

PETITIONER:
KRISHI UTPADAN MANDI SAMITI, MUZAFFARNAGAR (U.P.), ETC.

Vs.

RESPONDENT:
RATAN PRAKASH MANGAL & ORS., ETC.

DATE OF JUDGMENT 06/05/1988

BENCH:
OJHA, N.D. (J)
BENCH:
OJHA, N.D. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1988 AIR 1459 1988 SCR Supl. (1) 182
1988 SCC (3) 225 JT 1988 (2) 549
1988 SCALE (1) 1170

ACT:
Land Acquisition Act, 1894 Challenging notification issued under section 4(1) read with section 17(4) and consequential notification issued under section 6-of-For acquisition of plot of land.

HEADNOTE:

These two appeals-Civil Appeal No. 3446 of 1987 and Civil Appeal No. 3447 of 1987-were filed in this Court against the judgment of the High Court in the Writ Petition No. 6789 of 1982. Ratan Prakash Mangal and Kuldip Singh, respondents Nos. 1 and 2 in the Civil Appeal No. 3446 of 1987 and the appellants in Civil Appeal No. 3447 of 1987, had filed the said writ petition challenging a notification dated 20th May, 1982, issued under section 4(1) read with section 17(4) of the Land Acquisition Act, 1894 (the Act) and also the consequential notification dated 21st May, 1982, issued under section 6 of the Act with regard to a plot No. 289. The notification under section 4(1) of the Act was quashed in part in so far as it invoked Section 17(4) of the Act, and the notification under section 6 was quashed as a whole with regard to the said plot No. 289. The Civil Appeal No. 3446 of 1987 was preferred by Krishi Utpadan Mandi Samiti, Muzaffar Nagar for which the said plot had been acquired, for setting aside the judgment of the High Court. Civil Appeal No. 3447 of 1987 was preferred by Ratan Prakash Mangal and Kuldip Singh afore-mentioned hereinafter referred to as respondents Nos. 1 & 2 asserting that the notification under section 4(1) should have been quashed by the High Court in its entirety and not only in so far it invoked section 17(4) of the Act.

Initially, a Notification dated 20th March, 1975 was issued under section 4(1) of the Act for acquiring land, including the plot No. 289, for construction of a market yard for the appellant Krishi Utpadan Mandi Samiti. Later, this Notification was superseded by another Notification dated 30th August, 1975 issued under section 4(1) with regard to land which did not include the said plot. Subsequently, another Notification dated 26th October, 1978, was issued under section 4(1) read with Section 17(4) of the Act with regard to land, including the plot abovementioned.

The Notification dated 26th October, 1978 was followed by
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a Notification dated 27th October, under section 6.

Prior to the issue of these Notifications, respondents Nos. 1 and 2 had purchased the said plot No. 289. The said respondents Nos. 1 and 2 had challenged the Notifications dated 26th October, 1978 and 27th October, 1978 by a writ petition in the High Court. The High Court had quashed the two Notifications in so far as Plot No. 289 was concerned. This Judgment of the High Court had been challenged by Krishi Utpadan Mandi Samiti before this Court in Civil Appeal No. 2970 of 1979.

This Court had held that even though the quashing of the Notification under Section 6 had been justified, the High Court had not been right in quashing the Notification under section 4(1) in its entirety, and had set aside the Judgment of the High Court in so far as it had quashed the Notification under section 4(1) in its entirety, while maintaining the rest of the Judgment with a direction regarding inquiry under Section 5A into the objections of the respondents Nos. 1 and 2 to the proposed acquisition etc. In pursuance of the said direction, inquiry under section 5A had been made and the Land Acquisition Officer had submitted a report on 20th January, 1981, after about 15 months of the direction above-said of this Court, to the effect that the Plot No. 289 might be exempted from acquisition. The Government did not agree with the said report and issued the Notifications impugned in present appeals.

Allowing Civil Appeal No. 3446 of 1987, and dismissing Civil Appeal No. 3447 of 1987, the Court,

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HELD: There was no doubt with regard to the legal position that the Report dated 20th January, 1981 of the Land Acquisition Officer was not binding on the State Government and it was still open to it to continue the proceedings for the acquisition of the Plot No. 289 notwithstanding the said report. The Government had its reason why in place of issuing a Notification under section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under section 4(1), fresh notifications under section 4 and 6 had to be issued as also the reason for the delay in issuing the fresh Notifications, as was apparent from the record. As regards the submission that section 17(4) of the Act had been erroneously invoked in fresh Notification under section 4(1) dated 20th May, 1982 also and that inquiry under Section 5A had again to be made before issuing this Notification, it was enough to point out that once an inquiry under the said section had already been made and the parties had been given full opportunity to substantiate their case in the enquiry and the State Government had not been inclined to agree with the

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report of the Land Acquisition Officer submitted in pursuance of that inquiry, it would have been a futile exercise to repeat the whole performance again. After the issue of the earlier Notification dated 26th October, 1978, a period of nearly 3 1/2 years had expired when the fresh Notification dated 20th May, 1982 above-said was issued and apparently the necessity to acquire the plot No. 289 during this period became more acute due to this delay. Further, as stated in the said Notification itself, the urgency had become more imminent on account of the direction issued by this Court on 2nd March, 1982 in Writ Petition No. 1318 of 1982 filed by the traders in gur, khandseri and foodgrains,

Muzaffar Nagar, challenging the Notification under Section 7(2)(b) of the U.P. Act No. 25 of 1964. Consequently, it was difficult to hold that the opinion of the State Government that it was a fit case to invoke section 17(4) of the Act was invalid on the ground that there was no basis or material in support of the opinion. On the facts of the case, it was not possible to hold that the Notification dated 20th May, 1982 had been issued by the State Government in colourable exercise of its power. [194A-F]

The Notification dated 20th May, 1982 and 21st May, 1982 had not been challenged by respondents Nos. 1 and 2 on the basis of mala fides of any particular officer of the State Government. What was urged was that it was a case of legal mala fides inasmuch as in issuing the said fresh Notification dated 20th May, 1982, an attempt had been made by the State Government to circumvent the direction of this Court issued in the Civil Appeal No. 2970 of 1979 to make inquiry under Section 5A of the Act and to proceed thereafter in accordance with law, the State Government did make an inquiry under Section 5A of the Act in pursuance of the direction of this Court after giving full opportunity to the concerned parties to substantiate their case. It was difficult to agree with the submission of respondents 1 and 2 that the government attempted to circumvent the direction of this Court. A case of legal mala fide was not made out. [194G-H; 195B]

The Government all through was of the opinion that Plot No. 289 did not deserve to be released from acquisition. Also, this plea lost significance and became almost of academic value inasmuch as the State Government had not issued a notification under section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under Section 4(1). After the issue of the fresh Notification what was really to be seen was whether there was justification for invoking section 17(4) of Act or not. There was such a justification. There had been a material change in the circumstances after the report of the Land Acquisition

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Officer dated 20th January, 1981, to justify Section 17(4) of the Act being invoked and to dispense with a further inquiry under section 5A of the Act. [196D-E; 198C]

The submission of the respondents 1 and 2 about the lack of application of mind before issuing the Notification dated 20th May, 1982 with regard to plot No. 289 had no substance, as indicated by the original record produced by counsel for the State Government. The effect of issuing a fresh Notification under Section 4(1) and the delay in issuing it had benefited the respondents 1 and 2 inasmuch as now they would be entitled to compensation not on the basis of market value of plot No. 289 as on 26.10.78 when the earlier Notification under Section 4(1) was issued but as on 20th May, 1982 when the fresh Notification under the said section was issued. [200G-H; 201A]

Civil Appeal No. 3446 of 1987 was allowed and the judgment of the High Court in the Writ Petition No. 6789 of 1982 was set aside, and as a consequence, Civil Appeal No. 3447 of 1987 was dismissed. [201B]

State of Punjab v. Gurdial Singh & Ors., [1980] 1 SCR 1071; The Collector (District Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal, etc., [1985] 3 S.C.R. 995; P.L. Lakhanpal v. Union of India & Ors., [1967] 1 SCR 443; Siemens Engineering & Manufacturing Co. of India Limited v. Union of India & Anr., [1976] Suppl. S.C.R. 489; Narayan Govind Gavate v. State of Maharashtra, [1977] 1 S.C.R. 763

and State of U.P. v. Pista Devi, [1986] 4 S.C.C. 251, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3446 & 3447 of 1987.

From the Judgment and Order dated 11.3.87 of the High Court of Allahabad in Civil Misc. Writ Petition No. 6789 of 1982.

Satish Chandra, Ms. Purnima Bhat and E.C. Agarwala for the Appellants.

P.P. Rao, B.D. Agarwal, P.K. Chakraverty, Ms. Sandhya Goswami and R.C. Verma for the Respondents.

The Judgment of the Court was delivered by

OJHA, J. These two appeals have been preferred against the judgment dated 11th March, 1987 of the Allahabad High Court in Writ

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Petition No. 6789 of 1982. In the said writ petition a Notification dated 20th May, 1982 issued under Section 4(1) read with Section 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) and also the consequential Notification dated 21st May, 1982 under Section 6 of the Act with regard to Plot No. 289 with an area of 3 bighas 14 biswa situate in village Kukra, District Muzaffarnagar in the State of Uttar Pradesh were challenged by Ratan Prakash Mangal and Kuldeep Singh who are Respondents 1 and 2 in Civil Appeal No. 3446 of 1987 and the appellants in Civil Appeal No. 3447 of 1987. For the sake of convenience these two persons shall hereinafter be referred to as Respondents 1 and 2. The Notification under Section 4(1) of the Act was quashed in part in so far as it invoked Section 17(4) of the Act and thereby dispensed with inquiry under Section 5A of the Act whereas the Notification under Section 6 was quashed as a whole with regard to the aforesaid Plot No. 289. Civil Appeal No. 3446 of 1987 has been preferred by the Krishi Utpadan Mandi Samiti, Muzaffarnagar for whom the aforesaid plot had been acquired with a prayer that the judgment of the High Court may be set aside. Civil Appeal No. 3447 of 1987 on the other hand has been preferred by Respondents 1 and 2 asserting that even the Notification under Section 4(1) of the Act should have been quashed by the High Court in its entirety and not only in so far as it invoked Section 17(4) of the Act.

Before dealing with the respective submissions made by learned counsel for the parties it is necessary to give some more facts. Initially a Notification dated 20th March, 1975 was issued under Section 4(1) of the Act for acquiring nearly 80 acres of land for the public purpose of construction of a market yard for the appellant, Krishi Utpadan Mandi Samiti, Muzaffarnagar. About 5 months thereafter, however, this Notification was superseded and another Notification was issued under Section 4(1) with regard to only 60 acres of land. The Notification issued on 20th March, 1975 included Plot No. 289 aforesaid whereas the subsequent Notification which is dated 30th August, 1975 did not include the said plot along with several other plots. Subsequently, however, another Notification was issued on 26th October, 1978 under Section 4(1) read with Section 17(4) of the Act with regard to 19.47 acres of land including Plot No. 289. This Notification really seems to be with regard to that portion of land which even though included in the earlier Notification dated 20th March, 1975

had been excluded in the subsequent Notification dated 30th August, 1975. The Notification dated 26th October, 1978 was followed by a Notification under Section 6 dated 27th October, 1978. About four months prior to the issue of these Notifications Respondents 1 and 2 had purchased

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Plot No. 289 aforesaid on 7th June, 1978, The purpose for which Respondents 1 and 2 purchased Plot No. 289 was shown by them in their writ petition filed before the High Court as construction of a residential colony. According to them in furtherance of that purpose they executed three sale deeds one each on 10th November, 1978, 16th November, 1978 and 7th December, 1978. The first of these three sale deeds had been executed in favour of one Smt. Dhanwanti Agarwal, the second one in favour of Smt. Santosh Kumari and the third one in favour of Shri Janardhan Das and Ram Kumar. The writ petition filed by Respondents 1 and 2 in the High Court indicates that Smt. Dhanwanti Agarwal and Smt. Santosh Kumari were wives of two gazetted officers and the third purchaser Ram Kumar too was a Government servant.

The Respondents 1 and 2 challenged the Notification dated 26th October, 1978 and 27th October, 1978 referred to above before the High Court in Writ Petition No. 163 of 1979. The plea raised by them was that there was no urgency and consequently the inquiry contemplated by Section 5-A of the Act could not be dispensed with by invoking Section 17(4) thereof. This plea found favour with the High Court and the two Notifications mentioned above were quashed on 6th June, 1979 in so far as Plot No. 289 was concerned. This judgment of the High Court was challenged by the Krishi Utpadan Mandi Samiti, Muzaffarnagar before this Court in Civil Appeal No. 2970 of 1979. This Court agreed with the High Court in so far as it had held that the urgency clause had been wrongly applied. But it was held that on that ground even though quashing of the Notification under Section 6 of the Act was justified the High Court was not right in quashing the Notification under Section 4(1) in its entirety. On this view the appeal was allowed in part and the judgment of the High Court was set aside in so far as it quashed the Notification under Section 4(1) of the Act in its entirety. The rest of the judgment was, however, maintained with a direction "that copies of the Notifications be served personally on Respondents Nos. 1 and 2 and their transferees so that Respondents Nos. 1 and 2 and their transferees may have an opportunity to file their objections to the proposed acquisition within three weeks from the date of service of the copy of the notification upon each of them. The appropriate authority will then hold an inquiry into the objections under Section 5A and proceed with the matter in accordance with law. Since the appellant has obtained possession of the land from Respondent Nos. 1 and 2 and their transferees by invoking the urgency clause which has been set aside, the appellant will restore possession of the same to Respondents Nos. 1 and 2 and their transferees within a week from today."

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In pursuance of the aforesaid direction inquiry under Section 5A of the Act was made and the Land Acquisition Officer after giving the parties an opportunity to file their objections and produce evidence and hearing the arguments of their learned counsel, submitted a report on 20th January, 1981, that is, after about 15 months of the direction referred to above issued by this Court in Civil Appeal No. 2970 of 1979. The report submitted by the Land Acquisition Officer was to the effect that Plot No. 289 may

be exempted from acquisition. In submitting the said report, a copy of which has been placed on record, it appears that the Land Acquisition Officer was impressed mainly by two circumstances: (1) That Smt. Dhanwanti Agarwal and Smt. Santosh Kumari who had purchased portions of Plot No. 289 had made a declaration saying that there was no house in their names in Muzaffarnagar and (2) that even though Mandi Samiti had constructed a building it was lying idle inasmuch as no trader was prepared to shift to these premises. The Government, as is apparent from the counter-affidavit filed on its behalf in this Court as also from the original record which was produced before us, did not seem to agree with the report of the Land Acquisition Officer and issued the Notifications which are the subject-matter of the present appeals. We shall deal with the details in this behalf as also with regard to the delay between 20th January, 1981, the date of the report and 20th May, 1982, the date of the issue of Notification under Section 4(1) of the Act while considering the submissions made by learned counsel for the parties on this point.

It was urged by learned counsel for the appellant that even Plot No. 289 was urgently needed by the appellant and the High Court has erred in taking a contrary view and holding that dispensing with inquiry under Section 5A was not bona fide or rational. For the Respondents 1 and 2 on the other hand it was urged by their learned counsel that consequent upon the report of the Land Acquisition Officer dated 20th January, 1981 in proceedings under Section 5A of the Act to the effect that Plot No. 289 may be exempted from the acquisition, it was incumbent upon the Government to give a decision in this behalf as contemplated by the said Section 5A and until a decision was given, the direction of this Court referred to above given in Civil Appeal No. 2970 of 1979 remained unimplemented and the issue of fresh Notifications under Sections 4(1) and 6 was in colourable exercise of power. In this connection it was pointed out that the only course open to the Government was to give a decision that notwithstanding the report of the Land Acquisition Officer dated 20th January, 1981 it was necessary to acquire Plot No. 289 and to issue a

Notification under Section 6 of the Act on the basis of such decision in continuation of the earlier Notification dated 26th October, 1978 under Section 4(1) of the Act. According to him since the Notification dated 26th October, 1978 had initially been quashed by the High Court in its entirety on 6th September, 1979 in so far as Plot No. 289 is concerned and was partly maintained by this Court vide its judgment in Civil Appeal No. 2970 of 1979 with a direction to make inquiry under Section 5A of the Act and to proceed thereafter in accordance with law, the second proviso to Section 6(1) of the Act as inserted by the State of Uttar Pradesh by the Land Acquisition (U.P. Amendment) Act 28 of 1972 was clearly attracted. It was urged that since the said proviso contemplated that in computing the period of three years for issuing a Notification under Section 6 prescribed by the first proviso to sub-section (1) thereof the time during which the State Government was prevented by or in consequence of any order of any court from making such declaration shall be excluded, it was open to the State Government to issue a Notification under Section 6 even on 20th May, 1982 when the fresh Notification under Section 4(1) was issued and the issue of the fresh Notification under Section 4(1) invoking Section 17(4) of the Act was not bona fide and was apparently a case of colourable exercise

of power. It was also pointed out by learned counsel for the Respondents 1 and 2 that undue delay had been caused in issuing the fresh Notification under Section 4(1) of the Act on 20th May, 1982 after the report of the Land Acquisition Officer dated 20th January, 1981 which itself indicated that there was no occasion for invoking Section 17(4) of the Act. In this connection it was further submitted by learned counsel for the Respondents 1 and 2 that no material change in the factual position had taken place between 20th January, 1981 and 20th May, 1982 and for this reason also Section 17(4) of the Act could not have been invoked. According to learned counsel there was in any case no justification for the Government to include even that portion of the land other than Plot No. 289 which was the subject-matter of Notifications dated 26th October, 1978 and 27th October, 1978 and with regard to which the said Notifications had not been quashed. According to him the Government by including that portion of the land also in these Notifications dated 20th and 21st May, 1982 really took steps to acquire its own land which indicated lack of application of mind at the time of issuing these Notifications. On the basis of these submissions it was urged by learned counsel for the Respondents 1 and 2 that not only the judgment of the High Court under appeal deserved to be confirmed, Civil Appeal No. 3447 of 1987 filed by Respondents 1 and 2 deserves to be allowed and the Notification dated 20th May, 1982 under Section 4(1) of the Act deserves to be quashed in its

entirety in substitution of the judgment of the High Court quashing the same only in so far as it invoked Section 17(4) of the Act.

Having heard learned counsel for the parties we are of the opinion that Civil Appeal No. 3446 of 1987 filed by the Krishi Utpadan Mandi Samiti, Muzaffarnagar deserves to be allowed and as a consequence thereof Civil Appeal No. 3447 of 1987 filed by the Respondents 1 and 2 deserves to be dismissed. At this place another intervening circumstance may be noticed. A Notification dated 20th November, 1981 was issued by the State Government under clause (b) of subsection (2) of Section 7 of the Uttar Pradesh Krishi Utpadan Mandi Adhyniyam, 1964 (hereinafter referred to as U.P. Act No. 25 of 1964) declaring that with effect from the date of publication of the Notification in the Gazette the wholesale transactions of agricultural produce in respect of Muzaffarnagar market area specified in Schedule A shall be conducted only on the place within the Muzaffarnagar Principal Market Yard. A copy of this Notification forms part of the record of Civil Appeal No. 3446 of 1987 and it indicates that Schedule A thereto contains 54 commodities of agricultural produce. The effect of the issue of the said Notification was that dealers of the said 54 commodities had to shift their existing place of business to the Principal Market Yard.

An association of traders in gur, khandsari and foodgrains, namely, the Gur, Khandsari and Grain Merchants Association (Regd.), Muzaffarnagar filed Writ Petition (Civil) No. 1318 of 1982 in this Court challenging the aforesaid Notification. The grievance of the petitioners was that once the impugned Notification became operative no one could carry on wholesale business in the specified agricultural produce except at a place declared as a Market yard and any business being carried on at any other place would be contrary to law rendering persons carrying on such business liable to prosecution. According to the petitioners

in this view of the matter and in view of the circumstance that in the new Market Yard mentioned in the Notification shops were not available, the whole business of the petitioners would be ruined if the said Notification was implemented. Notices were issued to the respondents and statements were made by learned counsel appearing for the concerned respondents that the Mandi Samiti had undertaken planned programme of constructing shops and that 120 more shops can be constructed within two months apart from the shops which had been constructed and allotted to the intending traders and dealers. On the basis of the aforesaid statements this Court ordered on 2nd March, 1982:-

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"We, therefore, record the statements of Mr. Rana and Mr. Garg that within a period of six months from today the Samiti will construct required number of shops. If some vacant shops are available proceedings for allotment must be taken forthwith. Those of the traders/dealers who are allotted shops must shift to the notified market yard within a week from the date of the receipt of the allotment order. Till any trader/dealer is not allotted a shop he can carry on his business in the old market yard and is not to be prosecuted, on the ground that he is doing business in the old market yard which is denotified."

A further direction was given that the shops to be constructed must be in accordance with the plan according to which the existing shops had been constructed.

The impugned Notification dated 20th May, 1982 under Section 4(1) of the Act contained inter alia the following recital as is apparent from a copy thereof placed on the record of Civil Appeal No. 3446 of 1987:

"Being of the opinion that the provisions of sub-section (1) and (1A) of section 17 of the Act are applicable to the said land inasmuch as the said land which is arable and banjar Atirikt is urgently required for the construction of market yard of Krishi Utpadan Mandi Samiti, Muzaffarnagar under a planned development scheme and that in view of the directions of the Supreme Court additional shops are to be constructed most urgently. It is as well necessary to eliminate the delay likely to be caused by an enquiry under Section 5A of the said Act."

In the counter-affidavit filed on behalf of the State of U.P. which forms part of Civil Appeal No. 3447 of 1987 it has been stated that after the receipt of the report of the Land Acquisition Officer dated 20th January, 1981 the State Government called for comments from the Director, Mandi Parishad, Uttar Pradesh, who vide his letter dated 27th June, 1981 informed the State Government that Plot No. 289 deserved to be acquired and there was no justification to release it from acquisition. After the said letter had been received Smt. Dhanwanti Agarwal, one of the vendees from Respondents 1 and 2 referred to above requested the State Government vide her letter dated 2nd September, 1981 to reconsider the matter. On the receipt of

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the said letter a meeting was convened at Government level on 16th November, 1981 attended by the District Magistrate, Muzaffarnagar, Agriculture Secretary and Director, Mandi Parishad. In pursuance of the deliberations of that meeting the District Magistrate was requested to look into the matter and send his comments vide letter dated 21st

November, 1981 and in response to that letter the District Magistrate vide his letter dated 3rd December, 1981 informed the State Government that for reasons stated therein it was not advisable to exempt or exclude Plot No. 289 from the acquisition proceedings. Copies of these letters have been annexed to the counter-affidavit. In his letter dated 3rd December, 1981 the District Magistrate inter alia pointed out that the land of Plot No. 289 was situated in the middle of the land acquired under the Notifications in question and that it was necessary to acquire the land of the said plot also for a smooth construction of the market yard. The District Magistrate by his letter made a request that Notification under Section 6(1) of the Act may be issued immediately. The counter-affidavit further indicates that while the matter was under consideration Smt. Santosh Kumari the other vendee from Respondents 1 and 2 referred to above made an application before the State Government stating that Plot No. 289 should not be acquired in view of the report of the Land Acquisition Officer and further that since the Notification dated 26th October, 1978 under Section 4(1) had been published on 25th November, 1978 and a period of three years had elapsed any acquisition would be invalid.

We have already indicated above that the original record was produced before us by learned counsel appearing for the State Government and from its perusal it appeared that after Smt. Santosh Kumari had made the said application the question as to whether a Notification under Section 6(1) of the Act could be issued in continuation of the Notification dated 26th October, 1978 under Section 4(1) of the Act came up for consideration before the State Government. The matter was ultimately referred to the Law Department. The record further indicated that there appeared to be a divergence of opinion in regard to the applicability of the second proviso to Section 6(1) of the Act inserted by the State of U.P. and the ultimate view which prevailed was that it was expedient to issue a fresh Notification under Section 4(1) also and it was thus that in place of issuing a Notification under Section 6(1) in continuation of the Notification dated 26th October, 1978 under Section 4(1), fresh Notifications both under Sections 4(1) and 6 of the Act were issued on 20th May, 1982 and 21st May, 1982 respectively. The original record also indicated that after the receipt of the report of the Land Acquisition Officer the file was

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moving above for sometime to ensure as to whether possession over Plot No. 289 had been restored back or not in pursuance of the direction of the Supreme Court in Civil Appeal No. 2970 of 1979 and to take steps to ensure compliance of the said direction. As seen above it was the own case of Respondents 1 and 2 in their writ petition before the High Court that Smt. Dhanwanti Agarwal and Smt. Santosh Kumari were wives of two gazetted officers. In the counter-affidavit which was filed on behalf of the Krishi Utpadan Mandi Samity, Muzaffarnagar in the said writ petition it was stated in paragraph 20 with regard to the report of the Land Acquisition Officer dated 20th January, 1981 that some of the land being of gazetted officers, they succeeded in exerting pressure on the Land Acquisition Officer to submit a wrong report. As already pointed out in the counter-affidavit filed on behalf of the State Government in this Court reference has been made to the two letters given by Smt. Dhanwanti Agarwal and Smt. Santosh Kumari on the basis of which further inquiry had to be made by the State Government and ultimately a decision had to be taken that in

place of issuing a Notification under Section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under Section 4(1) fresh Notifications under Sections 4(1) and 6 may be issued.

The original record which was produced before us also indicated that at no stage after the receipt of the report of the Land Acquisition Officer dated 20th January, 1981 had the Government taken a decision that it was not necessary to acquire the plot. Indeed, as seen above, the Government was not inclined to agree with the report of the Land Acquisition Officer because had it been so there would have been no occasion either for calling for a report from the Director Mandi Parishad or convening a meeting to consider the matter or to require the District Magistrate to submit his own report. After making necessary inquiries the Government ultimately decided not to release Plot No. 289 from acquisition proceedings. However, before a Notification could be issued under Section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under Section 4(1) a question was raised by Smt. Santosh Kumari that three years having expired from the date of the publication of the Notification under Section 4(1) Plot No. 289 could not be acquired in pursuance of the said Notification. The Government thereafter referred the matter to the Law Department and it was ultimately decided to issue fresh Notifications under Sections 4(1) and 6 of the Act.

There seems to be no doubt with regard to the legal position that

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the report dated 20th January, 1981 submitted by the Land Acquisition Officer was not binding on the State Government and it was still open to it to continue the proceedings for acquisition of Plot No. 289 notwithstanding the said report. The reason why in place of issuing a Notification under Section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under Section 4(1) fresh Notifications under Sections 4 and 6 had to be issued as also the reason for the delay in issuing the fresh Notifications have already been indicated above. As regards the submission that Section 17(4) of the Act has been erroneously invoked in the fresh Notification under Section 4(1) dated 20th May, 1982 also and that inquiry under Section 5A had again to be made before issuing this Notification, suffice it to point out that once an inquiry under the said Section had already been made and the parties had been given full opportunity to substantiate their case in the said inquiry and the State Government was not inclined to agree with the report of the Land Acquisition Officer submitted in pursuance of that inquiry it would have been a futile exercise to repeat the whole performance again. After the issue of the earlier Notification dated 26th October, 1978 a period of nearly 3 1/2 years had expired when the fresh Notification dated 20th May, 1982 under Section 4(1) was issued and apparently the necessity to acquire Plot No. 289 during this period became more acute due to this delay. Further, as stated in the Notification dated 20th May, 1982 itself the urgency had become more imminent on account of the direction issued by this Court on 2nd March, 1982 in Writ Petition No. 1318 of 1982 filed by the traders challenging the Notification under Section 7(2)(b) of U.P. Act No. 25 of 1964. Consequently, we find it difficult to hold that the opinion of the State Government that it was a fit case to invoke Section 17(4) of the Act was invalid on the ground that there was no basis or material in support of that opinion. We are further of the

view that on the facts indicated above it is also not possible to hold that the Notification dated 20th May, 1982 had been issued by the State Government in colourable exercise of its power.

At this place it would be relevant to notice that the Notifications dated 20th May, 1982 and 21st May, 1982 had not been challenged by Respondents 1 and 2 on the basis of mala fides of any particular officer of the State Government. What was urged was that it was a case of legal mala fides inasmuch as in issuing the fresh Notification dated 20th May, 1982 under Section 4(1) of the Act, an attempt was made by the State Government to circumvent the direction issued by this Court in Civil Appeal No. 2970 of 1979 to make inquiry under Section 5A of the Act and to proceed thereafter in accordance with law. Suffice it to say,

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so far as this submission is concerned that the State Government in pursuance of the aforesaid direction given by this Court did make an inquiry under Section 5A of the Act and in the said inquiry full opportunity was given to the concerned parties to substantiate their case. It is, therefore, difficult to agree with the submission of learned counsel for Respondents 1 and 2 that an attempt was made by the State Government to circumvent the direction of this Court. As seen above, the State Government was not bound to agree with the report of the Land Acquisition Officer and it has not been disputed even by learned counsel for the respondents that it was open to the State Government to take a contrary decision and to issue a Notification under Section 6(1) of the Act on the receipt of the report dated 20th January, 1981 of the Land Acquisition Officer. That the State Government in the instant case was not inclined to agree with the report of the Land Acquisition Officer has already been indicated above. The reasons for the delay in taking further steps as also for issuing fresh Notifications under Sections 4(1) and 6 have also been indicated. On these facts we are of the opinion that a case of even legal mala fides is not made out. The decision of this Court in the case of State of Punjab v. Gurdial Singh & Ors., [1980] 1 S.C.R. page 1071 on which reliance has been placed by learned counsel for Respondents 1 and 2 is of no assistance inasmuch as the plea of mala fides in that case was based on personal malice. So also is the position with regard to the decision of this Court in The Collector (Distt. Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal etc., [1985] 3 S.C.R. Page 995. That was a case where land had been acquired for a cinema theatre in the vicinity of the building housing the Hindi Sahitya Sammelan. It was pointed out that the power to acquire land is to be exercised for carrying out the public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity it could not be said that such a purpose would be a public purpose. May be, the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the educational and cultural environment of the institution and therefore, it will like to wish away a cinema theatre in its vicinity. But that hardly constitutes public purpose. Such is not the situation in the instant case.

The learned counsel for Respondents 1 and 2 in support of his submission that since this Court by its order dated 22nd October, 1979 in Civil Appeal No. 2970 of 1979 had issued a direction to hold an inquiry under Section 5A of the Act and to proceed with the matter in accordance with

law it was incumbent on the Government to take a decision that notwithstanding the report of the Land Acquisition Officer

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Officer dated 20th January, 1981 it was necessary to acquire Plot No. 289, placed reliance on the decision of this Court in P.L. Lakhanpal v. Union of India & Ors., [1967] 1 S.C.R. page 433 where while dealing with Rule 30A of the Defence of India Rules, 1962 it was held that according to dictionary "decision" means "settlement, (of question etc.), conclusion, formal judgment, making up one's mind, resolve, resoluteness, decided character." and on Siemens Engineering & Manufacturing Co. of India Limited v. Union of India & Anr., [1976] (Supplementary) S.C.R. page 489 where while dealing with the provisions of the Indian Customs Tariff it was held that if courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Reliance was placed on some other cases also but we do not find it necessary to deal with them in detail inasmuch as to us it appears firstly, that the Government in the instant case was all through of the opinion that Plot No. 289 did not deserve to be released from acquisition as already indicated above. Secondly, this plea loses its significance and becomes almost of academic value inasmuch as the State Government in the instant case has not issued a Notification under Section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under Section 4(1). After the issue of the fresh Notifications under Sections 4(1) and 6, what is really to be seen is whether there was justification for invoking Section 17(4) of the Act or not. We have already indicated above that there was such justification.

In support of the submission that there was no material change in the factual position between 20th January, 1981 and 20th May, 1982, learned counsel for the Respondents 1 and 2 has urged that the direction contained in the judgment of this Court dated 2nd March, 1982 in Writ Petition No. 1318 of 1982 filed by the traders was confined to the question of allotment of 200 shops only. And since the land which had already been acquired was sufficient for constructing as many shops it was not necessary to acquire Plot No. 289. As seen above, the Notification under Section 7(2)(b) of the U.P. Act No. 25 of 1964 which had been challenged before this Court in Writ Petition No. 1318 of 1982 was in regard to 54 commodities. The writ petition aforesaid had been filed by an association of traders dealing in gur, khandsari and foodgrains only. Even though technically it may be said that the direction issued by this Court was relevant with regard to about 200 shops only,

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in substance, however, that does not appear to be the correct position. The effect of the direction issued by this Court was that no trader could be compelled to come to the market yard unless shops were provided. The Krishi Utpadan Mandi Samiti, Muzaffarnagar could not afford to act contrary to this direction with regard to any of the traders who were dealing in any of the aforesaid 54 commodities. As seen above, one of the two main circumstances relied upon by the Land Acquisition Officer in giving his report dated 20th January, 1981 was that no trader was willing to come to the premises which had already been constructed and were lying

idle. This circumstance had ceased to exist with the issue of the Notification under Section 7(2) of the U.P. Act No. 25 of 1964 as a consequence whereof on shops being made available in the market yard all the traders doing wholesale business in the 54 commodities mentioned in the Notification were bound to shift to the shops in the market yard. For this provision had to be made by the Krishi Utpadan Mandi Samiti, Muzaffarnagar. In paragraph 15 of the counter-affidavit filed on behalf of the Krishi Utpadan Mandi Samiti, Muzaffarnagar in the writ petition in the High Court it was stated that the Mandi Samiti had completed construction of 120 shops and there was further scope for constructing only 90 more shops in the 60 acres of land originally acquired whereas Mandi Samiti had to construct 540 shops. In this Court a supplementary affidavit has been filed on behalf of the said Mandi Samiti in which it has been stated that so far 348 shops had been constructed and 4 shops are incomplete on account of the impugned judgment of the High Court relating to Plot No. 289. A site plan has been attached as Annexure D indicating that land on three sides of Plot No. 289 has already been acquired and on the fourth side lies a road. Annexure E to the said supplementary affidavit is a sketch map indicating the various requirements of the Mandi Samiti in connection with the construction of the market yard. The said sketch plan indicates that apart from construction of shops provision has been made for roads and parking grounds, godowns, auction platforms, open space in front of the shops, staff quarters, rest house, police chowki, check post, a building for bank as well as a post office, toilets, canteens and so on. The affect of the Notification under Section 7(2) of U.P. Act No. 25 of 1964 is that wholesale business in 54 commodities mentioned therein can be carried out only in the principal market yard. It is common knowledge that trucks, tractors with trollies and even bullock carts are used for transporting the various commodities to the principal market yard. To accommodate them provision has necessarily to be made for roads and parking grounds etc. Likewise, arrangement has also to be made for storage of the various commodities and for their auction as well as for lodging

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such of the cultivators, drivers, cleaners etc. who may have to stay on due to the exigencies of the situation. Some if not all employees attached with the principal market yard have to be provided with accommodation. Section 19 of U.P. Act No. 25 of 1964 deals with Market Committee funds and its utilisation. Sub-section (3)(vii) authorises the Market Committee to utilise its funds for payment of "cost of construction and repairs of buildings necessary for the market yards and for the health, convenience and safety for the persons using them". It gives clue to the nature of some of buildings which are to be constructed by a Market Committee and for which land has to be provided for. The requirement of the Mandi Samiti, therefore, has to be construed in this background and not in isolation with regard to its requirement for land to be covered by shops alone. Apparently, therefore, there has been a material change in the circumstances after the report of the Land Acquisition Officer dated 20th January, 1981 so as to justify Section 17(4) of the Act being invoked. In this connection reliance was placed by learned counsel for the Respondents 1 and 2 on the decision of this Court in Narayan Govind Gavate etc. v. State of Maharashtra, [1977] 1 S.C.R. page 763 where dealing with Section 17(4) of the Act it was pointed out that the purpose of the said section was

obviously not merely to confine action under it to waste and arable land but also to situations in which an inquiry under Section 5A will serve no useful purpose or for some overruling reason which should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary inquiry 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 is to be considered. It was also held in that case that the development of an area for industrial and residential purposes in itself, on the face of it does not call for any such action barring exceptional circumstances, as to make immediate possession without holding even a summary inquiry under Section 5A of the Act, imperative. On the other hand such schemes generally take sufficient period of time to enable summary inquiry under Section 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. The aforesaid decision was considered in a subsequent decision of this Court in State of U.P. v. Pista Devi, [1986] 4 SCC 251 and it was distinguished. It was held:

"Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5A of the Act.

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Perhaps, at the time to which the decision in Narayan Govind Gavate v. State of Maharashtra, [1977] 1 SCR 763 related the situation might have been that the schemes relating to development of residential areas in the urban centres were not so urgent and it was not necessary to eliminate the inquiry under Section 5A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not 'appear to demand such emergent action as to eliminate summary inquiries under Section 5A of the Act'. In Kasireddy Papaiah (died) v. Government of A.P., AIR 1975 AP 269: 1975 1 APLJ 70 Chinnappa Reddy, J. speaking for the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus:

That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that

the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some government officials.

(italicising by us)

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What was said by the learned Judge in the context of provision of housing accommodation to Harijans is equally true about the problem of providing housing accommodation to all persons in the country today having regard to the enormous growth of population in the country. The observation made in the above decision of the High Court of Andhra Pradesh is quoted with approval by this Court in *Deepak Pahwa v. Lt. Governor of Delhi*, [1985] 1 SCR 588 even though in the above decision the Court found that it was not necessary to say anything about the post-notification delay. We are of the view that in the facts and circumstances of this case the post-notification delay of nearly one year is not by itself sufficient to hold that the decision taken by the State Government under Section 17(1) and (4) of the Act at the time of the issue of the notification under Section 4(1) of the Act was either improper or illegal."

Apart from what has been pointed out above we have already held that on the facts of the instant case there was sufficient justification for invoking the provisions of Section 17(4) of the Act and dispensing with a further inquiry under Section 5A of the Act.

With regard to the submission made by learned counsel for Respondents 1 and 2 that since land other than land of Plot No. 289 which already stood acquired had also been included in the fresh Notification dated 20th May, 1982 under Section 4(1) of the Act it indicated lack of application of mind suffice it to say that the original record produced before us by learned counsel for the State Government indicates that the deliberations which took place after the direction of this Court dated 22nd October, 1979 in Civil Appeal No. 2970 of 1979 were with regard to Plot No. 289 and the inclusion of the other land in the Notification seems to be not the result of lack of application of mind on the part of the officers concerned but due to inadvertent copying out of the entire plots included in the Notification under Section 4(1) dated 26th October, 1978 at some clerical level and it does not in any way have the effect of invalidating the fresh Notifications with regard to Plot No. 289. The submission about the lack of application of mind before issuing the said Notification has also, therefore, no substance. The effect of issuing a fresh Notification under Section 4(1) and the delay in issuing it has really benefited Respondents 1 and 2 inasmuch as now they will be entitled to compensation not on the basis of the market value of Plot No. 289 as on 26.10.1978 when the earlier

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Notification under Section 4(1) was issued but as on 20th May, 1982 when the fresh Notification under the said Section was issued.

In the result, Civil Appeal No. 3446 of 1987 is allowed, the judgment dated 11th March, 1987 of the High Court in Writ Petition No. 6789 of 1982 is set aside and the said writ petition is dismissed. As a consequence Civil Appeal No. 3447 of 1987 is dismissed. In the circumstances of the case there shall be no order as to costs.

S.L.

C.A. No. 3446/87 is allowed and
C.A. No. 3447/87 is dismissed.

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JUDIS