NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1182 OF 2003

State of West Bengal and others .....Appellants

Versus

Prafulla Churan Law and others .....Respondents

WITH

CIVIL APPEAL NO. 1183 OF 2003

J U D G M E N T

The appellants are aggrieved by the order of the Calcutta High Court, which annulled the invoking of Section 17 of the Land Acquisition Act, 1894 (for short, "the Act") by the State Government for the acquisition of premises No. 14 and 12/1, Hare Street, Calcutta.

There is no dispute between the parties that possession of the premises in question was taken by the Government before independence in March, 1944 by invoking the provisions of the Defence of India Act. After 15 years, the State Government issued order dated 30.9.1959 under Section 3(1) of the West Bengal Premises Requisition and Control (Temporary

Provisions) Act, 1947 (for short, "the 1947 Act") for requisition of the premises.

After 31 years, the respondents filed Writ Petition No.3601 of 1990 questioning the continued possession of the premises by the appellants. The learned Single Judge of the High Court allowed the writ petition and issued a mandamus for restoration of the premises to the respondents. Notification dated 27.8.1990, issued by the State Government under Section 4(1) of the Act for acquisition of the premises, was quashed by the High Court in Writ Petition No. 1382 of 1991. Thereafter, the respondents filed Writ Petition No. 3790 of 1993 and reiterated their prayer for restoration of possession. The learned Single Judge allowed the writ petition and directed that the possession of the premises be delivered to the writ petitioners within four months. At the same time, he made it clear that during this period the concerned authorities may acquire the property in accordance with law and observed that if the property is acquired within that period, the question of handing over the possession will not arise. The respondents challenged the latter part of the order of the learned Single Judge in Appeal No. 35 of 1994, which was disposed of by the Division Bench vide order dated 18.4.1994, the relevant portions of which are extracted below:

> "We are conscious of the contentions raised by the appellants in this regard, but we think that we cannot prevent the State authorities to acquire the premises in question in accordance

> with the law after ad-hearing to the proper formulates as delineated in the statute. Some steps have already been taken in this regard in the meantime. Till such time the acquisition proceedings are complete, the respondents cannot however take advantage of the situation and continue at the old rate of compensation which was fixed amount 40 to 50 years before. In one case the requisition was made in 1944 and in other case it was in 1956.
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> We would, accordingly, direct the respondent authorities to pay by way of ad-interim measure a monthly compensation at the rate of Rs.10/- per sq.ft. confirming to the market rate for their occupation with a further direction upon the State respondents to complete the acquisition proceeding within a period of six months from this date. If this proceeding are not complete by that date, the mandate as passed by the learned trial Judge should definitely be operative and the writ petitioners, the present appellants, would be entitled to get back the possession of the disputed premises in accordance with law."

Special Leave Petition (C) No. 4899 of 1996 filed by the respondents was dismissed by this Court on 28.2.1996 with liberty to them to claim damages for the occupation of the premises for the period between the date on which the term of requisition came to an end and the date on which the acquisition proceedings were initiated.

In the meanwhile, the State Government issued notification dated 19.7.1994 under Section 4(1) read with Section 17(4) of the Act for acquisition of the premises in question for the purpose of providing permanent accommodation to the unit of Cottage and Small Scale Industries, Bangasree and also for West Bengal Ceramic Development Corporation.

This was followed by notification under Section 6, which was published on 18.7.1995.

The respondents challenged the aforementioned notifications in Writ Petition No. 870 of 1996 on several grounds including the one that there was no valid ground for invoking Section 17(4) of the Act, which resulted in depriving them of the right to file objection under Section 5-A. It was pleaded that the purpose of acquisition was not such which could justify dispensing with the inquiry envisaged under Section 5-A.

The learned Single Judge dismissed the writ petition by observing that the decision of the State Government to invoke Section 17(4) was legally correct and justified and the power of judicial review cannot be exercised to interfere with the subjective satisfaction on the issue of urgency. The Division Bench allowed the appeal filed by the respondents and quashed the acquisition by recording the following observations:

> "The virtue of a public enquiry case not be overstressed. It is the very heart and soul of the rule of law. It stops high handed action. It stops mere repetition or words found in Act, when such repetition lacks substance, in the facts and circumstances of a particular case. This is the reason why such a hearing is usually compartmentalized as an important compartment of the rules of natural justice. Had there been a public enquiry, in a usual manner, the parties would know, what is the reason for their losing their right to their property; in that event, the court would also be in the know of far more facts. When approving or disapproving of acquisition

> proceedings, the details and the facts are necessary and important, not only for the parties, but also for the court.
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> Here we know nothing. Everything has been short – circuited by preliminary notifications doing away with public enquiry without ever even trying to put it afoot. The Government proceeded with a closed mind, in an authoritarian way, paying attention only to words being repeated in the Notifications, exactly as those appear in the L.A. Act.
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> We are thus of the opinion that both the notifications in regard to both the premises issued in a combined way under section 4 and 17(4) were the products of a closed mind, which was already made up, that the premises being in the possession of the government undertakings, would be kept by such government undertakings, and a compensation would be awarded to the public parties. The whole proceedings show such a closed mind. The appellants had lost their property as soon as the combined notice under section 4 and 17(4) had been published.
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> In our opinion, this manner of proceeding to acquire land vitiates the entire acquisition proceedings. Dispensing with hearing of objections, when there was no real urgency, is a fatal infirmity."

Shri Avijit Bhattacharjee, learned counsel for the appellants submitted that the premises were needed for a public purpose i.e., providing permanent accommodation to the unit of Cottage and Small Scale Industries, Bangasree and also for West Bengal Ceramic Development Corporation and, as such, no exception could be taken to the procedure adopted by the appellants. Learned counsel emphasized that Section 17(4) was invoked because in terms of order dated 18.4.1994 passed by the Division Bench of the High Court, the State Government was obliged to complete the

acquisition proceedings within six months and this could not have been possible if objections were invited and opportunity of hearing was given to the respondents as per requirement of Section 5-A. In support of his argument, Shri Bhattacharjee relied upon the judgment of this Court in **Chameli Singh and others v. State of U.P. and another** (1996) 2 SCC 549.

Shri Shyam Divan, learned senior counsel appearing for the respondents supported the impugned order and argued that the Division Bench of the High Court did not commit any error by quashing the acquisition. He relied upon the recent judgment in **Anand Singh and another v. State of Uttar Pradesh and others** (2010) 11 SCC 242, and submitted that the High Court has rightly nullified the acquisition proceedings on the ground that there was no such urgency which could justify short circuiting the rule of hearing enshrined in Section 5-A of the Act.

We have considered the respective submissions and carefully perused the record. The applicability of Section 17 of the Act has been considered in several cases, but it is not necessary to burden the judgment with large number of precedents and it will be sufficient to notice the two judgments which have direct bearing on the issue arising in these appeals. In **Narayan Govind Gavate v. State of Maharashtra** (1977) 1 SCC 133, a three-Judge

Bench of this Court considered various facets of the issue relating to invoking of urgency clause for the acquisition of land for development and utilization as a residential-cum-industrial area. The Bombay High Court had allowed the writ petitions filed by the land owners and quashed the invoking of Section 17(4) of the Act. This Court first considered the question of burden of proof in matters in which inquiry under Section 5A is dispensed with, referred to Phipson on Evidence (11th Edition), the judgment in **Woolmington v. Director of Public Prosecutions** 1935 AC 462, noticed the provisions of Sections 101, 102, 103, 106 and 114 of the Evidence Act and held:

> "Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordinate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the conditions precedent were complied with. In the present case this has been done by the filing of an affidavit before us.
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> It is also clear that, even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori, the court

> may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the court will interfere."
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> (emphasis supplied)

The Court then considered whether there was any justification for invoking the urgency clause for acquisition of land for residential and industrial purposes and observed:

> "In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under Section 5-A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under Section 5-A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under Section 5-A of the Act.
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> All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquiries under Section 5-A of the Act. 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 5-A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under Section 5-A 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 5-A of the Act. It is certainly a ease in which the recital was at least defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry under Section 5-A of the Act and that the mind of the Commissioner was applied to this essential question. It seems to us that the High Court correctly applied the provisions of Section 106 of the Evidence Act to place the burden upon the State to prove those special circumstances, although it also appears to us that the High Court was not quite correct in stating its view in such a manner as to make it appear that some part of the initial burden of the petitioners under Sections 101 and 102 of the Evidence Act had been displaced by the failure of the State to discharge its duty under Section 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts especially within the knowledge of its officials, which rested upon it under Section 106 of the Evidence Act, taken together with the attendant facts and circumstances, including the contents of recitals, had enabled the petitioners to discharge their burden under Sections 101 and 102 of the Evidence Act."
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> (emphasis supplied)

In **Anand Singh's case** (supra), the two-Judge Bench considered the question whether the State Government was justified in invoking Section 17(4) for acquisition of land for residential colony to be constructed by Gorakhpur Development Authority, Gorakhpur. The Court noted that notifications under Section 4(1) read with Section 17(1) and (4) were issued on November 23, 2003 and February 20, 2004 and declaration

under Section 6 was issued on December 24, 2004, referred to 16 judicial precedents including those noticed hereinabove and held:

> "The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.
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> A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it.
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> 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.
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> As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances

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

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

As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A."

(emphasis supplied)

We may now revert to the case in hand. A brief recapitulation of the facts shows that possession of the premises in question was taken in 1944 under the Defence of India Act. After 46 years, an attempt was made by the appellants to acquire the premises but could not achieve their object because notification dated 27.8.1990 issued under Section 4(1) was quashed by the High Court. Thereafter, no action was taken for acquisition of the premises till after the disposal of Appeal No.35 of 1994. The appellants have not explained as to why appropriate steps could not be taken for acquisition of the premises by complying with the requirement of Section 5-A of the Act. The time gap of 3 years between the quashing of first notification and issue of the second notification was too long to justify invoking of urgency clause which resulted in depriving the respondents of their right to raise objection against acquisition of the premises. If the appellants felt that six month's time was not sufficient for completing the acquisition proceedings, they could have filed an application in Appeal No.34 of 1994 for extension of the time. However, the fact of the matter is that no such effort was made by them and the urgency clause was invoked on the pretext of completion of the acquisition in terms of the direction given by the High Court in Appeal No.35 of 1994. In our view, this was clearly impermissible and the respondents could not be deprived of their legitimate right to raise objection and to be heard against the proposed acquisition of the premises.

As a sequel to the above discussion, we hold that the Division Bench of the High Court did not commit any error by quashing the Notifications issued under Section 4(1) read with Section 17 and Section 6 of the Act.

In the result, the appeals are dismissed. The parties are left to bear their own costs.

…….……J.
[G.S. Singhvi]

…….……J.
[Asok Kumar Ganguly]

New Delhi;
February 4, 2011