CASE NO.:
Appeal (civil) 2735 of 2004

PETITIONER:
Union of India & Ors.

RESPONDENT:
Krishan Lal Arneja & Ors.

DATE OF JUDGMENT: 28/04/2004

BENCH:
SHIVARAJ V. PATIL & D.M.DHARMDHIKARI.

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL NOS.2736, 2738 AND 2739 OF 2004
(Arising out of S. L. P. (C) Nos. 9264/2003, 9263/2003 and 9265/2003)

(Arising out of S. L. P. (C) NO. 5451/ 2003)

SHIVARAJ V. PATIL J.

Leave granted.

In these appeals, common order dated 22.3.2002 passed in Letters Patent Appeals by the Division Bench of High Court of Delhi, is under challenge. The facts leading to the filing of these appeals, in brief, are that:

In all, 14 properties including the properties in question in these appeals, were notified for acquisition on 6th March, 1987 under the provisions of Section 4 and Section 17(1)&(4) of the Land Acquisition Act, 1894 (for short 'the Act'). Earlier these properties were requisitioned by the appellants under the Defence of India Rules. The provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short '1952 Act') were going to lapse on 10th March, 1987. These properties were occupied either for offices or for providing residential quarters to the officers. Out of these 14 properties, Banwari Lal and Sons and Shakuntala Gupta had questioned the validity of acquisition proceedings pertaining to property no. 6, Ansari Road, Dariyaganj, New Delhi and property no. 2, Underhill Road, Delhi, respectively by filing separate writ petitions. The writ petitions were allowed and acquisition proceedings were quashed including the above-mentioned notification of 6th March, 1987. These matters attained finality having reached this Court. The respondents in these appeals filed writ petitions challenging the acquisition of their properties under the very notification. Learned Single Judge of the High Court allowed the writ petitions. The appellants questioned the correctness and validity of the orders made by learned Single Judge in the Letters Patent Appeals,

which were dismissed by the impugned order mainly following earlier judgments in the cases of Banwari Lal and Sons and Shakuntala Gupta.

The learned senior counsel for the respondents raised a preliminary objection as to the very maintainability of these appeals on the ground that the controversy raised and the contentions sought to be urged in these appeals are fully covered against the appellants by the judgment of this Court in Union of India & Ors. vs. Shakuntala Gupta (Dead) by Lrs. [(2002) 7 SCC 98]. The learned senior counsel for the appellants, however, did not agree and sought to argue these appeals on merits raising various contentions stating that the decisions in Shakuntala Gupta (supra) and Banwari Lal & Sons Pvt. Ltd. vs. Union of India & Ors [DRJ 1991 (Suppl) 317] are distinguishable on facts and that certain questions of law, which go to the root of the matter, were neither urged nor decided in the aforementioned two cases. Hence, we heard the learned counsel for the parties on either side at length.

The contentions advanced on behalf of the appellants were: (1) that Banwari Lal's case was wrongly decided and further it was on its own facts being property specific; Banwari Lal's case was not a precedent as no reasoned order was made by this Court inasmuch as the petition was dismissed at the SLP stage itself; (2) Non-mentioning of the nature and existence of urgency in the notification issued under Sections 4 and 17 of the Act does not vitiate the notification; subjective satisfaction as regards urgency could not be determined solely on the basis of the expressions used in the notification and such urgency could be gathered looking to the surrounding circumstances and the records which would show the urgency for the acquisition; (3) pre and post notification delay would not affect the notification on account of lethargy of the officers and such delay would not render the exercise of power to invoke urgency clause invalid where there was a grave urgency on account of shortage of Government housing; (4) the High Court committed a serious error in appointing the arbitrator to determine the damages in the absence of any arbitration agreement and there being no prayer in that regard in the writ petition; (5) correctness of the order in Banwari Lal's case was not considered in Shakuntala Gupta's case; paras 11, 12 and 15 in Shakuntala Gupta's case in review must be read together to understand the correct legal position; (6) alternatively, notification as regards Section 17(1), could be quashed sustaining it only to the extent of Section 4(1) of the Act.

The learned senior counsel for the respondents made submissions supporting the impugned judgment. They contended that Banwari Lal's case was correctly decided. The orders of this Court in Shakuntala Gupta affirm the legal position stated in Banwari Lal. Hence the same result rightly followed in the writ petitions filed by the respondents in these appeals. The High Court was right and justified in passing the impugned common judgment affirming the order of the learned Single Judge having regard to the decision already rendered in Banwari Lal's case in regard to the same common notification; if a different view is taken at this stage, particularly after the decision in

Shakuntala Gupta's case in the main appeal as well as in review, it will lead to anomalous result leading to conflict of decisions, i.e., the very same notification stands quashed in respect of some writ petitioners which has attained finality by virtue of affirmation of the said order by this court in Banwari Lal and Shakuntala Gupta and in regard to other writ petitions filed by the present respondents, it will have to be sustained. If that be so, it will result in treating similarly placed persons differently on same set of facts. The learned senior counsel further urged that non-compliance of Section 17(3A) is yet another ground for quashing notification; strict compliance of sub-section (3A) of Section 17 is mandatory. According to them, in these cases even on the facts and circumstances found, there was neither material nor justification to invoke urgency clause; they made submissions distinguishing decisions relied on behalf of the appellants having regard to the facts of those cases and the points that arose for consideration. It was also their contention that the appellants having been in possession of the properties, there was no reason to invoke urgency clause to take immediate possession; at best, after the expiry of the 1952 Act as amended by Act No. 20 of 1985, the appellants continuing in unauthorized possession, could be made to pay damages or compensation for the period during which they unauthorisedly continued to be in possession. They also submitted that this Court sustained the appointment of arbitrator to determine the damages made in earlier decisions and having taken note of the same, as can be seen from the impugned common judgment in these appeals; almost after 17 years, it may not be just and equitable to direct the parties to approach civil court for claiming damages. The learned counsel submitted that Shakuntala Gupta's case is concluded on facts and in law in relation to the very same notification against the appellants. In SLP No. 9264/2003, the ground of delay in filing writ petition is not raised; the learned Single Judge did not find delay as a good ground for rejecting the writ petition on the facts and circumstances. The Division Bench in the LPA agreed with the learned Single Judge.

In reply, the learned counsel for the appellants submitted that non-compliance of sub-section (3A) of Section 17 may affect the possession and not the acquisition; on account of such non-compliance, party may be entitled for interest under Section 23A of the Act; it would also not lead to returning possession of the property.

We have carefully considered the respective submissions made by the learned counsel for the parties. The notification issued on 6.3.1987 which was the subject matter of challenge in the writ petitions reads:

"NOTIFICATION

Dated 5.3.1987

No. F.7(9)/86-L&B: (1) Whereas it appears to the Governor Delhi that the lands/properties are likely to be required to be taken by the government at the public

expense for the following public purposes. It is hereby notified that the land in the locality described below is likely to be required for the above purpose.

This notification is made under the provisions of Section 4 of the Land Acquisition Act, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor is pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

The Lt. Governor, being of the opinion that the provisions of sub-section (1) of section 17 of the said Act are applicable to this land is further pleased under sub-section 4 of the said section, to direct that the provisions of section 5A shall not apply.

SPECIFICATION

Sl. No.	Property	Total Area	Field or boundaries No.	Purpose of acquisition
1	2	3	4	5
1.	95, Lal Kothi Jatwara Mohalla	321 sq. mts.	East Kutab Road, West Hosue of Sh. Tej Ram, North Gali, South Shops.	Residential use of Govt. servants
2.	8 A.Kamla Nagar Delhi	285 sq. mtrs.	East Road, West Housing the G.T. Road, North Property No. 7A South Property No.9-A	govt. offices
3.	301, Okhla New Delhi	106 sq. mtrs.	East Gali West Hosue No. 76/1, Dispensary, North Road, South House NO. 301-A	Setting up of dispensary
4.	15, Alipur Road & Civil Station,	Big - Bis 7 - 12	Khasra No. 537 Min. 12 Biswas	Min. 7 bigha 610 Housing the govt. offices
5.	1 Rajpur Road Civil Station	10 - 13	981/500 big-bis 0 - 05 10-08	Housing the govt. office & govt. servants
6.	15 Rajpur road Civi Station	475	11 - 10	Housing the govt. offices

7.	2, Under Hill Road, Delhi	11-740 sq. mts.	East Kothi No. 16, Alipur Road, West K. No. 4 Road, South K. No. 4 & 6 Under Hill Road	Housing the govt. office
8.	60/21, Ramjas Road, Delhi	475 sq. mts.	East Ramjas Raod West 60/2, North Street, South Road	Residential use of govt. servant
9.	30, Rohtak Road 1087 Delhi	1087 sq. mts.	East Plot No. 29 West Plot No. 31 North Road South Gali	Residential use of govt. servants.
10.	11, Lencer Road Delhi	1125 sq. mts.	East K. No. 1 West K. No. 10-A North service Land . South Road	Housing the govt. offices
11.	3, Tilak Marg	East Old Qila Road, West	East Old Qila Road West Tilak Marg Road North Police Station, South Rajdootawas Kothi No. 1	Housing the govt. offices
12.	6 Ansari Road, Daryaganj, Delhi	5592 sq. yds.	East Land, West Electric Transformers Station and Ansari Road, North Masjid Ghat Road, South K. No. 5	Residential use of govt. servants
13.	97, Daryaganj Delhi.	320 sq. yds.	Eat Road, West Sham Lal Road North-Kothi No. 96 South - Kothi No. 98	for residential use of govt. servants.
14.	M.C. No. 500 to 507, Ward No. IX/6062, Gandhi Nagar (4 set of Old Police Station, Gandhi Nagar, Seelampur)	1595 sq. yds	East-House, West Gali, North-Gali South - Gali	Housing the govt. offices

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By order
Sd/-
(Mrs. Neeru Singh)
Joint Secretary (L&B)
Delhi Administration,
Delhi".

Under this notification, 14 properties were sought to be acquired.

Banwari Lal and Sons filed writ petition No. 2385/88 seeking quashing of the aforesaid notification in respect of property 6, Ansari Road, Darya Ganj, Delhi. The purpose of acquisition of this property was mentioned as for "residential use of government servants". This property No. 6 Ansari Road, Dariya Ganj measures 5592 sq. yds., with built up area of about 6,000 sq. ft. It is situated in the main

commercial centre of Delhi and was being used all along for commercial purpose by Bharat Bank and then by the American Embassy for running the United States Information Centre. On 27.9.1950, four flats out of the said building were acquisitioned by the Delhi Administration under the provisions of Requisitioning and Acquisition of Immovable Property Act, 1952. Further on 13.3.1959, remaining building along with the garages, warehouses and other structures was requisitioned by the Administration under the same Act. The building continued under the requisition till the said Act lapsed on 10.3.1987. It may be recalled that notification under Section 4 read with Section 17(1)&(4) of the Act was issued on 6.3.1987 for acquiring 14 properties including this building, 6 Ansari Road, Darya Ganj, Delhi. On 10.3.1987, Delhi Administration issued notification under Section 6 of the Act and issued a letter to the Collector to take possession of the property within 15 days. Thereafter the Administration proposed to the writ petitioners that the building be given on lease and the negotiations for lease were continued for long. The officers of the Administration continued to stay in the building for over 20 months. Suddenly, the Administration decided to proceed with land acquisition after a period of 20 months. At that stage, the above-mentioned writ petition was filed. On 25.11.1988, the High Court directed that the possession of the building was not to be taken by the Administration under Section 17 of the Land Acquisition Act but the acquisition proceedings could go on. Thereafter, award was passed fixing compensation at Rs. 77,11,230.60. Petitioners were ready to receive the compensation under protest but the Administration did not make the payment. It also did not offer the payment of 80% of the proposed compensation under Section 17(3A) of the Act. Mainly three grounds were urged in the writ petition : (1) the notification issued under Section 4 and Section 17 did not indicate the urgency for taking possession and, therefore, the same was vitiated in law; petitioners were illegally deprived of their right to raise objections and inquiry under Section 5A of the Act; (2) the Administration could not acquire commercial building for residential purpose; (3) that the whole exercise of acquisition of the building was a fraud on the powers under the Act. On behalf of the Administration, it was contended that the building was urgently needed for the residence of the officers, the building was being used for residential purpose for a long time and for payment of amount under sub-section (3A) of Section 17, steps had been taken for securing the sanction. The High Court dealing with the contentions raised in the said writ petition held that there was no whisper in the notification as to what was the urgency to take immediate possession and to deny the right of raising objections under Section 5A of the Act; the building was already in occupation of the officers of the Delhi Administration and the Administration knew that the Requisitioning and Acquisition of Immovable Property Act, 1952 was to lapse on 10.3.1987; they had sufficient time to make alternate arrangements for the residence of the officers and that there was no urgency whatsoever for invoking the provisions of Section 17(1)&(4) of the Act. The court also held that Section 17(1) could not

be utilized to cover up the laxity and lethargy of the Administration in taking appropriate steps for securing alternate accommodation for its officers. The notification was also held bad in law for non-compliance of the requirement of Section 17(3A) of the Act, in that the Collector did not tender 80% of the compensation of the land as estimated by him before taking possession of the land and that the Delhi Administration had no explanation for the non-compliance of Section 17(3A) except saying that process of sanction had been initiated by them. The High court also held that issuing of notification under Section 17(1) was a fraud on the powers. In that view, the notification was quashed and direction was given to hand over the peaceful physical possession of the building to the petitioner. An arbitrator also was appointed to determine the damages payable by Administration having taken note of the facts and to avoid further delay. The Union of India and Ors. filed SLP No. 4458/91, aggrieved by this order of the High Court dated 4.2.1991 made in the writ petition. The SLP was dismissed on 21.3.1991 by passing the following order:-

"In the facts and circumstances of the case, we do not find any good ground to interfere with the impugned order of the High Court. The Special Leave Petition is accordingly dismissed.

Although we have dismissed the petition but having regard to the fact that public servants are residing in the premises in dispute and their immediate dispossession may cause injury to public interest, we allow the petitioners to continue in possession till 31.3.1993 provided the petitioners file an undertaking in this Court within three weeks with usual conditions to hand over the vacant possession of the premises including the servant quarters on or before 31.3.1993, we further make it clear that the Arbitrator appointed by the High Court may give award and the same may be filed before the High Court for appropriate orders."

(emphasis supplied)

Shakuntala Gupta filed writ petition No. 894 of 1987 inter alia raising similar contentions as were raised in Banwari Lal case (supra). The High Court allowed the said writ petition and quashed the notification following the order made in the case of Banwari Lal and Sons aforementioned. The Union of India and Ors. filed Civil Appeal No. 518 of 1998 before this Court by special leave. This Court disposed of the said appeal on 14.11.2000 observing thus:-

"The High Court quashed the impugned notification by following its earlier decision in Banwari Lal & Sons vs. Union of India decided on 4th February, 1991 in which this very notification was

quashed. It is not in dispute that subject matter including the notification under Land Acquisition were the same except that in Banwari Lal it was the government housing for the officers while in the present case it is housing for the offices. The said decision of the High Court stood confirmed when this Court dismissed the SLP filed by the Union of India. We do not find any sustainable ground raised in the present appeal to make any distinct or difference from the one in the case of Banwari Lal and Sons. Accordingly, there is no error committed by the High Court in making the decision and dismissing the same. Accordingly the present appeal has no merits and it is dismissed."

Further Union of India and Ors. filed a review petition (c) No. 74 of 2001 in aforementioned appeal No. 518/98. The review petition was disposed of on 27.8.2002 by a considered order in the light of contentions urged and arguments advanced extensively. The said order is reported as Union of India and Ors vs. Shakuntala Gupta (Dead) by Lrs. [(2002) 7 SCC 98].

The learned counsel for the respondents heavily relied on this decision and contended that it fully covers the case against the appellants; in view of the same, it is not open to the appellants particularly being the parties to the said decision, to re-agitate on the same issue again when the notification being composite one in respect of all 14 properties sought to be acquired under it and when the ground of urgency was also common in respect of all the 14 properties. But according to the learned counsel for the appellants, the correctness of decision in Banwari Lal is not decided in this case and it is clearly distinguishable in applying to the facts of the cases in these appeals. In other words, the decision in Shakuntala Gupta is confined to its own facts. In the light of these submissions and that this decision will have great bearing on the question in deciding these appeals whether urgency clause could be invoked under Section 17(1)&(4) of the Act, the notification being composite one in respect of all 14 properties including the properties which are the subject matter of these appeals, we will refer to the decision in greater details. In the case of shakuntala Gupta, part of the premises known as Grand Hotel situated at No. 2, Underhill Road, Delhi, had been requisitioned on 3.4.1980 under the Requisition and Acquisition of Immovable Property Act, 1952, which lapsed on 10.3.1987. On 6.3.1987, the very same notification, which is also the subject matter of these appeals, was issued under Section 4 read with Section 17(1) and (4) of the Act. In this notification, 14 properties were specified to which it applied. This notification also indicated purpose for which each property was sought to be acquired, the purpose being either "housing the Govt. office" or "for residential use of Govt. servants".

Shakuntala Gupta challenged the notification issued under Section 4 read with Section 17(1)&(4) as well as the declaration made under Section 6 of the Act under Article 226 of the Constitution of India before the High Court. As already stated above, Banwari Lal and Sons Pvt. Ltd., the owner of one of the 14 properties specified in the notification, also filed writ petition in the High Court impugning the same notification inter alia urging that there was no urgency to dispense with the right of the owner to file objections and inquiry under Section 5A of the Act. Banwari Lal's writ application was allowed on 4.2.1991 quashing the impugned notification upholding the contentions urged on behalf of Banwari Lal including the issue of urgency. The SLP filed against the decision of the High Court in Banwari Lal case was dismissed by this Court on 21.3.1991. The appellants vacated the Banwari Lal's premises pursuant to the order of this Court made on 21.3.1991. The Division Bench of the High Court disposed of Shakuntala Gupta's writ petition following Banwari Lal's case quashing the impugned notification. In the SLP filed against the said order by the appellants, leave was granted on 19.1.1998 and hearing of the appeal was expedited. The appeal was duly listed for hearing from time to time and ultimately on 14.11.2000, the appeal was disposed of by a reasoned order, relevant portion of which is already extracted in the earlier paragraph. Later the appellants made an application for recalling the order dismissing the appeal on the ground that it was disposed of without hearing them. On 10.1.2001, accepting the request of the appellants, the application made for recalling the order dated 14.11.2000 was treated as a review petition and the review petition was accordingly heard. In support of the review petition, relying on the decisions of this Court in Aflatoon & Ors. vs. Lt. Governor of Delhi & Ors. [(1975) 4 SCC 285], Deepak Pahwa & Ors. vs. Lt. Governor of Delhi & Ors. [(1984) 4 SCC 308], Satendra Prasad Jain & Ors. vs. State of U.P. & Ors. [(1993) 4 SCC 369] and Chameli Singh & Ors. vs. State of U.P. & Anr. [(1996) 2 SCC 549], it was urged that the principles of law enunciated in Banwari Lal's case no longer held the field. On that basis, it was contended that the decision of the High Court quashing the impugned notification by following Banwari Lal's decision was erroneous. Opposing the review petition, it was urged that the review petition itself was not maintainable as there was no error apparent on the face of the record; the same notification stood quashed in Banwari Lal's case; since the impugned notification had been quashed on a general ground which did not specifically relate to a particular petitioner, the quashing of the notification must enure to the benefit of all persons affected by that notification. In support of this, reliance was placed on Abhey Ram (Dead) by LR. & Ors. vs. Union of India & Ors. [(1997) 5 SCC 421] and Delhi Administration vs. Gurdip Singh Uban & Ors. [(2000) 7 SCC 296]. The review petition was disposed of on 27.8.2002 since reported in [(2002) 7 SCC 98]. To appreciate the rival submissions as to the implication and understanding of this judgment, it is necessary to reproduce paras 12, 13 and 15 of the judgment which read:-

"12. The matter has been argued extensively. We

therefore do not propose to reject the application on the ground that the review application should not at all be entertained. It is also not necessary to consider whether the decision in Banwari Lal (Banwari Lal & Sons (P) Ltd. v. Union of India, DLJ 1991 Supp 317) correctly enunciates the principles of law as to acquisitions under Section 17 of the Act as we are of the view that the order of this Court dated 14-11-2000 was, in the circumstances of the case, correct.

13. It appears that the petitioners have proceeded on the basis that the acquisition sought to be effected by the impugned notification under Section 4 had been invalidated in respect of other specified properties by the decision of this Court in Banwari Lal case. The statement in the respondent's affidavit that several of the properties covered by the same notification have since been returned by the petitioners to the original owners has not been disputed by the petitioners. Furthermore, the High Court in the decision impugned before us has also noted:

"It is also not disputed that under the impugned notifications neither an award has been made nor any compensation is determined and paid. The reason being that the impugned notifications were quashed and set aside in Banwari Lal case.

14 .....

15. In any event the order dated 14-11-2000 was not legally erroneous. The notification under Section 4 was a composite one. The "opinion" of the Lt. Governor that the provisions of Section 17(1) of the Act were applicable, as expressed in the last paragraph of the impugned notification, was relatable in general to the 14 properties specified in the notification. The impugned notification was quashed in Banwari Lal case (Banwari Lal & Sons (P) Ltd. v. Union of India, DLJ 1991 Supp 317) inter alia on the ground that the "opinion" of the Lt. Governor as expressed in the notification was insufficient for the purpose of invoking the provisions of Section 17(1) of the Act. This ground was not peculiar to the premises in Banwari Lal case (Banwari Lal & Sons (P) Ltd. v. Union of India, DLJ 1991 Supp 317) but common to all fourteen properties. The urgency sought to be expressed in the impugned notification cannot be held to be sufficient for the purposes of Section 17(1) in this case when it has already been held to be bad in Banwari Lal case. (Abhey Ram v. Union of India, (1997) 5 SCC 421; Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296). The expression of urgency being one cannot be partly good and partly bad like the curate's egg. It must follow that the acquisition in respect of the respondent's premises as mentioned in the notification which were sought to be acquired on the basis of such invalid expression of "urgency" cannot be sustained."

(emphasis supplied)

It is needless to repeat that a judgment need not be read and interpreted as a statute and that a judgment should be read and understood in the context of the facts of case and looking to the ratio. The

sentence in paragraph 12, extracted above, that "It is also not necessary to consider whether the decision in Banwari Lal correctly enunciates the principles of law as to acquisitions under Section 17 of the Act as we are of the view that the order of this Court dated 14.11.2000 was, in the circumstances of the case, correct", has reference to enunciation of principles of law in relation to Section 17 as to the expression of urgency as stated in Banwari Lal, i.e., to whether the existence of urgency and expression of urgency must be specifically stated in the notification issued under Section 4(1) read with Section 17(1) of the Act and if not whether the notification is vitiated. In view of the later decisions of this Court, even in the absence of stating as to the existence of urgency or express statement as to urgency, the issue of urgency could be justified on the basis of the surrounding circumstances and the records available at the time of subjective satisfaction of authorities to invoke the aid of Section 17(1)&(4). It is in that context that the statement is made in para 12 not with regard to the validity of the impugned common notification in respect of all the 14 properties which fact is abundantly clear from what is stated specifically in para 15 of the judgment extracted above in relation to sustainability of the impugned notification or otherwise in respect of one or other property. On this basis, the court had held that the expression of urgency in the common notification being general to all 14 properties could not be sustained in respect of any particular property, on the ground that the expression of urgency being one and the same cannot be partly good and partly bad. In the same para, the decision in Banwari Lal that the impugned common notification was bad, is accepted. As is evident from paragraph 13 that pursuant to the impugned notification, neither any award was passed nor any compensation was determined and paid on the ground that the impugned notification was quashed and set aside in Banwari Lal case. This only indicates that even the appellants understood the impugned notification as a common and composite notification in respect of all the 14 properties. The ground of urgency also being common, it is not possible to accept that the decision rendered in the cases of Banwarl Lal or Shakuntala Gupta on the question of urgency was properties specific. The decision in Banwari Lal and Shakuntala Gupta of this Court in relation to the same notification may not be binding on principle of res judicata. The argument, however, cannot be accepted that those decisions are not binding being 'properties specific' in those cases. In our considered opinion, the decisions are binding as precedents on question of validity of the notification, which invokes urgency clause under Section 17 of the Act. We find ourselves in full agreement with the ratio of the decisions in those cases that urgency clause, on the facts and circumstances, which are similar to the present cases, could not have been invoked. The two decisions are, therefore, binding as precedents of this Court. We are not able to find any distinction or difference as to the ground of urgency in regard to the properties covered by these appeals.

In the order disposing of the appeal on 14.11.2000, it is clearly stated that the High Court

quashed the impugned notification following its earlier decision in Banwari Lal's case; the subject matter including the notification under the Act was the same except that in Banwari Lal's case, it was the Govt. housing for the officers while in the Shakuntala Gupta's case, it is housing for the offices. No sustainable ground was found in the appeal to make any distinction or difference between the case of Banwari Lal and Shakuntala Gupta. In review, this order was not disturbed. In Banwari Lal's case on the facts found and looking to the circumstances in the background of lapsing of the Requisitioning Act and taking note of laxity and lethargy on the part of the officers, the Court concluded that there existed no urgency to invoke Section 17(1) of the Act. This notification was struck down not merely on the ground that the existence of urgency is not stated in the impugned notification. The ground of urgency was common to all 14 properties. It is not the case that the ground of urgency was different in respect of different properties which fact is clear from the composite notification. Further it was also not shown either in Banwari Lal's case or in Shakuntala Gupta's case if the ground of urgency was different in respect of different properties. In this view and looking to what is stated in paragraph 15, extracted above, we find substantial force in the preliminary objection raised on behalf of the respondents. However, in the light of arguments advanced at length, we wish to deal with them.

The provisions of the Act, to the extent they are relevant, are reproduced hereunder:-

"Section 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).

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen, -

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any proposed to be made thereon);

to make such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked, to cut down and clear away any part of the standing crop, fence of jungle;

provided that no person shall enter into any building or upon any other enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."

"Section 5A - Hearing of objections - (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-Section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the Appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

"Section 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 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-eighty 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) .....

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) .....

(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)."

These provisions clearly provide protection to a person whose land is to be acquired by providing right to object to the proposed acquisition of any land notified under Section 4; opportunity of hearing is also provided to show that the proposal to acquire the land was unwarranted; such opportunity available under Section 5A cannot be denied except in case of urgency.

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.

Life of Requisitioning and Acquisition of Immovable Property Act, 1952 was extended from time to time by various amending Acts. Finally by Act No. 20 of 1985, the period was extended to retain the properties under the said Act for a maximum period of two years which expired on 10.3.1987. The Statement of Objects and Reasons of this Act - No. 20 of 1985 are as

follows:-

"According to the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 as these existed immediately before the amendment of the Act by ordinance No. 2 of 1985, all the properties, which were requisitioned prior to the amendment of the aforesaid Act in 1970, were required to be released from requisition or acquired by the 10th March, 1985. However, it was found that some of the properties requisitioned under the above Act are required to be retained by the Ministry of Defence, Ministry of Works and Housing and also some other Ministry/Department and Delhi Administration for public purposes. Although Government is expeditiously implementing the policy of acquiring or releasing from requisition the requisitioned properties, a number of them are expected to be needed by the Government even after the 10th March, 1985, for public purposes. The Ministry of Defence is taking action for either releasing or acquiring the requisitioned properties (including land). Similarly, in the case of Ministry of Works and Housing, the need to continue the properties under requisition beyond the aforesaid date is due to shortage of office accommodation for various Ministry/Departments and also due to a few cases being under adjudication by courts of law. The Ministry of Works and Housing has constructed a new office building in Calcutta for the Govt. offices located in requisitioned properties and, therefore, most of the requisitioned properties in Calcutta are expected to be released from requisition shortly. An office building is nearing completion in New Bombay also and the same is likely to be allotted as alternative accommodation to the eligible offices located in requisitioned properties. It was, therefore, decided to extent the maximum period for which properties could be retained under requisition by a period of two years.

2. .....

3. In the circumstances stated above, the Act was amended through the Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance, 1985 (2 of 1985) so as to extend the period for which the properties could be retained under requisition by two years and to provide for revision of the recurring part of the compensation."

(emphasis supplied)

This Court in the case of H.D. Vora vs. State of Maharashtra & Ors. [1984 (2) SCR 693] dealing with the scope of Requisitioning and Acquisition of Immovable Property Act, 1952 in relation to length of the period for which the properties requisitioned could be

continued, has observed thus:-
"The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide : Observations of Mukherjee, J. in Chiranjit Lal case (Chiranjit Lal v. Union of India, 1950 SCR 869 : AIR 1951 SC 41). The concept of acquisition has an air of permanence, and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as far back as April 9, 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as third years. We must

therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and derequisition the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to the third respondent."
(emphasis supplied)

In these appeals also, the properties in question had been under requisition for a very long time. It appears, the Union Works and Housing Minister on 28.3.1985 assured the Lok Sabha that the Government would return all requisitioned properties within two years or acquire it permanently after paying compensation. This announcement came at the end of the debate on the Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1985 which later became Act. From the debate, it is also clear that the National Conference Member mentioned about the difficulties faced by many people whose properties were requisitioned for one purpose or the other. The Minister informed that he had written letter to the concerned for making arrangements for vacating or permanently acquiring the properties within next two years.

The Office Memorandum dated 9.7.1979 reads:-

"Delhi Administration, Delhi
(Public Works Department)
Vikas Bhawan, New Delhi.

No. F.13/22/79-PWD/Allot/8397 Dated 9.7.1979

OFFICE MEMORANDUM

Due to amendment in the Requisitioning and Acquisition of Immovable Property Act, 1952 and as per Decision of the Executive Council all the requisitioned/leased houses which are with the Administration for more than 10 years are to be released to their owners immediately. As such it has since been decided by the Administration to compile a

priority list of the occupants of requisitioned/leased houses with a view to allot them alternative accommodation on priority basis. All the occupants of requisitioned/leased houses are requested to furnish the relevant information in the enclosed performa by 16.7.1979 failing which, the officer concerned will be liable for eviction from requisitioned house without provision for alternative accommodation. This may please be noted.

(L.d. Gupta)
Under Secretary (PWD)

Shri K.K. Kamra,
Exchange Stores
13, Alipur Road, Delhi

Despatcher,
P.W.D./L.S.G Deptt.
Delhi Administration
I.P. Estate, N.Delhi-110001"

(emphasis supplied)

One more aspect to be noticed is, as observed by the High Court, that the properties in question continued to be in possession of the appellants; in other words, there was no urgency of taking immediate possession nor there was any immediate threat of dispossessing them from the properties. At the most, after the lapsing of the Requisition Act on 10.3.1987, their possession over the properties would have been unauthorized, may be so long they continued in unauthorized possession of the properties, they were liable to pay damages for their occupation for few months during which period they could have completed acquisition proceedings in the normal course without resorting to provisions of Section 17 (1) & (4) of the Act. During the course of the hearing, we specifically asked the learned counsel for the appellants in this regard, the only answer was that the appellants being Union of India & others did not want to remain in the unauthorized possession of the properties. We are not convinced by this reply so as to justify invoking urgency clause to acquire the properties. Having regard to the facts and circumstances of the case in these appeals, the authorities could have completed acquisition proceedings in couple of months even after providing opportunity for filing objections and holding inquiry under Section 5A of the Act if they were really serious.

In the Objects and Reasons of Act No. 20 of 1985, it is stated that all the properties which were requisitioned prior to the amendment of the Act in 1970 were required to be released from requisition or acquired by March 10, 1985; although Government is expeditiously implementing the policy of acquiring or releasing from requisition the requisitioned properties, a number of them are expected to be needed by the Government even after the 10th March, 1985 for public purposes; the Ministry of Defence is taking action for either releasing or acquiring the

requisitioned properties. It was, therefore, decided to extend the maximum period for which the properties could be retained under requisition by a period of two years. Thus, it is clear that the authorities were aware that the properties were to be released or acquired and the maximum period was extended upto two years for the purpose. From 1985 to 1987 they had sufficient time to acquire the properties in question in the usual course. They had enough time to provide opportunity for filing objections and holding inquiry under Section 5A of the Act. There was no need to invoke Section 17 of the Act. The Office Memorandum dated 19.7.1979 extracted above shows that the Executive Council took the decision in view of the amendment in the Requisition and Acquisition of Immovable Property Act, 1952 with all the requisitioned/leased houses which were with the Administration for more than 10 years were to be released to their owners immediately and all the occupants of requisitioned/leased houses were requested to furnish the relevant information by 16.7.1979 failing which the officer concerned will be liable for eviction from the requisitioned house without provision for alternative accommodation. Here again, it is clear that the authorities were in know of the situation in the year 1979 itself. Further the minutes of the meeting held on 8.4.1985 in the room of Secretary (PWD/L&D), Delhi Administration, Delhi show that the position regarding all the requisitioned properties in Delhi which were requisitioned under the 1952 Act was reviewed. The said meeting was attended by (1) Secretary (PWD&L&D), (2) Joint Director (Training), (3) Additional District Magistrate (Registration) and Under Secretary (LA). In the said meeting, it was decided that all the pre-1970 residential buildings which were partially requisitioned and were not in full occupation of Delhi Administration should be de-requisitioned in stages.

It was noted that some of the requisitioned buildings which were fully occupied for residential/office purposes by the various departments of the Delhi Administration and which buildings are essentially required for the functioning of such departments should be acquired under the Act.

Shri V.N. Khanna pointed out that in cases where the buildings/properties were to be acquired under the Act, 80% of the compensation was to be given at the stage of notice itself.

In this meeting, cases of requisitioned buildings were reviewed in details and recommendations were made in respect of each property.

It was also noticed that the acquisition of buildings was going to be prolonged affair; initially those properties which have been surveyed by ADM (Requisition) and recommended for acquisition/de-requisitioning vide letter dated 27.3.1985 may be taken up.

Thus, from the Statement of Objects and Reasons of the Act 20 of 1985, Statement by the concerned Minister to Lok Sabha on 28.3.1985, the Office Memorandum

aforementioned and the minutes of meeting dated 8.4.1985, it is sufficiently clear that the appellants were fully aware that they had to make arrangements either for acquiring the properties or de-requisitioning them by making alternate arrangement within a period of two years i.e. upto 10.3.1987 inasmuch as no further extension of the Requisition Act was possible. Further having regard to the observations made by this Court in the case of Vora (supra), there would have been no justification for the appellants to continue properties in question under the Requisitioning Act any more. If the appellants were really serious in acquiring the properties in question, they had almost 2 years time even after taking the decision to acquire them or derequisition them within which time, acquisition proceedings could be completed in the usual course without depriving the respondents of their valuable right to file objections for acquisition and without dispensing with inquiry under Section 5A of the Act.

The High Court was not right in holding that without expression of urgency in the impugned notification itself, it could not be sustained, but then the High Court did not rest its conclusion only on this. Having examined the facts and circumstances of the case, it was found that there was no material and the circumstances even to have subjective satisfaction by the authorities to invoke urgency clause under Section 17 of the Act. This urgency was common in respect of all the 14 properties as already noticed above in the cases of Banwari Lal as well as Shakuntala Gupta aforementioned. The finding of fact that there was no urgency for invoking Section 17 has become final. This finding holds good even for these appeals. Having regard to the facts and circumstances and the material available on record, we are of the view that invocation of urgency clause was without justification and was untenable as held in Banwari Lal and Shakuntala Gupta. This Court in State of Punjab & Anr. vs. Gurdayal Singh & Ors. [(1980) 2 SCC 471] as to the use of emergency power under Section 17 of the Act has observed that "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 were public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

In Om Prakash and Another vs. State of U.P. & Ors. [(1998) 6 SCC 1] referring to State of Punjab vs. Gurdiyal Singh (supra), this Court in para 21 has observed that "according to the said decision, inquiry under Section 5A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has no longer remained a fundamental right, at least observation regarding Article 14 vis-a-vis Section 5A of the Land Acquisition Act would remain apposite." In the present appeals, the appellants have not been able to show before the High Court any genuine

subjective satisfaction depending upon any relevant material 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 5A inquiry taking aid of Section 17(4) of the Act. A bench of three learned Judges of this Court in Narian Govind Gavate & Ors. vs. State of Maharastra & Os. [(1977) 1 SCC 133] has expressed that Section 17(4) cannot be read in isolation from Section 4(1) and 5A of the Act and has expressed that having regard to the possible objections that may be taken by the land owners challenging the public purpose, normally there will be little difficulty in completing inquiries under Section 5A of the Act very expeditiously. In the same judgment, it is also stated that "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."

The various decisions cited on behalf of the appellants in support of their submission that there was justification in invoking urgency clause for acquiring the properties in question were on the facts of those cases where either urgency was made out or where it was shown that relevant material and data was available at the time of issuing notification invoking urgency clause. In the case of Deepak Pahwa & Ors. vs. Lt. Governor of Delhi & Ors. [1984) 4 SCC 308] one of the grounds raised was that long period of 8 years was spent in inter-departmental correspondence which showed that there was no urgency to invoke Section 17(4) of the Act. In that context, the Court observed that "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." The Court proceeded on the assumption that the pre-notification delay could have been caused by representations made by the aggrieved parties but this case is not an authority to say that in the absence of material to justify urgency clause and long delay in issuing the notification could be ignored or condoned to uphold the validity of such notification. In Chameli Singh & Ors. vs. State of U.P. & Anr. [(1996) 2 SCC 549], the observations of the Court that larger the delay, greater be the urgency was in the context of the facts of that case having regard to the public purpose involved therein for invoking the urgency clause. In that case, the Court appeared to think that very often the officials due to apathy in the implementation of the policies and programmes of the Government themselves adopt dilatory tactics which leads the aggrieved party to challenge the invocation of urgency. The Court took note of the fact that urgency clause was invoked in that case for providing house sites to the dalits and the poor which is a national problem. This is not an authority to condone

or ignore the laxity or lethargy or carelessness on the part of the authorities in invoking urgency clause to exercise special powers under Section 17 of the Act to cover up their delay and laches without there being any justification or material justifying invoking of urgency clause. In the case of Union of India vs. Ghanshyam Das Kedia [(1996) 2 SCC 285], this Court has taken the view that the notification need not specifically recite the nature of urgency and it is enough if the records disclosed the consideration by the Government on the urgency for taking action under Section 17(1) & (4) of the Act. This position was not disputed before the High Court and is also not contested before us. The view of High Court in this regard that the notification itself must specifically state about the nature of urgency and in its absence the notification gets vitiated, cannot be accepted. But as already observed above, the High Court did not quash the notification only on the ground of non-mentioning of urgency in the impugned notification but it has also independently considered and concluded that no material was placed before the Court to show that material and circumstances were available before the authorities at the relevant time to invoke the urgency clause to exercise powers under Section 17 of the Act. 'Urgency' for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of Acquiring Authority. However, the position may be different where the delay is caused or occasioned by the landowner himself. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition under Section 5-A.

In Civil Writ Petition No. 229/92 filed by Sudhir Choudhrie, (the respondent in SLP No. 9264/2003), a contention was raised on behalf of the appellants herein that the writ petitioner's case suffered from delay and laches. The learned Single Judge having regard to the facts and circumstances of the case concluded that the writ petition could not be dismissed on the ground of delay holding that the writ petitioner had been pursuing his remedies in the court of law against the proposed action of the appellants. The Division Bench of the High Court in the order under challenge in regard to the delay in filing the writ petition agreeing with the learned Single Judge has stated thus:-

"Before parting, we may however notice that the appellant had raised a question of delay in filing the writ petition by the first respondent in writ petition No. 229/92 which is the subject matter of LPA No. 10/1995. However, the learned single Judge not only accepted the explanation for the alleged delay but also entertained the writ petition and decided the same on merits. We, therefore, are of the opinion that it is not a fit case where this court should interfere with the said judgment on the afore-mentioned ground."

Ground of delay is not raised by the appellants in

the SLP. In this view, the contention urged on behalf of the appellants that the writ petition No. 229 of 1992 ought to have been dismissed on the ground of delay and laches cannot be accepted.

The argument advanced by the learned counsel on behalf of the appellants that the arbitrator could not be appointed by the High Court in the absence of any agreement for appointment of arbitrator to determine the damages and there being no prayer in that regard in the writ petition, cannot be accepted. This Court dismissed the SLP No. 4458 of 1991 filed by the appellants against the order dated 4.2.1991 made by the High Court in Banwari Lal's case. While dismissing the said SLP on 22.3.1991, may be in the light of the argument made on behalf of the appellants that arbitrator could not be appointed, this Court expressly made it clear that the arbitrator appointed by the High Court may give award and the same may be filed before the High Court for appropriate orders. Civil Appeal No. 518 of 1998 filed by the appellants against the order made in the writ petition No. 894 of 1987 filed by Shakuntala Gupta was disposed of by this Court on 14.11.2000 following Banwari Lal's case which included appointment of arbitrator. In the said order, this Court did not find any sustainable ground raised in the appeal to make any distinction or difference from the case of Banwari Lal and others. Hence it follows that order of appointment of arbitrator made in Shakuntala Gupta's case was also upheld by this Court. The learned Single Judge passed the order in the writ petition appointing arbitrator to determine the damages payable by the Delhi Administration instead of making the petitioners to run to the civil court for that purpose after spending several years in the court. In the impugned order, the Division Bench of the High Court has upheld the same. Since the order appointing arbitrator in the cases of Banwari Lal and Shakuntala Gupta is upheld by this Court, we have no good reason to take a different view. On the other hand, we are in respectful agreement with the same having regard to the facts and circumstances of the case.

The alternative argument urged on behalf of the appellants that if the impugned notification suffers from infirmity in relation to invoking urgency clause, it can be quashed only to the extent of invoking the aid of Section 17 and the said notification can be sustained confining it to Section 4 of the Act, cannot be accepted. Otherwise, the same common notification stands quashed in respect of the few parties as in the cases of Banwari Lal and Shakuntala Gupta and it stands sustained in respect of others i.e. respondents in these appeals leading to anomalous situation. Added to this, if the argument, as advanced on behalf of the Union, is accepted, the notification under Section 17 of the Act invoking urgency clause would stand quashed but the landowner, would nonetheless be deprived of the possession of the property as also payment of 80% of compensation under Section 17(3A) of the Act. Such an unjust result cannot be allowed to happen by quashing the notification in part only to the extent of Section 17 of the Act and maintaining it for the purpose of Section 4 of the Act. Thus, having regard to the facts and circumstances brought on record in these appeals, it is not possible to accept this argument particularly

when the very foundation of invoking Section 17 was invalid and unjustified as upheld by this Court in Banwari Lal and Shakuntala Gupta.

Since we are of the view that the decisions in Banwari Lal and Shakuntala Gupta cover these appeals against the appellants, we do not consider it necessary to deal with the contention that due to non-compliance of sub-section (3A) of Section 17 of the Act, the entire acquisition proceedings were vitiated. Further when we are upholding the impugned common order on other grounds, we do not wish to deal with this contention.

One more contention urged on behalf of the appellants in SLP (C) No. 5451/2003 namely that the writ petition filed by the respondents being tenants was not maintainable, is required to be dealt with. It does not appear that this contention was urged before the Division Bench of the High Court. In the light of the decision of this Court in Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. & Ors. [(1996) 11 SCC 501], it cannot be said that in no case, the tenant of the land which is sought to be acquired under the provisions of the Act can challenge the acquisition proceedings. It is clear from Section 5A(3) of the Act that for the purpose of the said Section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired. In an appropriate case, a tenant having sufficient subsisting interest in the land can challenge the acquisition proceedings. In view of the facts and circumstances of the case, the learned Single Judge did not dismiss the writ petition as not maintainable on the ground that the tenant could not maintain the writ petition. The Division Bench of the High Court also did not disturb the order of the learned Single Judge. This apart, the very same notification being common is quashed at the instance of other writ petitioners. In this view, at this stage, the contention urged on behalf of the appellants that writ petition filed by a tenant was not maintainable cannot be accepted.

Thus, having regard to all aspects and for the reasons stated and discussion made above, we do not find any merit in these appeals. Hence, they are dismissed. No costs.