Supreme Court of India
Nand Kishore Gupta & Ors. Vs. State Of U.P.& Ors. on 8 September, 2010
Author: V Sirpurkar
Bench: V.S. Sirpurkar, Cyriac Joseph
"Reportable"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7468 OF 2010

(Arising out of SLP (C) No. 33194 of 2009)

Nand Kishore Gupta & Ors. ... Appellants Versus

State of U.P. & Ors. ...Respondents WITH

CIVIL APPEAL NO. 7469 OF 2010

(Arising out of SLP (C) No. 33958 of 2009)

J.S. Horticulture Pvt. Ltd. ...Appellant Versus

State of U.P. & Ors. ...Respondents WITH

CIVIL APPEAL NO. 7470 OF 2010

(Arising out of SLP (C) No. 35336 of 2009)

Balbir Singh & Anr. ...Appellants Versus

State of U.P. & Ors. ...Respondents 2

J U D G M E N T

V.S. SIRPURKAR, J.

1. This judgment will govern Special Leave Petition (Civil) Nos. 33194 of 2009, 33958 of 2009 and 35336 of 2009.

2. Leave granted in all the Special Leave Petitions.

3. In the first two Special Leave Petitions, judgment passed by the High Court of Judicature at Allahabad dated 30.11.2009, is in challenge while in the third Special Leave Petition, judgment dated 5.10.2009 on the same subject is impugned. By the impugned judgments, the Writ Petitions filed by the land owners challenging the notification under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter called `the Act' for short) relating to Yamuna Expressway Project, were dismissed by the High Court. In the Writ Petitions, directions were sought, firstly not to give effect to the notifications issued and further not to dispossess the landholders/ petitioners after demolishing their constructions on the lands which were proposed to be acquired. All the challenges were repelled by the High Court. The High Court, in the judgment dated 30.11.2009 3

passed in Civil Misc. Writ Petition No.31314 of 2009 (Nand Kishore Gupta & Ors. Vs. State of U.P. & Ors.), basically pointed out that out of 12,282 land owners, 11,397 had already received their compensation under the agreement and the challenge related only to 21.03 hectares out of 1,604 hectares of land. The High Court also took the view that the scales of justice must tilt towards the right to development of the millions who will be benefited from the road and the development of the area, as against the human rights of 35 petitioners therein, whose main complaint was that they were not heard before the declaration under Section 6 of the Act. The High Court also declined to give any direction to the State Government to consider to exempt 21.03 hectares of land relating to the 35 petitioners therein on account of the fact that the construction of the road had to be made in an alignment and that alignment could not be changed. Identical view was taken in another Writ Petition filed by one Balbir Singh. The High Court also expressed its concerns that any direction to exempt the land covered by the construction might seriously jeopardize the Project. The High Court also reiterated that the acquisition of the land for interchange of the road was the essential part of the Project, as also the 4

construction of bridges, culverts and interchanges, which were essential for the fast moving six lane Expressway.

4. Before we approach the arguments, it would be interesting to see some facts of this litigation.

5. A notification dated 20.2.2009 was issued by the Government of Uttar Pradesh under Section 4(1) read with Sections 17(1) and 17(4) of the Act. Thereunder, the lands described in the schedules appended thereto in District Agra, Pargana Etmadpur, Tehsil Etmadpur, Village Kuberpur were covered for a public purpose, namely, the construction of the interchange under the Yamuna Expressway Project in District Agra through Yamuna Expressway Industrial Development Authority (hereinafter called `YEIDA' for short). In fact, in the year 2001 itself, the State Government had taken a decision for the construction of Yamuna Expressway which sometimes earlier was named as Taj Expressway, which was to proceed from Greater Noida to Agra. This was to be done on Build, Operate and Transfer (BOT) basis and the builder was to get the rights to collect the tolls for a period of 36 years from the date of commencement of commercial operations. On account of the public outcry, 5

the State Government appointed a Commission of Enquiry under the Chairmanship of Mr. Justice Siddheshwar Narain (Retd.). A Public Interest Litigation was also filed. The Project was cleared in the enquiry and the Public Interest Litigation also ended in favour of the Government of U.P. It is on the backdrop of this that the State Government came up with a notification dated 20.2.2009, i.e. only after its way was cleared, which itself took about 8 years. This was the reason given for making applicable the urgency clause under Sections 17(1) and 17(4) of the Act. Legal notices were served by those who were affected, but ultimately the State came out with a notification dated 15.6.2009 under Section 6(1) read with Sections 17(1) and 17(4) of the Act. It is mainly the complaint of the appellants that they had purchased the land long time back and their names were duly mutated in the Revenue records and they had thereafter raised constructions over the land in question, and in those constructions, they were running their business like shops, cold-storage etc. The appellants also complained that the area which was proposed to be cleared for the interchange, if acquired, the appellants would suffer immensely. The appellants very seriously challenged the application of urgency 6

under Sections 17(1) and 17(4) of the Act to these acquisitions, thereby depriving the appellants of an opportunity to be heard under Section 5A of the Act. Even before us, that is the main thrust of the arguments on behalf of the appellants.

6. The other major challenge opposing the acquisition related to the concept of `public purpose'. It was tried to be suggested that this was in fact an acquisition without any public purpose for the Company- J.P. Infratech Ltd.-respondent No.5 and would be covered under Part VII of the Act. In that, the learned Counsel appearing on behalf of the appellants urged that there could be no dispensation with enquiry under Section 5A of the

Act. It was pointed out that the compensation was payable by the private party under the scheme and, therefore also, this could not be viewed as a public purpose. It was also suggested that this was virtually a perpetual lease in favour of the Company and, therefore, the Company was getting deemed proprietary rights.

7. In the two impugned judgments, the Allahabad High Court has repelled all the challenges. In fact in the earlier round of litigation that is in the Public 7

Interest Litigation itself the Division Bench of the Allahabad High Court repelled the challenges to this Project which was then known as Taj Expressway Project and the land acquisition made therefor.

8. Before we approach the questions argued, it will be better to refer to the judgment of the Allahabad High Court in the Public Interest Litigation, which, in itself, refers the enquiry held by Mr. Justice Sidheshwar Narain (Retd.). In fact one of the prayers in the Public Interest Litigation was for production of the Report dated 12.10.2006 of the Commission headed by Mr. Justice Narain. The other prayers were to initiate de novo judicial enquiry by a sitting High Court Judge and further to issue a Writ of Mandamus declaring the alleged Enquiry Report as illegal, invalid and ineffective and not enforceable in the eyes of law and lastly to pass any other Writ, order or direction. This Writ Petition was then amended and the Concession Agreement dated 7.2.2003 entered between the Taj Expressway Authority and the Jaiprakash Industries (hereinafter called `the Company' for short) also came to be challenged. This Taj Expressway Authority was constituted under Section 3 of the U.P. Industrial Area 8

Development Act, 1996 which later on was named as Yamuna Expressway Industrial Development Authority (YEIDA). The petitioners prayed for a declaration that this agreement was null and void.

9. Another prayer added by way of an amendment was for investigation by the special investigation team into the entire deal of Taj Expressway Project. The High Court in its well considered judgment, took note of the three challenges by the petitioners to the said Commission of Enquiry Report. The said challenges were: (1) that the award of contract to the Company was activated by mala fides;

2) that the tender process itself was faulty; and 3) that the terms of contract were unconscionable and against the public interest.

10. All the three challenges were refuted by the Division Bench of the High Court by referring to the Report itself which was filed before it at the instance of the State Government. It recorded a finding that there was no mala fide on the part of anybody. The Commission had also come to the conclusion that the Agreement with the Company was arrived at after proper scrutiny on the part of the Government Officers and there was no mala fide on the alleged connection of one 9

Shri Anup Mishra or his father with the Company. The Division Bench affirmed this finding. The Division Bench also recorded a finding that the petitioner therein was not able to place any other material on record to show that the process itself was faulty or that the terms of contract were unconscionable and against the public interest. While considering the amendment made by the petitioner to the Writ Petition by which fresh challenges were thrown against the Agreement dated 7.2.2003, the Division Bench came to the conclusion that there was no procedural infirmity in the contract having been awarded to the Company. The Division Bench then considered the other challenges namely:

1) huge chunks of lands had been given to respondent No.2 on lease for 90 years at a very nominal lease rent.

2) Exemption of stamp duty has been given to respondent No.2 causing loss of revenue to the State exchequer.

11. The Division Bench in detail considered the nature of lease and the nature of the transaction. For that it went on to analyze the whole Project which had the three objectives, namely:

1

(1) provide a fast moving corridor to minimize travel time

(2) to connect the main township/ commercial centres on the Eastern side of Yamuna

(3) to relieve the National Highway No.2 which was already congested and ran through the heart of cities like Faridabad, Ballabhgarh and Palwal."

12. The High Court then discussed the financial ramifications resulting out of the Agreement and then after referring various judgments of this Court, went on to decide the question whether before finalizing the contract in favour of respondent No. 2 Company, the State Government or the Taj Expressway Authority had undertaken the requisite research. It went on to record a finding as found in the Commission of Enquiry that the authorities had examined all the aspects of the matter before issuing the bid document inviting offers. It also recorded that there was proper publication of the Notice Inviting Tender (NIT) in various national Dailies and that 19 parties had responded to the NITs. The High Court, therefore, recorded a finding that there was nothing shady and the entire process was transparent. The High Court also registered a finding that it could not be said that undue concessions were given to the Company in view of the fact that all such concessions had already been spelt out in the bid document. Thus, 1

the High Court approved of the findings reached in the Commission of Enquiry by Mr. Justice Siddheshwar Narain (Retd.). Ultimately, the High Court dismissed the Public Interest Litigation.

13. It is on this backdrop that number of Writ Petitions came to be filed again giving rise to the two impugned judgments.

Basically two questions emerge from the arguments made at the Bar before us. They are:-

1. The acquisition itself cannot be said to be for the public purpose:

(a) as the object of this acquisition is not covered by the definition of `public purpose' in Section 3 (f) of the Land Acquisition Act.

(b) it cannot be said that this acquisition would come under Part II of the Land Acquisition Act and in fact it must be

considered to be under Part VII of the Act

since it virtually amounts to acquisition

of land for J.P. Infratech-a company(respondent No.5).

(c) the compensation for the land acquisition is coming wholly from the Jaypee Industries and not from the 1

Government or from YEIDA and, therefore, it is not an acquisition for public purpose.

(d) the acquisition for so-called interchange is not at all necessary and it is actually a colourable exercise of powers.

2. The application of Sections 17 (1) and 17 (4) of the Land Acquisition Act was wholly unnecessary and, therefore, illegal,

(a) and, therefore, the Government could not have dispensed with the enquiry under Section 5 A of the Act.

14. Learned Counsel appearing on behalf of the appellants argued in support of the above two main and the ancillary questions.

15. As against this, learned Counsel appearing for the State as also for the Company and YEIDA supported the acquisition and contended that it was futile to oppose the acquisition, particularly, when the acquisition was virtually accepted by all except a few, inasmuch as the learned Counsel contended that majority of the landlords have accepted the compensation also and have not challenged the acquisition in any manner. It is only a few extremely insignificant pockets which are now caught in this litigation. The learned Counsel have specifically averred that the whole process was extremely 1

transparent and that there was necessity of this land considering the public purpose involved and that all care was taken to safeguard the interests of the farmers and that the creation of this Expressway and creation of five townships would immensely help the general public residing on the Eastern Bank of Yamuna particularly, and the residents of UP generally. It is on these rival contentions that we have to proceed now.

16. Since the land acquisition exercise is for the Yamuna Expressway Project, it would be worthwhile to see some factual background thereof. U.P. Industrial Area Development Act, 1976 came into force on 1.4.1976. Section 3 thereof provides for constituting an authority by a notification. The object of this legislation is planned development of certain notified areas in the State by building up integrated industrial townships. The State Government is empowered thereunder to declare the industrial development area and this Act empowers the authority to acquire the land by direct purchase or through State (under the provisions of the Land Acquisition Act, 1894). It also requires preparing a Master Plan, to demarcate the sites into industrial, commercial, institutional, residential and other land use 1

in accordance with the Master Plan. Under Section 7 of the said Act, the authority is empowered to allot its properties, by way of lease or otherwise, on such terms and conditions as it may deem fit. An authority called Taj Expressway Industrial Development Authority came to be constituted under this Act by a Notification dated 24.4.2001. This Authority changed its nomenclature and became Yamuna Expressway Industrial Development Authority (`YEIDA' for short) vide Notification dated 11.7.2008. This was with intent to develop the Eastern Side of the river Yamuna by construction of a 6 lane Expressway joining Noida to Agra and also for development of five regions along the said Expressway into a planned industrial development area for residential, industrial, institutional or recreational purposes. The industrial development area was also notified on 24.4.2001, which then comprised of 8 villages. Later on, vide notification dated 22.8.2001, as many as 63 No. of villages including the village of some of the appellants were also included. By further notifications, some more villages were also notified as part of industrial development area. The area was in 4 districts, namely, Gautam Budh Nagar, Agra, Mathura and Aligarh.

1

17. After the constitution of the Authority (YEIDA), public notices for global tenders were issued in 2001 inviting bids from interested parties desirous of implementing the Project of the said 6 lane Expressway and the building of the townships on Build, Operate and Transfer model. This Project, however, did not proceed, as there was no eligible bidder and ultimately, the selection process was dropped. Subsequently, in November, 2002, fresh bids were invited on the same principles, but with an option either to enter into a joint venture (JV) with the YEIDA or to implement the said Project without any equity partition of the said Authority. In the Bid Document, the necessity of the major highway connecting New Delhi with Mathura and Agra was reiterated with the objectives (i) to provide a fast moving corridor to minimize the travel time, (ii) to connect the main townships/commercial centres on the Eastern Side of Yamuna, and (iii) to relieve NH-2 which was already congested and ran through the heart of cities like Faridabad, Ballabhgarh and Palwal. It was informed to the interested parties that the proposed Expressway was to be about 160 Kms. in length shortening the

distance between Noida and Agra with an estimated cost of US $ 350 million. It was also informed that the 1

Expressway was to pass through virgin area along the river Yamuna and that a band of 500 meters width of land at five or more locations, of which one location was to be in Noida or Greater Noida area along the Expressway, would be offered on acquisition cost along the corridor as an integral part of the Project. It was further informed that in addition to the land for Expressway, 25 million square meters land along the same would be given at acquisition cost for development of the same for commercial, amusement, industrial, institutional and residential purpose. Bids were invited from all the interested parties having experience in the construction/development of infrastructure Projects including real estate development and it was informed that the selected developer would be offered 25 millions square meters of land for development on acquisition cost on lease for a period of 90 years. It was also informed that the concession period would be for 7 years from the date of signing of the Concession Agreement and all the assets related to the Expressway were to stand transferred on the date of signing of the Concession Agreement in favour of such a successful bidder. The Bid Document also provided that the successful bidder would have the right to levy, collect and retain toll from the 1

public using the Expressway during the concession period. Tender of Jaiprakash Industries Ltd. was accepted and thus they became the successful bidder as they had claimed the lowest concession period of 36 years.

18. The Concession Agreement dated 7.2.2003 also came to be executed between the parties. However, before the work could start, the whole Project got stuck up in the litigation, upon which the Enquiry Commission was appointed by the State Government under the Chairmanship of Mr. Justice Siddheshwar Narain (Retd.). Before that, two Commissions of sub enquiries were constituted. While the Report of the first Commission was quashed by the Allahabad High Court, the second Commission of Enquiry could not proceed at all, as the Members had resigned. Ultimately, Mr. Justice Siddheshwar Narain (Retd.) completed the enquiry and submitted his Report in October, 2006. Thereafter, as has already been pointed out earlier, a Public Interest Litigation came to be filed by way of a Writ Petition before the Allahabad High Court, which was dismissed by the Allahabad High Court. It was thereafter that the process of land acquisition commenced in September, 2007. In the first phase, land for Expressway was acquired. Subsequently, the 1

acquisition process started for the land for development. The first Writ Petition being Civil Misc. Writ Petition No. 48978 of 2008 came to be filed by one Balbir Singh, challenging the Notification dated 15.10.2007 issued under Section 4 of the Act, as also the Notification dated 4.1.2008 issued under Section 6 of the Act. Status quo order was passed on the said Writ Petition. On its heels, other Writ Petitions were filed, the main Writ Petition being Civil Misc. Writ Petition No. 31314 of 2009 filed by one Nand Kishore Gupta. The status quo orders were passed even in that Writ Petition. Ultimately, the Writ Petition of Balbir Singh was dismissed by a judgment dated 5.10.2009 and that of others including Nand Kishore's came to be dismissed on 30.11.2009. It is on this historical backdrop that we have now to consider the correctness or otherwise of these two judgments, which pertain to, more or the less, same subject, but with slight variation.

19. The Writ Petition filed by Balbir Singh proceeded, inter alia, on the grounds that acquisition was a colourable exercise of power and was one which should have been accomplished by complying with the provisions of Part VII of the Act as this was an acquisition for 1

company. By the judgment dated 5.10.2009, the High Court dismissed the Writ Petition holding that (a) the entire process of acquisition was in accordance with the provisions of the Act and this was not a colourable exercise of powers, (b) the land in instant case was indeed acquired for public purpose, namely, construction of Yamuna Expressway Project, (c) the land was not acquired for company and as such the procedure under Chapter VII was not applicable.

It was also urged in that case that the entire cost of the acquisition was to be borne by the Company and the Company had to pay the entire dues towards acquisition cost and, therefore, there was no public purpose in

this acquisition and the so-called public purpose appearing in the Notification was a camouflage. It was further urged that since even a part of compensation was not coming from the Government out of the public revenue or some fund controlled by the local authority, this acquisition was not for the public purpose. In Balbir Singh's case, all these objections were dismissed.

20. More or the less, same contentions with some difference were raised in Nand Kishore's case also, the judgment which also disposed of the Civil Misc. Writ 2

Petition No. 50474 of 2009 (Rajo Devi & Ors. Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 35090 of 2009 (J.S. Horticulture Pvt. Ltd. Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 51537 of 2009 (Bhupendra Singh & Ors. Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 51543 of 2009 (Mukesh Singh Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 51546 of 2009 (Vijay Singh & Anr. Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 51551 of 2009 (Jagvir Singh & Ors. Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 60587 of 2009 (Kadival Infrastructure Pvt. Ltd. & Anr. Vs. State of U.P. & Ors.) alongwith the main Writ Petition being Civil Misc. Writ Petition No.31314 of 2009 (Nand Kishore Gupta & Ors. Vs. State of U.P. & Ors.). The individual grievances raised in all these Writ Petitions were dealt with and the challenges were rejected. The two main points, as culled out by us, were dealt with as in Balbir Singh's case.

21. Insofar as the individual grievances are concerned, they were mostly in the nature of plea regarding the constructions having been there in this land required for interchange. For example, in Nand Kishore Gupta's case, it was claimed that there was cold storage of the 2

petitioner No. 1 therein and shops in cold storage, a temple in plot No. 139, a weigh bridge (Dharm Kanta) on plot No. 122 and some of the plots were owned by Trishul Awas Sahkari Awas Samiti. It was stated in Civil Misc. Writ Petition No. 50474 of 2009 (Rajo Devi & Ors. Vs. State of U.P. & Ors.) that the petitioners had a house and a boundary wall on some Khasras and some constructions on the others. In Civil Misc. Writ Petition No. 35090 of 2009 (J.S. Horticulture Pvt. Ltd. Vs. State of U.P. & Ors.), it was urged that there was a 10'X11' high boundary wall and constructed rooms inside a `Goshala' and 3 tube wells with several trees. In Civil Misc. Writ Petition No. 51537 of 2009 (Bhupendra Singh & Ors. Vs. State of U.P. & Ors.), it was urged that this was an agricultural land and the petitioners therein depended on the same for their livelihood. In still other Writ Petitions being Civil Misc. Writ Petition No. 51543 of 2009 (Mukesh Singh Vs. State of U.P. & Ors.), Civil Misc. Writ Petition No. 51546 of 2009 (Vijay Singh & Anr. Vs. State of U.P. & Ors.) and Civil Misc. Writ Petition No. 51551 of 2009 (Jagvir Singh & Ors. Vs. State of U.P. & Ors.), the same plea of cultivation was raised. In Civil Misc. Writ Petition No. 60587 of 2009 (Kadival Infrastructure Pvt. Ltd. & Anr. Vs. State of U.P. & 2

Ors.), the petitioners claimed that they had purchased 7 plots with the total area of 24060 sq. meters and they were plots for industrial purposes and that the plot of Yashoda Devi was a fertile land.

22. The High Court has refuted all these contentions by giving good reasons. We will not go into these individual cases once the High Court has decided not to entertain these plea and, in our opinion, correctly. After all, this was an acquisition for building up a highway and the abovementioned Writ Petitions pertained to the land required for interchange. It is obvious that the alignment of the highway cannot be changed, as its design has been prepared after consideration of so many factors by the experts in building the road. Its direction or alignment, therefore, cannot be changed, with the result, the area which is required for interchange, also cannot be changed. This is a typical example of the individual having to sacrifice his land for the public good. There can be no dispute that this road would add to the betterment of the citizens of the East Yamuna area in particular and Uttar Pradesh in general. This is apart from the fact that the majority of the persons whose lands have been acquired, have 2

either not objected to it or have accepted the compensation without any demur. It will, therefore, not be possible for us to go into these individual grievances, which have been rightly rejected by the High Court. In fact, in Balbir Singh's case, it was pointed out that out of the 12,315 affected farmers in 133 villages over the total area of 1,638 hectares of the Expressway, 11387 have already received compensation and only 142 farmers have raised the issues. The High Court has rightly held that the private interest is always affected to some extent in such large schemes requiring the acquisition of land. The High Court has rightly held that a holistic view had to be taken to look for an all round development without forgetting about our heritage, culture and traditions. We also, therefore, would not entertain the objections, feebly raised before us, individually.

23. We have now to see as to whether the challenge posed by the appellants herein about this acquisition not being for public purpose is justified or not. Shri Ranjit Kumar, Shri Debol Banerjee, learned Senior Counsel and Ms. Meenakshi Arora, learned Counsel appearing on behalf of the appellants, vehemently urged that this 2

acquisition, in the first place, is colourable exercise of power. All the learned Counsel urged that the very nature the whole transaction showed was that the whole acquisition was tailor made for the respondent Company. The learned Counsel further urged that it was meant only for the benefit of the Company, inasmuch as, though the acquisition should have been made under the provisions of Part VII of the Act, it was carried out in terms of the provisions of the Part II of the Act, citing this to be an acquisition for public purpose. According to the learned Counsel, there already existed a road which was a functional road and Yamuna Expressway is only an excuse to develop the feeder road to connect the five proposed townships. The learned Counsel urged that the huge land of 25 million square meters has virtually been handed over to the respondent Company on a platter and, therefore, all this exercise was clearly not for the public purpose. It was further urged that the so-called Concession Agreement dated 7.2.2003 was one-sided, inasmuch as, even if it was terminated, the land which was given to the Company for development, would have remained unaffected. It was further urged that considering the length of the lease period of 90 years, the land was virtually given to the Company for ever, and 2

it was nothing but transferring the same in favour of the Company. It was then pointed out that it was only the Expressway which would revert back to the Government after 36 years, but not the land measuring about 25 million square meters, which would be wholly managed by the Company. In fact, the learned Counsel argued that this cannot be said to be an integrated Project, as the land for Expressway and the land for development have been treated on an entirely different and unequal footing. It was also pointed out that the present purpose was not a public purpose as envisaged in Section 3(f) of the Act. The learned Counsel pointed out that from the Agreement itself, it is clear that the entire cost of the acquisition is going to be borne by the Company and, therefore, there can be no doubt that the acquisition is for the Company and not for the public purpose. The learned Counsel argued that merely because the Company has paid the entire cost of acquisition alongwith Rs.100/- per hectare per year by way of premium, it cannot be denied that it is only the private respondent who is bearing the entire cost of the acquisition and the State Government/YEIDA has not contributed anything. Heavily relying on the decision in Pratibha Nema & Ors. Vs. State of M.P. & Ors. [2003 (10) 2

SCC 626], the learned Counsel argued that this issue needs to be addressed by this Court on the backdrop of this case.

24. As against this, the learned Counsel appearing on behalf of the State, as also for the Company and YEIDA, pointed out that this cannot be said to be a colourable exercise of power. They also pointed out that there cannot be any dispute about the utility of this Project and its benefits to the public. They further pointed out that the whole process has been extremely transparent. They also pointed out that this acquisition cannot, under any circumstances, come within Part VII of the Act. The learned Counsel further pointed out that the five developed parcels of the land were going to revert to the acquiring body after 90 years, and the period of

90 years cannot provide a permanency to the whole transaction. The learned Counsel urged that the State ultimately was going to receive a 6 lane Expressway which was 160 Kilometers long alongwith five developed parcels of land on the Eastern Side of Yamuna river. The learned Counsel also pointed out that all this was going to help the industrialization and the overall development of that area in particular and the State in general, apart from 2

the fact that this highway would reduce the traffic congestion presently felt on N.H.-2. The learned Counsel pointed out that it will also release the congestion, as it exists in the cities and would help smooth movement of people, goods and material.

25. The learned Counsel also urged that the creation of five planned parcels of land under the Scheme would immensely help the trading activities in the State and would be extremely useful for the citizens. The learned Counsel further pointed out that the land would be put to the industrial, commercial, residential, amusement or institutional purposes which would ultimately serve the public purpose. Lastly, on this question, the learned Counsel urged that it was a misnomer to say that the compensation was coming only from the private coffers of the Company. The learned Counsel also referred to the nature of the agreement i.e. the BOT contract. The contention raised was that a BOT contract, by its nature cannot be equated to or with an acquisition for a Company. According to the learned Counsel, all that the Government was doing was merely choosing a third party agency to implement the work of building, designing, financing or running the Project, and that the Government 2

was utilizing the expertise and enterprise of a third party.

26. Our attention was also invited to two decisions of this Court concerning the BOT contracts and the allegations made relating to them. The decisions were State of Karnataka & Anr. Vs. All India Manufacturers Organization & Ors. [2006 (4) SCC 683] and Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. [2008 (9) SCC 552].

27. The first and foremost thing which we must keep in mind while deciding these matters is that at least in the present two matters (Balbir Singh's case decided on 5.10.2009 and Nand Kishore's case decided on 30.11.2009), the subject related only to the acquisition of few hectares of land as compared to the acquisition of large chunk which has not been challenged. Further, it is an admitted position that majority of the acquisition proceedings are over. In Balbir Singh's case also, the persons who challenged the Project, were 9 in number, owning about 7.09 hectares of land i.e. about 0.42% of the total land. It has been strongly argued on behalf of the State, the Company and YEIDA that the major activity of land acquisition process is over. It has been noted 2

in Balbir Singh's case that out of the 12,315 affected farmers in 133 villages over the total area of 1,638 hectares of the Expressway, 11387 have already received compensation and only 142 farmers out of such a large number of villages have raised the issues, leaving 139 farmers who had not taken the compensation. This is apart from the fact that only 9 Writ Petitioners came in that Writ Petition. The story in Nand Kishore's Writ Petition which was disposed of by the High Court alongwith other Writ Petitions is no different. The learned Counsel appearing on behalf of the appellants could not deny the fact that the total number of petitioners concerned in these acquisition proceedings, coming up before the High Court, was extremely insignificant as compared to those who had accepted the compensation. Of course, that by itself may not be the only reason to hold against the appellants (petitioners), however, that fact will have to be kept in mind while deciding the issues which cover the whole acquisition process, which acquisition is for the purpose of development of 25 million square meters of land. The High Court has also noticed this aspect. We have mentioned this aspect only with a limited objective of showing that the criticism against the whole scheme which 3

would invalidate the acquisition would be difficult to be accepted, particularly in this case, in view of the fact that majority of the land owners have parted with possession, taken the compensation and thus, the whole scheme has progressed to a substantial level, wherefrom it will be extremely difficult now to turn back to square one.

28. We must point out that at the time when the Project conceived in 2001, the present Company was not in existence. It came in existence only later on. This is an admitted position also. Therefore, it cannot be said that the whole Project was envisaged keeping this Company in view. That would be the first reason to reject the argument that the whole scheme was a result of colourable exercise of power. We also cannot ignore the fact that a full-fledged enquiry was got done by the State by constituting a Commission of Enquiry under the Chairmanship of Mr. Justice Sidheshwar Narain. The said Commission of Enquiry submitted its Report in October, 2006 and it was duly accepted by both the Houses of the Legislature of the State of Uttar Pradesh. Again, we also cannot ignore that the aspects of the transparency have been examined by the Division Bench of the Allahabad 3

High Court in a P.I.L., which was dismissed by a well- considered judgment, which remained unchallenged. We have already made reference to that judgment. Nobody has so far argued that any specific partial treatment was offered to the Company nor has it been pointed out at any stage that there was anything amiss with the tendering process or that the tender of contract to the Company herein was a foregone conclusion. We, therefore, cannot subscribe to the contention that this acquisition was a colourable exercise of power. We must say that there was a full transparency in the whole process and the whole process was checked, rechecked and re-rechecked, leaving no scope to infer any bias in favour of the Company.

29. It was pointed out that initially the award was preceded by issuance of an advertisement in the leading newspapers throughout the country. It was also pointed out that the offers were invited on the basis of a global tender and as many as 19 parties entered the fray, and that it is only thereafter that the present respondent Company was chosen for the award of the tender. Again, the essential features of the transaction appear to be that (i) Project was to be implemented on the Build Operate and Transfer model, (ii) Project conceived of the 3

construction of the Expressway as well as development of land parcels at five different locations and (iii) the land for development was to be provided to the selected bidder on a lease of 90 years upon payment of acquisition cost and necessary lease rentals. There was, thus, a complete transparency in the whole affair. It is also to be seen that this was not a case where the exercise of power of eminent domain by the State was for any of the purposes set down in Section 40 of the Act. Further, it is not as if the power of acquisition was exercised by the State Government for the work or Project of the Company. Lastly, it is not a case where the power of exercise was exercised by the State Government so that the acquired land was to belong or vest permanently in the Company for its own purpose. It was pointed out that the lease is going to be for 90 years after which the whole land is going to revert back to the State Government, so also the whole land acquired and used actually for the purpose of the highway would also go back to the State after the period of 36 years, during which the Company would have the right to levy and collect the toll. It is not as if a public purpose is relevant in Part VII, where under Section 39, the previous consent of appropriate Government is required 3

for execution of an agreement between the Government and the Company. Section 40 of the Act then puts a specific rider that the State Government shall not give the consent unless it is satisfied of any of the contingencies described in sub-Sections (a), (aa) and (b) thereof, which are as under:-

40. Previous enquiry:- (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5A, Sub-section (2), or by an enquiry held as hereinafter provided,-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

This would suggest that even when the acquisition is meant for the Company, the concept of public purpose has to be at the back of mind of the acquiring body like Government. Here, of course, there is no question of any agreement with the Company as the three eventualities described under Section 40 of the Act are not available for the simple reason that the basic idea for the acquisition under Part VII of the Act is the total 3

transfer of the ownership of the acquiring land in favour of the Company. That is obviously not present here. We do not see any factual background for holding that any agreement was contemplated in between the State Government and the Company or for that matter, YEIDA and the Company, as envisaged in Sections 39, 40 and 41 of the Act. It was tried to be canvassed before us that there would be a difference in concepts of a public purpose and the work useful to the public. We are not much impressed by this argument in view of the fact that there is absolutely no evidence to suggest that this is an acquisition for the Company, basically on account of the fact that the acquired land is not to vest with the Company. This was clearly a Project conceived and justified by the State Government, while the concessionaire was to be chosen only to implement the Project. The Project was going to be implemented on the basis of principles of BOT. Therefore, after the operating period is over, the assets of the Project were to be transferred to the State Government. There was going to be no vesting of land as in case that if the acquisition was being effected under Part VII of the Act. We, therefore, do not accept the argument that this was either a colourable exercise of power or was meant for 3

the Company. We are not impressed by the argument that this was an acquisition for the Company. The High Court, in Balbir Singh's judgment, has correctly come to the conclusion that this acquisition was not meant only for the Company and on that count, it could not be said that this is not for the public purpose. The learned Counsel, however, vehemently argued that the whole compensation had come from the Company and, therefore, this acquisition cannot be said to be for a public purpose. We shall tackle this point a little later. However, before we proceed to do that, we must express on the utility of the Expressway, which was conceived, as also the development of five parcels of land.

30. During the debate, our attention was invited to Section 3(f) of the Act, which contains a definition for `public purpose'. It was pointed out that where the acquisition is for the Company, it cannot amount to a public purpose. There can be no dispute about this proposition that where the acquisition of land is for the companies, it cannot amount to a public purpose. It was, therefore, our endeavour to find out whether this land was for the Company and we are quite satisfied with a finding recorded by the High Court that this acquisition 3

was not for the Company but was for the public purpose. The Expressway is a work of immense public importance. The State gains advantages from the construction of an Expressway and so does the general public. Creation of a corridor for fast moving traffic resulting into curtailing the traveling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million square meters of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement etc., would be complimentary to the creation of the Expressway. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no

doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilization of the Expressway and the existence 3

of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose.

31. We must, at this stage, take into account the argument that the whole compensation is coming wholly from the Company and not from the Government or from YEIDA. The appellants invited our attention to Clause 4.1(d) of the Concession Agreement. On that basis, it was argued that the Company has paid the compensation cost and, therefore, the acquisition is clearly covered under Part VII of the Act, and there may be no public purpose if the acquisition is made for the Company and it is the Company who has to shell out the whole compensation. Now, this argument is clearly incorrect. Even if we accept for the sake of argument that all this compensation is coming from the Company, we must firstly bear it in mind that the Company gets no proprietary or ownership rights over the Project assets. Now, if it is presumed that the compensation is coming from the Company, then it will have to be held that the whole assets would go to the Company. At least that is 3

envisaged in Part VII of the Act. Here, that is not the case. The assets are to revert back to the acquiring body or, as the case may be, the Government. Even the lands which are utilized for the construction of the Expressway are to go back to the Government barely after 36 years i.e. after the Company has utilized its rights to recover the toll on the Expressway. Secondly, it must be borne in mind that the Concession Agreement has been executed in February, 2003, whereas the acquisition process started somewhere in the month of September, 2007. When the Concession Agreement was executed, the cost factor was not known. The acquiring body was only to make available the land to the concessionaire to implement the Project. There would be number of difficulties arising, as for example, it would be clearly not contemplated that the land would be made available without any value or that there would no scheme for the State Government for recovering the expenses that it would incur in obtaining the land. The learned Counsel appearing for the State as also for the Company and YEIDA argued that in order to overcome and iron out such difficulties, the Agreement provides that the land would be leased on a premium equivalent to the acquisition cost. This argument proceeds on the basis of Clause 4.3 3

C of the Concession Agreement. It is to be noted then that the premium of the land was not going to be just the acquisition cost, but also the lease rent of Rs.100/- per hectare. Therefore, the State Government was to earn Rs.100/- per hectare for the total acquired land, which was about 25 million square meters over and above the compensation to be decided. The mention of the compensation amount in addition to the lease money of Rs.100/- per hectare would clearly provide that the whole compensation was not going to be paid by the Company alone. This is apart from the fact that through this agreement, only the extent of the compensation payable by the Company to YEIDA was decided. However, once all the amounts went to the coffers of YEIDA, it would lose its independent character as a premium. When it goes into the coffers of YEIDA, it is the YEIDA who would make the payments of the estimated compensation and thereby it would be as if the compensation is paid not by the Company, but by YEIDA. The respondents have relied on the law laid down in Pratibha Nema's Case [cited supra], more particularly, paragraphs 24 and 25 therein. The respondents also argued relying upon the decision in Naihati Municipality & Ors. Vs. Chinmoyee Mukherjee & Ors. [1996 (10) SCC 632]. The respondents argued that 4

the law laid down in Pratibha Nema's Case (cited supra) emanates from the judgment in Naihati Municipality & Ors. Vs. Chinmoyee Mukherjee & Ors. (cited supra).

32. Two judgments in State of Karnataka & Ors. Vs. All India Manufacturers Organization & Ors. [cited supra] and Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra) were pressed in service by the respondents.

33. The first judgment in State of Karnataka & Ors. Vs. All India Manufacturers Organization & Ors. (cited supra) pertain to Bangalore-Mysore Infrastructure Corridor Project). While considering what the public purpose was, this Court in paragraphs 76, 77, 78 and 79 took stock of the contention, whereby it was suggested that land far away from the actual alignment of the road and periphery had been acquired and, therefore, even if the implementation of the highway Project was assumed to be for the public purpose, the acquisition of the land far away therefrom would not amount to a public purpose nor would it be covered by the provisions of the Karnataka Industrial Areas Development Act, 1966 (KIAD Act). In the present case also, it was argued that the lands which are being acquired for the interchange would not at all 4

be necessary. Further, it was argued that the five parcels of land which is being acquired for the development of five industrial townships, could not be said for the public purpose nor could it be said to be a part of the present integrated scheme. This Court had refuted this argument holding that even in case of Bangalore-Mysore highway Project, the lands even little away from the main alignment of the road, had to be a part of this Project and the Project was an integrated infrastructure development Project and not merely a highway Project. It was conceived originally as the Bangalore-Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities alongwith the highway at several points. The situation is no different in the present case. Therefore, the contention that this acquisition was not for public purpose, is rejected.

34. In Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra), same question cropped up which has been mentioned 4

in Paragraphs 9, 10 and 11 of the judgment suggesting that there was no public purpose and in fact, it was an acquisition for a private Company under Part VII of the Act and, therefore, the power of eminent domain would have no application to such case. The contentions raised in that judgment in paragraphs 16, 17 and 18 are almost similar to the contentions raised herein. The Court has extensively dealt with the question of public purpose in paragraph 66 and has taken stock of practically all the cases till paragraph 109 therein. It will not be necessary for us to repeat all the case law and the questions raised and considered in these paragraphs, such as industrial policy of the State, acquisition for Company etc. In fact, while considering the contention regarding the industrial policy of the State, the Court has taken into consideration the oft-quoted case of Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttaranchal & Ors. [2007 (8) SCC 418], where this Court has come to the conclusion that in the absence of illegality or violation of law, a Court of law will not interfere in the policy matters. Similar is the case here, where the development of the industrial infrastructure along the Expressway for the overall betterment of the region and further for the industrialization of the otherwise backward region of 4

Uttar Pradesh, was considered as a policy. In this judgment again, the Court has extensively considered the question as to whether and under what circumstances, the acquisition could be said to be the acquisition for the Company. In that, the Court has also considered the decision in Babu Barkya Thakur Vs. State of Bombay [AIR 1960 SC 1203]. The Court quoted the observations in the aforementioned decision in Babu Barkya Thakur Vs. State of Bombay (cited supra) to the following effect:- "These requirements indicate that the acquisition for a Company also is in substance for a public purpose inasmuch as it cannot be

seriously contended that constructing dwelling houses, and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility do not serve a

public purpose."

We have already considered this question that in the present case, there is nothing to indicate that the acquisition is for the Company i.e. for Jaiprakash Industries Ltd. It is only, therefore, that we are at pains to point out that the Government was only using the Company for implementing its policy.

35. In the aforementioned judgment of Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra), Hon'ble Thakker, J. has also referred to the decision in Pandit Jhandu Lal Vs. 4

State of Punjab [AIR 1961 SC 343], where the acquisition was for construction of houses by members of Thapar Industries Cooperative Housing Society Ltd., Yamuna Nagar. The challenge was that there was non-compliance of the provisions of Part VII of the Act, though the acquisition was for the Company under Part VII of the Act. The High Court, in that case, held that the acquisition was for a public purpose and there was no need to comply with the provisions of Part VII of the Act. In fact, practically all the decisions on the subject of acquisition for the Company and public purpose have been considered in this judgment of Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra), which itself is a locus classicus. Ultimately, this Court came to the conclusion that the acquisition made by the State of Andhra Pradesh could not be faulted, as it was in pursuance of policy decision for development of the city of Hyderabad and in pursuance of that policy, an integrated Project was taken up for development of the city of Hyderabad into a business-cum-leisure tourism infrastructure centre. The Court also came to the conclusion that the Andhra Pradesh Infrastructure and Investment Corporation (APIIC) in the reported decision was a nodal agency like YEIDA in the 4

present case which was to generate the revenue and help the development of infrastructure for industrialization of the area. The Court also recognized that such instrumentality of State would have the power of eminent domain. Like the present case, the Court held the Project to be an integrated and indivisible Project. We have no doubt that in the present case also, the Expressway as well as the five parcels which are to be developed are part of an integrated and indivisible Project. In the reported judgment of Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra), it has also been found that the entire amount of the compensation was to be paid by the State agency APIIC, just like in the present case, where the entire amount is to be paid by YEIDA, which agency is working as a nodal agency for the execution of the Project. The Court has also found that where the power of eminent domain is exercised mala fide or for collateral purposes and de hors the Act or in an irrational or unreasonable manner or when the purpose is `no public purpose' and the fraud on statute is apparent, a Writ Court can undoubtedly interfere. It has been found very specifically here that the present matter is not suffering from the above defects. In this judgment, 4

the subject of eminent domain has been discussed and considered with thoroughness and all the ramifications of the principle of eminent domain have been discussed. We have already culled out the principles emanating from this decision in the earlier part of this judgment and even at the cost of repetition, we may say that this judgment is practically, the law setter on the subject of eminent domain, as also on the other allied subjects of acquisition. The judgment has also explained the concept of `public purpose', which has been held to be wider than `public necessity'. The judgment proceeds on a basis that merely because the benefit goes to a particular section of the society, the acquisition does not cease to be for the public purpose. It has been specifically held that where the State is satisfied about the existence of a public purpose, the acquisition would be governed by Part II of the Act, as has happened in the present matter. The judgment in Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra) is an authoritative pronouncement on the mode of payment, as also on the construction of Sections 40 and 41 of the Act. In fact, this judgment is a complete answer to the argument of the appellants that this acquisition is not for public purpose.

4

36. The respondents then fall back upon the nature of the transaction, saying that since the whole transaction is on the BOT basis, the Government has merely chosen a third party agency to implement the Project instead of taking up itself the task of building, designing, financing or running the Project. It was pointed out that in such contracts, the assets did not go to the private enterprise which was chosen by the Government. On the other hand, the assets revert to the Government and, therefore, the BOT Project can never be akin to the acquisition of land for a Company under Part VII of the Act, where the land and the assets vest and belong to the Company. The respondents argued that when a BOT contract is tested in the light of the provisions of Part VII of the Act, as also the Land Acquisition (Companies) Rules, 1963, it would come out that there has to be an agreement between the State and the Company, which necessarily provides for the payment of cost of acquisition to the Government. It must entail the transfer of such land to the Company. Similarly, under Rule 5 of the Rules of 1963, the agreement must itself make provision that the land will be utilized only for the purposes for which it was acquired and if the Company commits breach of any condition of the agreement, the Government would be 4

entitled to declare the transfer of land to it to be null and void, so also if the Company fails to utilize the entire land acquired, the unutilized portion would revert to the Government. The respondents argued that in a BOT contract, the land is only leased to a third party agency for the purposes of implementation of the Project. There is no occasion for declaring the transfer of land to be null and void. There would also be no occasion for reversion of the utilized land of the State Government. The respondents, therefore, argued that a BOT contract can never be contemplated as falling under Part VII of the Act.

37. Some other decisions which were pressed in service by the appellants are Smt. Somavanti & Ors. Vs. The State of Punjab & Ors. [AIR 1963 SC 151], more particularly, the observations in paragraph 40 therein, where the Constitution Bench of this Court observed that if the purpose of acquisition is not related to a public purpose, then a question may well arise whether in making the declaration there has been on the part of the Government, a fraud on the power conferred on it by the Act. We have already discussed the factual situation here for pointing out that this acquisition was indeed 4

for the public purpose and cannot be held to be for respondent Company. In that view, the criticism is not justified. The decision in Pandit Jhandu Lal Vs. State of Punjab (cited supra) was also referred to and, more particularly, the observations in Paragraph 8 therein. There can be no dispute about the principles laid down; however, as we have already pointed out, this case has been thoroughly considered in Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. etc. etc. (cited supra). We have already returned a finding that the compensation in this case does not come from the respondent Company alone. We approve of the finding returned by the High Court in that behalf. During the debate, the decision in Devinder Singh & Ors. Vs. State of Punjab & Ors. [2008(1) SCC 728] was also referred to. It was urged that there was a conflict in this decision and the decision in Pratibha Nema's Case (cited supra). This was a case where the petitioners who were the owner of the agricultural lands, had challenged the acquisition of lands for M/s. International Tractors Ltd. It was claimed that the land was being acquired for public purpose i.e. setting up the Ganesha Project of M/s. International Tractors Ltd. at various villages. The High Court had held that the land acquisition was for 5

public purpose. This Court explained the public purpose as defined in Section 3(f) of the Act and noted that the aforementioned Ganesha Project was not a Project of the State, but the one undertaken by the Company M/s. International Tractors Ltd. The Court then went on to consider Sections 40 and 41 of the Act alongwith Rule 4 of the Land Acquisition (Companies) Rules, 1963 and came to the conclusion that the same could not be a public purpose as the whole compensation was coming from the coffers of the Company. In that view, the Court further came to the conclusion that the State not having followed the provisions of Sections 40 and 41 of the Act, the whole process had suffered illegality. The Court also considered the decision in Pratibha Nema's Case (cited supra) and distinguished the same by making a comment to the following effect:-

"But we must hasten to add that the Bench did not have any occasion to consider the question as to whether the State is entitled to take

recourse to the provisions of both Part II and Part VII of the Act simultaneously."

The Court, however, refused to go into the nicety of the question and observed that in a case of acquisition for a public Company, public purpose is not to be assumed and the point of distinction between acquisition of lands 5

under Part II and Part VII of the Act would be the source of funds to cover the cost of acquisition. The Court also considered the judgment of this Court in Smt. Somavanti & Ors. Vs. The State of Punjab & Ors. (cited supra), Jage Ram & Ors. Vs. State of Haryana & Ors. [1971 (1) SCC 671] and Shyam Behari & Ors. Vs. State of Madhya Pradesh & Ors. [AIR 1965 SC 427]. Ultimately, the Court came to the conclusion that the necessary provisions not having been found, the view of the High Court was not correct, whereby it had upheld the land acquisition, holding it to be for the public purpose. We have closely seen the judgment; however, the factual situation in the judgment is quite different. In our opinion, the judgment will not help the appellants to contend that the present land acquisition is not for public purpose. We also do not think that there is any serious conflict between the decision in Pratibha Nema's Case (cited supra) and the decision in Devinder Singh & Ors. Vs. State of Punjab & Ors. (cited supra), so as to require a reference to the larger Bench. In our opinion, the decision in Pratibha Nema's Case (cited supra) applies to the fact situation in this case. Therefore, considering the overall factual situation, we are of the opinion that the High Court was right in holding that the acquisition 5

was made for the public purpose. We find from the order of the High Court that the High Court has considered the question of public purpose keeping in mind the correct principles of law. We are, therefore, of the opinion that the contention raised by the learned Counsel for the appellants that this acquisition was not for the public purpose for various reasons which we have discussed, is not correct.

38. This takes us to the next point pertaining to the application of Sections 17(1) and 17(4) of the Act. The learned Counsel for the appellants have vociferously urged that there was no necessity whatsoever to apply the urgency clause to these acquisitions and further to avoid the enquiry under Section 5A of the Act. According to the learned Counsel, this dispensation of Section 5A enquiry was not only unjust, but added to the sufferings of the appellants who had lost their fertile land. It was pointed out that this Project was slumbering since 2001 and it was in order to infuse fictitious urgency that a reference to the Commonwealth Games was made. According to the appellants, Right to be heard was akin to the Fundamental Rights and its breach has rendered the whole acquisition exercise illegal. Numbers of 5

authorities were relied upon by the appellants. The respondents, on the other hand, argued that there was material available before the Government justifying the invocation of the urgency clause. The respondents argued that, in fact, the High Court has returned the finding that there was material before the State Government for dispensing with the enquiry under Section 5A of the Act and that finding was based on the examination by the High Court of the records of the State Government. It was pointed out that going through the ordinary procedure for acquisition of land would have taken years for disposal of the objections while land was urgently required for public purpose, in this case, the construction of interchange under the Yamuna Expressway Project, which was absolutely essential for the purposes of running the highway. It was also pointed out by the respondents that because of the unnecessary litigation in the enquiries, the Project was hopelessly delayed and the cost had gone up from Rs.1,700 crores to whopping Rs.9,700 crores. It was also further pointed out that any waste of time would have invited the encroachments on the land, which would have added to the further trouble. The enormousness of the Project which required acquisition of 1,604 hectares of land involving 12,283 farmers, would have taken years 5

if the enquiry under Section 5A was permitted and thereby, the cost would have still further soared up. Numbers of authorities were relied upon by the parties.

39. Before considering the issue, we must take stock of the finding returned by the High Court. In the judgment in Nand Kishore Gupta & Ors. Vs. State of U.P. & Ors. (Civil Misc. Writ Petition No.31314 of 2009), the High Court took stock of the allegations regarding malafides and dispensing with the enquiry under Section 5A of the Act by referring to Paragraph Nos. 20, 21, 28, 29, 30, 31 and 32 of the Reply filed on behalf of the State Government through an affidavit of one Shri Vinod Kumar Singh, ADM, Land Acquisition, Agra, wherein it was pointed out that the Project was on the mammoth scale and there was a great deal of possibility of encroachments if the Project was allowed to linger. The High Court took note of the contention that YEIDA deposited 70% of the estimated compensation on 29.5.2009 itself, since 10% of the estimated compensation was already deposited by the acquiring body (YEIDA). The High Court then referred to the various clauses of the Concession Agreement like Clause Nos. 2.1, 2.2, 3.1, 3.2, 3.6 and 4.1 (a), (b), (c) & (d) to know about the exact nature of the job which was 5

required to be done for building the Expressway. It was after this that the High Court had recorded a finding that the integrated Project was to cover a large area of land and the requirement was of 25 million square meters of land to be acquired. The High Court, therefore, noted the plea raised to the effect that the State Government took correct decision to invoke the urgency clause, as on an enquiry into disposal of individual objections as contemplated under Section 5A of the Act, the Project itself would have lost all value and efficacy. The High Court also noted the plea raised by YEIDA and the State Government about the likelihood of encroachment. The High Court then referred to the two decisions of this Court in Sheikhar Hotels Gulmohar Enclave & Anr. Vs. State of Uttar Pradesh & Ors. [2008(14) SCC 716] and First Land Acquisition Collector & Ors. Vs. Nirodhi Prakash Gangoli & Anr. [2002 (4) SCC 160]. The High Court also referred to the counter affidavit of one Shri V.C. Srivastava, Addl. General Manager, Jaypee Infratech Ltd. (owned by Jaiprakash Industries Ltd.). The High Court then took stock of the plea raised on behalf of the respondents on the basis of more than 25 judgments of this Court. The High Court then referred to the decision of this Court in State of Punjab & Anr. Vs. Gurdial Singh 5

& Ors. [1980 (2) SCC 471] and Om Prakash & Anr. Vs. State of U.P. & Ors. [1998 (6) SCC 1], as also Babu Ram & Anr. Vs. State of Haryana & Anr. [2009 (10) SCC 115]. The High Court also referred to the decision in Manju Lata Agrawal Vs. State of U.P. & Ors. [2007(9) ADJ 447 (DB)], Sudhir Chandra Agrawal Vs. State of U.P. [2008 (3) ADJ 289 (DB)] and Munshi Singh Vs. State of U.P. [2009 (8) ADJ 360 (DB)], which all were the decisions of the Allahabad High Court itself. The Court then referred to the delay on account of the litigations from 2001 till 2008 and referred to the contention raised on behalf of the appellants relying on the judgment in Essco Fabs Pvt. Ltd. & Anr. Vs. State of Haryana & Anr. etc. etc. [2009 (2) SCC 377], Mahender Pal & Ors. Vs. State of Haryana & Ors. [2009 (14) SCC 281] and Babu Ram & Anr. Vs. State of Haryana & Anr. (cited supra). It then recorded a finding in the following words:-

"In order to verify whether there was any material with the State Government to form an opinion and to exercise its powers under Section 17(1) and Section 17(4) of the Act, dispensing with enquiry under Section 5A of the Act, and that the State Government had applied its mind on such material, we summoned the records of the three concerned notifications. Shri Satish Chaturvedi, Addl. Advocate General assisted by Shri M.C. Tripathi, Addl. Chief Standing Counsel has produced the records alongwith the material collected by the Collectors/District Magistrate and placed before the State Government for forming an opinion. He has taken us through the various documents and 5

forms on which the Collectors have recommended on Forms X alongwith justification of their recommendations as well as its summary given in the office note placed before the State Government. The three files produced before us relate to village Kuberpur, district Agra, village Malupur Pargana Atmadpur, district Agra and village Tappal district Aligarh for construction of interchange. The notification under

Section 4(1)/17 of the Act for proposing acquisition of land of village Kuberpur was made on 20.2.2009 and was published in two newspapers 'Amar Ujala' and 'Dainik Jagran' on 27.7.2009. The munadi was made on 7.3.2009. The notification under Section 6(1)/17 was issued on 15.6.2009 and was published in the two newspapers on 18.6.2009. The notice under Section 9 was sent on 20.6.2009 and possession was taken on 8.7.2009. In the recommendation sent by the District Magistrate, considered by the State Government on 11.2.2009 before publication of notification under Section 4, the District Magistrate had after giving details of land proposed to be acquired, had forwarded the Form-X alongwith justification referred to in para 3 of the noting of the State Government. The Collector, Agra recommended that in order to acquire the land for Y.E.I.D.A. established under the U.P. Industrial Area Development Act, 1976 the preparation of plan, identification of land for units for industrial development, infrastructural facilities, the lease or sale of the land, the construction of building and for industrial units. Y.E.I.D.A. has been given the regulating powers. The village Kuberpur is in the notified area of Y.E.I.D.A. and which urgently requires the proposed land for construction of interchange' for Y.E.I.D.A. In case of any delay there is a strong possibility of encroachment on the land, which will affect the Project of Y.E.I.D.A. in public interest. In para 4 it was stated that hearing of oral and written objections will take several years causing indefinite delay in construction of interchange. The proposal was forwarded with recommendation signed by the Under Secretary, Industrial Development, Government of U.P., Special Secretary, Industrial Development ; Shri Arun Kumar Sinha, Secretary, Rehabilitation and Industrial Development Department; Government of U.P.; Shri V.N. Garg, Principal Secretary, Rehabilitation and Development, Government of U.P. on 12.2.2009 and by Shri Shailesh Krishna, the Principal Secretary to Chief Minister on 18.2.2009.

5

As regard the acquisition of land for Y.E.I.D.A. for interchange in village Malupur for construction of Yamuna Expressway, Pargana Atmadpur, district Agra for acquisition of 4.5322 hects. of land the proposal with recommendation of District Magistrate, Agra on Form-X and the justification similar to and in the same language as in the case of village Kuberpur, district Agra was placed before the State Government alongwith the notings. The proposal bears recommendations and signature of Under Secretary, Industrial Development Department, Government of U.P. on 23.10.2008 ; Special Secretary, Industrial Development, Government of U.P. on 24.10.2008; Principal Secretary, Industrial Development and Commissioner on 30.11.2008 ; Special Secretary, Industrial Development on 10.12.2008 and the Secretary to Chief Minister on 15.12.2008.

For village Tappal in Tehsil Khair, district Aligarh proposal for acquisition of 48.572 hect. of land for Y.E.I.D.A. for construction of Yamuna Expressway with the recommendation of the District Magistrate and justification for invoking urgency clause was placed before the State Government and was recommended and signed by the Under Secretary and Special Secretary, Industrial Development Department on 16.1.2009 ; Secretary, Rehabilitation and Industrial Development, Department of Government of U.P. on 16.1.2009 ; Principal Secretary, Industrial Development on 16.1.2009 and by the Secretary to the Chief Minister on the same day on 16.1.2009. The proposals were accepted by the State Government for acquisition and for invoking urgency clause for construction of Yamuna Expressway by Y.E.I.D.A." Ultimately, the High Court wrote a finding in the following words:-

"The record produced before us by the State Government enclosing the material of invoking urgency clause and the satisfaction of the State Government on the said material, has satisfied us that the State Government had sufficient material and had applied its mind to record its opinion that there was urgency to acquire the land to dispense with the enquiry under Section 5A of the Act." 5

We have deliberately quoted the above part of the High Court judgment only to show the meticulous care taken by the High Court in examining as to whether there was material before the State Government to dispense with the enquiry under Section 5A of the Act. We are completely convinced that there was necessity in this Project considering the various reasons like enormousness of the Project, likelihood of the encroachments, number of appellants who would have required to be heard and the time taken for that

purpose, and the fact that the Project had lingered already from 2001 till 2008. We do not see any reason why we should take a different view than what is taken by the High Court. The law on this subject was thoroughly discussed in Tika Ram & Ors. etc. etc. Vs. State of U.P. & Ors. etc. etc. [2009 (10) SCC 689], to which one of us (V.S. Sirpurkar) was a party. In that decision also, we had reiterated that the satisfaction required on the part of Executive in dispensing with the enquiry under Section 5A is a matter subject to satisfaction and can be assailed only on the ground that there was no sufficient material to dispense with the enquiry or that the order suffered from malice. It was also found on facts in Tika Ram & Ors. etc. etc. Vs. State of U.P. & Ors. etc. etc. (cited supra) that 6

there was no charge of malafide levelled against the exercise of power and there was material available in support of the satisfaction on the part of the Executive justifying the invocation of the provisions of Section

17. The position is no different in the present case. The High Court in the present matter went a step ahead and examined the bulky original record itself to find that there was full material available.

40. We are not impressed by the argument that the encroachment issue was not a relevant factor. This argument was based on the reported decision in Om Prakash & Anr. Vs. State of U.P. & Ors. (cited supra). It must be said that the actual scenario in that case was different. In that case, the Court was considering the acquisition of area of about 500 acres comprising of 437 plots, whereas, in the present case, the area to be acquired for the Expressway alone was more than 1,600 hectares. This is apart from the 25 million square meters of land which was liable to be acquired for the purposes of development of 5 land parcels. There was interlinking between the acquisition of land for the highway and the acquisition of land for establishing the 5 townships. In Om Prakash & Anr. Vs. State of U.P. & 6

Ors. (cited supra), there was unexplained delay after issuance of Section 4 notification, which is not the case here. Therefore, we do not think that what has been said in Om Prakash & Anr. Vs. State of U.P. & Ors. (cited supra) would be apposite here. Every case has to be decided on its own facts. This is apart from the fact that it is not specifically laid down in Om Prakash & Anr. Vs. State of U.P. & Ors. (cited supra) that the encroachment was never a relevant factor for dispensing with the enquiry under Section 5A. Again we hasten to add that this was not the only factor considered by the State Government and even the High Court has not held the same to be the only factor for dispensing with the enquiry.

41. In view of the law laid down in the last judgment on this issue i.e. Tika Ram & Ors. etc. etc. Vs. State of U.P. & Ors. etc. etc. (cited supra), we are of the clear opinion that the challenge by the appellants on the ground that there was no urgency and, therefore, the enquiry under Section 5-A of the Act should not have been dispensed with, cannot be accepted. We hold accordingly.

42. No other point was canvassed before us. 6

43. There is no merit in the appeals. They are dismissed. The two impugned judgments of the High Court i.e. Civil Misc. Writ Petition No. 48978 of 2008 (Balbir Singh & Anr. Vs. State of U.P. & Ors.) decided on 5.10.2009 and Civil Misc. Writ Petition No. 31314 of 2009 (Nand Kishore Gupta & Ors. Vs. State of U.P. & Ors.) decided on 30.11.2009 are confirmed. There shall be no costs.

.....J.

[V.S. Sirpurkar]

.....J.

[Cyriac Joseph]

New Delhi;

September 8, 2010

6