

Before Uma Nath Singh & Daya Chaudhary, JJ.

BHUSHAN KUMAR AND ANOTHER,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. NO. 11612 OF 2008

9th March, 2009

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss.4, 5-A, 6 & 17(1)—Acquisition of land by invoking urgency provisions of S.17(1)—Dispensing with enquiry u/s 5-A—No material showing application of mind on part of authority—State Govt. issuing notifications u/ss 4 & 17(1) with a gap of 5 months—No urgency to dispense with enquiry—State Govt. failing to explain justification for dispensing with inquiry—Right to make objection u/s 5-A—Akin to fundamental right—Hearing of objections must be effective and not a mere formality—Petitions allowed, notifications quashed.

Held, that there was no ground nor was there any material to show the application of mind on the part of Authority in dispensing with the enquiry under Section 5-A of the Act. The explanations given for showing urgency also do not justify dispensing with the enquiry under Section 5-A of the Act. This view of ours also gets support from the fact that in respect of the same land, two notifications under Section 4 read with Section 17(1) of the Act were issued with a gap of five months between them, and the reason given for the second notification is that a land housing a Gurudwara, was also inadvertently included in the earlier notification. However, in the reply filed by the State, this is reiterated that there was no change in the master plan which is contrary to the assertion of the State that the second notification was issued because of the land of Gurudwara falling in the area notified earlier, which needed to be excluded for the religious sentiments of local people. Besides, the State has also taken a plea that because of typographical error, there was a mistake in the notification issued under Section 6 of the Act wherein certain items like junctions and roadside

amenities, which were included in the notifications under Section 4 read with Section 17(1) of the Act, were left. We fail to understand as to how the State is in a position to justify the application of mind when such a plea has been taken in its reply.

(Paras 20 & 21)

M.L. Sarin, Senior Advocate, with Hemant Sarin, Advocate,

Rakesh Gupta and Harkesh Manuja, Advocates, *for petitioners.*

Manoj Bajaj, Senior Deputy Advocate General, Punjab.

UMA NATH SINGH, J.

(1) This judgment shall also dispose of the connected Civil Writ Petition Nos. 10879 of 2008, 11777 of 2008 and 12469 of 2008 as all these writ petitions impugn the notifications : (i) annexure P-2, dated 30th January, 2008 (published in newspapers on 15th February, 2008) and (ii) annexure P-6, dated 22nd May, 2008 (published in newspapers on 24th May, 2008), issued under Section 4 read with Section 17(1) and (iii) annexure P-8, dated 6th June, 2008 (published in newspapers on 8th June, 2008), issued under Section 6 of the Land Acquisition Act (for short 'the Act'). However, the brief facts of each writ petition are given separately hereinafter.

(2) In CWP No. 11612 of 2008, petitioners claim to own a land measuring 4.69 acres in village Patti Jhuti, Bathinda, comprising in Khasra Nos. 4572 min, 4573 min and 4574 min. According to petitioners, this chunk of land has great potential for being used for residential and commercial purposes, both. The land in question is located on Multanian Road, and it appears from the averments in writ petition that the petitioners decided to set up a Resort (marriage palace) to be known as 'Skyland Resorts'. Accordingly, they applied to Government departments concerned for grant of no objection certificates for setting up the Resort, in 2006. On 23rd June, 2006, District Town Planner, Bathinda gave a report to the Senior Town Planner, Patiala, regarding the suitability of petitioners' land for setting up the proposed Resort. The District Town Planner, Bathinda, after inspecting the site, reported

that his office was agreeable to the proposal as such. This was also pointed out by the District Town Planner that the land in question did not fall within any town planning scheme. However, it was noticed that some electricity wires were going over the land and, thus, the petitioners were required to deposit shifting charges with P.S.E.B., which according to them, they have since already done and thereafter, the electricity wires have also been shifted. On 29th September, 2006, Punjab Pollution Board also granted no objection certificate for setting up the Resort, which was followed by grant of no objection by Punjab Urban Development Authority, (PUDA), on 26th October, 2006, and the petitioners, thus, started raising constructions on the said land. On 30th January, 2008, State of Punjab issued a notification under Section 4 of the Act, seeking to acquire a total area of 80 acres, 60 kanals, 10 marlas land in village Patti Jhuti and 9 acres, 5 kanals, 1 marla in village Behman Diwana for the public purpose like "construction of Ring Road, Phase-II, development of junctions and roadsite amenities, connecting Malout Road to Badal Road, Tehsil Bathinda and District Bathinda". The State Government also invoked the urgency provisions under Section 17(1) of the Act, and directed that the provisions of Section 5-A of the Act shall not apply in respect of this acquisition. A portion of petitioners' land as aforesaid, measuring 21 kanals and 6 marlas was found included in that notification. Besides, that part of the land which touches Multanian road and is proposed to be used towards main entry to the Resort, was also included in the notification (annexure P-2). As a result, now there is no access to the proposed Resort from the side of Multanian Road. On 15th February, 2008, after two weeks, the aforesaid notification issued under Section 4 of the Act (annexure P-2) was published in the newspapers 'Indian Express' and 'Ajit'. On 3rd March, 2008, only after over a month of issuance of the notification, an entry was made in the Rapat Roznamcha of village Patti Jhuti to show the carrying out of publication of the substance of notification in the locality. Thus, from the date of issuance of Section 4 notification, a period of 1 month and 15 days was lost in effecting publication and making entry in Rapat Roznamcha. It is also alleged that on 11th April, 2008, the petitioners met the Minister incharge of Department of Public Works and submitted a representation (annexure P-3) against the acquisition of a portion of their land being used for the construction

of a marriage palace as also the piece of land to be used for providing a passage from Multanian Road to the marriage palace. Their representation was marked to the officers of department for examination and providing necessary assistance to competent authority. On 23rd April, 2008, the SDM, Bathinda, submitted his report (annexure P4) to the Deputy Commissioner, mentioning that the petitioners had started the construction on the land under acquisition only after obtaining no objection certificates from PUDA, District Town Planner and Pollution Control Board etc. It was also pointed out that due to acquisition of about 40% of the land in question, the petitioners are left with almost no land to provide an access to the Resort. This was also pointed out that the land under acquisition, fell within a junction and, in order to give the access to Resort from Multanian Road, some part of the junction would need to be left out. On 16th May, 2008, SDM concerned (Respondent No. 2),—*vide* his letter (annexure P-5) wrote to the Executive Engineer (B&R), Bathinda, informing him that the land of petitioners does not fall in the Ring Road, however, it comes within a pocket planned next to the Ring Road. This was also pointed out that as a result of acquisition, the petitioners would be left with no access to the remaining part of their land housing the Resort/marriage palace. This was clarified by Respondent No. 2 that for any further action in this regard, the acquiring department would alone be the proper authority to issue a corrigendum for releasing the said piece of land as has been done in respect of release of other lands like the one situated in village Bhagwargarh on Sangat Kotshamir Road. Thereafter, on 22nd May, 2008, State Government of Punjab issued another notification (annexure P-6) under Section 4 read with Section 17(1) of the Act seeking to acquire 81 acres, 2 kanals, 15 marlas of the land in village Patti Jhuti and 9 acres, 5 kanals and 1 marla land in village Behman Diwana, for the same public purpose, namely : “construction of Ring Road Phase-II, development of junctions and road site amenities”. That notification again included the land of petitioners measuring 23 kanals, 4 marlas. According to writ petitioners, the notification (annexure P-6) covered the same area which was notified in the earlier notification (annexure P-2). Now, the difference between the two notifications is said to be that the areas of some khasra numbers being acquired under the later notification (annexure P-6), have been increased while that of other

Khasra numbers have been decreased. Moreover, some khasra numbers, which were included in the earlier notification (annexure P-2), have been excluded from the latter notification (annexure P-6). This is also mentioned that the area of 21 kanals and 6 marlas of land belonging to the petitioners, which was acquired,—*vide* the earlier notification (annexure P-2), has been increased to 23 kanals and 4 marlas in the later notification (annexure P-6). Besides, the portion of land which alone could provide the passage from Multanian Road to the Resort was again included in the later notification (annexure P-6), like the earlier one. Now after a gap of 13 days, State Government of Punjab issued the notification under Section 6 of the Act, which was published two days thereafter on 8th June, 2008, in the English Daily “Tribune”,—*vide* annexure P-8. Moreover, the public purpose mentioned in the later notification (annexure P-6) was changed to read only as “for Ring Road Phase-II, Bathinda”. Thus, the items like construction of junction and Road Site amenities, do not find mentioned in the notification issued under Section 6 of the Act. The Executive Engineer concerned,—*vide* his letter (annexure P-9), also wrote to the SDM (Respondent No. 2) that the passage to the Resort of the petitioners falls in a pocket under the notification and thus, they would be left with no approach passage from Multanian Road to the Resort. He also clarified that there would be no obstruction in the construction of Ring Road if the land meant for use as the passage to the Resort was released. The Executive Engineer, thus, recommended the release of land to be utilized for the passage. The SDM (Respondent No. 2) then wrote to Additional Secretary, Department of Public Works (B&R), Chandigarh,—*vide* Annexure P-10, that the petitioners had started construction of the Resort after obtaining NOCs from the departments and thus, with the acquisition of their land, they would be left with no passage to the Resort. Like the report of Executive Engineer, the SDM, also pointed out that with the release of land to be used as passage, except the area marked as ABCD in a plan, there would be no obstruction to the construction of Ring Road. Respondent No. 2 also pointed out that it would rather be in the public interest to release the land for passage to the petitioners. However,—*vide* annexure P-11, a notice under Section 9 of the Act was issued.

(3) In C.W.P. No. 10879 of 2008, the total area of land belonging to village Patti Jhuti is 81 acres, 2 kanals, 15 marlas, whereas to Village Baihman Dewana is 9 acres, 5 kanals, 01 marla. Thus, the entire area would work out to 90 acres, 7 kanals and 16 marlas.

(4) Learned counsel for petitioners submitted that respondents herein did not carry out proper publication of the substance of notification (Annexure P-3) in the locality as required under mandatory provisions of the Act. Moreover, an entry to show carrying out of publication of the substance of notification (Annexure P-3) in the locality in the Rapat Roznamcha of village Patti Jhuti was made after a month of the issuance of the notification. Thus, the entry was only a paper formality. As per notification, the acquisition intends to lay an eight kms road known as the Ring Road Phase-II stratching from Malout Road to Badal Road. The respondents have also projected the development No. 6 junctions/pockets with some commercial buildings. Though this petition was filed by 30 petitioners, but,—*vide* our order dated 24th September, 2008, in C.M. No. 18823 of 2008 (application under Section 151 CPC, for dismissing the writ petition as withdrawn *qua* petitioner Nos. 5, 6, 22, 23, 26, 27, 28 and 30), the writ petition was dismissed as withdrawn in respect of the said petitioners.

(5) Coming to the facts of C.W.P. No. 12469 of 2008, which has been filed by two land-owners, the total area of land involved is 2 bighas and 1 biswa (comprising of Khasra No. 5997/4341, Khewat Khatoni No. 1019/5735 as per jamabandi for the year 2002-2003), situated within the municipal limits of Bathinda. The land of petitioners has also been sought to be acquired by the same notifications with the same public purpose, as detailed herein above in order writ petitions. Besides raising contentions like other writ petitioners, petitioners herein have also contended that they have raised construction of a two room set and a boundary wall on their land and a few trees are also standing inside the boundary. According to writ petitioners, the possession of land, and also the constructions which were raised thereon after receiving approval of site plan have already been recognized by the Municipal Corporation, Bathinda,—*vide* Survey No. 27596 allotted to the property. Further, this is also alleged that the second notification in respect of almost the same total area of land with a little variance was issued

only in order to help certain influential persons whose lands the State Government wanted to release. According to writ petitioners, though the total stretch of land is 8 kms., but it has been planned in such a manner that it would only turn out to be a jig-jag road and further, the junctions and pockets sought to be set up, are designed to help grow only *the stretch of one km. urban area.*

(6) In CWP No. 11777 of 2008, petitioners have asserted that they purchased 0K-16M of land, situated in Khasra No. 4573, in the revenue estate of village Patti, Jhuti, Tehsil and District Bathinda,—*vide* sale deeds dated 29th March, 1996 and 8th January, 1999. After purchasing the aforesaid land, they started on industrial unit for manufacturing batteries etc. in the name of M/s Capital Batteries, since the year 1999. Petitioners also got this firm registered as an ‘SST’ unit with the District Industries Centre, Bathinda, and further they were granted sales tax exemption,—*vide* certificate dated 18th April, 2000 (Annexure P-5). Thereafter, they applied for issuance of a fresh registration certificate under the Punjab VAT Act, and were granted the new registration number,—*vide* a letter dated 14th January, 2005 (Annexure P-6). They have challenged the impugned notifications, *inter alia*, on the ground that initially, as per the plan drawn by Town and Country Planning Department, the road in question was to pass through Khasra No. 4572, situated parallel to their land under acquisition. This is also alleged that as Khasra No. 4572 belongs to the family of a local politician from the ruling party, who has been impleaded as respondent No. 5 herein, the State Government has changed the alignment of Ring Road, Phase-II without getting an approval from the Town and Country Planning Department, to protect his interest, and thus,—*vide* notification dated 22nd May, 2008, petitioners’ land under acquisition falling in Khasra No. 4573, has also been acquired.

(7) We have heard learned counsel for parties and perused the writ records.

(8) Learned senior counsel for petitioners submitted that the petitioners are not opposed to construction of the proposed Ring Road,

but they are certainly aggrieved by the manner the acquisition notifications have been issued by invoking the urgency provisions of Section 17(1) of the Act. It also appears that the State Government itself was not sure as to whether there is any urgency and which land needs to be acquired for the public purpose. This is apparent from the facts of these writ petitions that the State Government issued notifications under Section 4 of the Act twice after invoking the urgency provisions of Section 17(1) of the Act. First notification under Section 4 of the Act (annexure P-2) is dated 30th January, 2008, whereas, the second one under Section 4 of the Act (annexure P-6) is dated 22nd May, 2008. Both these notifications seem to cover more or less the same area with a little difference of a few khasra numbers. Thus, when the State Government could take three months time to decide as to what land it needs to acquire for the public purpose, this is very well clear that there was no urgency to invoke the provisions of Section 17(1) of the Act, and the Government could give 30 days time to land owners to file their objections under Section 5-A of the Act. In support of these contentions, learned senior counsel for petitioners placed reliance on the judgments as : (i) **State of Punjab versus Sudhir K. Dhingra & another (1)**; (ii) **State of Punjab versus Gurdial Singh and others (2)**; (iii) **Gurdev Singh versus State of Punjab and another (3)**; (iv) **Om Parkash and another versus State of U.P. & others (4)**; and (v) **Gurcharan Singh and others versus State of Punjab and others (5)**.

(9) This is also a submission of learned senior counsel that filing of objections under Section 5-A of the Act is a very valuable right available to a land owner. He referred to the judgment of Hon'ble the Apex Court in **Hindustan Petroleum Corporation versus Darius Shapur (6)** (Paras 6, 9 to 12 & 29), wherein this right has been held to be akin to a fundamental right. Such a valuable right, if required to be taken away, can be done so only in exceptional circumstances.

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- (1) 1978 Revenue Law Reporter 530
 - (2) AIR 1980 SC 319
 - (3) 1995 Revenue Law Reporter 30
 - (4) 1998 (6) S.C.C. 1
 - (5) 2007 (1) PLR 261
 - (6) 2005 (7) S.C.C. 627

According to learned senior counsel, no such exceptional circumstances have been shown by the State Government in the present case, particularly, for the fact that the land in question is required for construction of junctions and roadside amenities and not even the main Ring Road. Learned senior counsel while challenging the decision of Government to invoke the provisions of Section 17(1) of the Act, submitted that there is nothing on record to suggest that the officials concerned while putting up the proposal of impugned notification before the concerned Minister, had even sought and/or obtained his permission for dispensing with the requirements of Section 5-A under Section 17 (4) of the Act. The only permission sought and specifically granted was to invoke Section 17(1) of the Act, and dispensing with the filing of objections under Section 5-A of the Act, is not an automatic process to flow from the application of provisions of Section 17(1) of the Act and a decision under Section 17(4) of the Act ought to have been taken before issuing the impugned notifications. To fortify his submission, learned senior counsel cited the judgment of Hon'ble the Apex Court in **Union of India versus Mukesh Hans (7)** (paras 29 to end). This is also a submission of learned senior counsel that the Executive Engineer, PWD was a member of the Site Selection Committee (subject matter of CWP No. 11612 of 2008), and,—*vide* his correspondence dated 9th June, 2008 (annexure P-9), he reported that there would be no obstruction in the construction of Ring Road by releasing the passage from Multanian road to the Resort of the petitioners. Thought it appears that initially he had given a contrary report, but in the later report, he recommended the release of said land meant to be utilized for passage to Resort, with reasons. Petitioners were constructing the Resort on the land in dispute when the impugned notification were issued. The construction started only after obtaining necessary approval and sanctions from PUDA, Pollution Control Board, District Town Planner etc. Thus, the State Government acted contrary to decisions taken by its functionaries earlier and is thus, estopped from acquiring the land in question. According to petitioners, by acquisition of this land, they would be left with no access to the Resort from the main road. Learned senior counsel, in support of his

contention, has placed reliance on the judgments as (i) **Savitri Devi versus State of Haryana and others (8)** (paras 17 & 21); (ii) **Eros City Developers (P) Ltd. versus State of Haryana and others (9)** (para 26 to 28), and (iii) **Busching Schmitz (P) Ltd., versus State of Haryana and others (10)** (para 18). This is also a submission of learned senior counsel that there is no mention about the junctions and roadside amenities in the notification under Section 6 of the Act (annexure P-8), thus, the State Government cannot acquire the land in dispute for such purposes.

(10) In order to answer the averments made in the writ petitions, the State has filed replies by way of counter affidavits sworn by one Manjit Singh, Executive Engineer, in CWP Nos. 11612 of 2008, 12469 of 2008 and 11777 of 2008, and has adopted the reply filed in CWP No. 11612 of 2008, for the purpose of disposal of CWP No. 10879 of 2008,—vide our order dated 24th September, 2008. This is averred in reply to CWP No. 11612 of 2008 that only those portions of land which are needed for the construction of Ring Road, Phase-II have been sought to be acquired under the impugned notifications. Further, out of the entire land measuring 90 acres, 7 kanals and 16 marlas, which have been sought to be acquired, in respect of 95% thereof, possession has been taken after payment of compensation. The petitioners are said to be owners of 4.69 acres of the land in Khasra No. 4572 min, 4573 min and 4574 min, as per revenue record, and out of 4.69 acres, only 2 acres, 7 kanals and 12 marlas of land have been acquired for the purpose of construction of Ring Road, Phase-II, and the balance 1 acre and 2 kanals land is still with the petitioners. According to the State, as this land would be very less in area for building up a Resort, therefore, the claim for leaving passage to the Resort is wrong and baseless. The State has also denied knowledge about the issuance of no objections from different departments for construction of the Resort. Construction of Ring Road, according to reply, is required to divert the traffic outside the city so as to keep the city free from air and sound pollution. The reply has justified the invoking of urgency provisions

(8) 2007 (4) PLR 240

(9) 2008 (2) PLR 492

(10) (1997) 1 PLR 183

of Section 17(1) of the Act and dispensing with the provisions of Section 5-A of the Act, only on the ground of a mention like that in the notifications. Further, according to averments in reply to para 6 of the writ petition, as the notification under Section 6 of the Act has already been issued, it would not be possible to make a change at this stage, however, there is no complete denial of the assertions of petitioners in respect of their claim over the land. While strongly denying the allegations that the substance of notification (annexure P-2) was not carried out in the locality, in reply to para 8 of the writ petition, the State has averred as under :

“..... It is specifically denied that petitioners did not carry out proper publication on the substance of notification Annexure P-2 in the locality as per mandatory provisions of the Act. In fact, the answering respondent made proper publication on the instance of notification Annexure P-2 in the locality by publication in two newspapers as well as by beat of drum. A rapat in this regard was also lodged in the Rapat Roznamacha of the Halqa Patwari. It is specifically denied that Rapat Roznamacha of the Halqa Patwari was merely a paper entry rather the same was got entered in the Rapat Roznamacha after due publication of the substance of notification by beat of drum. It is further submitted that all the residents of that locality including petitioners were well aware of the substance of notification and they started making objections to the concerned official, i.e., Land Acquisition Collector. The petitioners also started making representations to different authorities against the above said acquisition.....”

(11) As regards the necessity of invoke the urgency provisions of Section 17(1) of the Act, the State has tried to justify it by stating in reply to para 12 of the writ petition, as under :—

“..... It is also admitted that answering respondents had invoked urgency provisions of the Act, but rest of the para as stated is wrong hence denied. It is specifically denied that there was/is no urgency in the matter or that provisions

of Section 5(A) of the Act have been by-passed without application of mind. The petitioner is well conversant with the notification wherein clearly notified that his land is urgently needed for the construction of said road and provisions of Section 5-A shall not apply in regard to this acquisition. Hence, all these averments are false and baseless. The urgency clause was invoked *vide* the above said notification because there was/is real urgency of construction of this Ring Road, Phase-II. This Ring Road Phase-II has been purposed to link two National Highways, i.e., Dabwali Bathinda NH-64 and Malout Bathinda NH-64. Bathinda is a fast developing city and various important projects have been announced by the Government.....”

(12) Coming to second notification dated 22nd May, 2008, issued under Section 4 of the Act to acquire 81 acres, 2 kanals and 15 marlas of land of village Patti Jhuti and 9 acres, 5 kanals and 1 marla land of village Behman Diwana, the State in reply to para 13 of the writ petition, has again tried to justify the notification almost on the same ground, except stating further that there were some discrepancies and mistakes in the first notification and also in the records and in order to correct and verify them, a joint inspection of the area was conducted. Another vital point raised in the writ petition is that in the notification dated 6th June, 2008 (annexure P-8), issued under Section 6 of the Act, the public purpose regarding ‘development of junctions and roadside amenities’ has not been mentioned. The State has tried to justify it by mentioning in reply to para 17 of the writ petition, that there was some typographical error. In reply to para 20 of the writ petition, the respondent-State has not denied the necessity for passage to the Resort and it is mentioned that the Government has conveyed to the Land Acquisition Collector, Bathinda on 7th July, 2008 that this question is to be decided by the competent authority at the appropriate stage, but there is no denial of the claim of the petitioners.

(13) As far as the reply to CWP No. 12469 of 2008 is concerned, the respondent-State has taken the same stand as averred in reply in CWP No. 11612 of 2008. Moreover, the Government has tried to justify the issuance of second notification dated 22nd May, 2008 (annexure

P-6) under Section 4 read with Section 17(1) of the Act, by mentioning a new fact which has not been taken in replies to other writ petitions, as :

“..... It is further submitted that all the time of issuance of notification dated 30th January, 2008 inadvertently some portion of Gurudwara Sahib and its compound alongwith residential house constructed in compound of Gurudwara Sahib was purposed to be acquired for construction of Ring Road. This mistake had occurred because no Nishan Sahib was in existence in the compound of Gurudwara Sahib, but later on the residents of that locality orally objected to the acquisition of Gurudwara Sahib and its property. To avoid any religious resentment/complications, amendment was proposed to be made in the earlier notification, so that land/property of Gurudwara Sahib may be excluded from acquisition. Because of all this, revised notification dated 22nd May, 2008 (notified in Gazettee on 23rd May, 2008) has been issued. The facts regarding urgency of construction of this road has (have) also been mentioned in the foregoing paras. The revised notification and urgency provisions were invoked by the answering respondents after due application of mind and after considering public interest and development of Bathinda City. It is denied that the alignment in the revised notification was changed to help some influential persons as there is no change in alignment at all as compared to notification u/s 4 issued on 30th January, 2008.....”

(14) In reply to 4th writ petition being No. 11777 of 2008, the respondent-State has again taken a similar stand except adding further that the industry of the petitioners is in the middle of road, therefore, it has been sought to be acquired.

(15) Learned Senior Deputy Advocate General for the State of Punjab submitted that in the facts and circumstances of the case,

issuance of two notifications under Section 4 read with Section 17 (1) of the Act dispensing with the provisions of Section 5-A of the Act which mandate the hearing of objections of land owners, does not suffer from any defect. Learned State counsel also placed reliance on some judgements of Hon'ble the Apex Court and this Hon'ble Court in support of his contentions, which are as ; (i) **M/s Sheikhar Hotels Gulmohar Enclave and another versus State of U.P. and others (11)**; (ii) **Welgrow Buildcon Private Limited and others versus State of Haryana and others (12)**; (iii) **State of U.P., versus Smt. Pista Devi and others (13)**; (iv) **Jai Narain and others versus Union of India and others (14)**; (v) **Union of India and others versus Praveen Gupta and others (15)**; (vi) **Raghunath and others versus State of Maharashtra and others (16)** and (vii) **Sadhu Singh and others versus State of Haryana and others (17)**.

(16) On a careful consideration of the aforesaid averments and submissions, we are of the view that these writ petitions need to be adjudicated in the premises as : (i) whether there was an urgency to dispense with the enquiry under Section 5-A of the Act which appears to be contrary to the background wherein the State Government has issued two notifications (annexures P-2 & P-6) under Section 4 read with Section 17 (1) of the Act in respect of the same area of land with a little increase and decrease in the area of some khasra numbers with a gap of five months between these notifications; (ii) whether the question of urgency has been sufficiently explained by stating that the Ring Road, Phase-II is being constructed to connect two Highways in order to divert the traffic outside the city Bathinda, said to be a fast developing city wherefor, the State Government has announced various development projects to be set up, and (iii) whether in the facts and circumstances of this case and on a careful reading of the ratio of

(11) AIR 2008 S.C. 2284

(12) 2008 (2) RCR (C) 436

(13) AIR 1986 S.C. 2025

(14) AIR 1996 SC. 697

(15) AIR 1997 S.C. 170

(16) AIR 1988 S.C. 1615

(17) 2008 (2) RCR (C) 613

judgments of Hon'ble the Apex Court reported in, (a) **Union of India and others versus Mukesh Hans (18)**; (b) **Hindustan Petroleum Corporation Limited versus Darius Shapur Chenai and others (19)** and (c) **M/s Sheikhar Hotels Gulmohar Enclave and another versus State of U.P. and others (20)**, deprivation of an important right to be heard on objections under Section 5-A of the Act, which is akin to the fundamental right of a land owner, can be justified.

(17) A Three Judge Bench of Hon'ble the Apex Court in the case of **Mukesh Hans (supra)** (para 31, 32, 33, 35 & 36), has articulated the importance of the right of a land owner under Section 5-A of the Act, as under :

“.....31. Section 17 (4) as noticed above, provides that in case where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub-section (1) or (2) of Section 17, it may direct that the provisions of Section 5-A shall not apply and if such direction is given then Section 5-A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of Section 4(1) notification and possession can be made.

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17 (4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that alongwith the existence of such urgency or unforeseen emergency, there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended

(18) (2004) 8 S.C.C. 14

(19) (2005) 7 S.C.C. 627

(20) AIR 2008 S.C. 2284

the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated under Section 17 (1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17 (1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A, but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.

33. An argument was sought to be advanced on behalf of the appellants that once the appropriate Government

comes to the conclusion that there is an urgency or unforeseen emergency under Section 17(1) and (2), the dispensation with inquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because sub-section (4) of Section 17 itself indicates that the "Government may direct that the provisions of Section 5-A shall not apply" (emphasis supplied) which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will *ipso facto* have to direct the dispensation of the inquiry. For this, we do find support from a judgment of this Court in the case of **Nandeshwar Prasad versus State of U.P.**, wherein considering the language of Section 17 of the Act which was then referable to waste or arable land and the U.P. Amendment to the said section, this Court held thus : (SCR pp 436-37) :

"It will be seen that Section 17(1) gives power to the Government to direct the Collector, though no award has been made under Section 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under section 17 (1), taking possession and vesting which are providing in Section 16 after the award under Section 11 are accelerated and can take place fifteen days after the publication of the notice under Section 9. Then comes Section 17(4) which provides that in case of any land to which the provisions of sub-section (1) are applicable, the

Government may direct that the provisions of Section 5-A 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 publication of the notification under Section 4(1). It will be seen that it is not necessary even where the Government makes a direction under Section 17 (1) that it should also make a direction under Section 17(4). If the Government makes a direction only under Section 17(1) the procedure under Section 5-A would still have to be followed before a notification under Section 6 is issued, though after that procedure has been followed and a notification under Section 6 is issued the Collector gets the power to take possession of the land after the notice under Section 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under Section 17 (4) that it becomes unnecessary to take action under Section 5-A and make a report thereunder. It may be that generally where an order is made under Section 17 (1), an order under Section 17 (4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order under Section 17(1) or Section 17 (4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand.”

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35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section

17 (4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of Munshi Singh versus Union of India, wherein this Court held thus : (SCC p. 342 para 7) :

“7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made..... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A.”

36. It is clear from the above observation of this Court that right of representation and hearing contemplated under Section 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right, then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A.....”

(18) Learned Senior Deputy Advocate General, Punjab, has placed reliance on a latest judgment of a Division Bench of Hon'ble the Apex Court in Sheikhar Hotel's case (*supra*), to justify the stand of the State necessitating the act of dispensing with the enquiry under Section 5-A of the Act. In this judgment, the Three Judge Bench judgment has also been discussed and distinguished on the ground that

the land in question therein was required for setting up a Transport Nagar and four laning of National Highway No. 91 in order to deal with traffic congestion in Delhi and National Capital Region.

(19) On the contrary, in the instant case, this is stated in the reply that the Ring Road is required just to divert the traffic from the city area of Bathinda, and this is not a case of traffic jam or congestion in any area of the National Capital Region. Another plea taken to justify the stand of State Government is that the Government has announced various development projects for Bathinda city, but there is nothing on record to show anything further beyond such announcement. This is also admitted in the reply that the city is situated near two National Highways, therefore, it cannot be said that the proposed Ring Road alone would bear the major traffic load from the city. Thus, in our opinion, the ratio of judgment in *Sheikhar Hotels' case* (*supra*) does not advance the stand of the State any further.

(20) In yet another judgment in the case of *Hindustan Petroleum Corporation Limited* (*supra*), this is clearly held that Right to make objection under Section 5-A of the Act having regard to Article 300-A is akin to a fundamental right. This is also stressed that hearing of objection under Section 5-A of the Act must be effective and not a mere formality. There must be proper application of mind in regard to public purpose by considering relevant factors and rejecting irrelevant factors. Thus, all these three judgments go to support the submission of learned senior counsel for petitioners that there was no ground nor was there any material to show the application of mind on the part of Authority in dispensing with the enquiry under Section 5-A of the Act.

(21) Besides, the explanations given for showing urgency, as reporduced herein above, also do not justify dispensing with the enquiry under Section 5-A of the Act. This view of ours also gets support from the fact that in respect of the same land, two notifications under Section 4 read with Section 17(1) of the Act were issued with a gap of five months between them, and the reason given for the second notification is that a land housing a Gurudwara, was also inadvertently included in the earlier notification. However, in the reply filed by the State, this is reiterated that there was no change in the master plan which

is contrary to the assertion of the State that the second notification was issued because of the land of Gurudwara falling in the area notified earlier,—*vide* Annexure P-2, which needed to be excluded for the religious sentiments of local people. Besides, the State has also taken a plea that because of typographical error, there was a mistake in the notification issued under Section 6 of the Act (annexure P-8), where in certain items like junctions and roadside amenities, which were included in the notifications (annexures P-2 and P-6), under Section 4 read with Section 17 (1) of the Act, were left. We fail to understand as to how the State is in a position to justify the application of mind when such a plea has been taken in its reply.

(22) In view of all the aforesaid, we are unable to agree with the aforesaid contentions of the State and thus, we quash the notifications dated 30th January, 2008 (annexure P-2), 22nd May, 2008 (annexure P-6), and 6th June, 2008 (annexure P-8), and allow these four writ petitions without any order as to costs.

R.N.R.

Before Ranjit Singh, J.

RESHAM SINGH,—*Petitioner*

versus

**THE FINANCIAL COMMISSIONER & SECRETARY TO
GOVT. HARYANA, CHANDIGARH & OTHERS,—*Respondents***

C.W.P. No. 6998 of 2008

31st March, 2009

Constitution of India, 1950-Art. 226—Maintainability—Sanction of mutation in favour of petitioner on basis of sale deed—Challenge thereto—Whether petition on question of sanctioning mutation is maintainable—Held, yes-Respondents failing to establish right or sale deed in their favour—Sufficient material on record indicating possession of petitioner and title of land decided in favour of seller from whom petitioners purchased land—Mere pendency of suit is no reason to interfere in order of mutation—