequent to the decision of the State Government invoking Section 17(4) of the Act can verify and test the strength of submissions made by the petitioners that invocation of urgency clause under Section 17(4) of the Act was in routine manner and without application of mind.

Shri. A.K. Mishra learned counsel appearing for an intervener laid emphasis on Section 17(1A) which was added in the statute by U.P. Act 22 of 1954. It is submitted that urgency in case of Planned Development having been statutorily recognised, it is not open to the petitioners to contend that there was no urgency to invoke Section 17(1) and 17(4) for planned industrial development. It is relevant to note that Section 17(1A) was added by U.P. Act 22 of 1954 since in Section 17 of the Act power to take possession was available only for waste or arable land, and the U.P. Amendment was brought to enable the Government to exercise power under Section 17(1) for planned development which otherwise was not available under Section 17. It is further to note that by Parliamentary Act 68 of 1984 the words ‘waste and arable’ land has been deleted and substituted by ‘any land needed for Public Purpose”. This is not disputed by any one that Section 17(1) can be applied in case land is needed for planned development. Moreover, Section 17(1A) and now Section 17 as amended at best empowers the State to take possession but that does not mean that in all cases of planned development the enquiry under Section 5A shall also stand dispensed with. Thus Section 17(1A) as added in Uttar Pradesh does not change the status of acquisition for a planned development on any higher plan than all the acquisitions now covered by Section 17 as amended by Parliamentary Act 68 of 1984.

In view of forgoing discussions, we are of the view that exercise of power by the State Government invoking Section 17(4) of the Act dispensing with inquiry under Section 5A of the Act is vitiated due to following reasons as discussed above:-

(i) The original records of the State Government indicate that officers of the State Government did not advert to the issue of dispensation of inquiry under Section 5A of the Act nor gave any recommendation to that effect which further indicate that direction issued by the State Government under Section 17(4) of the Act was made without application of mind;

(ii) In the certificate given by the Collector (In Prapatra-10) only observation made was that it is necessary to take possession immediately to complete the project without delay. However, in his certificate the Collector has not given any reason as to why inquiry under Section 5A of the Act be dispensed with, rather observation in the certificate was that by invoking Section 17 of the Act the right of objection under Section 5A are automatically dispensed with and he is in agreement with dispensation of inquiry. The Collector himself having not applied his mind, who was required to consider all aspects and no reasons/recommendations having been there in the notings of the officers of the State Government as noticed above, there was no material on record to dispense with the inquiry under Section 5A of the Act;

(iii) Even assuming without admitting that reasons given by the GNOIDA in its Note of Justification for issuing notification under Section 4/17 were considered and relied by the State Government for arriving on its subjective satisfaction to dispense with the inquiry under Section 5A, the subjective satisfaction is vitiated since the ground that unless the land is not immediately provided, the land shall be encroached has been held by the Apex Court to be a irrelevant ground in **Om Prakash's and Radhy Shyam's** cases (supra). The subjective satisfaction based on an irrelevant ground is vitiated in law. As observed above, the notifications issued under Section 4 read with Section 17(1) and 17(4) were identical with all acquisitions and the materials on record before the State Government including the certificates issued by the Collector in Prapatra-10 as well as the Note of Justification submitted by the authorities were in identical term, hence the invocation of Section 17(4) has to be held to be vitiated in all the above cases.

Considering the dictum of the Apex Court, as noticed above and the facts as noticed above, we hold that invocation of Section 17(4) by the State Government dispensing with the inquiry under Section 5A of the Act while issuing notification under Section 4 is vitiated. The dispensation of inquiry being invalid, all the petitioners were entitled for an opportunity to file objection under Section 5A of the Act.

6. Pre-notification and Post-notification delay:

The petitioners in the writ petition have submitted that there was no urgency for invoking Sections 17(1) and 17(4), while issuing notification under section 4 which is also fully proved by the fact of delay which has occasioned even before issuance of notification under section 4 and subsequent to section 4 notifications. The petitioners have submitted that in main writ petition of Gajraj, the Greater Noida Authority sent recommendation on 31.3.2006 for invoking Sections 17(1) and 17(4) but the Collector forwarded the recommendation only on 22.2.2008 and thereafter notification under section 4 dated 12.3.2008 was issued which clearly proved that there was no such urgency in the matter so as to dispense the inquiry under section 5A. It is further submitted that the notification under section 6 was issued after more than three and half months from section 4 notifications which itself belies the case of the State that the case was such urgent that no opportunity could have been given under section 5A. Learned Counsel for the petitioners submits that there are several other cases in which gap of about one year in the notifications under section 4 as well as in the notification under section 6. For village Pali Notification under section 4 was issued on 7.9.2006 whereas notification under section 6 was issued on 23.7.2007 i.e. after more than ten months. In village Biraundi Chakrasenpur Section 4 notification was issued on 31.7.2007 whereas notification under section 6 was issued on 15.1.2008. In Tusiyana section 4 notification was issued on 10.4.2006, whereas section 6 declaration was issued on 30.11.2006. In Village Dabara Section 4 notification was issued on 31.10.2005, whereas section 6 notification was issued on 1.9.2006. In this context one case is to be specifically noted i.e. writ petition No. 44093 of 2011 Beli Ram Vs. State of U.P. and others of village Kondali Banger. In the writ petition, notification dated 8.9.2008 issued under section 4 read with Section 17(1) and section 17(4) and notification dated 16.9.2009 read with Section 6 have been challenged. A counter affidavit has been filed by the State in which it has been pleaded that notification under section 4 was published in the Hindi newspaper Rashtriya Sahara and Amarujala on 15.8.2009 and the Munadi in the village was carried out on 21.8.2009 and thereafter notification under section 6 was issued on 16.9.2009 which was published in the daily newspaper Jansatta and Dainik Jagaran on 24.10.2009. From the above, it is clear that even publication of section 4 notification was made in the newspaper on 15.8.2009 and Munadi was done on

21.8.2009 i.e. notification under section 4 was published after 11 months and notification under section 6 was issued after more than one year of the gazette publication of section 4.

The submission which has been pressed by the learned counsel for the petitioners are that section 6 has been not immediately issued after section 4 clearly indicates that there was no urgency in the acqusition and the invocation of urgency under section 17(1) and 17(4) was done in the routine manner without there being any real need or urgency in the matter. The question of delay caused prior to issuance of notification under section 4 as well as subsequent to section 4 had come for consideration before the apex Court in several cases. In AIR 1971 SC 1033 **Jage Ram and others Vs. State of Haryana** in which apex Court observed the fact that State Government or Authority concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date when notification was issued there was urgency or not. Following was laid down in paragraph 10:

“The fact that the St-ate Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not the conclusion of the Government in a given case that there was urgency entitled to weight, if not conclusive.”

In **Deepak Pahwa etc. Vs. Lt. Governor of Delhi and others** AIR 1984 SC 1721, the apex Court held that mere pre-notification delay would not render the invocation of urgency provision void. However, the Court did not say anything about post notification in delay. Following was laid down in paragraph 8:

“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 S. 4 (1) was published, it would be apparent that there was no justification for invoking the urgency clause under s. 17 (4) and dispensing with the enquiry under s. 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 invariably to delay in the

execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that more pre-notification delay would render the invocation of the urgency provisions void. We however wish to say nothing about post-notification delay. In Jaga Ram v. State of Haryana, this court pointed out "the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not." In Kash Reddy Papiah v Govt. of Andhra Pradesh, it was held, "Delay on the part of the tardy officials to take further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency." In the result both the submissions of the learned counsel for the petitioners are rejected and the special leave petitions are dismissed."

The next case relied by learned counsel for the respondents is **Chameli Singh and others Vs. State of U.P. and another** (1996) 2 Supreme Court Cases 549, the apex Court had occasion to consider the question of pre-notification and post notification delay. The apex Court laid down following in paragraphs 15, 16 and 17:

"**15.** .....The pre-notification and post-notification delay caused by the concerned officer does not create a cause to hold that there is no urgency.. Housing conditions of Dalits all over the country continue to be miserable even till day is a fact of which courts are bound to take judicial notice. The ratio of Deepak Pahwa's case (supra) was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to inter-Departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In Jaga Ram and Ors. v. State of Haryana and Ors. MANU/SC/0571/1971 : [1971]3SCR871 this Court upheld the exercise of the

power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Pahwa's case this Court had held that very often persons interested in the land proposed to be acquired may make representations to the concerned authorities against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgency projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition.....

16. It would thus be seen that this Court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17(4) to dispense with Section 5-A inquiry.

17. It is true that there was pre- notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power male fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem, and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the

power to invoke urgency clause invalid on that account."

Again in (2002) 4 Supreme Court Cases 160 **First Land Acquisition collector Vs. Nirodhi Prakash Gangoli and another**, the Court considered the post notification delay. Following was observed in paragraph 5:

"Any post Notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5(A) by invoking powers under Section 17(1) of the Act would not invalidate the decision itself specially when no malafides on the part of the government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it would be shown that the State Government never applied its mind to the matter or that action of the State Government is malafide."

In **Anand Singh Vs. State of U.P**.(2010)11 Supreme Court Cases 242, the issue of pre-notification and post notification delay in issuing notification under section 6 was considered and the apex Court after considering the judgment of Jage Ram, Deepak Pahwa and Chameli Singh (supra) laid down following proposition in paragraph 48:

" As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact-situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate government before the court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5A."

The recent judgment in **Dev Sharan and Others Vs. State of U.P. and others** (2011) 4 **Supreme Court Cases 769,** the Court considered the post notification delay and following was observed in paragraphs 37 and 38:

"**37.** Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is of 11 months

and 23 days, i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17 (4) of the Act.

38. In paragraph 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months." The submission of learned counsel for the respondents is that delay prior to issuance of notification and subsequent to the issuance of notification under section 4 accelerates the urgency as has been held by the apex Court in several cases. This argument has been specifically considered in recent judgment of the apex Court in **Devendra Singh and others Vs. State of U.P. and others** (Civil Appeal No. 6293 of 2011 decided on 3.8.2011). The apex Court held that delay in proceeding itself shall not create urgency but urgency may be accelerated only in cases where there exist urgency. Thus, existence of urgency is a material factor. It is relevant to quote paragraph 13 which is to the following effect:

" 13. Learned senior counsel for the respondents also relied on the decision of this Court in Deepak Pahwa case (supra). In that case, the land was acquired by invoking urgency provisions under section 17 for the purpose of construction of a New Transmitting Station for the Delhi Airport after the correspondence of nearly eight years among the various Departments of the Government before the Notification and the declaration was published in the Gazette. This Court has held that mere pre-notification delay would not render the invocation of the urgency provisions void as very often, the delay increased the urgency of the necessity for acquisition. We are afraid that the decision will not come to the rescue of the respondents because this Court has observed that delay only accelerates or increases the urgency of need of acquisition, which contemplates that delay does not create a ground or cause for urgency but increases the already existing

urgency for acquisition of land for any public purpose. Therefore, the delay, by itself, does not create urgency for acquisition but accelerates urgency only in case if already exists in the nature of the public purpose."

From the pronouncements of the apex Court as noticed above, it is clear that in the event there are sufficient material to explain the delay prior to issuing notification under section 4 or subsequent to notification under section 6, the delay itself does not vitiate the acquisition. It has been further stated that the delay may be by objection by interested persons or by lethargy of the officer which itself should not be ground but as has been laid down by the apex Court in Anand Singh's case (supra), noticed above, that the delay will have a material bearing on the question of matter of urgency particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of inquiry under section 5A. It is further relevant to note that delay both pre and post notification itself does not accelerate urgency where there was none and it may accelerate urgency only when there was urgency for the acquisition. Thus the crux of the matter is, whether urgency was such that summary enquiry under Section 5A was necessary to be dispensed with since acquisition could not have waited for few days and few weeks. In this bunch of cases, the reason for invocation of urgency has been mechanically given in same words which has already been considered and found not valid. Further there is no proper explanation with regard to inordinate delay caused in issuing notification under section 6 when section 4 notification was already issued by the State Government invoking urgency. Thus, the submission of the petitioners have substance that in large number of cases pre-notification and post-notification delay caused clearly indicates that the cases were not such so as to invoke sections 17(1) and Section 17(4).

7. **Colourable Exercise of Power**

Petitioners' case in the writ petition is that the acquisition of agricultural land of the petitioners was in colourable exercise of power and was nothing but fraud on power. In the main writ petition (Gajraj and others vs. State of U.P.), the petitioners' case is that urgency clause was invoked in order to fulfil the obligations

to the private builders. It has been pleaded that the notifications seeking to acquire the land were in colourable exercise of power. In the aforesaid writ petition, the petitioners have pleaded in paragraph 14, as quoted above, that although the land was acquired for planned industrial development in district Gautam Budh Nagar but the same has been transferred to private builders for construction and sale. Copy of Lease deed dated 31st March, 2010 by which one Supertech Limited was transferred plot measuring 2,04,000.00 square meters for construction of residential colonies, has been brought on the record.

In Writ Petition No.47502 of 2011 (Jugendra and othes vs. State of U.P. and others) of village Tusiyana following has been pleaded in paragraphs 11 and 31:-

"**11.** It is now well established that the State Government, Greater Noida Authorities, Bulders and the Colonizers have hatched a conspiracy to deprive the farmers of their lands by malafide and colourable exercise of powers of so called 'eminent domain' and thereby snatching away the lands of the farmers that being allotted to the builders and colonizers and in the process to earn huge money therefrom.

31. That, it has now come on record that it is for the benefit of certain individual that the large population of farmers and entrepreneurs are put to sword and are mad to suffer on account of malice of the respondents. In this context it may not be lost sight that various farmers and entrepreneurs have lost their land and although they have been paid some compensation but the said compensation could not be equated with an alternative arrangement for a recurring source of income. It is a matter of common knowledge that on account of such acquisition and depriving the local youth in meaningful activity of engaging themselves in some business including business in industrial sector, the local youth is finding its future rudderless and are now frequently engaging themselves in criminal activities and that it is for this reason that murders and kidnapping etc. galore in that part of the world. Planned development 'of the society' should be matter of concern for the State and not benefit of 'certain individuals'. The acquisition proceedings result in pocketing of huge profits in the limited few by depriving the bulk of population either of their residential abode or their source of livelihood. Averments relating to

advancements, development and such other ‘colourful phrases’ is in effect of camouflage and is a false perspective of development. It may be noticed that the acquisition of petitioners land would not only deprive them of their property and business but also result in depriving the person who have been working with the petitioners of their right of livelihood.”

In Writ Petition No.37119 of 2011 (Dal Chand and others vs. State of U.P. and others) of village Roja Yakubpur, following was stated in paragraphs 7, 11 and 12:-

“**7.** That the purpose for which the land of petitioners is sought to be acquired as per the notification is Plan Industrial Development through the Authority which, on the fact of it, is incorrect and is, in fact, a camouflage. It may be stated here that State Government wrongly and illegally mentioned in the notification that the land is being acquired for Plan Industrial Development through the Authority while, in fact, the land is sought to be acquired for the purposes of transferring the same to private builders (in the present case respondents No.3 to 8) for construction residential colonies/flats. Thus the entire exercise which has been done is colourable exercise of powers and on this ground alone the impugned notifications and acquisition proceeding pursuant thereof, are liable to be quashed.

11. That, however, the land which was acquired Plan Industrial Development by invoking urgency clause U/s. 17(4) of the Act and the inquiry as contemplated U/s. 5 of the Act was dispensed with in the acquisition proceeding. The land acquired is not used for Plan Industrial Development through Authority and it is not used for the purpose for which it was acquired and is transferred to Respondent No.3 to 8 for the purposes of constructing residential flats.”

12. That vide lease deed dated 28.07.2010 an area of 106196.00 sq. meter of Plot No. GH-01, Techzone-IV Greater Noida is transferred in favour of Respondent No.3 namely Amarpali Leisure Valley Developers Pvt. Ltd. for the development and marketing of Group Housing Pockets/flats/plots. A photocopy of the said lease deed dated 28.07.2010 is being filed as ANNEXURE-4 TO this writ petition.”

In paragraphs 13 to 17 of the said writ petition, details of allotments and lease deed dated 25th February, 2011 in favour of M/s. Amrapali Dream Valley Private

Limited for an area of 354299 square meters, lease deed dated 17th February, 2011 in favour of Amrapali Centurian Park Private Limited for an area of 272916 square meters, lease deed dated 11th October, 2011 in favour of M/s Supertech Ltd. for an area of 85202.37 square meters, lease deed dated 2nd April, 2011 in favour of Omar Nests Pvt. Limited for an area of 86037 square meters and lease deed dated 3rd November, 2010 in favour of M/s Rajesh Projects (India) Limited for an area of 74731.24 square meters have been referred to and pleaded.

Pleadings to the same effect have been made in almost all the writ petitions and reference of transfer to private parties of substantial area of land acquired has been made.

Learned counsel for the respondents although contended that there are no pleading or material to even allege colourable exercise of power by the GNOIDA or the State Government but the said contention cannot be accepted. The interveners have already filed applications and affidavit giving details of allotment which clearly substantiate the pleading that there has been mass transfer of acquired land to private builders by the GNOIDA against the purpose and object of the 1976 Act and the transfer to private parties is not in conjunction with any industrial development, rather it is dehors the object of the 1976 Act. Along with four supplementary counter affidavit the GNOIDA has given details of allotments, land use, change of land use, area of allotment and other details pertaining to each village of Greater NOIDA. From the materials, which are in shape of folders and part of four supplementary counter affidavit, it is revealed that in following villages the GNOIDA itself has changed the land use converting the land use into residential whereas it was different in the master plan. The details of villages in which land use was got changed by GNOIDA to enable it to facilitate transfer to private parties, are as follows:-

1. Patwari

2. Junpat

3. Ghori Bachhera

4. Chhapraula

5. Pali

6. Yusufpur Chak Shahberi

7. Kasna

8. Haibatpur

9. Chhipayana Khurd

10. Itehra

11. Roja Yakubpur

12. Bishrakhpur Jalalpur

We have already observed, while considering Issue No.1 and 2, that GNOIDA has not correctly comprehended the object and purpose of the 1976 Act and its actions have not been in accord to promote the purpose and object of the Act. Reckless proposals submitted by the GNOIDA for acquiring huge fertile agricultural land of villages of GNOIDA and NOIDA which remain unutilised for years and ultimately the industrial use of some villages was got changed into residential facilitating transfer to private parties indicate that the action of the GNOIDA is not to fulfil the object of the Act, rather it has been exercising its statutory power for the object which is not contemplated by the 1976 Act. The GNOIDA has mechanically recommended invocation of urgency clause so that land holders could not raise any finger regarding the acts and motive of the GNOIDA and it may pursue its plan to carry on its activity as it pleases. We have already noticed above that GNOIDA is labouring under misconception that unless it acquires the land under the Land Acquisition Act it cannot carry any development which mindset is not in accordance with the purpose and object of the 1976 Act. It is true that under Section 6(2)(a) of the 1976 Act the functions of the Authority includes acquisition of land in the industrial development area by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes of the Act. The Authority has not substantially resorted other mode prescribed for acquisition i.e. by

agreement, rather it has embarked upon acquisition of land in reckless manner. The fact that the land use of the land, which was acquired for industrial development in different villages, has been changed into residential clearly indicates that the Authority has not been able to achieve the object of industrial development.

Learned counsel for the respondents has submitted that by changing the land use there has been no change as the change of land use of a particular village was compensated by swapping the land. Although under the provisions of the Act and Regulations 1991 it may be permissible for the Authority to change the land use, but we are not on the above issue. The sequence of events specially the wholesale allotment for residential colonies and the resolution of the GNOIDA dated 2nd February, 2010 by which it decided to change the land use of the area adjoining 130 meters road for the purposes of earning more profit clearly indicates that it did not pursue the object of the Act and acted with the object of earning profit.

Learned counsel for the respondents has placed reliance on a Division Bench judgment of this Court in the case of **Sundar Garden Welfare Association and another vs. State of U.P. and others** reported in 2008(5) ALJ 29. In the said case land was acquired for planned industrial development in district Ghaziabad through Uttar Pradesh State Industrial Development Corporation, Kanpur. In the aforesaid case, following was laid down in paragraph 13:-

"**13.** We are of the view that once the land was acquired and taken over by the requiring body for the purposes of industrial development, then it can be public or commercial and residential accommodation connected with the said industrial development but it cannot enter into simple housing development scheme performing the job of the development authorities and Nagar Nigams etc., which are authorised under the U.P. Urban Planning and Development Act, 1973 and colourable exercise other similar Acts."

There cannot be any dispute that according to the provisions of the 1976 Act and Regulations land acquired can be put to different uses as mentioned in Regulation 2 of the 1991 Regulations including agricultural, commercial, industrial, institutional

and residential houses but as observed by us while deciding Issue No.1 and 2 other uses have to be subservient to the dominant object of the industrial development.

Learned counsel for the GNOIDA has placed reliance on a Division Bench judgment of this Court in the case of **N.P. Singh vs. State of U.P. and another** reported in 2010(10) ADJ 217 for the proposition that the Authority can alienate the plots to private builders and the Authority cannot be prohibited from making allotments of group housing plots. It was held by the Division Bench that Section 7 of the Act does not bar the Authority from selling or leasing the land to private parties including private builders. Following was laid down by the Division Bench in paragraph 15 of the said judgment, which is as under:-

"**15.** On consideration, therefore, of Sections 6 and 7, it is clear that power is conferred on the Authority to sell, lease or otherwise transfer, by the method set out in the Section, any land belonging to the Authority in the development area on such terms as it thinks fit. The functions of the Authority have been set out under Section 6 of the Act, which includes the power to acquire land, to prepare a plan, to demarcate and develop sites for industrial, commercial and residential purposes and to allocate them for sale or lease, amongst others, for residential purposes. The power, therefore, to alienate the land, which had been acquired for residential purpose has been provided for by the Act itself. It will, therefore, not be possible to accept the contention on behalf of the petitioner that the land having been acquired under the Land Acquisition Act, 1894 cannot be alienated. Section 7 of the Act does not bar the Authority from selling or leasing the land to private parties including private builders. There is also no other provision, implied or express, prohibiting the transfer of land under the Act. The object of the Act is not defeated if private builders are allowed to develop the area, as the object is to develop the area into an industrial and urban township. The process of development, as noted by the Authority in terms of plan notified, can be carried out either by the Authority or through other bodies. The Authority in that process transfers plots to individuals, societies as also for Group Housing in respect of which development can be done by the private parties, including builders whereby the object of the Act is satisfied. The petitioner has not brought to our attention any provision whereby the Authority

is prohibited, expressly or impliedly, from carrying out objects of the plan through private builders. The State and it organs in order to enable citizens to have affordable housing and further for proper development of a town, so that better infrastructure is provided, can do it by itself or through its instrumentalities or third partner, including private builders. That private builders may make profit is no answer. The State with its limited financial resources can allow others to achieve the object of the Act which is its primary concern including affordable housing and better infrastructure. The first contention must be rejected."

We are of the view that no exception can be taken to the power of the Authority to transfer or lease out the property as empowered by Section 7. We are, however, of the view that power under Section 7 has to be utilized for the purpose and object of the Act and leaving the industrial development as its dominant object, the Authority cannot act in a manner that it has become a facilitator of carrying building activities in the area to private builders without it having any connection with the object of industrial development. The power given to the Authority under the Act has to be exercised keeping in view the object of the Act.

The phrase "colourable exercise of power" came for consideration before the Apex Court in the case of **State of Punjab and another vs. Gurdial Singh and others** reported in (1980)2 SCC 471. In the said case Justice Krishna Iyer explained as to what is mala fide in the jurisprudence of power, sometimes called colourable. Following was laid down in paragraph 9:-

"**9.** The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the

entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat...that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice- laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

In the case of **Collector (District Magistrate) Allahabad and another vs. Raja Ram Jaiswal** reported in (1985)3 SCC 1, the Apex Court had occasion to consider the question of colourable exercise of power in context of land acquisition. Following was laid down by the Apex Court in paragraphs 25 and 26:-

"**25.** It is well-settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Sec. 4 (1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity, can it be said that such a purpose would be a public purpose May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the equcational and cultural environment of the institution and therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its proclaimed need of land for putting up Sangrahalya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land the statutory authority having known this fact yet proceeded to exercise

statutory power and initiated the process of acquisition. Does this constitute legal mala fides?

26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourableq exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides In such a situation there is no question of any personal ill- will or motive. In Municipal Council of Sydney v. Compbell(1) it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In State of Punjab v. Gurdial Singh and Ors (2) acquisition of land for constructing a grain market was challenged on the ground of legal malafides Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal malafides in his hitherto inimitable language, diction and style and observed as under:

.....

.....

After analysing the factual matrix, it was concluded that the land was not needed for a Mandi which was the ostensible purpose for which the land was sought to be acquired but in truth and reality, the Mandi need was hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine. The notification was declared invalid on the ground that it suffers from legal mala fides. The case before us is much stronger, far more disturbing and unparalelled in influencing official decision by sheer weight of personal clout. The District Magistrate was chagrined to swallow the bitter pill that he was forced to acquire land even though he was personally convinced there was no need but a pretence- Therefore, disagreeing with the High Court, we are of the opinion that

the power to acquire land was exercised for an extraneous and irrelevant purpose and it was colourable exercise of power, namely, to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which it vowed to destroy. Therefore, the impugned notification has to be declared illegal and invalid for this additional ground."

Learned counsel for the petitioners have also referred to terms and conditions of allotment of land to private builders indicating that on mere payment of 5% of allotment money allotments have been made since entire efforts of the Authority were to only help the private builders and allot as much land to them as possible. The object of the Authority to earn huge profit is writ large in its action. The petitioners submit that the allotment to builders on very soft terms was the real purpose and object of the Authority for acquisition which has come true by subsequent conduct of the Authority. One of the allotment letters dated 17.8.2010 in favour of M/s Supertech Ltd. has been filed as Annexure CA-3 to the counter affidavit filed by M/s Supertech Ltd. (respondent No.9) in Writ Petition No.43825 of 2011 (Nepal and others vs. State of U.P.) which indicates that: (i) allotment has been made on 5% reservation money and 5% allotment money; (ii) there shall be moratorium of 24 months from the date of allotment for payment of instalments; (iii) allotment amount was to be paid within 10 years; and (iv) land allotted was 249410 square meters. The above indicates that Authority allotted huge land on very soft terms and conditions which discloses its intention to transfer as much land as possible to private builders putting aside its main object of industrial development.

While considering the issue pertaining to National Capital Regional Planning Board Act, 1985, we have referred to effect of Section 40 of the 1985 Act on the 1976 Act. Under the 1976 Act though Authority is empowered to acquire land under Section 7(2)(a) but the power of requiring body i.e. Authority shall now be conditioned by Section 40 of the Act i.e. now the power of acquisition can be exercised only to give effect to any Regional Plan, Functional Plan, Sub-Regional Plan or Project Plan. In the present cases the Authority has stated that its Master Plan 2021 had been approved by the Authority in November, 2001 and thereafter it proceeded to implement its plan. The recommendations for acquisition of land

has been thus made by Authority in furtherance of its Master Plan 2021; The Master Plan 2021 of Greater Noida Authority having not yet been cleared by NCRP Board, the recommendations of Authority for huge acquisition of land becomes questionable which is also an act of Greater Noida Authority in colourable exercise of power.

From the aforesaid discussions, we are of the view that the Authority has acted in colourable exercise of power in exercising its statutory function of acquiring the land as per Section 6(2)(a) of the 1976 Act. The Authority on the pretext of carrying planned industrial development as it was statutorily obliged to carry, pursued different object and purpose, i.e. transferring the land to private persons dehors to the industrial development.

Now comes the allegations made against the State Government regarding colourable exercise of power. Learned counsel for the petitioners has submitted that State without applying its mind and without making appropriate inquiry and without adverting as to whether such huge chunk of land is required for acquisition, proceeded to issue notification under Section 4 read with Sections 17(1) and 17(4) and Section 6 of the Act to help and facilitate the private parties, which is a colourable exercise of power. We, however, observe that there are no appropriate pleading alleging malafide against the State Government nor there is any material on the record on the basis of which we can come to the conclusion that the State Government has acquired the land at the instance of private parties. Thus we are of the view that petitioners have not successfully pleaded and proved malafide against the State Government although it has been proved that State has proceeded to issue notifications under Section 4 read with Sections 17(1) and 17(4) and Section 6 without application of mind as observed above.

8. Taking of possession:

One of the submissions which has been pressed by petitioners' counsel in all the writ petitions is that no possession of the plots in question have been taken by the Collector on the spot. It is submitted that possession as contemplated under Section 17, sub Section 1 has to be actual physical possession. It is submitted that the District Revenue Authorities as well as NOIDA authority/greater NOIDA

authorities have never taken physical possession of land in dispute and the possession memo has been prepared without coming on the spot and there are neither signatures of land holders nor there are signatures of any independent witnesses in the possession memo.

Learned counsel for the petitioners has relied on various judgments of the Apex court; **A.I.R. 2011 S.C. 1989 Narmada Bachao Andolen Vs. State of Madhya Pradesh and judgment of the Apex Court in Prahlad Singh and others Vs. Union of India and others 2011, 5 S.C.C. 386.** Learned counsel for the petitioners further submitted that in the counter affidavit filed by the State as well as by authority, no material has been brought on the record to indicate as to when possession was taken by the State under Section 17 of the Act. It is submitted that the respondents have filed alleged possession memo to indicate that possession was handed over to the authority.

It is submitted that unless the State takes possession of the land in dispute in accordance with law, there is no question of transferring the possession by the State of the land to the authority. It is further submitted that State having never taken actual physical possession on the spot. It can not transfer the possession to the authority and the possession memo which has been filed along with the counter affidavit evidencing alleged transferring of possession to the authority by the State can not be given any credence. Reliance has been placed by learned counsel for the respondents on the judgment of the Apex Court in **1976(1) S.C.C. 700 Balwant Narayan Bhagde Vs. M.D. Bhagwat.** Reliance has also been placed on judgment of the Apex court in **1996 volume 4 SCC 212 Bal Mukund Khatri Educationl and Industrial Trust Vs. State of Punjab** and judgment of the Apex Court in **2011 (5) S.C.C. 394 Banda Development authority, Banda Vs. Moti Lal Agarwal and others.** We have considered submission of the learned counsel for the parties and perused the record. Before we proceed to consider respective submission of the parties it is useful to refer to the judgments relied by learned counsel for the parties in which the issue has been considered. In **Balwant Narayan Bhagde** following was observed in paragraph 25.

“25. When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under section 47 of the Act if impeded in. taking possession. On publication of the notice under section 9(1) claims to compensation for all interests in the land has to be made; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under section 16 or 17 (1) it vests absolutely in the Government free from all incumbrances. It is, therefore, clear that taking of possession within the meaning of section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority 10 SC 75-18 has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking, of possession is not necessary. No further notice beyond that under section 9(1) of the act: is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government.”

In paragraph 28 it was further observed that how such possession may be taken, would depend on the nature of the land and there can be no hard and fast rule laying down what acts would be necessary to constitute taking a possession of the land. In **Balmokand Khatri, Educational and Industrial Trust v. State of Punjab 1996(4) SCC 212**, Apex Court observed that normal mode of taking possession is drafting the Panchnama in the presence of Panch as taking possession and giving to the beneficiaries following were laid down in paragraph 4:

“4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.”

In **Narmada Bachao Andolan’s** case (supra) Apex Court had occasion to consider the question of issue of taking possession. The manner of taking possession of land in Narmada Bachao Andolan, Apex Court held that in case the land is fallow and barren and does not have any structure or crop symbolic position may meet the requirement of law. However, this will not be a position in case crop is standing or a Kuccha or Pucca structure has been raised on such land following was laid down in paragraph 124.

124. In view of the above, law on the issue can be summarized to the effect that no strait-jacket formula can be laid down for taking the possession of the land for the purpose of Sections 16 and 17 of the Act 1894. It would depend upon the facts of an individual case. In case the land is fallow and barren and does not have any structure or crop on it, symbolic possession may meet the requirement of law. However, this would not be the position in case crop is standing on the land or a kachha or pacca structure has been raised on such land. In that case, actual physical possession is required to be taken.

There may be a case where the acquiring authority is in possession of the land, as the same has already been requisitioned under any law or the property is in possession of a tenant, in such a case symbolic possession qua the tenure holder would be sufficient.

In **Banda Development Authority’s** case (supra) the Apex court again considered manner of taking possession and after considering earlier judgment following principle was laid down in paragraph 37 which is quoted as below:

37. The principles which can be culled out from the above noted judgments are:

i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

The last judgment relied by petitioners is judgment of the apex court in **Prahlad Singh's** case. In the said case apex court held that no evidence was shown by the respondent to show that possession was taken in the presence of independent witness and their signatures were obtained in the Panchanama. Paras 20 and 22 which are relevant are quoted below:

“20 If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in Banda Development Authoritys case it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the Appellants and no evidence has been produced by the Respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama.”

22. Respondent Nos. 3 to 6 have not placed any document before this Court to show that actual possession of the acquired land was taken on the particular date. Therefore, the High Court was not right in recording a finding that the acquired land will be deemed to have vested in the State Government.”

In the main writ petition no.37443 of 2011 in the counter affidavit filed by the State it has been stated that possession of land was transferred to Greater NOIDA on 5.9.2008 and 12.1.2009 the relevant averment regarding delivery of possession has been made in paragraph 12(e) which is quoted below:

The Greater Noida Development Authority deposited 70% of the compensation amount (10% of the compensation amount had already been deposited by the Greater Noida Authority before submitting the proposal for issuance of Section 4 Notification), as required under the Land Acquisition Act, before sending the proposal for issuance of declaration under Section 6. The proposal was sent to the State Government vide letter no.144/10 dated 24.06.08 and the State Government after being satisfied with the proposal issued declaration under Section 6(1)/17(1) on 30.06.2008. After the declaration under Section 6(1)/17(1), notices under Section 9 were issued to the land owners, and after expiration of fifteen days time as stipulated in the notices, possession of land was transferred to Greater Noida Development Authority on 05.09.2008, for an area of 572.592 hectares, and on 12.01.2009 for an area of 1.453 hectares. True photocopies of the possession memo dated 05.09.2008 and 12.01.2009 are being filed herewith and marked as ANNEXURE NOS. CA-5 AND CA-6 respectively to this counter affidavit.

The possession memos dated 5.9.2008 and 12.1.2009 has been filed as Annexures 5 and 6 to the counter affidavit of the State. Both the possession memos state “the possession of land as detailed below included in notification as mentioned above of Village Patwari, Tehsil Dadari is being transferred to acquiring department/greater NOIDA Industrial Development authority.” (translated in English)

The said memo has been signed by 5 officials of greater NOIDA authority and Special Land Acquisition officer Gautam Budh Nagar. The possession memo does not contain signatures of any of the land holders or any witnesses. It is useful to refer two specific pleadings in writ petitions regarding possession. In writ petition no.47502 of 2011 Jugendra and others Vs. State of U.P. following was stated in paragraph 6 of the writ petition:

“That, subsequent to the acquisition proceedings a notice purporting to be a notice under Section 9 of the Act aforesaid was also issued and it is said that the possession of entire land in village Tusiyana, Pargana and Tehsil Dadri district Gautam Budh Nagar and being 293.015 Hectare was taken. Photostat copy of the procession memo as prepared and shown to have been executed between the authorities of the State Government and Greater Noida, is being filed herewith and is marked as Annexure-5 to this writ petition. As would appear from a perusal of possession memo also, none of the petitioners have signed the aforesaid possession memo and the possession memo is only a departmental document not signed by any of the petitioners. Thus at no point of time the possession of the land in dispute has been validly taken from the petitioners. Copy of the possession memo as claimed by the State dated 2nd February, 2007 was also filed as Annexure 5 to the writ petition. The possession memo Annexure 5 to the writ petition also contains the statement “details of the land possession of which is being transferred to acquiring body/greater NOIDA Industrial Development authority”. The said memo has again been signed by four officers of the greater NOIDA authority and Additional District Magistrate Land Acquisition, Gautam Budh Nagar. The aforesaid possession memo are not the possession memo or the document showing taking of possession by the State. There is no occasion to transfer the possession to the greater NOIDA authority by the State unless the

possession is obtained by the State. Further more, as held in the judgment of the apex court as noticed above even if the land is vacant the State authority has to go to the spot and prepare a Panchanama which ordinarily be treated as sufficient to constitute taking of possession. The possession memo filed by the State in the counter affidavit can not be termed to be a Panchanama since signatures of any Panch (independent witness) are absent. Thus the taking of possession by the respondent can not be said to be in accordance with the law. Thus we find substance in the submission of the learned counsel for the petitioners that possession was not taken by the State authorities of land in accordance with law and possession memo which has been filed by the State authorities can not be treated to be valid possession memo evidencing taking of possession.

9. Vesting:

One of the submissions raised by learned counsel for the respondents is that in view of the land having been vested in the State after taking possession under section 17(1) of the Act, no relief can be granted to the petitioners putting them back in possession. It is further submitted that acquisition cannot be challenged after land having vested in the State. Section 17(1) of the Land Acquisition Act provides as follows:

“17. Special powers in case of urgency. - (1) In cases of urgency whenever the appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1). Take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.”

According to Section 17(1) where possession is taken by the Collector after expiration of 15 days from the publication of the notice under section 9(1) such land shall there upon vest absolutely in the Government, free from all encumbrances. As proposition of law and statutory consequences, there cannot be any dispute to above. The issue which has been sought to be raised is that the land having vested in the State, the petitioners cannot be granted relief nor any challenge to the acqusitioin can be entertained after such vesting. The first case

which needs to be considered in this context is **Raja Anand Brahma Shah** (supra). In the said case notification under section 4 was issued on October 4, 1950 invoking Sections 17(1) and 17(4). Section 6 declaration was issued and thereafter Collector took possession of the land on in November, 1950. Award was also made on 7.1.1952. The writ petition was filed by the land owners in the year 1955 challenging the notificatioins including the award. The apex Court held that State Government had no jurisidcitoin to apply section 17(1) and Section 17(4) and Government had no jurisdiction to order the Collector to take possession under section 17(1). The High Court dismissed the writ petition which order was set aside by the apex Court and the appeal was allowed. Following order was passed by the Supreme Court:

“We further order that notification of the State Government dated December 12,1950 under section 6 of the Act and also further proceedings taken in the land acquisition case after issue of the notifications should be quashed including the award dated January 7, 1952 and reference made to civil Court under section 18 of the Act.”

The restoration of possession was not directed in view of the judgment of the apex Court in Civil Appeal No. 653-654 of 1964 decided on the same date that intermediary interest of the appellant had validly vested in the State of U.P. under U.P. Zamindari Abolition and Land Reforms Act.

Respondents have placed reliance on a judgment of the apex Court in (1996)3 Supreme Court Cases 600 **Senjeevnagar Medical and Health Employees Cooperative Housing Society Vs. Mohammad Abdul Wahab and others** in which judgment, the apex court laid down following in paragraph 12:

“A Bench of three Judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to the owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48(1) gives power to withdraw from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the

appellants, in the absence of any power under the Act to have the title of the appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. The exercise of the power to quash the notification under Section 4(1) and the declaration under Section 6 would lead to incongruity. Therefore, the High Court under those circumstances would not have interfered with the acquisition and quashed the notification and declaration under Sections 4 and 6 respectively. Considered from either perspective, we are of the view that the High Court was wrong in allowing the writ appeal"

In (1996) 1 Supreme Court Cases 501, **Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Corporation Pvt. Ltd.,** it was laid down in paragraph 29 (which has been quoted above) that when award was passed and possession was taken the Court would not have exercised the power under Article 226 of the Constitution to quash the acquisition.

In **State Of Rajasthan and Ors vs D.R. Laxmi and Ors** (1996) 6 Supreme Court Cases 445 following was laid down in paragraph 9:

"Recently, another Bench of this Court in Municipal Corporation of Greater Bombay Vs. Industrial Development and Investment C. (P) Ltd. [C.A. No. 282 of 1989] decided on September 6, 1996 reexamined the entire case law and held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of latches. It is thus, well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226."

The above decision of the apex Court by three Judges Bench had clearly laid down that the High Court has no doubt discretionary power under Article 226 of the Constitution of India to quash the notification under section 4 and notification under section 6 but it should be exercised taking all relevant factors into pragmatic consideration.

As laid own by the apex Court in the Judgment Today 2009 (9) S.C. 537 **National Thermal Power Corporation Ltd. Vs. Mahesh Dutta and others** that in the event possession of land in respect whereof a notification had been issued had been taken over, the State would be denuded of its power to withdraw from the acquisition in terms of Section 48 of the Act. It is true that under the Act after vesting of the possession in the State under section 17(1), there is no provision under which the acquisition can be withdrawn or vesting can be nullified but the exercise of jurisdiction under Article 226 challenging the acquisition cannot be hedged with any such limitation that court in appropriate case cannot quash the notifications and the entire acquisition proceedings. To hold that after land is vested in the State under section 17(1), the acquisition cannot be quashed would be putting limitation in the exercise of jurisdiction under Article 226 where no such limitation has been contemplated. It is another case that High Court while exercising its writ jurisdiction may take a decision to quash or not to quash the notifications taking into consideration all relevant factors but that is matter of exercise of power and submission that acqusition cannot be quashed after vesting of land in favour of the State has to be rejected. In the event, it is accetped that after land is vested in the State, acquisition cannot be quashed. Only thing which may be required for the State to save all acqusition is to somehow take possession under section 17(1) and thereafter to tell the Court that now the acquisition cannot be quashed. The Apex Court in **Narmada Bachao Andolan** (supra) has laid down the courts are not to perpetuate an illegality rather it is the duty of the Court to rectify mistake.

Following was laid down in paragraph 63:

“63. The Courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in Hotel Balaji and

Ors. etc. etc. v. State of A.P. and Ors. etc. etc., AIR 1993 SC 1048 observed as under:

"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (A.M.Y. at page 18: `a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors". (See also Nirmal Jeet Kaur v. State of M.P. and Anr., (2004) 7 SCC 558; and Mayuram Subramanian Srinivasan v. CBI, AIR 2006 SC 2449)."

In the present case, the issue is already concluded by the judgment of the apex Court. In writ petition No. 5670 of 2007 pertaining to village Yakubpur was filed challenging the notification dated 26.9.2006 under section 4 read with Section 17(1) and Section 17(4) and notification under section 6 dated 19.1.2007. After the notification, the State had taken possession on 27.1.2007. The writ petition was filed in this Court on 31.1.2007 in which writ petition on 9.2.2009, the Division Bench of this Court passed following order:

" This writ petition has been filed by the petitioner challenging the land acquisition proceedings dispensing with the provisions of Section 5A and urgency clause 17(4) and notification under section 4(1) of the Land Acquisition Act. There is no interim order in the writ petition. By efflux of time, the writ petition has rendered infructuous as the land has vested in the State free from all encumbrances. The writ petition is dismissed."

The petitioners of the writ petition filed a Special Leave Petition in the Supreme Court against the aforesaid judgment. The leave was granted by apex Court. The appeal was allowed by judgment and order dated 1.2.2010 in Civil Appeal No. 1331 of 2010, Kesari Singh and others Vs. Government of U.P. The apex Court gave following judgment on 1.2.2010. :

"Leave granted. Heard.

2. The appellants' land was said to be acquired by issuing the notification dated 26.09.2006 under Section 4(1) read with Section 17(4) of the Land Acquisition Act, 1894 dispensing with Inquiry under Section 5A followed by final notification dated 9.1.2007 issued under Section 6 of the said Act. The appellants challenged the acquisition notifications by filing a writ petition in the year 2007. The writ petition was dismissed by the High Court by a short order dated 9.2.2009 stating that the petitioner has become infructuous because there was no interim order. The said order is challenged in this appeal by special leave.

3. We have issued notice to show cause why the matter should not be remanded to re-consider the writ petition in accordance with law. Even though the notice is served, the respondents have not chosen to contest the proceedings.

4. When a writ petition is filed challenging the acquisition, merely because the interim stay was not granted, the writ petition does not become infructuous. If the writ petitioner is able to satisfy the court that the writ petition has to be allowed on merits, he may be entitled to appropriate consequential reliefs. Even if the possession of the land has been taken and used for a public purpose, it may be possible to grant other reliefs say, deeming a subsequent date, instead of the date of Section 4(1) notification as the date of acquisition for purposes of calculating the compensation, or directing delivery of a plot etc. In some cases, even restitution may be permissible. Be that as it may. What is relevant to notice is that the petitioner will not become infructuous merely because of non-grant of stay.

5. In view of the above, this appeal is allowed, the order dated 09.02.2009 of the High Court is set aside and the writ petition is restored to the file of the High Court. We request the High Court to dispose of the matter on merits, expeditiously particularly having regard to the fact that there is no interim order."

The Apex Court had set aside the Division Bench judgment of this Court and has laid down that even if the possession of the land has been taken it maybe possible to grant other reliefs. The Court also observed that even restitution may be permissible. The above judgment of the apex court clinches the issue and the issue has to be answered against the respondents and submission made by learned counsel for the respondents that the petitioners cannot be permitted to

challenge the land acquisition proceedings after vesting of the land has to be rejected.

10. Section 11 A Lapse of Acquisition:

Learned counsel for the petitioners have submitted that after publication of declaration under Section 6 of the Act, in none of the cases award has been made under Section 11 within two years from the date of publication, hence, the entire proceedings for acquisition of the land has lapsed. Section 11 A of the Act is as follows:

11A. Period within which an award shall be made. - (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 the award shall be made within a period of two years from such commencement.

Learned counsel for the respondents refuting the submission made by counsel for the petitioners contends that in all the acquisitions under challenge Section 17(1) was invoked and the possession was taken of the land after issue of notice under Section 9 and land has vested in the State under Section 17 sub Section (1) hence Section 11-A has no application.

Learned counsel for the respondents submitted that Section 11 A applies in the cases where Section 17 has not been invoked and in cases where Section 17 has been invoked, there is no applicability of Section 11-A.

Learned counsel for the respondents has placed reliance on the judgments of the Apex Court of **1993 Volume 4 S.C.C. Page 369 Satendra Prasad Jain Vs. State of U.P. and 2011 Volume 5 S.C.C. 394 Banda Development Authority Vs. Motilal Agarwal**.

We have considered the submission of the learned counsel for the parties. In **Satendra Prasad Jain's** case the issue was considered and it was held by the Apex Court that when Section 17 sub Section (1) is applied by reason of urgency, the Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government as laid down in paragraph 15. The said view was reiterated by the Apex Court in **Awadh Bihari Yadav and others Vs. State of Bihar and others, 1995, 6 S.C.C. Page 31**. The recent judgment of Banda Development Authority (supra) has also occasion to consider the said issue, relying on the decision of Satendra Prasad Jain. The argument on the basis of Section 11-A was repelled. In the present bunch of cases the State Government has invoked urgency clause under Section 17(1) and possession has been taken in all the cases exercising urgency power. The ratio laid down by Satendra Prasad Jain's case is fully attracted and the submission made by the learned counsel for the petitioners on the basis of Section 11-A can not be accepted.

11. Section 17 (3A) of the Act:

Learned counsel for the petitioners submitted that the petitioners were not made payment of 80% of the compensation as required by Section 17(3- A) and as alleged the possession has been taken without payment of 80% compensation which violates Section 17(3A). It is contended that Section 17(3A) uses the word 'shall' which has to be interpreted as a mandatory provision. It is submitted that when possession is to be taken under Section 17 sub Section 1, invoking urgency clause the award is not prepared and in preparation of the award several years are taken due to which Section 17(3-A) mandates that 80% of the compensation is to be paid. Non payment of 80% compensation is arbitrary, unjust and in view of the fact that without payment of compensation possession is claimed to have been taken. The entire acquisition deserves to be set aside on this ground alone. The above submission made by the learned counsel for the petitioners has been refuted by learned counsel appearing for the respondents. It is contended that the provision of Section 17(3-A) is directory. It is submitted that even if 80% compensation is not tendered/paid to the land holder, acquisition shall not be vitiated, reliance has again been placed on judgment of Sateyendra Prasad Jain

(supra) as well as the judgment of the Apex Court in Banda Development Authority (supra) and Awadh Bihari Yadav (supra).

The provisions of Section 17(3A) of the Act were considered by three Judge Bench in Satendra Prasad's Jain case, following was laid down by Apex Court in paragraph 17:

“In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.”

Again in Awadh Bihari Yadav (supra) 's case the same proposition was laid down in paragraph 8 which is quoted below:

“8. The sheet-anchor of the appellants plea is that the land acquisition proceedings have lapsed in view of Section 11-A of the Act. In order to understand the scope of the plea it will be useful to extract the relevant provisions of the Acts. [Section 6, Section 11, Section 11- A, Section 17 and Section 18(1)].

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

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

one report or different reports has or have been made (wherever required) under Section 5-A, sub- section (2):

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

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

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

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

"11. Enquiry and award by Collector.- (1) on the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notifications under Section 4, sub- section (1), and into the respective interests of the compensation and shall make an award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii)the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him: Provided that no award shall be made by the Collector under this sub- section without the previous approval of the appropriate Government or of such officer as the

appropriate Government may authorise in this behalf:

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act,1908, (16 of 1908), no agreement made under subsection (2) shall be liable to registration under that Act."

"11-A. Period within which an award shall be made.- The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

"17. Special powers in cases of urgency.- (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub- section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

XXX XXX XXX

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

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-

(1) Expect in the case provided for in Section 36, the Government shall be at liberty to withdraw from the Acquisition of any land of which possession has not been taken."

It was contended that in view of Section 11-A of the Act the entire land acquisition proceedings lapsed as no award under Section 11 had been made within 2 years from the date of commencement of the Land Acquisition Amendment Act, 1984. We are of the view that the above plea has no force. In this case, the Government had taken possession of the land in question under Section 17(1) of the Act. It is not open to the Government to withdraw from the acquisition (Section 48 of the Act). In such a case, Section 11-A of the Act is not attracted and the acquisition proceedings would not lapse, even if it is assumed that no award was made within the period prescribed by Section 11-A of the Act. Delivering the Judgment of a Three Member Bench of this Court, in Stander Prasad Jain and others vs. State of U.P. and others, 1993 (4) sc 369, S.P. Bharucha, J., at page 374, paragraph 15, stated the law thus:

"Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under section 11. Upon the taking of possession, the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what section 16 states. The provisions of section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two

years from the date of the section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under section 6, the land has still not wasted in the Government and its title remains with the owner, the acquisition proceedings are still pending, and by virtue of the provisions of section 11-A, lapse. When section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, section 11- A can have no application to cases of acquisition under Section 17, because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

(Emphasis supplied)

We, therefore, hold that the land acquisition proceedings in the instant case did not lapse."

Recent judgment of the Supreme Court in M/s. **Delhi Airtech Service Pvt. Ltd. and another Vs. State of U.P. and others, J. T. 2011(9) S.C. 440** needs to be noted in this context. The provisions of Section 17(3A) as well as 11 A of the Act came for consideration before the Apex Court. Submission was made that payment of 80% compensation as contemplated under Section 17(3A) is a condition precedent for taking possession under Section 17(1). It was contended that unless the provision is interpreted as mandatory the whole purpose and object shall be frustrated . The two judge Bench which heard the matters in M/s Delhi Airtech Services Pvt. Ltd. deferred on the interpretation of Section 17(3-A). Hon. Justice Ashok Kumar Ganguli held the provisions of Section 17(3A) mandatory. Following was laid down in paragraphs 72 and 74:

"72. On the above premise, taking over a possession of land without complying with the requirement of section 17(3A) is clearly illegal and in clear violation of the statutory provision which automatically violates the constitutional guarantee under Article 300A. A passing observation to the contrary in S.P. Jain (supra) must pass sub silentio being unnecessary in the facts of the case as otherwise such a finding

is per incuriam, being in violation of the statute. A fortiorari the said finding cannot be sustained as a binding precedent.

74. This court further holds that in all cases of emergency acquisition under section 17, the requirement of payment under section 17(3A) must be complied with. As the provision of section 17(1) and section 17(2) cannot be worked out without complying with requirement of payment under section 17(3A) which is in the nature of condition precedent. If section 17(3A) is not complied with, the vesting under section 17(1) and section 17(2) cannot take place. Therefore, emergency acquisition without complying with section 17(3 A) is illegal. This is the plain intention of the statute which must be strictly construed. Any other construction, in my opinion, would lead to diluting the Rule of Law."

Hon. Justice Swatanter Kumar took a different opinion and relying on various judgment of this Court following the line of Satyendra Prasad Jain it was opined that Section 17(3-A) is not mandatory. Justice Swatanter Kumar further held that Section 11-A has no application to the acquisition proceedings under Section 17 of the Act. Following observation were made by Hon. Justice Swatanter Kumar in paragraph 117:

"Consistent with the view expressed by this Court in the cases referred (supra), I am of the considered view that the provisions of Section 17(3A) of the Act are not mandatory. Such a conclusion can safely be arrived at, even for the reason that the Court would have to read into the provisions of Section 17(3A) consequences and a strict period of limitation within which amount should be deposited, which has not been provided by the Legislature itself in that section. The consequences and contingencies arising from non-compliance of the said provisions have not been stated in the Act. Once the land has vested in the Government, non-compliance with the obligation of payment of 80 per cent of estimated compensation would not render the possession taken under Section 17(1) as illegal. The land cannot be re-vested or reverted back to the claimants as no provisions under the Act so prescribe. Furthermore, if the interpretation put forward by the appellants is accepted, it would completely frustrate the objects and purpose of the Act, rather than advancing the same. The expression `shall' used in

Section 17(3A) has to be understood in its correct perspective and is not to be construed as suggestive of the provisions being absolutely mandatory in its application. Inter alia for these reasons and as per the above discussions, I hold that the provisions of Section 17(3A) are not mandatory. They are directive provisions, though their compliance is necessary in terms of the Act."

There being difference of opinion the matter was directed to be placed before Hon. Chief Justice for reference to larger bench to resolve the divergent views expressed in both the judgments and to answer the questions of law framed. From the above, it is clear that the issue is yet to be considered by larger Bench of the Apex Court on Section 17(3A). However, we are bound to follow the law as it exists today which is a binding precedent under Article 141 of the Constitution of India. The judgment in Sateyendra Prasad Jain will hold the field hence the submission of the petitioner at present that Section 17(3) A is mandatory, non compliance of which vitiate the acquisition can not be accepted.

12. Waiver:

Shri S.P. Gupta, learned Senior Advocate appearing for the intervenors has submitted that the petitioners after having accepted the compensation under the 1997 Rules, and having not objected to the dispensation of inquiry under Section 5A of the Act, 1894 they have waived their right to challenge the acquisition.

Learned Counsel appearing for the State has also contended that the petitioners shall be treated to have waived their right challenging the writ petition in view of the facts and circumstances of the present cases. Shri S.P. Gupta, learned Senior Advocate appearing for the intervenors, elaborating his submission contended that even though the inquiry under Section 5A of the Act, 1894 was dispensed with by invoking Sections 17(1) and 17(4) of the Act, the land owners ought to have objected against the said dispensation and no objections having been filed by the land owners it will be presumed that the petitioners have waived their right to challenge the notifications. It is further contended that the petitioners after having accepted the compensation under the 1997 Rules, they shall be treated to have relinquished all their rights against the acquisition. It is submitted by Shri S.P. Gupta, that if there are any grievances of the land owners regarding

nondeclaration of the amount of compensation taken by them they had the remedy to agitate under Section 18 of the Act, 1894. The land which was acquired by the Authority was developed and development was made in the knowledge of everyone. No objections having been raised, it will be presumed that that the petitioners have waived their right to challenge the notifications. It is further submitted by Shri S.P. Gupta that certain land owners were also allotted plots/flats under 6% allotment scheme of Abadi land which was subsequently transferred by them to other persons.

Learned counsel for the petitioners has also placed reliance on the judgment of the Apex Court in **Commissioner of Income Tax, Calcutta Vs. T.I. and M Sales Ltd., (1987) 3 SCC 132, Rajendra Singh Vs. State of M.P. and Ors, (1996) 5 SCC 460, M.C. Mehta Vs. Unioin of India and Ors., (1999) 6 SCC 237.**

The submission of Shri S.P. Gupta, learned Senior Advocate appearing for the intervenors, that since the land owners have not objected against the dispensation of inquiry by invoking Sections 17 (1) and 17 (4), of the Act, 1894 it will be presumed that that the petitioners have waived their right to challenge the notifications does not command us. The right of objection to land owners is provided under Section 5A of the Act, 1894 after a preliminary notification is issued under Section 4 of the Act, proposing to acquire any land. When the right of objection under Section 5A of the Act, 1894 has been dispensed with by invoking Section 17(4) of the Act, 1894 petitioners have no right to file objections. The question of waiver of right to file objection would have arisen if the land owners had right of objection under Section 5A of the Act, 1894 and they did not avail the same. There being no right of objection, the question of waiver does not arise. Shri S.P. Gupta, then contended that it was open for the land owners to raise their objections before the State Government objecting the dispensation of inquiry. The said submission of Shri S.P. Gupta does not have our approval since there is no forum provided before the State Government asking the petitioners to go before the State Government and raise objections failing which they shall be treated to have waived their right to challenge the acquisition is misconceived. The principle of waiver has been elaborately dealt with and considered by the Apex Court in **Sikkim Subba Associates Vs. State of Sikkim, (2001) 5 SCC 629.**

The Apex Court defined the principle of waiver in paragraph 16 in following words.

“Waiver involves a conscious, voluntary and intentional relinquishment or abandonment of a known, existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, the party would have enjoyed”.

The submission of Shri S.P. Gupta that the petitioners accepting the compensation under the 1997 Rules hence they shall be treated to have waived their right to challenge the acquisition now needs to be considered. From the materials brought on record, it does appear that the majority of land owners have accepted the compensation under the 1997 Rules. 1997 Rules, have been framed by the State of U.P. under Section 11 sub-section 2. The circumstances under which the petitioners have accepted the compensation under the 1997 Rules, have been explained in several writ petitions. It is useful to refer to the pleadings in the writ petition in that regard.

In **Writ Petition No.45694/2011, Jai Singh and Ors Vs. State of U.P.and Ors,** the petitioners have challenged the notifications dated 30/3/2002 and 28/6/2003 issued under Sections 4 and 6 and the award dated 29/1/2010. The petitioners have pleaded in the writ petition that the Additional District Magistrate, (Land Acquisition) Gautam Budh Nagar sent a printed notice to the petitioners to appear before the Additional District Magistrate, (Land Acquisition) Gautam Budh Nagar for payment of compensation. When the petitioners appeared they were informed that they would be paid compensation at the rate of Rs. 378.92 per Square Yard of the acquired land. Petitioners did not agree to accept the said compensation and then they were told that the land having already been vested in the State, petitioners shall be deprived from receiving the compensation for long time and they have no option but to accept the compensation. Petitioners have further pleaded that the award under Section 11 is passed after 7 to 8 years of the declaration during which the petitioners had been deprived of their land and enjoyment of their property. It is useful to quote paragraph 16 and relevant portion of paragraph 46 which are to be following effect:-

“16. That the Additional District Magistrate, (Land Acquisition) Gautam Budh Nagar sent a printed notice to the petitioners intimating that their land situated in

Village Sadarpur is needed for panned industrial Development. Petitioners in pursuance of the aforesaid notice appeared before the Additional District Magistrate, (Land Acquisition) Gautam Budh Nagar, then they have been told by the Authority officials that the Authority intended to pay compensation @ Rs. 378.92 per sq yard of the acquired land. Petitioners were not agreed to the aforesaid rate of the land, but the officials of the Authority threatened them that since the land is vested into the State Government and you people will be deprived from receiving the compensation for long time, you have no option except to accept the said compensation, petitioners being afraid of, have accepted 90% compensation and entered into agreement.

46. That the statutory authority has taken 7 to 8 years in passing the impugned award which is unexplained delay. The delay in making the said award deprived the land owners/petitioners of the enjoyment of their property or to deal with the land and delay in making the said award has subjected the owners of the land to untold hardship." In the present case, the award under Section 11 was declared on 29/1/2010 which has been filed as Annexure-4 to the writ petition which award was declared after more than 6 and a half years from issuance of declaration under Section 6. The rate of compensation under the 1997 Rules, as has been also noted in the award was Rs.378.92 per square yard for "Pushtaini" and Rs. 329.50 per square yard for "Gair Pushtaini", whereas in the award under Section 11(1), the rate fixed for per square yard was Rs.156 which has been mentioned in the award. The pleadings of the petitioners as noted in paragraph 16 and the apprehension which has been expressed in the pleadings come true by the events as noted above.

Learned counsel for the petitioners have rightly contended that the acceptance of compensation under the 1997 Rules, is not voluntarily, but is due to force of circumstances and the compulsion. The land of poor farmers have been acquired and possession having been claimed to be taken by invoking Section 17 (1) of the Act, 1894 petitioners are deprived of their property and they had no option, but to accept whatever the meagre amount was offered by the respondents under the agreement to somehow survive. Learned counsel for the petitioners further contended that in case the petitioners do not accept the amount under the

agreement they will not be paid anything for years together since the declaration of the award takes several years. Accepting the amount under above circumstances cannot be said to be acceptance of amount voluntarily nor such acceptance can be treated to be waiver of rights of the petitioners to challenge the acquisition. The submission of Shri S.P. Gupta, learned Senior Advocate appearing for the intervenors that remedy was available to the land owners/petitioners to go under Section 18 of the Act, 1894 after accepting the compensation under the agreement also cannot be accepted. The remedy under Section 18 of the Act, 1894 for enhancement of the compensation is not available to those persons who have accepted the compensation under the 1997 Rules.

Learned counsel for the petitioners have also placed reliance on the judgment of the Apex Court in **Radhy Shyam (Dead) through LRs and Ors. Vs. State of U.P. and Ors, (2011) 5 SCC 553.**

In the aforesaid case, the Apex Court had occasion to consider similar issues. In the said case notifications of land acquisition issued under Section 4 read with Sections 17 (1) and 17 (4) as well as declaration under Section 6 was challenged of Village Makaura District Gautam Budh Nagar. Writ petition was filed by the land owners which was dismissed by the High Court. Against which the appeal was filed. One of the submission raised before the Apex Court was that the land owners having accepted the compensation under the 1997 rules, they cannot be allowed to challenge the acquisition. Following observation was made by the Apex Court in para 20 which is quoted below:-

“20. The resultant effect of these acquisitions is that the land owners, who were doing agricultural operations and other ancillary activities in rural areas, have been deprived of the only source of their livelihood. Majority of them do not have any idea about their constitutional and legal rights, which can be enforced by availing the constitutional remedies under Articles 32 and 226 of the Constitution. They reconcile with deprivation of land by accepting the amount of compensation offered by the Government and by thinking that it is their fate and destiny determined by God. Even those who get semblance of education are neither conversant with the functioning of the State apparatus nor they can access the

records prepared by the concerned authorities as a prelude to the acquisition of land by invoking Section 4 with or without the aid of Sections 17(1) and/or 17(4).”

Again the Apex Court had occasion to consider another case of land acquisition in which the acquisition of land of Village Sahberi of District Gautam Budh Nagar was involved is **Greater Noida Industrial Development Authority Vs. Devendra Kumar and Ors. 2011 (6) ADJ 480.**

In the said case the issue of accepting compensation by the land owners under the 1997 Rules was also raised. The submission made before the Apex Court in the said case was that the relief should not be granted to those who have accepted compensation. The Apex Court observed that the situation in which the people belonging to this class are placed does not leave any choice to them to make compromises and try to salvage whatever they can. Following observation was made in paragraph 39 which is quoted below:-

“39. We do not find any substance in the argument of the learned counsel for the petitioners that quashing of the acquisition proceedings should have been confined to those who had not accepted the amount of compensation. Once the High Court came to the conclusion that the acquisition of land was vitiated due to want of good faith and the provisions of the 1894 Act had been invoked for a private purpose, there could not have been any justification for partially sustaining the acquisition on the ground that some of the land owners or their transferees had accepted compensation by entering into an agreement with the Authority. The situation in which the people belonging to this class are placed in the matter of acquisition of their land leave a little choice to them but to make compromises and try to salvage whatever they can. Therefore, even though some persons may not have resisted the acquisition and may have accepted the compensation by entering into agreements, it is not possible to find any fault in the approach adopted by the High Court.” Learned counsel for the intervenors has relied on the judgment of the Apex Court in **Commissioner of Income Tax** (supra) in which case the Apex Court observed that since the facts asserted in the affidavit of the assessee were not disputed by the revenue, it appears that the revenue had waived its right to dispute the facts. Following was observed by the Apex Court in

paragraph 10 which is quoted below:-

“10. The assessments relate to a period about a quarter of century back and by its conduct, the revenue appears to have waived its right to dispute the facts asserted in the affidavit on one hand by not challenging its admissibility and on the other, by not disputing the context thereof.”

Another judgment relied on by the learned counsel for the intervenors is **Rajendra Singh's** case (supra) in which case the Apex Court has laid down that a mandatory provision conceived in the interest by a party can be waived by that party, whereas a mandatory provision conceived in the interest of the public cannot be waived by him. Following observation were made in paragraph 6 which is quoted below:-

“6. While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground or the Court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not fellow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of public cannot be waived by him. In other wards, wherever a complaint of violation of a mandatory provision is made, the Court should enquire- in whose interest is the provision conceived. If it is not conceived in the interest of public, question of waiver and/or acquiescence may arise - subject, of course, to the pleadings of the parties. This aspect has been dealt with elaborately by this Court in State Bank of Patiala v. S.K. Sharma and in Krishanlal v. State of Jammu and Kashmir on the basis of a large number of decision on the subject. Though the said decisions were rendered with reference to the statutory Rules and statutory provisions (besides the principles of natural justice) governing the disciplinary enquiries involving government servants and employees of statutory corporation, the principles adumbrated therein are of general application. It is necessary to keep

these considerations in mind while deciding whether any interference is called for by the Court whether under Article 226 or in a suit. The function of the Court is not a mechanical one. It is always a considered course of action." There cannot be any dispute to the proposition as laid down above, but in the present cases, petitioners have not waived any mandatory statutory provision as observed above. The above case does not help the petitioners in any manner.

The next judgment relied on by the learned counsel for the intervenors is the judgment of the Apex Court in **M. C. Mehta Vs. Union of India and Ors, (1999) 6 SCC 237.** In the aforesaid said case, the Court was considering whether the question of waiver of notice came up for consideration in context of principles of natural justice. Following was observed in paragraph 22 which is quoted below:-

"22. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma, Rajendra Singh v. State of M.P. that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of latter, it cannot be waived."

Insofar as the submission of the learned counsel for the petitioners that some of the land owners/petitioners who were allotted 6 % Abadi Plots/flats have sold their plots to third party, we are of the view that the mere fact that they have sold their Abadi plots/flats allotted to them does not mean that they have waived all their rights to challenge the acquisition. As we have noticed above, that most of the petitioners have taken the ground in the writ petition that they were under bonafide belief that acquisition has been made for Planned Industrial Development and when it came to their knowledge that the purpose has been diverted and the land has been transferred to private parties they invoked the jurisdiction of this Court.

In these circumstances, we are of the view that it cannot be presumed that the petitioners/land owners have waived their rights and cannot be non-suited on the ground that they have waived their rights to challenge the acquisition.

13. Acquiescence:

Shri L. Nageshwar Rao, learned Senior Counsel appearing for the State as well as Shri S.P. Gupta, learned Senior Counsel appearing for the intervenors have also laid much stress on the acquiescence. It has been contended that the acceptance of compensation under the 1997 Rules, clearly proves that the petitioners/land owners have acquiesced to the acquisition of their land and they cannot be now permitted to challenge the same. Development of land, allotment to third parties without any objection by the petitioners/land owners has also been cited as grounds to plead acquiescence. Acceptance of allotment of Abadi sites to some of the land owners have also been referred to as acquiescence on the part of the land owners. Shri L. Nageshwar Rao, learned Senior Counsel appearing for the State as well as Shri S.P. Gupta, learned Senior Counsel appearing for the intervenors have relied on the judgment of the Apex Court in **The Naya Garh Co-operative Central Bank Ltd. and Anr. Vs. Narayan Rath and Anr. (1977) 3 SCC 576, Krothapalli Satya Narayana Vs. Koganti Ramaiah and Ors, (1984) 2 SCC 439, Ramdev Food Products (P) Ltd. Vs. Arvind Bhai Ram Bhai Patel and Ors, (2006) 8 SCC 726** and the judgment of the Apex Court in **Urmila Roy and Ors Vs. Bengal Peerless Housing Development Company Limited and Ors,(2009) 5 SCC 242.**

The judgment of the Apex Court in **Naya Garh Co-operative Central Bank Ltd.** (supra) was a case where the Registrar Co-operative Societies disapproved the appointment of the respondent no.1 as Secretary of the Bank after 13 years. In the said circumstances, the Apex Court observed that the Registrar shall be treated to have acquiesced to the appointment. Following was laid down in paragraph 4 which is quoted below:-

“4. The writ petition filed by respondent No. 1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself presided, The writ petition in substance is directed not against any order passed by the Co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent No. 1 as secretary of the Bank. It was not open to the Registrar, in our Opinion, to set aside respondent No.l's

appointment as a secretary after having acquiesced in it and after having, for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years."

In the case of **Krothapalli Satyanarayana** (supra) in a suit which was filed for declaration of a right to passage after 9 years, it was observed that the plaintiff was held to have acquiesced to the construction of wall. The said case was on its own fact and has no application in the present case. Following observation was made in paragraph 8 which is quoted below:-

"8. In this case both the appellate Court and High Court have concurrently held that the Plaintiff was guilty of acquiescence in that even though the wall was constructed to his knowledge in 1956, he approached the court in 1965 and even in that year he did not seek the prayer for removal of wall which prayer was for the first time introduced in 1969. In this background, we are not inclined to entertain the submission on behalf of the plaintiff-appellant that defendants 2 and 3 should be directed to remove the wall W W-1 and clear the passage of encroachment."

In **Ramdev Food Products Pvt. Ltd.**(supra) defining the acquiescence following was laid down in paragraphs 103 and 104 which are quoted below:-

"103. Acquiescence is a facet of delay. The principle of acquiescence would apply where: (i) sitting by or allow another to invade the rights and spending money on it; (ii) it is a course of conduct inconsistent with the claim for exclusive rights for trade mark, trade name, etc.

104. In Power Control Appliances v. Sumeet Machines (P) Ltd. sthis Court stated:(SCCp.457,para 26)

"26. Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches."

The last case relied on by the learned counsel for the respondents is **Urmila Roy** (supra) in which land acquisition proceedings after issuance of notification under

Section 4, the attorney of land owners wrote a letter that owners are willing to negotiate the price of the land. In the said circumstances, the Court observed that the land owners had acquiesced to the acquisition. Following was laid down in paragraph 60 which is quoted below:-

“60. It is significant that this letter written by the Attorney Urmila Roy, on behalf of all the land owners spells out that the owners had in fact been willing to negotiate the price for the land at the time when the acquisition were still incomplete as only the Notification under Section 4 of the Act had, at that stage, been issued (4-12-2000). It is also significant that the declaration under Section 6 had been issued on 29-11-2001 and the award rendered on 27-12-2003. It is, therefore, evident that the land owners had, in fact, acquiesced to the acquisition and cannot now turn around to say that the acquisition was bad in law.”

The said case was on its own fact and does not help the respondents in the present case. Insofar as, the submission of the respondents relating to acceptance of compensation under the 1997 Rules are concerned, we have already dealt the said submission while discussing the plea of waiver. We have already arrived at a conclusion that merely because the land owners have accepted the compensation under the 1997 Rules, they cannot be said to have waived their right for the same reasons as given above. We are of the view that mere acceptance of compensation under the 1997 Rules, does not amount to acquiescence by the land owners.

Two cases cited by Sri Navin Sinha, learned counsel for the intervener also need to be noted, are; **K.M. Abbu Chettiar vs. Hyderabad State Bank** (AIR 1954 Madras 1001) and **Allahabad Bank Limited vs. Kul Bhushan and others** (AIR 1961 Punjab 571). In **K.M. Abbu Chettiar’s** case (supra) a suit was filed for ordering the Hyderabad State Bank to release and deliver over to the plaintiff the goods. In the said case in paragraph 12 the Madras High Court laid down that where one of two innocent parties must suffer for the fraud of a third, that party should suffer whose negligence facilitated the fraud. Following was laid down in paragraph 12 of the judgment:-

"**12.** The foregoing discussion can be summarized in the following five propositions: (1) It is for the customer to establish affirmatively that the signature on the disputed cheque is not that of the customer but a forgery., (ii) If the drawer's cheque is forged or unauthorised, however clever the forgery is, the banker cannot debit his customer's account in case he pays the sum unless he establishes adoption or estoppel. (iii) What amounts to adoption or estoppel is dependent upon the circumstances of each case. (iv) In order to make the customer liable for the loss the neglect on his part must be in or intimately connected with the transaction itself and must have been the proximate cause of the loss. (v) The Banker cannot set up either estoppel or adoption if his own conduct or negligence has occasioned or contributed to the loss, the well settled principle being that where one of two innocent parties must suffer for the fraud of a third, that party should suffer whose negligence facilitated the fraud." The judgment of Punjab High Court in **Allahabad Bank's** case (supra) also laid down the same proposition following the above Division Bench judgment of Madras High Court. The aforesaid two cases were on their own facts arising out of cases of forgery between the Bank and its customer. Those cases were on their own facts and do not help the intervener in the present case.

14. Third Party Rights and Construction:

After publication of declaration under Section 6 of the Act, 1894 the State/Authority has claimed to have taken possession under Section 17(1) of the Act, 1894. In the main writ petition **i.e. 37443/2011, Gajraj Singh and Ars. Vs. State of U.P. and Ors,** date of taking possession was 05/9/2008 (572.592 hectares) and 12/1/2009 (1.453 hectares). The case of the respondents authority as well as the intervenors as pleaded in the counter affidavit filed by the Authority and the affidavit filed by the intervenors is that after taking possession various allotments have been made for the purposes as was allocated to the area in question. In the counter affidavit filed by the Authority, in paragraphs 15, 16(a), 16(b) and 16(c) has given the details of the allotments made to individual residential plots as well as of Group Housing Plots. Paragraphs 15, 16(a), 16(b) and 16(c) are quoted below:-

“15. That after taking over of possession of the land in terms of the declaration dated 30.6.2008, development work was carried out and the area stands demarcated as Sectors 2,3, Tech Zone IV, Eco Tech 13, Sector 10 and Sector 11. The Authority has so far constructed roads, laid down sewer lines, electric transmission lines, developed green belts and carried out plotted, flatted ad Group Housing development works in respect of the aforesaid sectors in so far as they fall in the acquired land of Village Patwari. The remaining area of these sectors fall in the acquired land of the adjoining villages and acquisition of these adjoining villages for the purpose of planned and integrated development has taken place separately. In the development works, carried out on the acquired land of Village Patwari, so far the respondent Authority has spend about Rs. 13,464.08 lacs.

16(a). That in Sector 2, the individual residential plots have been allotted in terms of Scheme No.RPS-01 of the year 2009. In this Scheme, 2000 nos. of individual residential plots were allotted through draw of lots. Also in Sector 2, two Group Housing plots (One Partly falling under village Patwari) were allotted on 21.3.2010 and on 01.03.2011 respectively under the scheme code BRS-01/2010 and BRS-04/2010.

16(b) That in Sector 3, about 2250 individual residential plots were allotted through draw of lots in the month of January 2009 and 625 individual residential flats through draw of lots in July 2009 under the Schemes XT-01 and BHS.

16(c) That in Sector Tech Zone IV, Group Housing plots were carved out and allotted under Scheme BRS-01 to BRS-05. The allotment letters were issued to the allottees between the period March 2010 to March, 2011, Also in Tech Zone IV, some Institutional and some Information Technology plots have been allotted during the period 2008 to March 2009 under the Authority's open ended schemes.”

Learned counsel appearing for the authority has also given details of allotments and developments made in different villages. Taking the case of Village Patwari, which is the Village involved in the main writ petition being Writ Petition No. 37443/2011,Gajraj Singh and Ors. Vs. State of U.P. and Ors., along with the supplementary affidavit-4 in folders giving details of allotments and other developments has been filed. In the details given with regard to Village Patwari,

Group Housing Plots have been allotted in the year 2010 numbering 15 Plots in Sector 10 and 11 in which the Village Patwari, falls. Group Housing Plots have been allotted in Tech Zone-4, Sector 1 and Sector 2 of an area running into several lacs Square metres. Allotment for plot under Sports City, Farm House has also been made. In Tech Zone-4 under the institutional category 24 plots have been allotted from the year 2008-2011. Residential small Flats in Sector 2 numbering 1880 have been allotted.

In Sector 3, 689+300 flats have also been allotted. In the intervention application filed on behalf of the Developers Association also the details of allotments in different villages have been brought on record. Thus, the petitioners' case in the writ petition is that after acquisition of land, allotments have been made for Group Housing and for other purposes, thus the creation of third party rights has not yet been disputed.

Various applications have been filed by intervenors who were allottees of different Group Housing Plots and other allottees giving details of the activities taken by them after the allotment of plots. Following allotments have been claimed with regard to Village Patwari:

(I) M/s Patel Advance JV GH-03, Tech Zone IV. Date of allotment 27/4/2010. Date of possession 13/10/2010. It is claimed that project was sanctioned on 15/2/2011 and 04/3/2011. Number of dwelling units are 22700 and number of allottees are 1237. It is claimed that an investment of 75.22 crores have been made by the allottees.

(II) Super City Developers Pvt. Ltd. Flat No.7V-Tech Zone-IV. Date of allotment 08/12/2010. Possession is claimed to be taken on 25/2/2011.

(III) M/s La Residentia Developers Pvt. Ltd, GH-06A Tech Zone-4. Date of allotment 18/8/2010. Total investment is Rs.75 crores.

(IV) Arihant Infra Realtors Pvt. Ltd. Flat No.GH-07-A, Sector-1. Date of allotment 12/10/2010. Total investment is claimed to be Rs.32.74 crores.

In the similar manner, details of various allotments and projects and investments made by the different allotees have been given in their intervention applications as well as in the affidavit filed on behalf of the Developers Association. Along with the affidavits which have been filed by the intervenors and the Developers Association, certain photographs showing the semi-finished constructions of various dwelling units have been brought on the record.

From the facts which have been brought on the record it is clear that after creation of third party rights, the allottees also proceeded to carry on building activities and substantial constructions have been made on some of the places. The submission which has been pressed by the learned counsel for the respondents and the intervenors is that in view of the creation of third party rights and developmental activities carried on the spot, it is not in the interest of justice that the petitioners be granted relief of quashing the acquisition and an application by intervenors has also been filed as noted above by Flat Owners Association claiming that large number of members of public have got their flats booked and most of them have taken financial assistance from Banks and other financial institutions and are shouldering financial liability towards allotments of flats. The details regarding allotments of flats have also been brought on record.

As noticed above, Shri L. Nageshwar Rao, learned Senior Counsel appearing for the State in his concluding submission contended that even if the Court comes to the conclusion that dispensation of inquiry under Section 5A of the Act, 1894 was not justified, present is not a case where the petitioners are entitled for relief of quashing the notifications acquiring the land. It is submitted that the said relief is to be refused on the grounds mentioned below:

(I) The petitioners have approached this Court with delay and not immediately after declaration under Section 6 of the Act.

(II) After taking of the possession, the Authority has carried out development works and made allotments to various third parties who have acquired rights and to undo all subsequent acts shall neither be equitable nor just.

(III) Due to the development activities carried on the land under acquisition, now the situation is irreversible and the nature of land having been changed, relief of quashing the notifications be refused.

Learned Counsel for the State, Authority as well as the counsel appearing for the intervenors have referred to various judgements of the Apex Court in support of their submissions. The first judgment which has been relied on by the learned counsel for the respondents in support of their submission is the judgment of the Apex Court in **Kishan Das and Ors. Vs. State of U.P. and Ors, (1995) 6 SCC 240.**

In the said case, the Apex Court observed that since the land under acquisition constructions have been made and completed, there is no need to go into the question of urgency and exercise of power under Section 17(4) of the Act at such a belated stage.

Learned counsel for the respondents has also placed reliance on the judgment of the Apex Court in **Om Prakash and Anr. Vs. State of U.P. and Ors, (1998) 6 SCC, 1.**

In the said case, the land of Village Chhalera Banger then situated in District Ghaziabad was acquired for Planned Industrial Development of District Ghaziabad through Noida. The acquisition was challenged in the High Court on several grounds including the ground that inquiry under Section 5A of the Act was wrongly dispensed with and the High Court dismissed the writ petition. The matter was taken in appeal before the Apex Court. The Apex Court found that the said was not a case where power under Section 17(4) should have been invoked. The point was answered in favour of the land owners. The Court thereafter proceeded to consider as to whether in view of the finding that the inquiry under Section 5A of the Act was wrongly dispensed with, whether the notifications under Sections 4 and 6 of the Act be quashed or not. The Apex Court made following observations in paragraph 30 which is quoted below:-

“30. It is also to be kept in view that the impugned notification under Section 6 of the Act was issued for the purpose of planned development of District Ghaziabad

through NOIDA and by the said notification, 496 acres of land spread over hundreds of plot numbers have been acquired. Out of 494.26 acres of land under acquisition, only the present appellants owning about 50 acres, making a grievance about acquisition of their lands have gone to the court. Thus, almost 9/10th of the acquired lands have stood validly acquired under the land acquisition proceedings and only dispute centers round 1/10th of these acquired lands owned by the present appellants. It is a comprehensive project for the further planned development in the district. We are informed by learned senior counsel Shri Mohta for NOIDA, that a lot of construction work has been done on the undisputed land under acquisition and pipelines and other infrastructure have been put up. That the disputed lands belonging to the appellants may have stray complex of lands sought to be acquired. That if notification under Section 4(1) read with Section 17 (4) is set aside qua these pockets of lands then the entire development activity in the complex will come to a grinding halt and that would not be in the interest of anyone.

…….. ……..

That we cannot permit upsetting the entire apple cart of acquisition of 500 acres only at the behest of 1/10th of land owners whose lands are sought to be acquired. We may also keep in view the further alien fact that all the appellants have filed reference for additional compensation under Section 18 of the Act. Shri Shanti Bhushan, learned senior counsel, was right when he contended that the appellants could not have taken the risk of getting their reference applications time barred during the pendency of these proceedings. Therefore, without prejudice to their contentions in the present proceedings they have filed such references. Be that as it may., that shows that an award is also made and reference are pending. Under these circumstances for enabling the appellants to have their say regarding release of their lands on the ground that they are having abadi and that the State Policy helps them in this connection the appellants can be permitted to have their grievances voiced before the State authorities under Section 48 rather than under Section 5-A of the Act at such a late stage. Consequently, despite our finding in favour of the appellants on Point No. 1, we do not think that this is a fit case to set aside the acquisition proceedings on the plea of the appellants about non-

compliance with Section 5-A at this late stage. it is also obvious that if on this point the notifications are quashed for non-compliance of Section 5-A, that would open a pandora's box and those occupants who are uptill now sitting on the fence may also get a hint to file further proceedings on the ground of discriminatory treatment by the State authorities. All these complications are required to be avoided and hence while considering the question of exercise of our discretionary jurisdiction under Article 136 of the Constitution of India, we do not think that this is a fit case for interference in the present proceedings with the impugned notifications. Point No. 3, therefore, is answered in the affirmative against the appellants and in favour of the respondents."

Again in **Tika Ram and Ors Vs. State of U.P. and Ors, (2009) 10 SCC 689,** the Court was faced with a situation where invocation of Section 5A of the Act, 1894 was held not to be justified. The Court thereafter proceeded to consider as to whether the notification deserves to be quashed or not.

Following was laid down in paragraph 116 which is quoted below:-

"116. In a reported decision in Kishan Das and Ors. v. State of UP and Ors. this Court has taken a view that where the acquisition has been completed by taking the possession of the land under acquisition and the constructions have been made and completed, the question of urgency and the exercise of power under Section 17(4) would not arise. We must notice that acquisitions in this case are of 1984-1985 and two decades have passed thereafter. The whole township has come up, the houses and the lands have been allotted, sold and re-sold, awards have been passed and overwhelming majority of land owners have also accepted the compensation, this includes even some of the appellants. In such circumstances we do not think that the High Court was in any way wrong in not interfering with the exercise of power under Section 17 (4) of the Act. At any rate, after the considered findings on the factual questions recorded by the High Court, we would not go into that question."

The next case relied on by the learned counsel for the respondents is **Tamil Nadu Housing Board Vs. L. Chandrasekaran (Dead) By Lrs and Ors , (2010) 2 SCC 786.**

In the aforesaid case, the High Court quashed the declaration under Section 6 of the Act leaving the preliminary notification in tact. Thereafter Special Leave Petition was filed by A.S. Naidu in which the Apex Court took notice of the Tamil Nadu Land Acquisition (Amendment Act, 16/1997) in terms of which declaration under Section 6 was required to be made within three years from the date of preliminary notification. The Apex Court noticing the amendment took the view to quash the acquisition/notification with liberty to the State Government to issue fresh notification. L. Chandrasekharan, respondents in the case under consideration filed writ petition in the year 1997, for issuing direction to Board to certify that the acquired land was no longer needed for which it was acquired. The writ petition was allowed by the learned Single Judge. An appeal was filed before the Division Bench which took the view that the order passed in A.S. Naidu's case was in respect of the petitioner in that case only and held that the writ petitions are not entitled to make representation for reconveyance of the acquired land. Shri L. Chandashekhar submitted a representation and thereafter filed a writ petition in the year 1999 which was dismissed. An appeal was filed before the Division Bench which was allowed relying on its earlier order directing the Board/Member to reconvey the land to the respondents subject to their depositing the amount of compensation. The Tamil Nadu Housing Board filed a Special Leave Petition which was allowed by the Apex Court. The Apex Court in the said judgment made following observations in paragraph 16 which is quoted below:-

“16. From the above reproduced prayer clause, it is crystal clear that the only relief sought by Shri A.S. Naidu was for quashing the notification 11 issued under Section 6 in so far it related to the land falling in Survey Nos.254, 257, 258, 260, 268 and 271 in Mogapperi Village, No.81, Block V,Saidapet Taluk and in the absence of a specific prayer having been made in that regard, neither the High Court nor this Court could have quashed the entire acquisition. This appears to be the reason why the Division Bench of the High Court, while disposing of Writ Appeal Nos. 676 of 1997 and 8/9 of 1998 observed that quashing of acquisition by this Court was only in relation to the land of the petitioner of that case and, at this belated stage, we are not inclined to declare that order dated 21.8.1990 passed by this Court had the effect of nullifying the entire acquisition and that too by ignoring that the appellant-Board has already utilized portion of the acquired land for

housing and other purposes. Any such inferential conclusion will have disastrous consequences inasmuch as it will result in uprooting those who may have settled in the flats or houses constructed by the appellant-Board or who may have built their houses on the allotted plots or undertaken other activities."

Heavy reliance has been placed by the learned counsel for the respondents on the judgment of the Apex Court in **Anand Singh and Anr. Vs. State of U.P. and Ors, (2010) 11 SCC 242.**

In the aforesaid case, appeals were filed against the judgment of the High Court by which judgment, writ petition filed by the land holders was dismissed. The land was acquired for residential colony by the Gorakhpur Development Authority. One of the submission made before the High Court and the Apex Court was that the State Government wrongly exercised its power under Section 17(4) in dispensing with the inquiry. The Apex Court after considering all relevant cases has come to the conclusion that the dispensation of inquiry under Section 5A was unsustainable. The Apex Court after taking the view that notification in so far as the dispensation of inquiry under Section 5A, was unsustainable, proceeded to consider as to whether at that distance of time acquisition proceedings may be declared invalid and illegal. The Apex Court noted the submission of the Gorakhpur Development Authority which had invested huge amount in the Development. The Court did not grant relief to the petitioners for quashing the acquisition/notification. Following was laid down in paragraphs 55 and 56 which are quoted below:-

"55. In the facts and circumstances of the present case, therefore, the Government has completely failed to justify the dispensation of an enquiry under Section 5A by invoking Section 17(4). For this reason, the impugned notifications to the extent they state that Section 5A shall not apply suffer from legal infirmity. The question, then, arises whether at this distance of time, the acquisition proceedings must be declared invalid and illegal.

56. In the written submissions of the GDA, it is stated that subsequent to the declaration made under Section 6 of the Act in the month of December, 2004, award has been made and out of the 400 land owners more than 370 have

already received compensation. It is also stated that out of the total cost of Rs. 8,85,14,000/- for development of the acquired land, an amount of Rs. 5,28,00,000/- has already been spent by the GDA and more than 60% of work has been completed. It, thus, seems that barring the appellants and few others all other tenure holders/land owners have accepted the `takings' of their land. It is too late in the day to undo what has already been done. We are of the opinion, therefore, that in the peculiar facts and circumstances of the case, the appellants are not entitled to any relief although dispensation of enquiry under Section 5A was not justified." Another recent judgment relied on by the learned counsel for the respondents is **Shankara Cooperative Housing Society Ltd. Vs. M. Prabhakar and Ors, (2011) 5 SCC 607.** The Apex Court in the said case laid down principles for granting or refusing relief on the ground of delay and laches. Following was laid down in paragraphs 54 and 68 which are quoted below:

"54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

68. The other factor the High Court should have taken into consideration that during the period of delay, interest has accrued in favour of the third party and the condonatoin of unexplained delay would affect the rights of third parties. We are also of the view that reliance placed by Shri Ranjit Kumar on certain observations made by this Court would not assist him in the facts and circumstances of this case. While concluding on this issue, it would be useful to refer the observations made by the Court in the case of Municipal Council, Ahmednagar Vs. Shah Hyder Beig, wherein it is stated that:

`delay defeats equity and that the discretionary relief of condonation can be had, provided one has not given by his conduct, given a go by to his rights'."

From the dictum of the Apex Court as noted above, it is clear that the creation of third party rights and carrying on developmental works on the allotted sites has bearing while considering the issue as to what relief the land owners who have challenged the acquisition proceedings are entitled.

Learned counsel for the petitioners has submitted that in some of the cases there was an interim order passed by the High Court for maintaining status quo and it was not open for the authority to make any allotment or create any third party right.

In this bunch of writ petitions, in which there are more than 400 writ petitions for consideration only in few writ petitions interim orders were passed by this Court and in some of the cases said interim orders are of the date subsequent to the date when the respondents claimed to have taken possession.

Learned counsel appearing for the Authority as well as the learned counsel appearing for the intervenors have submitted that no land which was covered by any interim order of the High Court was neither allotted nor transferred and in some of the cases possession memo while taking possession mentions that

possession was not taken since the land was covered by any interim order of the Court. The fact that most of the petitioners did not invoke the jurisdiction of this Court under Article 226 of the Constitution immediately after declaration under Section 6 of the Act, 1894 or after taking of the possession has also relevance while considering the issue as to what relief the petitioners are entitled in the facts of the present cases.

We, thus conclude that the effect and consequence of third party rights, developments and the constructions made after taking of the possession by the authorities is a relevant factor which shall hereinafter be considered while considering the issue as to what relief the petitioners are entitled.

15. Effect of upholding of some of the notifcations in some writ petitions earlier decided.

16. Conflicts in view of Division Benches:

Both the above issues are taken together for consideration. The Division Bench while hearing main writ petition as noticed above in its referring order dated 26 July 2011 has noticed two contrary decisions of Division Bench of this Court. First judgment is Division Bench Judgment dated 25 November 2008 in writ petition no.45777 of 2008, **Harish Chand and others Vs State of U.P.** and others and second judgment is judgment of the Division Bench dated 19 July 2011 in writ petition no.17068 of 2009 **Har Karan Singh Vs. State of U.P. and others (2011 Volume VI, A.D.J. , 755)**". In Harishchand's case the notifications dated 12.3.2008 and 30 June 2008 acquiring the land of village Patwari was under challenge. The Division Bench dismissed the writ petition by following order:

"Heard learned counsel for the petitioner and the learned Standing Counsel.

Learned Standing Counsel has produced the original records pertaining the land acquisition proceedings under challenge. The notification dated 20.3.2007 and 9.7.2008 under Section 4 and 6 respectively have been assailed on the ground that there is no material before the State Government to arrive at a conclusion and there was an urgency for invoking Section 17 of the Land Acquisition Act.

We have perused the original records and we find that the District Magistrate had indicated various factors which led him to arrive at a conclusion that the land was required urgently and there was justification for acquiring the land. The State Government having regard to the letters/reports on record formed an opinion that it was a fit case to strike the urgency clause under Section 17 of the Land Acquisition Act. We are therefore of the opinion that the contention raised on behalf of the writ petitioner has no force. Further, we are fortifying our opinion in view of the decision of the Division Bench of this Court in case of Lakhami Vs. State of **U.P. 2008 (9) ADJ 657** and Jasraj Singh Vs. State of U.P. and others others **2008 (8) ADJ 329**.

Accordingly, we find no good grounds to interfere with the writ petition.

The writ petition is dismissed."

The second judgment in Har Karan Singh's case dated 19 July 2011 was also a writ petition in which the notification dated 12 March 2008 under Section 4 read with Section 17(1) and 17(4) as well as notification dated 30 June 2008 under Section 6 of Village Patwari was under challenge. The subsequent Division Bench noticed the earlier Division Bench judgment in Harischand case but took the view that the petitioner's are not bound by the judgement in Harischand's case and they have independent right to challenge the acquisition. On the basis of law laid down by Supreme Court the Division Bench in Har Karan Singh's case also observed that law of acquisition of land by State applying the Section 17(1) and 17(4) has undergone a sea change after the judgments of Supreme Court in Anand Singh's case, Radhey Shyam case, Devendra Kumar's case (supra) following was laid down in paragraph 30 in Har Karan Singh's case:

“30. The petitioners of this bunch were not parties in writ petition No. 38758 of 2008. They have right challenge the acquisition of land on the basis of law laid down by the Supreme Court. The principle of res judicate are not attracted to estop from challenging acquisition. We are also find that the ground that the land acquired for public purpose has been used for private commercial purposes by allotment of land to private builders for construction of multistory housing complexes was neither taken nor pressed in the aforesaid writ petition dismissed

by the Court. The law of acquisition of land by the State applying Section 17 (1) and (4) has undergone a sea change after the judgments of the Supreme Court in Anand Singh's case (Supra) decided on 28.7.2010, Radhey Shyam's case (Supra) decided on 18.4.2011 and Devendra Kumar's (Supra) case decided on 6.7.2011."

Thus one of the issues which has arisen for consideration by this Full Bench is as to which of the aforesaid two judgments be approved and followed. The submission which has been placed by learned counsel for the respondent is that subsequent Division Bench in **Har Karan Singh's** case would not have taken divergent view to one which was taken in **Harishcand's** case. It is submitted that at best the subsequent Division Bench could have made a reference to be heard by a larger Bench. In view of the fact that now this larger Bench had been constituted to consider as to which of the view is correct, the issue that subsequent Division Bench ought to have made a reference to the larger Bench instead of deciding the issue itself has become only an academic issue. We thus proceed to consider the views expressed by aforesaid two Division Benches on merits.

Learned counsel for the authority has further submitted that this court has also upheld several notifications which are subject matter of challenge in some of the writ petitions. Reference has been made to Division Bench judgment of this court of following villages:

THE NOTIFICATION WHICH HAS BEEN UPHELD BY THE HON'BLE HIGH

COURT ON DIFFERENT VILLAGES OF GREATER NOIDA

"Table"

It has further been submitted that against Division Bench judgment of this court in Jasaraj Singh, Sudhir Chandra Agarwal and Munshi Singh, the special leave to appeal were also filed in the Supreme Court which were dismissed.

We have perused the judgment of Division Bench of this Court as referred above in which cases various Division Bench of this court have dismissed the writ petition challenging the notifications and the arguments that State Government wrongly

invoked Section 17(1) and 17(4) was repelled. The view expressed by aforesaid Division Bench is to the same effect as has been expressed by Division Bench in Harishchand's case. Thus the issue to be considered is as to whether the view taken by Division Bench in Harishchand's case and several cases as noticed above is correct view to be approved by the Full Bench or the view taken by Division Bench in Har Karan Singh's is to be approved. The judgment of Harischand as extracted above gives following reasons for holding that invocation of Section 17 was correct:

“We have perused the original records and we find that the District Magistrate had not indicated various factors which led him to arrive at a conclusion that the land was required urgently and there was justification for acquiring the land. The State Government having regard to the letter/reports on record formed an opinion that it was a fit case to strike the urgency clause under Section 17 of the Land Acquisition Act. We are, therefore of the opinion that the contention raised on behalf of the writ petitioner have no force.”

From perusal of the above reasoning of the Division Bench it is clear that the Division Bench took the aforesaid view on the basis of District magistrate having indicated in his conclusion that the **land was required urgently and there was justification for acquiring the land**. We have noticed that three Judge Bench in **Narayan Govind Gavate Vs. State of Maharashtra** held that the mere fact that there is urgency under Section 17(1) is not sufficient for invocation of Section 17(4) but the mind of the officer or the authority has to be applied to the question whether the urgency is of such a nature that even the summary proceedings under Section 5A should be eliminated. Following observations were made by the Apex court in paragraph 38:

“Now, the purpose of Section 17(4) of the Act is, obviously, not merely to confine action under it to waste and arable land but also to situations in which an inquiry under Section 5A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the Officer or authority concerned has to be applied to the question whether there is ,an urgency of such a nature that even the summary proceedings under Section 5A 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 5A which has to be considered."

In **Union of India Vs. Mukesh Hansh** (supra), the argument was made before the apex court that when the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Section 17(1) and 17(2) the dispensation of the inquiry under Section 5-A becomes automatic. This argument was repelled by the Apex court in paragraph 33 which is quoted as below :

An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Section 17(1) and (2), the dispensation of enquiry under Section 5A becomes automatic and the same can be done by a composite order meaning thereby that there no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5A. We are unable to agree with the above argument because sub- section (4) of Section 17 itself indicates that the "government may direct that provisions of Section 5A shall not apply" which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub- section (1) or unforeseen emergency under sub-section (2) of Section 17 the Government will ipso facto have to direct the dispensation of inquiry. For this we do find support from a judgment of this Court in the case of Nandeshwar Prasad and Anr. vs. The State of U.P. and Ors. { 1964 (3) SCR 425) wherein considering the language of Section 17 of the Act which was then referable to waste or arable land and the U.P.Amendment to the said section held thus :

"It will be seen that s. 17(1) gives power to the Government to direct the Collector, though no award has been made under s. 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under s. 17(1), taking possession and vesting which are provided in s. 16 after the award under s. 11 are accelerated and can take place fifteen days after the publication of the notice under s. 9. Then comes s.17(4) which provides that in case of any land to

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

Thus the view taken in Harischand case as extracted above that the District Magistrate having arrived at conclusion that land was required urgently and there was justification for acquiring the land was not sufficient recommendation for dispensation of inquiry under Section 5-A and there being no application of mind to the aforesaid aspect which is specifically required to be considered, the judgement of the Division Bench in Harishchand can not the said to be in accordance with law as laid down by Apex court in Narayan Govind Gavate Vs. State of Maharashtra and Union of India Vs. Mukesh Hansh.

The division Bench judgment in Harakaran Singh's case have referred to Anand Singh's case (supra) which had relied on Narayan Singh Gautey's case. The Division Bench in Harakaran Singh has also relied on Radhey Shyam case (supra) which was fully applicable on the issues which have arisen in the present case. In view of the aforesaid discussion we are of the view that Division Bench judgment

in Harishchand can not be approved and the Division Bench judgment in Harakaran Singh is to be followed.

In so far as other Division Bench judgments which had been relied by learned counsel for the respondents as referred above upholding the notification we are of the view that said judgments had binding effect between the parties in the aforesaid cases. The present petitioners are not being party to those proceedings the said judgment may not be binding on the present petitioners. It is, however, relevant to notice one or two judgments in which notifications were upheld. One of the Division Bench judgments is relied by the respondent is **Munshi Singh Vs. State of U.P. and others 2009 Volume VIII A.D.J. 360** by which judgment the notifications dated 20 June 2007 under Section 4 and notification dated 18 June 2008 under Section 6 was challenged. The Division Bench dismissed the writ petition. The Division Bench while dismissing the writ petition has relied on Division Bench of this Court in **Radhey Shyam and others Vs. State of U.P. 2009 Volume 2 A.D.J. 388**. Against the judgment of Radheya Shyam and others by which Division Bench of the High Court dismissed the writ petition upholding the notification, special leave petition was filed in the Supreme Court and the Division Bench Judgement of the High Court has been reversed by Apex Court in **Radhey Shyam Vs. State of U.P. 2011 Volume 5, S.C.C. 553**.

Another Division Bench judgment of this court which is relevant is **Sudhir Chandra Agarwal Vs. State of U.P. and another 2008 Volume III A.D.J. 289** by which the acquisition notification under Sections 4 and 6 relating to Village Tushiana were upheld one of the arguments raised by the petitioners was that the invocation of Section 17 sub clause 4 by dispensing of the inquiry under Section 5-A was illegal. The Division Bench felt satisfied with the materials which was before the State Government and held that subjective satisfaction of State Government in forming the opinion that Section 17(4) be invoked can not be challenged. The Division Bench although in paragraph 25 of the judgment itself noted that one of the reasons given for invocation of urgency that in case the land is not made available then various foreign industrialist who intend to establish industries shall go to some other State, was considered and it was held that the said ground could not be substantiated by the authority. It is useful to quote paragraphs 24,25,26

which is to the following effect :

“24. The averment in the counter affidavit and the record produced before us would go to show that land use of the land in Village Tushiana in the master plan was reserved as, 'institutional'. The land was part of notification of the industrial area under Section 3 of U.P. Act No.6 of 1976. The development of the area was proposed for allotment to various industries and institutions and that it was stated that in case the development plan is not made available, the investors would establish their industries in some other States affecting the development of the industrial area.

25. On our request, a list of industries with their proposals was provided by the GNIDA alongwith their first supplementary counter affidavit. A perusal of the list of the industries would show that the GNIDA relied upon names of some of the industries, which have already set up their industrial units in other parts of Greater Noida and that there were no foreign companies or institutions, which had proposed to set up an industrial unit in the area. In fact GNIDA could not demonstrate or give the name of any foreign industry, which may have shown their interest for allotment of land in Greater Noida.

26. The sufficiency or insufficiency of the material, and the names of industries, which may have applied with concrete proposals for establishment of industrial units, is not material for the purposes of judicial review of the subjective satisfaction of the State Government. When there exists material before the State Government, in the shape of recommendations and that material is relevant for applying the mind for recording subjective satisfaction of invoking the urgency clause for acquisition of the land, the law does not permit the Court to consider the material as if it was weighing the evidence for the purposes of recording subjective satisfaction of invoking the urgency clause for acquisition of the land. If the material is relevant, on which competent authority, as reasonable person may invoke the urgency clause for acquisition of the land, the Court would not put such material on the scales, to weigh or measure such urgency. The court is not competent to carry out judicial review of the sufficiency or insufficiency on the material placed before it. What the Court required to see is whether such material

is relevant, and that the competent authority in the State Government could have formed an opinion without their being any motive or ill-will for invoking the urgency clause. In the present case the State has given in the counter affidavit, the material on which it had placed reliance and has produced the material before us, which we find to be relevant for the purpose of invoking urgency clause. Even if we may, after perusing the record arrive on different conclusion, we would restrain ourselves from interfering, as in such case we would be substituting our opinion in place of opinion of the competent authority in the State Government. If we do so, we would be sitting in appeal over the subjective satisfaction recorded by the State Government. The legal position obtained from the judicial precedents restrain us from doing so.

We are of the view that one of the grounds which was basis for arriving at subjective satisfaction for invoking Section 17(4) having not been substantiated by the authority, the subjective satisfaction was clearly vitiated as has been laid down by the apex court in **Sibban Lal Saxena's** case (supra).

It is also relevant to note that against the Division Bench judgment in Sudhir Chandra Agarwal case special leave to appeal Civil no.11551 of 2008 was filed in the Apex Court which was dismissed by following order dated 12 May 2008:

“Heard. The Special Leave petition is dismissed. However, the petitioner be given ex-post-facto hearing within two months from today.”

The respondents have also referred two judgment of the Apex Court dated 12.12.2008 by which order the Special Leave to Appeal Civil no.28731 of 2008 filed against the Division Bench Judgment of this Court dated 16.09.2008 in writ petition no.38793 of 2008 was challenged. The Supreme Court by order dated 12.12.2008 dismissed the Special Leave Petition by following order:

“Heard learned counsel for the petitioner. No merit. The special leave petition is dismissed”

Learned counsel for the respondent sought to contend that since the Division Bench judgment of this court as mentioned above has been upheld by the Apex

court by dismissing the special leave to appeal the said judgment having approval of the Apex Court are binding precedent under Article 141.

We have considered above submission of the learned counsel for the respondent. The orders of the Apex Court as quoted above were orders by which the Supreme Court dismissed the Special Leave Petition. The special leave was not granted by the Apex Court. The dismissal of special leave petition was not by an speaking order nor the Apex court considered any of the issues on merits nor any ratio can be culled out from the orders of the Apex Court as quoted above. The Apex Court in **2000 (6) S.C.C. 359 Kunhayammed and others Vs. State of Kerala and another** had occasion to consider the effect of dismissal at the stage of Special Leave by non speaking/speaking order. Apex court held that said order do not constitute any ratio within meaning of Article 141 nor it attracts doctrine of merger, following was laid down by the Apex court in paragraph 27:

“ A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order.

Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the apex court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary

to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question (sic) open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down By the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.

The recent judgment of the Apex court in M/s. Royal Orchid Hotel Ltd. fully support the contention of the petitioners that their rights are not affected by the Division Bench judgment of this Court upholding the notification in which they were not party. In the aforesaid case the co-tenure holders of the tenure holders whose land was acquired had filed writ petition in Karnataka High Court challenging the land acquisition which was dismissed. Special leave petition filed by them was also dismissed. Following was laid down by the Apex court in **M/s. Royal Orchid Hotel Ltd**. **and another Vs. G. Jayarama Reddy and others** decided on 29.9.2011 in paragraph 24:

“24. A reading of the impugned judgment, the relevant portions of which have been extracted hereinabove shows that the Division Bench of the High Court adverted to all the facts, which had bearing on the issue of delay including the one that on the advice given by an advocate, respondent No.1 had availed other remedies and opined that the delay had been adequately explained. Thus, it cannot be said that the discretion exercised by the High Court to entertain and decide the writ petition filed by respondent No.1 on merits is vitiated by any patent legal infirmity. It is true that the writ petitions filed by the brothers of respondent No.1 had been dismissed by the learned Single Judge on the ground of delay and the writ appeals and the special leave petitions filed against the order of the learned Single Judge were dismissed by the Division Bench of the High Court and this Court respectively, but that could not be made basis for denying relief to

respondent No.1 because his brothers had neither questioned the diversification of land to private persons nor prayed for restoration of their respective shares. That apart, we find it extremely difficult, if not impossible, to approve the approach adopted by the learned Single Judge in dealing with Writ Petition Nos. 2379 and 2380 of 1993 filed by the brothers of respondent No.1.

He distinguished the judgments of the Division Bench in Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer (supra) and Smt. H.N. Lakshmamma and others v. State of Karnataka and others, without any real distinction and did not adhere to the basic postulate of judicial discipline that a Single Bench is bound by the judgment of the Division Bench. Not only this, the learned Single Judge omitted to consider order dated 3.10.1991 passed in Writ Petition Nos. 19812 to 19816 of 1990 - Annaiah and others v. State of Karnataka and others in which the same Division Bench had quashed notifications dated 28.12.1981 and 16.4.1983 in their entirety.

Unfortunately, the Division Bench of the High Court went a step further and dismissed the writ appeals filed by the brothers of respondent No.1 without even adverting to the factual matrix of the case, the grounds on which the order of the learned Single Judge was challenged and ignored the law laid down by the coordinate Bench in three other cases. The special leave petitions filed by the brothers of respondent No.1 were summarily dismissed by this Court. Such dismissal did not amount to this Court's approval of the view taken by the High Court on the legality of the acquisition and transfer of land to private persons. In this connection, reference can usefully be made to the judgment in Kunhayammed v. State of Kerala (2000) 6 SCC 359."

We, however, hasten to add that the Division Bench judgment as referred above in which the different writ petitions filed by the petitioners of those cases challenging the acquisition proceedings were dismissed are binding between the inter parties and the effect of that judgment is not to be affected by any of observations made by us in this judgement except to their precedential value.

In view of the foregoing discussions we are of the view that Division Bench Judgment in **Harischand** case is not to be approved whereas the view taken in

the Division Bench Judgement in **Har Karan Singh** that the invocation of Section 17(4) was not justified is approved.

17. Reliefs:

As discussed above the question of grant of relief to land owners in a land acquisition proceedings depends on several important factors. The fact of creation of third party rights, developments undertaken over the land in dispute and the steps taken by the land owners after declaration made under section 6 of the Act are all relevant considerations for granting the reliefs to the land owners:

The acquisition of land specially of fertile agricultural land/or the land which is being used as Abadi for farmers has serious consequences not on the land owners but their future generations. India is a country where agriculture is one of the main vocation/occupation of its residents. Planned development of cities, towns is welcome factor but while proceeding with planned development/industrial development, good fertile agricultural land cannot be always sacrificed. As observed above, the right of objection of land owners as contemplated under section 5A was done away so that land owners could not point out any shortcomings/flaw in the acquisition process or justify exclusion of their land from acquisition.

In these writ petitions in majority of cases third party rights have been created after issue of declaration under section 6 and after taking possession substantial developments including constructions have been undertaken which has been already noted in detail by us in preceding paragraphs but there are few villages in which no third party rights have been created and no substantial developments have taken place. The cases where third party rights have not been created and no substantial developments have taken place and the cases where third party rights have been created, substantial developments have taken place and constructions made have to be separately treated and cannot be dealt with by same yardstick. As noted above, the cases in which relief of quashing the notification under sections 4 and 6 was not granted despite holding that dispensation of inquiry under section 5A was invalid were cases where third party rights have been created and substantial developments/construction have already

been undertaken. We thus, proceed to consider first the case of those villages where no third party rights have been created and no substantial developments have taken place. We first take the case of village Devla of Greater Noida. There are 23 writ petitions in this group (group 40). The notifications under section 4 read with Sections 17(1) and (4) was issued for acquiring the 107.0512 hectrares land of village Devla on 26.5.2009, which was published in the news paper on 4.5.2009. Declaration under section 6 was issued on 22.6.2009 which was published in the news paper on 30.7.2009. The possession is claimed to have been taken on 14.9.2009. 8 writ petitions were immediately filed in the year 2009 itself. First we take up the writ petition No. 50417 of 2009 M/S. Tosha International Ltd. and Ors. Vs. State of U.P. and others. The said writ petition has been filed by five petitioners challenging the notifications under section 4 and 6. The writ petition was filed on 16.9.2009 which was heard on 18.9.2009 and following order was passed by this Court:

“We have heard learned counsel for the petitioner, learned Standing Counsel for respondents no. 1 to 3 and Sri Ramendra Pratap Singh for respondent no.4.

Respondents may file counter affidavit within one month. Rejoinder affidavit, if any, may be filed within three days thereafter.

Learned counsel for the petitioners has challenged notification dated 26.5.2009 issued under Sections 4 of Land Acquisition Act and Notification dated 22.6.2009 under Section 6 of Land Acquisition Act. Learned counsel for the petitioners has urged that in view of the decision of Apex Court in M/s. Essco Fabs Private Limited and another Vs. State of Haryana and another (2009) 2 Supreme Court Cases 377 the authority is required to record his satisfaction as to why applicability of Section 5A of the Land Acquisition Act is to be dispensed with. The Apex Court has held in Sethi Auto Service Station and another Vs. Delhi Development Authority and others (2009) 1 Supreme Court Cases 180 that on the noting of the authorities the State Government's satisfaction cannot be inferred and the State Government is required to record its own independent reasons for invoking the urgency clause. In view of the aforesaid decisions, the petitioners are entitled for interim order.

Learned counsel for the petitioners has further urged that in view of the decision of Hon'ble Apex Court in Munshi Singh and others Vs. Union of India and others reported in A.I.R. 1973 S.C. 1150 for dispensing with an enquiry under Section 5A, mere mention of word "Land Development of the Area" is not sufficient and respondents are bound to show that the interested persons were aware of the scheme or were shown the scheme or the master plan in respect of land development.

In this view of argument made by the learned counsel for the petitioners, the learned Standing Counsel is directed to produce the entire records of acquisition on 21.10.2009 to demonstrate that satisfaction has been recorded by the State Government by applying in its own independent mind and enquiry under Section 5A was dispensed with in accordance with law.

List on 21.10.2009.

Until further orders of this court, parties are directed to maintain status quo."

The petitioners' case in the writ petition is that petitioners are owners of plots as mentioned in paragraph 7 of the writ petition which are recorded in the revenue records in their name. Case of petitioner no.1 is that petitioner no. 1 has started its unit which has been manufacturing black and white picture tube in the year 1990. The petitioner no. 1 claims to be registered under the Factories Act with Deputy Director, Factories, Western Zone, Meerut as well as under the Sales Tax Act. The petitioner no. 1 also claims to have been allotted a import code by the office of Joint Chief Controller Import and Export since 1988. No objection of U.P. Pollution Control Board was obtained on 22.10.1990. The petitioner's case is that in the plots owned by the petitioner no. 1 in the village as well as in the adjoining village Gulistanpur. Factory building, tanker shed, power plant room, LPG tanker plant and other plants have been constructed. The petitioner also took steps for grant of SEZ status under the Special Economic Zone Act, 2005. The petitioner submitted proposal before the competent authority. The petitioner has annexed in the writ petition correspondences with the District Magistrate, State Government as well as Govt. of India in this regard. The letter of Government of India, Ministry of Commerce Industries dated 17.1.2006 has been filed as Annexure-10 by which

the Government of India granted approval in principal subject to obtaining recommendations of the State Government and certain commitment by the State Government. Correspondence with the Greater Noida Authority by the petitioner as well as with the State Government has been brought on record. The State Government has asked report from Greater Noida. The petitioners had earlier also come to this court by filing writ petition being writ petition No. 49736 of 2007, M/s Tosha International Ltd. Vs. and others Vs. The State of U.P. and others. The said writ petition was disposed of by this Court vide order dated 11.10.2007 directing the Principal Secretary Industrial Development U.P. Government Lucknow to decide the claim of the petitioners which was submitted with regard to grant of SEZ status to the petitioner. The petitioner submitted a copy of the order before the Government and the matter is said to be pending. The petitioner in the writ petition has also referred to two earlier writ petitions filed by the petitioners in this Court with regard to acquisition of land of different plots belonging to the petitioners in the same area. The petitioner's case is that this Court entertained the writ petition and granted interim relief also. The petitioner has pleaded that the State Government has exempted land belonging to one M/s Arti Roiling Mills from the acquisition proposal whereas the petitioner has been discriminated since the petitioners' industry is also running from 1990.

Although in writ petition No. 50417 of 2009, no counter affidavit has been filed by the State despite the order of this Court dated 18.9.2009 but the counter affidavit of the State has been filed in the leading writ petition of the village being writ petition No. 31126 of 2011 Chaval Singh Vs. State of U.P. and others. In the counter affidavit filed by the State, it has been stated that possession of the land was taken on 14.9.2009. It was also stated in the counter affidavit filed on 14.9.2011 that no award has yet been prepared in so far as acquisition of village Dewla is concerned. In the counter affidavit filed by the State as mentioned above, the State has brought on record Prapatra Sankhya 16 which is prepared of assets which is noted in the survey before initiating proceedings for land acquisition. The said Prapatra Sankhya 16 has been filed as Annexure C.A. 6 in the counter affidavit. It is relevant to note that in plot Nos. 129,149,158,159,161 which are plots included in the declaration under section 6 Tosha Picture Tube and Constructions has been mentioned.

The Authority along with Supplementary affidavit-4 has filed details of village Dewla in which it has been stated that in the village in question only 19% land owners have accepted compensation under agreement and “a sum of Rs. 150.37 lakhs have been incurred on the development within the unacquired land of the village abadi” A chart has been filed in the folder where summary of village Dewla has been given which clearly indicates that no allotment of any plot has been made and area under recreational green is under process of planning. It is useful to quote the aforesaid summary of village Dewla given in folder along with supplementary affidavit-4:

“Table”

From the materials which are on record with regard to Dewla in this writ petition as well as in the leading writ petition and another writ petition, it is clear that neither any third party rights have been created in this village nor any substantial development has been made In the note which has been submitted by the Authority under folder along with Supplementary affidavit-4 with regard to development, following has been stated in paragraph 5:

“ 5. The Authority has incurred a total expenditure of Rs.150.37 lakhs upto July 2011 on the development. A sum of Rs. 150.37 lakhs have been incurred on the development within the un-acquired land of the village abadi” Thus the development which is claimed by the Authority is within the unacquired land of the village abadi. Another writ petition which needs to be noted in this context is writ petition No. 57032 of 2009 Manaktala Chemical (Pvt.) Ltd. Vs. State of U.P. and others which was filed in this Court on 29.10.2009. An interim order was also passed directing the parties to maintain status-quo with regard to possession as on date. The petitioner's case in the writ petition is also that the petitioner is a registered company which is using the plots in question for industrial purposes. The factory claims to be in existence over it. Reliance has also been placed on survey report dated 8.11.2007 which has been filed as Annexure-6 to the writ petition (as referred to above, while considering the writ petition of Tosha International Ltd.). In the survey on the plots which the petitioner claims, the mention of factory against plot nos. 566 and 564 was there and it was noted that

factory was closed. The petitioner's claim that factory is in existence since 1990. Other grounds challenging the notifications have been taken.

From the details as submitted by the Authority along with Supplementary affidavit-4 regarding the village in question, the land use as on the date of notification under sections 4 and 6 as well as of today is institutional green, recreational green, residential and commercial. The petitioners claim to be running industry over their plot, whose land use has now been changed in the sector plan which is not an industrial. Meaning thereby that the industries as per land use of the area has to be closed, whereas as noted above, the object and purpose of the Authority under the 1976 Act is industrial development. When the object of the Act is itself industrial development what purpose shall be served in shutting down the running industries has not been explained. In any view of the matter, there being no creation of third party rights and there being no substantial developments, we are of the view that the notifications under challenge dated 26.5.2009 under section 4 invoking Section 17(1) and 17(4) and notification under section 6 dated 7.6.2009 and all consequential actions deserves to be quashed. The petitioners shall be entitled to restoration of their land. As noted above, the award has not yet been given in this village. Several writ petitions in the villages were filed immediately after notifications in which interim orders were also granted.

Next writ petition to be considered is writ petition relating to village Yusufpur (Chak Sahberi) being writ petition No. 17725 of 2010 Ombir and others Vs. State of U.P. . By means of said writ petition, the petitioners have challenged the notifications dated 10.4.2006 issued under section 4 read with Section 17(1) and 17(4) and the declaration dated 6.9.2007 under section 6. The respondents claimed to have taken possession on 29.11.2007 and the award is claimed to be declared on 14.9.2011 whereas the writ petition was filed on 2.4.2010. The petitioners claimed to be owner of plots No. 87 and 144. The petitioner's case is that abadi of the petitioners exist on the plot. The petitioners claim that their plot were not exempted inspite of representation being submitted. Grounds challenging the invocation of section 17(1) and Section 17(4) have also been taken. Counter affidavits have been filed both by the Authority and State. In the counter affidavit filed by the Authority, there is no mention or details of any creation of third party rights or

developments in the village. In the Supplementary affidavit-4 filed by the Authority details regarding village Yusufpur Chak Sahberi has been given in folder. In the summary of village Yusufpur given in the folder, it is clear that the area is agricultural area plus river and no allotment has been made in the village. Summary of Yusyfpur Chak Sahberi as given in the folder is as follows:

“Table”

In paragraph 6 of the note submitted along with the folder, following has been mentioned:

“The Authority has incurred a total expenditure of Rs. 386.00 lakhs upto July 2011 on the development. A sum of Rs. 25.00 lakhs has been spent on the development of the acquired land while an amount of Rs. 361.00 lakhs have been incurred on the development within the un-acquired land of the village abadi”

From the materials brought on record, it is thus clear that neither any third party rights have been created in the village nor any substantial development has been made in the acquired area and the award claims to have been given on 14.9.2011 i.e. much after filing of the writ petition and after hearing in this writ petition had begun. The writ petition deserves to be allowed and notifications including all consequential actions be quashed. The petitioners shall be entitled to restoration of their land. Next writ petition to be considered is Writ Petition No.47486 of 2011; Rajee and others vs. State of U.P. and others (Group-42) relating to village Asdullapur, NOIDA. Notification under Section 4 was dated 27.1.2010. The declaration was issued under Section 6 dated 13.7.2010. The possession of 22.432 hectares (out of total land acquired 33.6115 hectare) is claimed to be taken on 24.6.2011. No tenure holder has accepted compensation. No award has been made. No third party rights have been created. The notifications 27.1.2010 and 13.7.2010 and all consequential actions deserve to be quashed. The petitioners are entitled to restoration of their land. There are three more villages where third party rights have not been claimed to be created, which are Khanpur. Sadopur and Pali. Writ petition No. 39037 of 2011 has been filed with regard to Khanpur. The petitioners challenge the notification dated 31.1.2008 and notification dated 30.6.2008. In the counter affidavit filed by the State as well as the Authority,

possession of land is claimed to have been taken on 10.10.2008. The writ petition was filed on 14.7.2011. In paragraph 6 of the note submitted in the folder alongwith supplementary affidavit-4 following has been stated about the developments:

"**6.** The Authority has incurred a total expenditure of Rs. 899.88 lakhs upto July 2011 on the development. A sum of Rs. 564.32 lakhs has been spent on the development of the acquired land while an amount of Rs. 335.56 lakhs have been incurred on the development within the un-acquired land of the village abadi" Substantial amount has been spent by the Authority on the developments after acquiring the land and taking possession and the writ petition having been filed only on 14.7.2011, we are of the view that the petitioners are not entitled for quashing the notifications under section 4 and 6 in respect of above village.

Writ petition No. 46026 of 2011, Umesh Chaudhary and Others Vs. State of U.P. has been filed with regard to village Sadopur. The said writ petition has been filed by the petitioners challenging the notification under section 4 read with Sections 17(1) and 17(4) dated 31.8.2007 and the notification under section 6 dated 30.6.2008. The writ petition has been filed on 10.8.2011. In the counter affidavit it has been stated that possession has been taken on 16.2.2009 and out of 825 tenure holders 61 have received compensation. The writ petition having been filed only on 10.8.2011, we are of the view that the petitioners are not entitled for relief of quashing the notification.

Now comes the writ petitions of village Pali, the leading writ petition being writ petition No. 46933 of 2011, Rabhubar and others Vs. State of U.P. The writ petition has been filed on 16.8.2011 challenging the notification dated 7.9.2006 under section 4 read with Sections 17(1) and 17(4) as well as notification dated 23.7.2007 under section 6. The possession of the land is claimed to have been taken on 1.11.2007 and 10.4.2008. It has been further stated in the counter affidavit that out of 558 tenure holders 470 have accepted compensation under agreement and for 93.49% area, the compensation has already been paid and award was made on 10.8.2011. In the facts of the present case, we are of the view that the petitioners are not entitled for the relief of quashing the notifications.

Now comes the issue as to what reliefs be granted to the petitioners of other writ petitions even though they are not entitled for quashing the notifications under section 4 and declaration under section 6 due to creation of third party rights, substantial developments, constructions made on the land in dispute and delay. A three Judges Bench recently had occasion to consider all aspects of land acquisition and the consequences which take place due to acquisition of land in (2010) 7 Supreme Court Cases 129 **Bondu Ramaswamy and Ors. Vs. Bangalore Development Authority and Ors.** In the said case acquisition of land by Banglore Development Authority for planned development was under challenge. Land of 16 villages was notified to be acquired near adjoining Banglore city for planned development. The acquisition was challenged in the writ petition. A learned Single Judge allowed the writ petition quashing the acquisition against which a writ appeal was filed. The Division Bench allowed the appeal and set aside the order of learned Single Judge and issued various directions to balance the equity of the parties. The land owners being dissatisfied with the directions issued by the Division Bench filed appeal to the apex Court. The apex Court considered the nature of acquisition and the consequences which took place. The apex Court has categorised the acquisition in three categories in paragraph 151. It was observed by the apex Court that in acquisition of category (ii) and category (iii) there is a general feeling among the land-losers that their lands are taken away, to benefit other classes of people when the land is given to others and their grievance and resentment are unaddressed, the result is unrest and agitation. The apex Court in paragraph 153 has said that the solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition. Acquisition which is subject matter of challenge in the present writ petition is acquisition of second category as mentioned in paragraph 151 of the judgment. It is useful to quote paragraphs 150,151,153.1 and 153.2:

“**150.** Frequent complaints and grievances in regard to the following five areas, with reference to the prevailing system of acquisitions governed by Land Acquisition Act, 1894, requires the urgent attention of the state governments and development authorities:

(i) absence of proper or adequate survey and planning before embarking upon acquisition;

(ii) indiscriminate use of emergency provisions in section 17 of the LA Act;

(iii) notification of areas far larger than what is actually required, for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions;

(iv) offer of very low amount as compensation by Land Acquisition Collectors, necessitating references to court in almost all cases;

(v) inordinate delay in payment of compensation; and (vi) absence of any rehabilitatory measures.

While the plight of project oustees and landlosers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the plight of farmers affected by frequent acquisitions for urban development.

151. There are several avenues for providing rehabilitation and economic security to landlosers. They can be by way of offering employment, allotment of alternative lands, providing housing or house plots, providing safe investment opportunities for the compensation amount to generate a stable income, or providing a permanent regular income by way of annuities. The nature of benefits to the landlosers can vary depending upon the nature of the acquisition. For this limited purpose, the acquisitions can be conveniently divided into three broad categories:

(i) Acquisitions for the benefit of the general public or in national interest. This will include acquisitions for roads, bridges, water supply 123 projects, power projects, defence establishments, residential colonies for rehabilitation of victims of natural calamities.

(ii) Acquisitions for economic development and industrial growth. This will include acquisitions for Industrial Layouts/Zones, corporations owned or controlled by the State, expansion of existing industries, and setting up Special Economic Zones.

(iii) Acquisitions for planned development of urban areas. This will include acquisitions for formation of residential layouts and construction of apartment Blocks, for allotment to urban middle class and urban poor, rural poor etc.

153. The solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition. It is necessary to evolve tailor-made schemes to suit particular acquisitions, so that they will be smooth, speedy, litigation free and beneficial to all concerned. Proper planning, adequate counselling, and timely mediation with different groups of landlosers, should be resorted. Let us consider the different types of benefits that will make acquisitions landloser-friendly.

151.1 In acquisitions of the first kind (for benefit of general public or in national interest) the question of providing any benefit other than what is presently provided in the Land Acquisition Act, 1894 may not be feasible. The State should however ensure that the landloser gets reasonable compensation promptly at the time of dispossession, so that he can make alternative arrangements for his rehabilitation and survival.

153.2 Where the acquisition is for industrial or business houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a land acquirer but also the role of the protector of the landlosers. As most of the agriculturists/small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable, should be made an integral process of the scheme of such acquisitions. If the government or Development Authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition

process.”

It is also relevant to notice that in same judgment, the apex Court has also noticed the consequence of unauthorised or illegal developments and the benefits of planned developments. It is useful to quote paragraphs 130 and 131 which are to the following effect:

“**130.** But in an unauthorised or illegal development, the roads are narrow and minimal, virtually no open spaces for parks and playgrounds, and no area earmarked for civic amenities. There will be no proper water supply or drainage; and there will be a mixed use of the area for residential, commercial and industrial purposes converting the entire area into a polluting concrete jungle. The entries and exits from the layouts will be bottlenecks leading to traffic jams. Once such illegal colonies come up with poor infrastructure and amenities, it will not be possible to either rectify and correct the mistakes in planning nor provide any amenities even in future. Residents of such unauthorized layouts are forever be condemned to a life of misery and discomfort. It is to avoid such haphazard, unhealthy development activities by greedy illegal colonisers and ignorant land-owners, the State Legislatures provided for City Improvement Trusts and Development Authorities so that they could develop well planned citizen friendly layouts with all amenities and facilities.

131. In this background large tracts of lands running into hundreds of acres are acquired to have integrated layouts. Only when a layout is formed on a large scale, adequate provision can be made for good size parks, playgrounds and community/civil amenities. For example, if a layout is made in 1000 acres of land, the developer can provide a good sized park of twenty acres and one or two small parks of 2 to 5 acres, have playgrounds of 5 to 10 acres. Instead of such an integrated large layout, if 200 small individual layouts are made in areas ranging from 2 to 10 acres, there will obviously be no provision for a park or a playground nor any space for civil amenities. Further small private colonies/layouts will not have well aligned uniform roads and accesses. While it is true that Municipal and Town Planning authorities can by strict monitoring and licensing procedures arrest haphazard development, it is seldom done. That is why formation of small layouts

by developers is discouraged and development authorities take up large scale developments."

The above dictum of the apex Court laid down that acquisition for economic development and industrial growth has to be dealt in a manner that land owners do not feel alienated but welcome the acquisition. This is possible only when they are made beneficiaries of acquisition apart from normal compensation to which they may be entitled under the Act. The apex Court in (2007) 8 Supreme Court Cases 705 **Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chekicals Ltd. and others** had occasion to examine the developments undertaken under Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam,1973. The apex Court noticed that there are two competing interest, firstly the interest of the State, vis--vis the general public and secondly the right of property of an individual. The apex Court observed following in paragraph 52:

"**52.** The Courts should, therefore, strive to find a balance of the competing interests."

The payment of adequate compensation for acquisition of land is also the important aspect of the whole exercise. One aspect of compensation, in the shape of payment of additional compensation with regard to land holders of village Patwari needs to be noted. As noted above, the Division Bench while passing the order dated 26.7.2007 for hearing of the matter by larger Bench has left open to the petitioners, State and Authority to make an effort of settlements. After order of this Court dated 26.7.2011, the Authority took steps and invited the land holders of village Patwari to arrive at a settlement. The Authority has filed a supplementary affidavit in the main writ petition giving details of facts and events which took place towards the settlement between the authority and the land owners regarding payment of additional compensation. In the supplementary affidavit it has been brought on record by the Authority in the main writ petition that an agreement was entered between the land owners of village Patwari and Authority by which it was agreed that an additional compensation of Rs. 550/- per square meter be given to the land owners of village Patwari in addition to the compensation which was paid under agreement to the villagers. In village Patwari the payment of additional

compensation at the rate of Rs.550/- per square meter has already been made after 26.7.2011.

Some of the learned counsel appearing for the petitioner with regard to other villages have submitted that although land owners of the village Patwari were called for negotiation and agreement but Authority have not called land owners of other villages for negotiation and payment of additional compensation. The amount of Rs. 550/- per square meter which has been offered and paid by the Authority in village Patwari is on the basis of negotiation and on the basis of settlement, the compensation which was paid to the residents of village Patwari under agreement was Rs. 850/- per square meter and the additional compensation which is now being paid is Rs. 550/- per square meter which comes to about 64.70% of the compensation paid earlier under the 1997 Rules. In the facts of the present case when the additional compensation has been paid to the resident of village Patwari after arriving a settlement by the Authority and farmers which indicate that in payment of additional compensation the Authority itself has agreed to pay additional compensation, we are of the view that the petitioners of other villages whose land has been acquired for the same purpose and who are the petitioners before us are also entitled for additional compensation. After considering all aspects of the matter including the amount which has been paid by the Authority as additional compensation, we are of the view that payment of amount to the same extent i.e. 64.70% % of what has already been paid under agreement or award shall meet the ends of justice which payment of compensation shall be in addition to other directions which hereinafter shall be issued. The apex Court in several judgments have directed for payment of additional compensation after finding the acquisition not in accordance with law but where the prayer of quashing the acquisition has been declined. In this context reference is made to the judgment of the apex Court in (2005) 13 Supreme Court Cases 4777 **Competent Authority vs. Barangore Jute Factory and Ors.** In the aforesaid case, the acquisition of land was made under the National Highways Act, 1956. The apex Court found that acquisition was not in accordance with law. However, to meet the ends of justice, it was held that additional compensation be paid to the land owners to compensate them. Following was laid down in paragraph 14:

“Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway. The construction of national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.”

In the three judges Bench judgment in the case of **Bondu Ramaswamy and Ors. Vs. Bangalore Development Authority and Others** as noticed above, the apex Court has clearly opined that giving participation of the land owners in the acquisition proceedings in cases for economic, industrial growth is only solution to compensate the land owners to make the land looser a direct beneficiaries of acquisition. It has been stated on behalf of the respondents that there is a policy of allotment of residential plots to the land losers equivalent to 6% of the land acquired. It has been stated that with regard to Patwari in the subsequent settlement between the Authority and land owners, it was decided to raise from 6% to 8%. When the land of agriculturists/farmers/ land owners is acquired, giving back certain percentage of the land to him is both just and equitable more so when the respondents authorities are taking steps for planned industrial development. In

Bondu Ramaswamy and Ors. Vs. Bangalore Development Authority and Ors. (supra) the apex Court had issued ultimate directions for giving open land to the land owners to accept allotment of 15% of the land acquired by way of developed plots in leiu of compensation or in excess where the extent of the land acquired exceed half an acre to claim additional compensation measuring 30”X40” on every half acre following to the acquisition plans recorded in paragraph 160 of the judgement which is quoted below:

“In view of the foregoing, we affirm the directions of the Division Bench subject to the following further directions and clarifications:

(i) In regard to the acquisition of lands in Kempapura and Srirampura, BDA is directed to re-consider the objections to the acquisitions having regard to the fact that large areas were not initially notified for acquisition, and more than 50% of whatever that was proposed for acquisition was also subsequently deleted from acquisition. BDA has to consider whether in view of deletions to a large extent, whether development with respect to the balance of the acquired lands has become illogical and impractical, and if so, whether the balance area also should be deleted from acquisition. If BDA proposes to continue the acquisition, it shall file a report within four months before the High Court so that consequential orders could be passed.

(ii) In regard to villages of Venkateshapura, Nagavara, Hennur and Challakere where there are several very small pockets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small pockets should also be deleted if they are not suitable for forming self contained layouts. The acquisition thereof cannot be justified on the ground that these small islands of acquired land, could be used as a stand alone park or playground in regard to a layout formed in different unconnected lands in other villages. Similar isolated pockets in other villages should also be dealt with in a similar manner.

(iii) BDA shall give an option to each writ petitioner whose land has been acquired for Arkavathy layout:

(a) to accept allotment of 15% (fifteen percent) of the land acquired from him, by way of developed plots, in lieu of compensation (any fractions in excess of 15% may be charged prevailing rates of allotment).

OR

(b) in cases where the extent of land acquired exceeds half an acre, to claim in addition to compensation (without prejudice to seek reference if he is not satisfied with the quantum), allotment of a plot measuring 30' x 40' for every half acre of land acquired at the prevailing allotment price.

(iv) Any allotment made by BDA, either by forming layouts or by way of bulk allotments, will be subject to the above." Looking to the facts of the present case, number of land owners who are affected by the acquisition, the fact that there is already policy of allotment of residential plots to the land owners we are of the view that ends of justice be met in case the allotment of developed plots is made to the land owners up to the 10% of land acquired subject to maximum limit of 2500 square meter as already been fixed by the Authority. The allotment of 10% developed plot be given to the land owners in the same village if possible subject to land use or in any other suitable place. On account of allotment of 10% developed plot, compensation payable to the extent of 10% shall not be paid.

There is one more aspect of the matter which needs to be considered. The apex Court in (2010) 4 Supreme Court Cases 17 **Om Prakash Vs. Union of India** has held that when a declaration is quashed by any Court, it will only for the benefit of those who have approached the Court. Following was laid down in paragraph 74:

"The facts of the aforesaid cases would show that in the case in hand as many as four declarations under Section 6 of the Act were issued from time to time. Finally when declaration is quashed by any Court, it would only enure to the benefit of those who had approached the Court. It would certainly not extend the benefit to those who had not approached the Court or who might have gone into slumber."

As noticed above, the land has been acquired of large number of villagers in different villages of Greater Noida and Noida. Some of the petitioners had earlier

come to this Court and their writ petitions have been dismissed as noticed above upholding the notifications which judgments have become final between them. Some of the petitioners may not have come to the Court and have left themselves in the hand of the Authority and State under belief that the State and Authority shall do the best for them as per law. We cannot loose sight of the fact that the above farmers and agricultures/owners whose land has been acquired are equally affected by taking of their land. As far as consequence and effect of the acquisition it equally affects on all land losers. Thus land owners whose writ petitions have earlier been dismissed upholding the notifications may have grievances that the additional compensation which was a subsequent event granted by the Authority may also be extended to them and for the aforesaid, further spate of litigation may start in so far as payment of additional compensation is concerned. In the circumstances, we leave it to the Authority to take a decision as to whether the benefit of additional compensation shall also be extended to those with regard to whom the notifications of acquisition have been upheld or those who have not filed any writ petitions. We leave this in the discretion of the Authority/State which may be exercised keeping in view the principles enshrined under Article 14 of the Constitution of India. In view of the foregoing conclusions we order as follows:

1. The Writ Petition No. 45933 of 2011, Writ Petition No. 47545 of 2011 relating to village Nithari, Writ Petition No. 47522 of 2011 relating to village Sadarpur, Writ Petition No. 45196 of 2011, Writ Petition No. 45208 of 2011, Writ Petition No. 45211 of 2011, Writ Petition No. 45213 of 2011, Writ Petition No. 45216 of 2011, Writ Petition No. 45223 of 2011, Writ Petition No. 45224 of 2011, Writ Petition No. 45226 of 2011, Writ Petition No. 45229 of 2011, Writ Petition No. 45230 of 2011, Writ Petition No. 45235 of 2011, Writ Petition No. 45238 of 2011, Writ Petition No. 45283 of 2011 relating to village Khoda, Writ Petition No. 46764 of 2011, Writ Petition No. 46785 of 2011 relating to village Sultanpur, Writ Petition No. 46407 of 2011 relating to village Chaura Sadatpur and Writ Petition No. 46470 of 2011 relating to village Alaverdipur which have been filed with inordinate delay and laches are dismissed.

2(i) The writ petitions of **Group 40** (Village Devla) being Writ Petition No. 31126 of 2011, Writ Petition No. 59131 of 2009, Writ Petition No. 22800 of 2010, Writ

Petition No. 37118 of 2011, Writ Petition No. 42812 of 2009, Writ 385

Petition No. 50417 of 2009, Writ Petition No. 54424 of 2009, Writ Petition No. 54652 of 2009, Writ Petition No. 55650 of 2009, Writ Petition No. 57032 of 2009, Writ Petition No. 58318 of 2009, Writ Petition No. 22798 of 2010, Writ Petition No. 37784 of 2010, Writ Petition No. 37787 of 2010, Writ Petition No. 31124 of 2011, Writ Petition No. 31125 of 2011, Writ Petition No. 32234 of 2011, Writ Petition No. 32987 of 2011, Writ Petition No. 35648 of 2011, Writ Petition No. 38059 of 2011, Writ Petition No. 41339 of 2011, Writ Petition No. 47427 of 2011 and Writ Petition No. 47412 of 2011 are allowed and the notifications dated 26.5.2009 and 22.6.2009 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to deposit of compensation which they had received under agreement/award before the authority/Collector.

2(ii) Writ petition No. 17725 of 2010 Omveer and others Vs. State of U.P. **(Group 38)** relating to village Yusufpur Chak Sahberi is allowed. Notifications dated 10.4.2006 and 6.9.2007 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to return of compensation received by them under agreement/award to the Collector.

2(iii) Writ Petition No.47486 of 2011 (Rajee and others vs. State of U.P. and others) of Group-42 relating to village Asdullapur is allowed. The notification dated 27.1.2010 and 4.2.2010 as well as all subsequent proceedings are quashed. The petitioners shall be entitled to restoration of their land.

3. All other writ petitions except as mentioned above at (1) and (2) are disposed of with following directions:

(a) The petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for village Patwari in addition to the compensation received by them under 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for Authority to take a decision as to what proportion of additional compensation be asked to be paid by allottees. Those petitioners who have not yet been paid compensation may be paid the compensation as well as additional compensation as ordered above. The

payment of additional compensation shall be without any prejudice to rights of land owners under section 18 of the Act, if any.

(b) All the petitioners shall be entitled for allotment of developed Abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 square meters. We however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of abadi plot to the extent of 10% be also given to ;

(a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and

(b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned at direction No.3.

5. The Greater NOIDA and its allottees are directed not to carry on development and not to implement the Master Plan 2021 till the observations and directions of the National Capital Regional Planning Board are incorporated in Master Plan 2021 to the satisfaction of the National Capital Regional Planning Board. We make it clear that this direction shall not be applicable in those cases where the development is being carried on in accordance with the earlier Master Plan of the Greater NOIDA duly approved by the National Capital Regional Planning Board.

6. We direct the Chief Secretary of the State to appoint officers not below the level of Principal Secretary (except the officers of Industrial Development Department who have dealt with the relevant files) to conduct a thorough inquiry regarding the acts of Greater Noida (a) in proceeding to implement Master Plan 2021 without approval of N.C.R.P. Board, (b) decisions taken to change the land use, (c) allotment made to the builders and (d) indiscriminate proposals for acquisition of land, and thereafter the State Government shall take appropriate action in the

matter.

All the writ petitions are decided accordingly. No costs.

Let the original records be returned to the learned Chief Standing Counsel as well as learned counsel for the Authority.

Hon'ble S.U. Khan,J.

I fully agree with the entire judgment delivered by brother Ashok Bhushan, J., however I would like to add something of my own which is as follows:

Land Acquisition is no more a holy cow. At present it is a fallen ox. “Everybody is butcher when the ox falls.” The correctness of this phrase is best illustrated by this bunch of more than 1000 writ petitions (about half of which are to be decided after this judgment) almost all of which have been filed after 06.07.2011 (the date on which judgment of the Supreme Court reported in **Greater Noida Industrial Development Authority Vs. Devendra Kumar, 2011 (6) ADJ 480** was delivered) challenging land acquisitions in North Okhla Industrial Development Area (NOIDA) and Greater NOIDA. Almost all the acquisitions since formation of NOIDA through notification dated 17.04.1976 under U.P. Industrial Area Development Act of 1976 (which received the assent of the Governor on 16.04.1976) have been challenged. In all the writ petitions, barring few, there are several petitioners. Total number of petitioners is more than ten thousand. Even during continuance of arguments in this Full Bench scores of similar writ petitions were filed before the Division Bench concerned daily and all were sent to this Full Bench. Similar petitions are being filed till date. It is not opening of flood gate. It is tsunami. It has helped us in understanding the problem in its entirety. Hearing individual challenge to a particular acquisition is like judging an elephant by a blind man, touching a particular part of elephant’s body (in the proverbial story of the elephant and six blind men). Some may mistake it for a wall, some for tree trunk, some for rope etc.

Till a couple of years before, it was considered almost indecent to suggest that acquisition of land might be quashed by higher judiciary. That was one extreme. Quashing of the acquisition lock, stock and barrel will be full swing to the other

extreme. To keep a pendulum clock working gentle swinging of its pendulum is necessary. Stopping of pendulum denotes that the clock is not working. However wild swings damage the clock. The wilder the swings the greater the damage. “Our age knows nothing but reaction, and leaps from one extreme to another.” Reinhold Niebuhr, Americal philosopher quoted by Times of India above the editorial under ‘A thought for today’ dated 18.05.2011.

Life of law is experience (O.W. Holmes).

However, spirit of law is BALANCE.

In **Indian Industries Association Vs. State of U.P. 2007 (4) AWC 3825**, one of us (S.U. Khan, J.) while dealing with the strife of capital and labour (in respect of wages) observed in Paras-27 and 28 as follows:

As far as industries are concerned, owner is primarily concerned with profit, worker with wage while interest of the public demands good quantity and quality of commodity/service at affordable cost. It is a sort of strife. The strife between capital and labour and the extreme stand which each takes and extreme arguments which each side advances are best illustrated by the drama 'strife' by John Galsmorthy written in 1909. **Each side may have legitimate arguments in its favour.**

However, this is a world of compromises and no argument can be brought to its logical conclusion. Philosophers and mad dogs are liable to be shot because they want to bring their arguments to their logical conclusion (Thomas Hardy in 'Far from the mad ding crowd').

Balance in nature is necessary for survival of the Universe. Similarly balance in society is also essential for its survival

Economic aspect is one of the most important aspects of human society. Economic balance will have therefore to be given a very high priority. For the sake of economic balance alongwith higher earning of upper section of the society, becoming higher and higher rapidly, good income/wages will have to be ensured to the lower section of the society. We have tried to maintain the delicate balance

through the leading judgment delivered by Hon'ble Ashok Bhushan, J. Land may be acquired for a public purpose. Public purposes for the sake of land acquisition may be divided into two broad categories. One may be termed as core, primary public purpose, e.g. purposes connected with military, construction of government offices, hospitals, government educational institutions, canals, roads and bridges etc. The other category may be termed as secondary public purpose which includes establishment of industries and development of urban areas which basically means construction of housing units. (In today's 'Times of India', Allahabad Edition there is a news on first page titled as 'Delhi Topples Mumbai as Maximum City'. It is reported thereunder that close to 2.2 crore people now live in Delhi's extended urban sprawl.) In the judgment of the Supreme Court reported in **Bondu Ramaswamy Vs. Bangalore Development Authority, 2010 (7) SCC 129** , (in Para-151), three types of public purposes for land acquisition have been mentioned. The purposes at Serial No.(i) may be described as core, primary public purpose and purposes at Serial No.(ii) (establishment of industries) and (iii) (urban area development) may be described as secondary purposes. In respect of core, primary public purpose normally no concept of profit making is involved. Accordingly, for such acquisitions greater latitude may be given and strict compliance of different provisions of Land Acquisition Act may not be insisted. Compensation as determined under the Land Acquisition Act can also be treated to be quite appropriate. As observed in the aforesaid Supreme Court authority, normally there is no resentment against such type of acquisitions.

However as far as acquisitions for secondary purposes i.e. for establishing industries and constructing residential units are concerned, they stand on slightly different footing. There cannot be any doubt that such acquisitions also serve public purpose, however the factor of profit making is quite apparent therein. The purpose of State in providing land for establishment of industries is that people will get employment and goods will be manufactured increasing the wealth of the nation which is squarely a public purpose. However the purpose of the person who establishes industry would be only and only to earn profit. There is absolutely nothing wrong in it. Business is always done for profit. However for establishing industry the three major, capital investments are land, building and machinery and the industrialist has to pay good amount for each. Similarly when land is allotted to

builders for constructing residential units, their purpose would be to earn profit and the purpose of the State would be to provide properly planned residential units to the public. However if the State itself gets the residential units constructed it would be earning huge profit.

Serving of public purpose by the industrialist or the builder is an unintended fall out of his business activity. No private person or nongovernmental company does business for the purpose of providing employment or for any other purpose except earning profit.

If on the acquired land profit earning activity is carried out then the person whose land has been acquired has got full right to have something like a share in the profit. It is for this reason that during recent past in different parts of the country there has been public opposition of various degrees to the land acquisition for the purposes of constructing dwelling units or establishing industries by private persons or non-governmental companies. (As government is rolling back its direct role in industrialization by running industries, hence acquisition for establishing government industries is now a thing of past).

The first paragraph and first sentence of the second paragraph of the book "**Law in a Changing Society"** written by W. Friedmann are quoted below:

"The controversy between those who believe that law should essentially follow, not lead, and that it should do so slowly, in response to clearly formulated social sentiment- and those who believe that the law should be a determined agent in the creation of new norms, is one of the recurrent themes of the history of legal thought. It is tellingly illustrated by the conflicting approaches of Savigny and Bentham.

For Savigny, bitter opponent of the rationalizing and law making tendencies spurred by the French Revolution, law was 'found', not 'made'."

Today, hardly any jurist agrees with Savigny. However, law may not be 'found' but its need can very well be 'found'. It is apparent that now there is need to make necessary changes in the law of land acquisition in respect of secondary public

purposes.

The need of law (including change of law) may be sensed either by the legislature or by the court. Justice R.S. Pathak in the Constitution Bench judgment reported in **Union of India Vs. Raghubir Singh, AIR 1989 SC 1933** (Incidentally that case was also related to land acquisition) quoted the following observations of Lord Reid.

“There was a time when it was thought almost indecent to suggest that Judges make law - they only declare it ……. but we do not believe in fairy tales anymore. (The Judge as Law Maker, Page-22).”

When the need for law is apparent and found and the legislature is slow to respond then the judiciary particularly the higher judiciary has to play a role akin to that of law maker. Of course, it is done through interpretation and within the bounds. In extreme situations, the bounds may be stretched but they are never to be broken.

It is said that great events do not leave great people standing by. The Judges also cannot remain oblivious of and unaffected with the resentment shown by public against some law. It is said that the best judge is he who understands the society best.

In the matter of land acquisition, the Supreme Court realized the importance of the resentment of the people at an early stage. Without waiting for the flames to rise, fire fighting efforts were initiated immediately after seeing the smoke during last couple of years. It is always easier to cure an illness at its earlier stage. Either provide a safety valve and an outlet or be ready for burst. However, it is heartening to note that Parliament is also responding promptly and it has given clear indications that it intends to modify Land Acquisition Act in near future by providing more to those persons whose lands are acquired (double or four times the market value). Some States have already taken corrective measures.

In view of the above, we have directed payment of something more than market value to those persons whose lands have been acquired for secondary public

purposes in order to make them sharer in the profit which is to be earned by industrialists and builders.

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