PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
SHRI GHANSHYAM DASS KEDIA & ORS.

DATE OF JUDGMENT12/12/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 SCC (2) 285 JT 1995 (9) 618
1995 SCALE (7)348

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

We have heard the counsel for the parties. The main question canvassed before the Division Bench in W.P. Nos.3084/87 was that the Government was not justified in invoking s.17(1) read with s.17(4) of Land Acquisition Act, 1894 (for short 'the Act') dispensing with the enquiry under s.5A. The High Court following its earlier decision has quashed the notification on the ground that the notification did not recite the nature of the urgency. Planned Development of Delhi is not urgent and, therefore, the exercise of the power under s.17(4) was illegal. We do not find that the view taken by the High Court is legal and correct. In Aflatoon & Ors. v. Lt. Governor of Delhi & Ors. [(1975)] 1 SCR 802], the Constitution Bench of this Court had upheld the exercise of power under s.17(4) dispensing the enquiry under s.5-A. It was for planned development of Delhi which would take long time for development. Yet this court upheld the exercise of the power of urgency. It is subjective satisfaction of the Government based on the material on record. The High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight. Therefore, it cannot be said that the notification should specifically recite the nature of the urgency. It is enough, if the record discloses the consideration by the Government on urgency for taking action under ss.17(1) and (2).

However, this conclusion does not solve the problem in this case. It is seen that the employer of the respondents had obtained sanction from the Delhi Municipal Corporation as early as in 1951. A plan thereof has been annexed in the paper book as annexure to the Additional Affidavit filed by Laxman Prasad Mittal. It is an admitted fact that the plan has not so far seen the light of the day except production for the first time in this Court. No application under Order 41 Rule 27 CPC was filed. So it cannot be received in

evidence. Be it as it may, it is not in dispute that about 3 acres of land was earmarked by the Birla Cotton, Spinning and Weaving Mill has become disused but the respondents had purchased under registered sale deeds from their employer certain extents of land and most of them had 330 sq.yd. Some of them purchased in excess also. It is seen that they purchased these lands for residential purpose long prior to the notification and master plan.

This Court on November 9, 1995, issued direction as stated hereunder :

> "It transpires that the respondents are now retired employees of the Birla Cotton Spinning and Weaving Mills Ltd. and they needed these sites for residential construction. When we requested Shri Saharya, learned counsel for the DDA to show us the localisation of the land in the existing zonal plan, counsel is handicapped for not having the details. He sought for and is granted two weeks time to produce the zonal plan. With the assistance of his officers and also after notice to Shri Venugopal, learned senior counsel and his instructing counsel they would localise the land of 6600 sq. yds. purchased by the 20 respondents and needed for their housing purpose. If it would be possible to demarcate and delete this part of the land, perhaps much of the controversy may not survive. Under these circumstances, the matter is adjourned to do the needful."

Shri V.B.Sahariya, the learned counsel appearing for the DDA, has placed before us additional affidavit of P.C.Jain, Additional Commissioner (Area Planning) DDA, Delhi together with annexures. In Annexure I, they have identified the land originally held by the Mill approximating three acres. Thereunder, they identified in north-east Corner the land which the respondents had purchased. In the Area Plan, Annexure-2, the land is reserved for institutional purpose and for Education and Research in Annexure-3. It is marked as red and in Annexure-4, it was identified abutting the road by name Mehrauli Road. It is in the middle of the area reserved for institution (Education & Research). It is stated in Annexure I that on the eastern side, Azad Appartments are situated; on the northern side, it is abutting the Mehrauli Road. In that view of the matter, it would be expedient that since the respondents have purchased long before the master plans have been prepared for residential purpose and on the eastern side residential flats are in existence, there may not be much difficulty for change of user of the land and the plan, leaving out the portion of the land for the residential purpose.

It is not in dispute that 19 persons now want construction of their houses in this area. Though some of them had purchased more than 330 sq. yds, uniformly everyone should have 330 sq. yds. We are of the considered view that it is appropriate for the appellant-Union of India to change user of land in the Master and Zonal Plans to the above extent and direct the Lt. Governor to carve out the above land as part of the residential purpose which is adjacent to already existing residential apartment. The appropriate Government would suitably consider withdrawl from acquisition to the above extent only and allow use for

residential purpose. They would take proper steps to release that part of the land which is necessary for the respondents to construct their houses. The area needed for amenities like road etc. need to be provided to these 19 plots and the same would also be set part. Necessary permission accordingly be given to the respondents as per rules by granting sanction to construct their houses.

The appeal is accordingly allowed to the above extent. The direction for release of the land should not be treated as a precedent in another case. It would be confined to the special facts in this case. No costs. 5827