

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 66 OF 2007**

Devender Kumar Tyagi & Ors. Petitioners

versus

State of U.P. & Ors. Respondents

WITH

WRIT PETITION (CIVIL) NO. 67 OF 2007

Jai Prakash Tyagi & Ors. Petitioners

versus

State of U.P. & Ors. Respondents

J U D G M E N T

H.L. Dattu, J.

- 1) The petitioners have filed this writ petition under Article 32 of the Constitution of India, *inter alia*, challenging the Notification dated 03.7.2006 issued under Section 4 and the Notification dated 18.12.2007 issued under

Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the LA Act”) for acquiring their lands for a planned development of the Leather City Project in order to relocate bone mills and allied industries by invoking the urgency provisions under Section 17(1) and 17(4) of the LA Act.

- 2) This Court is monitoring the re-location of the bone mills and allied industries in the various parts of State of Uttar Pradesh including the district of Ghaziabad in the public interest proceedings, which were initiated in the year 1994. Since then, this Court has time and again issued various orders and directions including inspection of polluting bone industries in Ghaziabad by the U.P. Pollution Control Board (hereinafter referred to as “the UPPCB”) and Central Pollution Control Board (hereinafter referred to as “the CPCB”). This Court, *vide* its Order dated 17.08.2004 in the Civil Appeal No. 3633-3634 of 1999 (*U.P. Pollution Control Board v. Anil K. Karnwal & Ors.*), which is still pending before us, had directed the respondents to relocate the bone mills and allied industries as per the recommendations of the CPCB and further directed the

respondents to identify the definite area suitable for relocation of the said industries. Pursuant to this Order, the respondents had filed an affidavit before this Court in the month of December, 2004, *inter alia*, proposing the Leather City Project for relocation of the said bone industries.

- 3) In this backdrop, the respondents had issued a Notification dated 03.7.2006 under Section 4 read with Section 17 (4) of the LA Act for acquisition of 28.804 hectares of the land at village Imtori, Chitoli, Sabli of Hapur-Pargana in the district of Ghaziabad for the public purpose of planned development of the Leather City Project by invoking the urgency provision under the LA Act, thereby, dispensing with inquiry under Section 5-A of the LA Act. The same was published in two daily Hindi newspapers on 04.07.2006. Subsequently, the English version of the said Notification was also published in two daily newspapers dated 24.01.2007. The relevant part of the Notification is extracted below:

“The Governor is pleased to order the publication of the following English translation of Notification No. 1588/VIII-3-2006-183 LA-2005, dated July 03, 2006:

No. 1588/VIII-3-2006-183 LA-2005

Dated Lucknow, July 3, 2006

Under subsection (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 the public purpose namely, for construction of Leather City Scheme at Villages-Chitoli, Sabli and Imtori, Pargana-Hapur, district-Ghaziabad by the Hapur-Pilkhuwa Development Authority, Hapur.

The Governor being of the opinion that provisions of subsection (1) of section 17 of the said Act are applicable to the said land in as much as the said land is urgently required for construction of Leather City Scheme at Villages-Chitoli, Sabli and Imtori, Pargana-Hapur, district-Ghaziabad by the Hapur-Pilkhuwa Development Authority, Hapur under planned development Scheme, it is as well necessary to eliminate to delay likely to be caused by an enquiry under section 5-A of the said Act the Governor is further pleased to direct, under subsection (4) of section 17 of said Act, that the provisions of section 5-A shall not apply.”

- 4) Thereafter, the respondent had issued a Notification dated 18.12.2007 under Section 6 read with Section 17 (1) of the LA Act, whereby, it directed the Collector of Ghaziabad to take possession of the said land on the expiry of 15 days from the date of publication of the Notice under Section 9(1) even though no award has been made under Section 11. The same was published in two newspapers on 05.01.2008. The relevant portion of the Notification is extracted below:

“The Governor is pleased to order the publication of the following English translation of notification No. 2647/VIII-3-2006-136L.A.-2006, dated September 18, 2006:

*No. 2647/VIII-3-2006-136L.A.-2006
Dated Lucknow, September 18, 2006*

UNDER, sub-section (1) section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1894) the Governot is pleased to notify for general information that the land mentioned in the schedule below, is needed for a public purpose namely for construction of planned Leather City scheme at village Rampur, Paragana Hapur, District Ghaziabad by the Hapur Pilkhuwa Development Authority, Hapur.

2. The Governor, being of the opinion that the proivision of sub-section (1) of section 17 of the said Act are applicable to the said land in as much as the said land is urgently required, for the construction of planned Leather City scheme at village Rampur, Paragna Hapur, District Ghaziabad by the Hapur Pilkhuwa Development Authority, Hapur under planned development scheme, it is as well necessary to eliminate the delay likely to be caused by an inquiry under section 5A of the said Act. The Governor is further pleased to direct under sub-section (4) of section 17 of the said Act that the provisions of section 5A of the said Act shall not apply.”

- 5) Since the Petitioners’ land situated at Hapur is included in these Notifications, the petitioners have filed present Writ Petition under Article 32 of the Constitution praying for issuance of appropriate writ or directions to quash these

Notifications issued under Section 4 and Section 6 of the LA Act.

6) In this Writ Petition, the issues before us are :

- I. Whether the Notification dated 18.12.2007 issued by the respondents under Section 6 read with Section 17 (1) of the LA Act is within the period of limitation as contemplated by proviso (ii) to Section 6 (1) of the LA Act.
- II. Whether the respondent is justified in invoking the urgency provision under Section 17(1) and excluding the application of Section 5-A in terms of Section 17(4) of the LA Act for acquisition of the land for the development of the Leather City Project.

7) Mrs. Pinky Anand, the learned senior counsel for the petitioners, submits that declaration of Notification dated 18.12.2007 under Section 6 is beyond the period of limitation of one year from the date of the publication of Notification under Section 4, as mandated by proviso (ii) to Section 6(1) of the LA Act. In other words, she submits that respondents had failed to make the declaration of Notification under Section 6 within a

period of one year starting from the last date of publication of Notification under Section 4 in two newspapers as contemplated by Section 4(1) of the LA Act. The learned senior counsel would argue that the publication of Notification under Section 4 in two newspapers in the Hindi language on 04.07.2006 was sufficient compliance of Section 4(1) of the LA Act in order to commence the period of limitation for the purpose of proviso (ii) to Section 6(1) of the LA Act from the said date. In other words, she contends that since the people residing at Hapur, Ghaziabad are well conversant and acquainted with the Hindi language, the publication of the Notification under Section 4 in two newspapers in the Hindi language on 04.07.2006 duly fulfils the requirement of the publication of the Notification as contemplated by Section 4(1) of the LA Act. Therefore, the period of limitation for declaration of Notification under Section 6 would commence from 04.07.2006 and not from the date of subsequent publication of the said Notification under Section 4 on 24.1.2007. She submits that the declaration of Notification dated 18.12.2007 under Section 6 by the respondents is made after the expiry of one year and is beyond the period of limitation in terms of the proviso to Section 6 (1) of the LA Act. In other words, the period of limitation commences from date of completion of the

necessary requirement of publication as contemplated by Section 4(1) of the LA Act. She further submits that in view of this, the acquisition proceedings are vitiated and should be set aside.

- 8) *Per Contra*, Shri. Pallav Sisodia, learned senior counsel for the respondents, submits that the declaration of Notification under Section 6 of the LA Act is well within the period of limitation of one year starting from the date of the last publication of the Notification under Section 4 of the LA Act, as mandated by proviso to Section 6(1) of the LA Act. He further submits that it is amply clear that the last date of publication of the Notification under Section 4 would be treated as the date of publication of the said Notification for all purposes in terms of Section 4(1) of the LA Act. He states that the respondents, after publishing the Notification under Section 4 on 4.07.2006 in the regional language, that is, Hindi, had also published the said Notification in English language on 05.01.2007. In this regard, the learned senior counsel argues that the period of limitation of one year in terms of proviso to Section 6(1) of the LA Act would commence only from 05.01.2007, that is, the date of the last publication of the Notification under Section 4 of the Act. He further submits that the proviso to Section 6(1) refers only to the

declaration of the Notification under Section 6 within the period of one year from the date of publication of the Notification under Section 4 of the LA Act and not the publication of the declaration under Section 6 (2). In other words, the proviso to Section 6(1) whilst prescribing the period of limitation, only refers to the declaration under Section 6, which is in the nature of order and excludes the publication of the declaration from its ambit. Therefore, the subsequent publication of declaration of Notification under Section 6 will not be taken into consideration in order to calculate the period of limitation in terms of proviso to Section 6(1) of the LA Act. The learned senior counsel, in support of his contention, has placed reliance on the decisions of this Court in *S.H. Rangappa v. State of Karnataka & Anr.*, (2002) 1 SCC 538 and *Sriniwas Ramnath Khatod v. State of Maharashtra & Ors.*, (2002) 1 SCC 689.

- 9) To appreciate the point in issue, it would be appropriate to set out relevant portion of Sections 4(1) and 6 of the LA Act.

“4. Publication of preliminary notification and powers of officers thereupon.—(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in

that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

** * **

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 authorised to certify its orders and different 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, 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, wholly or partly out of public revenues or some fund controlled or managed by a local authority.

2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.”

- 10) The Notification under Section 4 has to be published in the manner laid down therein. As against this, under Section 6, a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6(2) of the LA Act. Also, the proviso (ii) to Section 6(1) lays down a time-limit within which declaration has to be made. The said proviso (ii)

significantly only provides a time-limit for a declaration and not for publication as it has been incorporated in sub-section (1) of Section 6 of the LA Act.

- 11) It is not in dispute that the declaration of the Notification under Section 6 was issued on 18.12.2007. It is also not in dispute that the Notification under Section 4 was issued on 03.07.2006 and the same was published in two daily newspapers in Hindi language on 04.07.2006 having circulation in the locality where the land is situated. Also, the people at Pargana Hapur in the Ghaziabad district are well conversant with the Hindi language. In our considered view, the publication of the Notification in two newspapers having circulation in the locality where the land is situated and where people are well conversant with Hindi amounts to ample compliance with the requirement of the publication under Section 4(1) of the LA Act. In view of this, the subsequent publication of English translation of the said Notification under Section 4 in two newspapers on 05.01.2007 is unnecessary and will not assist the respondents to extend the period of limitation envisaged in the proviso to Section 6(1) of the LA Act. Hence, the last date of publication for the purpose Section 4(1) of the LA Act, which can be treated as date of

publication, is the date on which, the second Notification under Section 4 was published in the newspaper, that is, 04.07.2006. Therefore, the period of limitation commences from 04.07.2006, which is the date of publication of the Notification under Section 4(1) of the LA Act. If the declaration under Section 6 of the LA Act is made before the expiry of the period of one year starting from 04.07.2006, then, only such declaration will be considered as valid for the purpose of the acquisition of land. However, in the present case, the declaration under Section 6 was issued on 18.12.2007 which is clearly beyond the period of limitation of one year as mandated by the proviso to Section 6(1) of the LA Act. Therefore, the declaration of Notification under Section 6 and its subsequent publications are clearly beyond the period of limitation of one year starting from the date of publication of Notification under Section 4 of the LA Act. In our opinion, due to the aforesaid reasons, the reliance placed by Shri. Pallav Sisodia, learned senior counsel for respondents, on the decisions of this Court in *S.H. Rangappa v. State of Karnataka & Anr.*, (2002) 1 SCC 538 and *Sriniwas Ramnath Khatod v. State of Maharashtra & Ors.*, (2002) 1 SCC 689 in support of his contention that the proviso to Section 6(1) whilst prescribing time-limit, contemplates and refers only to the date of declaration

and not publication under Section 6 of the LA Act will not come to the rescue of the respondents.

- 12) The second point in issue before us is the invocation of the urgency clause by the respondents to acquire the lands in dispute. Mrs. Pinky Anand, learned senior counsel, submits that this Court has issued direction to relocate the bone industries in Ghaziabad vide its Order dated 17.08.2004, since then, the State Government had not shown any kind of urgency and was only considering the proposal of the Leather City Project in order to relocate the said industries for public purpose as they were located in the dense human habitation and causing environmental pollution and health hazards. It was only in July, 2006 that the State Government had issued the Notification under Section 4 on 3.7.2006, in continuation with this, after the lapse of more than a year, the State Government has issued Notification under Section 6 on 18.12.2007 by invoking urgency provision as contemplated by Section 17(1) and 17(4) of the LA Act. In other words, the lackadaisical attitude of the State Government since the direction of this Court in 2004 nearly 2 years ago and in making the declaration under Section 6 after the lapse of more than one year, from the issuance of the Notification under Section 4 of the LA

Act does not exhibit or depict any kind of urgency but only lethargy on their part in acquiring the lands. Therefore, the urgency contemplated in the LA Act cannot be equated with dereliction of responsibility on the part of the State Government. The learned senior counsel contends that the respondents had unnecessarily invoked the urgency provisions under Section 17 (1) read with 17 (4) for the acquisition of the land for construction of the Leather City Project in order to relocate the said industries in view of the delay of two years in the issuance of the Notification under Section 4 and delay of more than seventeen months in making declaration under Section 6 from the date of publication of the Notification under Section 4. The learned senior counsel argues that the invoking of the urgency provision under Section 17(4), which excludes the application of the Section 5-A, by the respondents in the absence of any real urgency as contemplated by Section 17 amounts to illegal deprivation of the right to file objection and hearing of the appellants and inquiry under Section 5-A of the LA Act. She submits that an expropriatory legislation like the LA Act must be given strict construction. She further submits that Section 5-A is a substantial right and akin to fundamental right which embodies a principle of giving of proper and reasonable opportunity to the

land loser to persuade the authorities against the acquisition of their lands which can be dispensed with only in exceptional cases of real urgency and not by side-wind. The learned senior counsel also submits that the entire acquisition proceedings are vitiated as the respondents have failed to obtain the approval of development of the Leather City Project as a sub-regional plan under Section 19 of the National Capital Region Planning Board Act, 1985 (hereinafter referred to as “NCRPB Act”). She further submits that such approval is mandatory in view of Section 27 of the NCRPB Act, which has overriding effect on any other inconsistent law or instrument.

- 13) *Per contra*, Shri. Pallav Sisodia, learned senior counsel for respondents, submits that the bone mills and allied industries were causing environmental pollution and health hazards to the public at large in the district of Ghaziabad. This Court has issued directions to relocate the said industries in accordance with the recommendation of the CPCB. The State Government, in strict compliance of the Order of this Court dated 17.08.2004, acquired the lands for construction of the Leather City Project by invoking the urgency provisions under Section 17 of the LA Act. He further submits that in view of the said urgency, the State

Government had issued a Notification dated 3.4.2006 under Section 4 of the LA Act for the acquisition of the said land for public purpose of urgent construction of the Leather City Project by invoking Section 17(4) of the LA Act in order to eliminate delay likely to be caused by enquiry under Section 5-A of the LA Act. The same was published in Hindi and English in two daily newspapers on 4.03.2006 and 24.01.2007, respectively. Subsequently, the State Government had issued the Notification dated 18.12.2007 under Section 6 read with Section 17(1) of the LA Act and published it in the newspapers dated 5.01.2008. The learned senior counsel submits that there is no lethargy or negligence on the part of the State Government to acquire the said land. He contends that the construction of the Leather City Project, in view of the pollution of environment caused by these industries as observed by this Court, is an urgent matter requiring acquisition of the land by invoking the urgency provisions under Section 17(1) and Section 17(4), thereby, dispensing with the enquiry under Section 5-A of the LA Act. The learned senior counsel, by placing reliance on the decision of this Court in *Jai Narain and Ors. v. Union of India*, (1996) 1 SCC 9, would argue that the invoking of the urgency provisions is justified in a situation where the entire acquisition proceedings are initiated in

compliance with the series of directions of this Court, which itself indicates the existence of urgency in acquiring the land for relocating the polluting industries. He further contends that the right of the land owner for filing of objections and opportunity of hearing under Section 5-A are subject to the provisions of Section 17 and the same can be legally curtailed in the event of any pressing need and urgency for the acquisition of land in order to eliminate delay likely to be caused by an enquiry under Section 5-A of the LA Act. The learned senior counsel further submits that the Hapur Pilkhuwa Development Authority (hereinafter referred to as “the HPDA”) *vide* its resolution dated 19.04.2005, has authorized the National Capital Region Planning Board (hereinafter referred to as “the NCRPB”) to prepare master plan for Hapur containing the Leather City Project termed as Sub-regional plan. Subsequently, the NCRPB in June, 2009, issued draft Sub-regional plan but without indicating the Leather City Project. Thereafter, the HPDA has made series of requests dated 27.08.2009, 18.08.2010 and 22.04.2011 to the NCRPB to include the Leather City Project in its Sub-regional plan. The respondents are keenly awaiting reply to these requests and hence, the grant of approval is still pending. *Arguendo*, the learned senior counsel submits that the Leather City Project pending approval of the

NCRPB will not adversely affect the acquisition of the Land in any manner in view of the presence of the Chief Coordinator Planner of the NCR Cell, Ghaziabad in almost all the meetings wherein the Leather City Project has been discussed and deliberated upon as he is a nominated member of the HPDA Board *vide* the Government Order and the Office Memo dated 08.06.2004 and 26.05.2011, respectively, amounts to implied consent or approval of the NCRPB.

- 14) We have heard the learned counsel for the parties before us. The second point in issue before us is no more *res integra* as it has already been decided by this Court in *Radhy Shyam v. State of U.P.* (2011) 5 SCC 553, to which one of us was the party (G.S. Singhvi, J.), wherein this Court has considered the development of the jurisprudence and law, with respect to invoking of the urgency provisions under Section 17 vis-à-vis right of the landowner to file objections and opportunity of hearing and enquiry under Section 5-A, by reference to a plethora of earlier decisions of this Court. This Court had culled out the various principles governing the acquisition of the land for public purpose by invoking urgency thus:

“77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner’s consent provided that such assertion is on account of public exigency and for public good — Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd., Charanjit Lal Chowdhury v. Union of India and Jilubhai Nanbhai Khachar v. State of Gujarat.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly — DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, State of Maharashtra v. B.E. Billimoria and Dev Sharan v. State of U.P.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one’s property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the LA Action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the LA Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the

same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

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

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the LA Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word “may” in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

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

- 15) In view of the above it is well settled that acquisition of land for public purpose by itself shall not justify the exercise of power of eliminating enquiry under Section 5-A in terms of Section 17 (1) and Section 17 (4) of the LA Act. The Court should take judicial notice of the fact that certain schemes or projects, such as the construction of the Leather City Project for public purpose, which contemplate the development of residential, commercial, industrial or institutional areas, by their intrinsic nature and character require the investment of time of a few years in their planning, execution and implementation. Therefore, the land acquisition for said public purpose does not justify the invoking of urgency provisions under the LA Act. In *Radhy Shyam (Supra)*, this Court, whilst considering the conduct or attitude of the State Government vis-à-vis urgency for acquisition of the

land for the public purpose of planned industrial development in District Gautam Budh Nagar, has observed:

“82. In this case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December 2006 but it took one year and almost three months for the State Government to issue notification under Section 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making enquiry under sub-section (2) of Section 5-A would have defeated the object of the acquisition.”

- 16) Moreover, in *Dev Sharan & Others v. State of U.P.* (2011) 4 SCC 769, the acquisition of land for the construction of a new district Jail by invoking urgency provision under Section 17 was quashed on the ground that the government machinery had functioned at very slow pace after issuance of the Notification under Section 4 in processing the acquisition proceedings which clearly evinces that there was no urgency to exclude the application of Section 5-A of the LA Act. This Court observed:

“35. From the various facts disclosed in the said affidavit it appears that the matter was initiated by

the Government's Letter dated 4-6-2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of a suitable site for construction was held on 27-6-2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2-7-2008. This was in turn forwarded to the State Government by the Director on 22-7-2008. After due consideration of the forwarded proposal and documents, the State Government issued Section 4 . notification, along with Section 17 notification on 21-8-2008. These notifications were published in local newspapers on 24-9-2008.

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 19-6-2009. The Director in turn forwarded all these to the State Government on 17-7-2009, and the State Government finally issued the Section 6 declaration on 10-8-2009. This declaration was published in the local dailies on 17-8-2009.

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 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 LA Act.

38. In Para 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 5-A. 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.

- 17) In the facts and circumstances of the present case, it is clear that this Court, vide its Order dated 17.08.2004, has issued a direction to the respondents to relocate the bone mills and allied industries causing environment pollution and health hazards as per the recommendations of the CPCB and, *inter alia*, respondents were also directed to identify the area for relocation. Pursuant to this, respondents have filed an affidavit in the month of December, 2004 specifying the construction of the Leather City Project at Hapur in Ghaziabad. Subsequently, it was only after the lapse of two years, the State Government had issued a Notification under Section 4 on 03.07.2006 and the same was published on 04.7.2006. Thereafter, the State Government took more than 17 months in order to make a declaration of the Notification under Section 6 from the date of publication of the Notification under Section 4 of the LA Act. In view of the above circumstances, it is crystal clear that the government functionary has proceeded at very slow pace at two levels, that is, prior to the issuance of the Notification under Section 4 and post the issuance

of the Notification under Section 4, for acquisition of the land for construction of the Leather City Project, which undoubtedly is a public purpose. Therefore, the above series of the events amply exhibit the lethargical and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions under Section 17 of the LA Act, thereby, depriving the appellants of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

- 18) Shri. Pallav Sisodia, learned senior counsel for respondents, heavily relied on *Jai Narain and Ors. v. Union of India* (Supra) in support of his contention that the acquisition proceedings were initiated under the directions of this Court which itself recognized the existence of urgent situation to relocate polluting industries. We are afraid that this decision will not come to the rescue of the respondents. In that case, this Court had monitored the setting up of sewage treatment plant and also directed the Delhi Administration to acquire land on war footing mentioning urgent situation of supply of pure water and avoiding any health hazards. The said urgency pointed out by this Court

was duly reciprocated by the Delhi Administration by issuing a Notification under Section 4 and subsequently, a Notification under Section 6 of the LA Act within a time period of 2 months.

19) The directions or orders issued by this Court must be abided by within the four corners of the legal framework and statutory provisions. The State Government is not allowed to transgress the express legal provisions and procedure thereunder in the garb or guise of implementing our guidelines or directions. The directions of this Court are issued with a purpose and the said purpose is supposed to be followed in the realm of legal structure and principles. Therefore, the respondents are not justified in invoking the urgency provisions of the LA Act in an arbitrary manner by referring to our earlier directions as a defense for their illegal and arbitrary act of acquiring land without giving an opportunity of raising objections and hearing to the petitioners in terms of Section 5-A of the LA Act.

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 Sub-regional 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 NCRPB 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."*

- 21) In *Ghaziabad Development Authority v. Delhi Auto & General Finance (P) Ltd.*, (1994) 4 SCC 42, this Court has considered the overriding effect of the NCRPB Act over the UP

Urban Planning and Development Act, 1973, in relation to the conversion of land user by State of UP which was not in consonance with the Regional Plan approved by the NCRPB for the National Capital Region, by virtue of Section 27 read with Section 29 of the NCRPB Act. This Court, after referring to various provisions and analysing the scheme of the NCRPB Act, has observed thus:

“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. (Annexure 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 of 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."

- 22) In *Sheikhar Hotels Gulmohar Enclave v. State of Uttar Pradesh*, (2008) 14 SCC 716, this Court has allowed the invocation of the urgency clause by the State Government for the widening of the National Highway in the National Capital Region in the light of completion of the procedural requirement of

approval of the master plan of the U.P. Government by the NCRPB. This Court observed thus:

“9. Traffic congestion is a common experience of one and all and it is very difficult to negotiate the traffic congestion in Delhi and National Capital Region. Therefore, in the present situation, it cannot be said that the invocation of Section 5-A was for ulterior purpose or was arbitrary exercise of the power. Since the master plan has already been prepared and it has been approved by the Planning Board and they have sanctioned a sum of Rs 20.65 crores for the development of this Transport Nagar and widening of National Highway 91 into four lanes. Therefore, the proposal was approved by the Board and it got the sanction from the National Capital Regional Planning Board and ultimately the Government invoked the power under Section 17(4) read with Section 5-A of the LA Act dispensing with the objections. In the light of these facts it cannot be said that invoking of power was in any way an improper exercise. There is need for decongestion of traffic and it is really the dire need of the hour and earlier it is implemented, the better for the people at large.”

- 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 NCRPB, 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 Region. 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.

- 24) In view of above discussion, we hold that the declaration of Notification dated 18.12.2006 under Section 6 of the LA Act is

beyond the period of limitation as envisaged by proviso to Section 6(1) of the LA Act. We also hold that the State Government was not justified, in the facts and circumstances of this case, to invoke the urgency provision of Section 17(4) of the LA Act. Therefore, the appellants cannot be denied of their valuable right under Section 5-A of the LA Act.

- 25) In the result, the Writ Petitions are allowed. The impugned Notification dated 03.7.2006 under Section 4 and Notification dated 18.12.2006 under Section 6 of the LA Act are hereby quashed. Costs are made easy.

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.....J.
[G.S. SINGHVI]

.....J.
[H.L. DATTU]

New Delhi,
August 23, 2011.