ITEM NO.41 COURT NO.11
SECTION XI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16366/2011

(From the judgement and order dated 12/05/2011 in CMWP No. 500/2010
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

GREATER NOIDA INDUSL.DEVT.AUTH.
Petitioner(s)

VERSUS

DEVENDRA KUMAR & ORS.
Respondent(s)

(With appln(s) for exemption from filing O.T. and permission to
place addl. documents on record and with prayer for interim relief
and office report)

WITH
S.L.P.(C)...CC NO. 10563-10593 of 2011
(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)
SLP(C) NO. 16406 of 2011
(With appln(s) for exemption from filing O.T. and with prayer for
interim relief and office report)
S.L.P.(C)...CC NO. 10641-10671 of 2011
(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)
SLP(C) NO. 16454 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16484 of 2011

(With prayer for interim relief and office report)
SLP(C) NO. 16499 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16501 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16507 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16524 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16527 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16528 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16529 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16530 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16531 of 2011

(With prayer for interim relief and office report)
SLP(C) NO. 16532 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16534 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16535 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16536 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16539 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16540 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16542 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16543 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16544 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16547 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16585 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16590 of 2011
(With prayer for interim relief and office report)
S.L.P.(C)...CC NO. 10856-10886 of 2011
(With appln(s) for permission to file SLP and with

prayer for
interim relief and office report)
SLP(C) NO. 16533 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16602 of 2011
(With appln(s) for exemption from filing O.T. and
with prayer for
interim relief and office report)
SLP(C) NO. 16604 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16609 of 2011
(With appln(s) for exemption from filing O.T. and
permission to
place addl. documents on record and with prayer for
interim relief
and office report)
SLP(C) NO. 16611 of 2011
(With prayer for interim relief and office report)
S.L.P.(C)...CC NO. 10974-11004 of 2011
(With appln(s) for permission to file SLP and with
prayer for
interim relief and office report)
S.L.P.(C)...CC NO. 11017-11047 of 2011
(With appln(s) for permission to file SLP and with
prayer for
interim relief and office report)
SLP(C) NO. 16682 of 2011
(With prayer for interim relief and office report)
S.L.P.(C)...CC NO. 11190-11220 of 2011
(With appln(s) for permission to file SLP and with
prayer for
interim relief and office report)

Date: 06/07/2011 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Mukul Rohatgi, Sr.Adv.
Mr. Ravindra Kumar, Adv.
Mr. M.C.Chaturvedi, Adv.
Mr. Sameer Ali Khan, Adv.
[For Greater Noida

Dev.Authority]

Mr. L. Nageshwar Rao, Sr.Adv.
Mr. Shail Kumar Dwivedi,
A.A.G.(U.P.)
Mr. Ravindra Kumar, Adv.
Mr. Anuvrat Sharma, Adv.
Mr. Samir Ali Khan, Adv.
[for State of Uttar Pradesh]

Mr. P.P. Rao, Sr.Adv.
Mr. Annam D.N. Rao, Adv.
Mr. Atul Sharma, Adv.
Mr. Rajneesh, Adv.
Ms. Neelam Jain, Adv.

Mr. Ranjit Kumar, Sr.Adv.

Mr. Dushyant A. Dave, Sr.Adv.
Mr. S.Udaya Kumar Sagar, Adv.
Ms. Bina Madhawan, Adv.
For Lawyer's Knit & CO.,
A.O.R.

Mr. Pallav Shishodia, Sr.Adv.

Mr. P.S. Patwalia, Sr.Adv.

For Respondent(s) Mr. V.P. Choudhary, Sr.Adv.
Mr. P.S. Narasimha, Sr.Adv.
Mr. Anand Varma, Adv.
Mr. Nitinjya Chaudhry, Adv.

Mr. Rajesh Srivastava, Adv.

UPON hearing counsel the Court made the following

O R D E R

The applications filed by the non-official petitioners

for permission to file the special leave petitions are allowed.

Delay condoned.

Whether the acquisition of 156.903 hectares land of

Village Shahberi, Pargana Dadri, District Gautam Budh Nagar by

the Government of Uttar Pradesh in the name of planned

industrial development in District Gautam Budh Nagar through the

Greater Noida Industrial Development Authority (for short, "the

Authority") and subsequent allotment of major portion of the

acquired land (over 90 hectares) to the builders including M/s.

Supertech Ltd., M/s. Amrapali Smart City Pvt. Ltd., M/s.

Panchsheel Buildtech Pvt. Ltd., M/s. SJP Infracon Ltd., M/s.

Mahagun India Pvt. Ltd. and M/s. Gulshan Developers amounts to

colourable exercise of power vested in the State Government

under the Land Acquisition Act, 1894 (for short, "the 1894 Act")

read with the Uttar Pradesh Industrial Area Development Act,

1976 (for short, "the 1976 Act") and the New Okhla Industrial

Development Area (Preparation and Finalisation of Plan)

Regulations, 1991 (for short, "the Regulations") is the main

question which arises for consideration in these petitions filed

for setting aside order dated 12.5.2011 passed by the Division

Bench of the Allahabad High Court in CMWP No.500 of 2010 and

batch.

Before adverting to the factual matrix of the case, it will

be useful to notice the relevant provisions of the 1976 Act and

the Regulations. The same are as under:

U.P. Industrial Area Development Act, 1976

2.(d) "industrial development area" means an area
declared as such by the State Government by notification;
3. Constitution of the Authority.-(1) The State

Government may, by notification, constitute for the purposes of this Act, an Authority to be called "(Name of the area) Industrial Development Authority", for any industrial development area.
6. Functions of the Authority-(1)The object of the Authority shall be to secure the planned development of the industrial development areas.
(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions-
(a) to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes of this Act;
(b) to prepare a plan for the development of the industrial development area;
(c) to demarcate and develop sites for industrial,

commercial and residential purpose according to the plan;
(d) to provide infrastructure for industrial,
commercial and residential purposes;
(e) to provide amenities;
(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;
(g) to regulate the erection of buildings and setting up of industries; and
(h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.
7. Power to the Authority in respect of transfer of land.-The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.
9. Ban on erection of buildings in contravention of regulations.-(1) No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under sub-section (2).

The New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulations,

1991

2(d) `Commercial Use' means the use of any land or building or part thereof for carrying on any trade, business or profession, sale of goods of any type, whatsoever and includes private hospitals, nursing homes, hostels, restaurants, boarding houses not attached to any educational institution, consultant offices in any field, cottage and service industries;
(e) `Industrial Use' means the use of any land or building or part thereof mainly for location of industries and other uses incidental to industrial use such as offices, eatable establishment etc.;
(f) `Industrial Use' means the use of any land/building or part thereof for carrying on

activities like testing, research, demonstration etc. for the betterment of the society and it includes educational institutions;
(g) `Land Use' means the use of any land or part thereof in the industrial development area for industrial, residential, institutional, commercial, public water bodies, organized recreational open spaces, streets, transportation, public and semi-public buildings, agriculture and other like purposes;
(h) `Organised recreational open space' means any land with or without structure left open or laid out and developed as a public recreational space in the form of tot lot gardens, sector or neighbourhood parks, amusement parks, woodland, playgrounds, public assembly, botanical or zoological gardens being used for public recreational purposes;
(i) `Plan' means the plan prepared by the Authority for the development of Industrial Development Area under sub-section (2) of Section 6 of the Act, and it includes Sector Plan;
(k) `Residential Use' means the use of any land or building or part thereof for human habitation and such other uses incidental to residential uses;
3. Town Planning and Civic Surveys form and contents of Plan.-(1) The Authority shall as soon as possible carry out town planning and civic survey and prepare Draft Plan for the industrial development area;
(2) The Draft Plan shall-
(a) define the various sectors into which the area falling within the proposed urbanisable limit is to be divided;

(b) allocate the area of land for land use;
(c) indicate, define and provide for-
(i) the existing and proposed National Highways,
arterial and primary and secondary roads;
(ii) the exiting and proposed other lines of transportation and communication including railways and airport.
(3) The Draft plan may indicate, define and provide for,-
(a) the existing and proposed public buildings; and
(b) all or any of the matters specified in Regulation 4.

(4) The Draft Plan shall consist of such maps, diagrams, charts, reports and other written matter of any explanatory or descriptive nature as pertain to the development of the whole or any part of Industrial Development Area.
(5) Written matter forming part of Draft Plan shall include such summary of the main proposals and such descriptive matter as the Authority may consider necessary to illustrate or explain the proposals indicated by maps, charts, diagrams and other documents;
(6) A Plan of land use shall also form a part of the Draft Plan proposing most desirable utilisation of land for purposes mentioned in clause (b) or sub-regulation (3).
4(1) The Plan may include:
(a) Sector Plans showing various sectors into which the industrial development area or part thereof may be divided for the purpose of development.
(b) The Plan will show the various existing and proposed land uses indicating the most desirable utilisation of land for-
(i) industrial use by allocating the area of land for various scales or types of industries or both;
(ii) residential use by allocating the area of land for housing for different and defined densities and plotted development for different categories of households;
(iii) commercial use by allocating the area of land for wholesale or retail markets, specialised markets, town level shops, show-rooms and commercial offices and such other allied commercial activities;
(iv) public use by allocating the area of land for

Government offices, hospitals, telephone exchanges, police lines, general post office, telegraph office, educational institutions, testing, research and demonstration institutions, oxidation pond and sewage farm, sanitary land fill area and other major establishments;
(v) organised recreational open spaces by allocating the area of land for regional and city park, exhibition ground, sports village, stadium, swimming pool etc.;
(vi) agricultural use by allocating the area of land for farming, horticulture, sericulture, piggery,

fishery and poultry farming;
(vii) such other purposes as the Authority may deem fit in the course of proper development of the industrial development area;
(c) Traffic and transportation plan consisting of proposals for road, railway and air transportation system.
(d) Infrastructural plan showing proposal for land/building for provision of water, electricity, drainage and disposal of sewage and refuse and also indicating proposals for organised recreational open spaces, civic and cultural centres and land/building for education, medical and such other infrastructural facilities;
(e) Housing Plan consisting of estimates of housing requirement and proposals regarding standard type of new housing units.
5. Public notice regarding preparation of Plan.-(1) Authority shall as early as may be, after the Draft Plan has been prepared publish a public notice stating that -
(a) The Draft Plan has been prepared and may be inspected by any person at such time and place as may be specified in the notice.
(b) objections and suggestions, if any, in respect of the Draft Plan shall be sent in writing by any person to the Chief Executive Officer of the Authority before such date not being earlier than 30 days from the date of publication of the notice and in such manner as may be specified in the notice.
(2) This notice may be issued in Form `A' appended to these regulations.
6. Mode of publication of the Public Notice.- Every public notice mentioned in Regulation 5 hereinunder shall be in writing under the signature of the Chief

Executive Officer and shall be widely published in the locality to be affected thereby affixing copies thereof at conspicuous public places within the said locality, or by publishing the same by beat of drums or by advertisements in a newspaper having circulation in the locality. This publication shall be by two or more of these means, which the Chief Executive Officer of the Authority may think fit.
7. Inquiry and hearing - (a) After the expiry of the period specified in the notice for making objections

and suggestions, the same will be placed before a Committee to consider the objections and suggestions. The Committee shall be constituted by the Chief Executive Officer and shall consist of three members, one of whom shall be Town Planner. The Committee shall fix date(s) for disposal of objection(s) received and shall serve notice on the affected person(s)/body who has filed objection(s) and may allow a personal hearing to the affected person(s)/body in connection with his/their objection(s), after intimating the time, date and place of hearing.

(b) The Committee shall after conclusion of the hearing submit its report/recommendation to the Chief Executive Officer of the Authority.

8. Consideration of the recommendations of the Committee.- (a) The recommendations of the Committee shall be submitted to the Chief Executive Officer for consideration thereof.

(b) If the Chief Executive Officer is of the view that some matter has not been considered by the Committee, the recommendation may be referred back by him to the Committee for consideration of the same.

(c) The Chief Executive Officer shall submit his report along with the recommendations of the Committee to the Authority.

9. Finalisation/Approval of the Draft Plan by the Authority-(a) The Authority may, after considering the report of the Chief Executive Officer and any other matter, issue directions for variations, modifications or amendments of the Draft Plan.

(b) The Authority shall approve the plan with such variations, modifications or amendments as are deemed to be necessary by the Authority.

(c) The Plan approved under clause (b) shall be effective for a period specified by the Authority but such period shall not be less than 5 years.

10. Date and commencement of Plan.-Immediately after

a Plan has been approved by the Authority a public notice shall be published under the signature of the Chief Executive Officer in the manner provided in Regulation 5 stating therein that a Plan has

been
approved and naming a place where a copy of the plan
may be inspected at all reasonable hours and upon the
date of first publication of the aforesaid notice,
the Plan shall come into operation.
11. Amendment of the Plan.-(1) The Authority may make
such amendments in the Plan which do not effect
important alteration in the character of the Plan and
which do not relate to the extent of land use or
standards of population density.
(2) Before making any amendment in the Plan under
sub-section (1), the Authority shall publish a notice
in at least one newspaper having circulation in the
development area inviting objections and suggestions
from any affected person with regard to the proposed
amendment before such date as may be specified in the
notice and shall consider all objections that may be
received.
(3) Every amendment made under this Regulation shall
be published in any of the manner specified in
Regulation 5 and the amendment shall come into
operation either on the date of the first publication
or on such other date as the Authority may fix.
(4) The Authority shall not make during the specified
period in which the Plan is to remain effective, such
amendment(s) in the Plan which affects important

alteration in the character of the Plan and which relates to the extent of the land use or standards of population density.

In exercise of the power vested in it under Section 3 of the 1976 Act, the State Government constituted the Authority in 1991. Thereafter, the Governor of Uttar Pradesh, in exercise of the power vested in him, under Section 2(d) and Section 6 of the 1976 Act read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 notified various villages as part of Greater Noida Industrial Development Area. Village Shahberi which was then part of District Ghaziabad and now falls in District Gautam Budh Nagar was declared as industrial development area vide

notification dated 21.2.1994.

After following the procedure prescribed under clauses 3(2) to (6) and 4 to 9 of the Regulations, the Authority prepared a Development Plan for Greater Noida-2021 (for short, "the Development Plan") covering a total area of 21570 hectares.

This area has been described as Phase I of Greater Noida. The

land use specified in the Development Plan is as under:

Land use	2021 (ha)	%age
Residential	5000	23.2
Industrial	4227.3	19.6
Commercial	1200	5.6
Institutional	3502.7	16.2
Green areas	5000	23.2
Transportation	2600	12.1
SEZ	40	0.2
Total	21570	100

The land use of village Shahberi has been shown in the

Development Plan as "industrial".

As a sequel to the declaration of different villages as

part of industrial development area, the State Government

acquired many hundred hectares land in those villages for

planned industrial development. However, as will be seen

hereinafter, 60 per cent of the acquired land has neither been

developed nor used for the purpose specified in the acquisition

notifications.

In May, 2009, the Authority submitted a proposal to the

State Government for the acquisition of 156.903 hectares land in

village Shahberi ostensibly for a public purpose, namely,

planned industrial development. Thereupon, Special Secretary,

Industrial Development Department prepared note dated 26.5.2009

for issue of notification under Section 4 read with Section 17

of the 1894 Act. The Directorate of Land Acquisition made

available the information required in terms of Government Order

dated 26.12.2006. In the notings recorded on the file, it was

proposed that application of Section 5A of the 1894 Act may be

dispensed with because hearing of objections which may be filed

by the landowners and interested persons is likely to take

several years causing undue delay and the same would adversely

affect the planned industrial development. This proposal was

approved by the Chief Secretary, Rehabilitation and

Industrial

Development Department and the Principal Secretary to the Chief

Minister, who was also the Minister of the concerned department.

Thereafter, notification dated 10.6.2009 was issued under

Section 4(1) read with Section 17(1) and (4) of the 1894 Act.

After 3 months and 20 days, the Director in the Directorate of

Land Acquisition suggested that a notification may be issued

under Section 6 read with Section 17. On 22.10.2009, the file

was sent to the Law Department for its opinion. On the same

day, a fresh note was prepared by the Industrial Development

Department with the suggestion that notification under Section 6

read with Section 17 may be issued without waiting for the

opinion of the Law Department because a number of writ petitions

had been filed in the High Court and there was a possibility of

the High Court granting stay. The fresh note was approved by the

Special Secretary to the Chief Minister on 1.11.2009.

Thereafter, notification dated 9.11.2009 was issued under

Section 6(1) read with Section 17(1).

In the meanwhile, the property department of the Authority

made a request that land use of the acquired land may be changed

from industrial to housing and another area may be earmarked for

industrial purpose and for this, the Development Plan may be

modified. Thereupon, a committee was constituted to suggest

swapping of land without changing the percentage of land use and

as was expected, the committee gave a favourable report on

2.11.2009. The same was approved by the Board on the very next

day i.e. 3.11.2009. (This happened 3 days before the issue of

notification under Section 6(1) read with Section 17(1) of the

1894 Act). After approval by the Board, notice dated 20.11.2009

was got published in "Dainik Jagran" and suggestions/objections

were invited from the members of public about the proposed

modification in the Development Plan. The proposed modification

of the Development Plan was finally sanctioned by the Board

sometime in the month of January, 2010 and was sent to the State

Government for its approval. The latter granted approval

sometime in March, 2010.

The notification issued by the State Government under

Section 4(1) read with Section 17(1) and (4) was challenged in

C.M.W.P. No. 37512/2009 - Amit Kumar and others v. State of U.P.

and others and batch, which were dismissed as premature by the

Division Bench of the High Court vide its order dated 27.10.2009

with liberty to the petitioners to file fresh petitions to

challenge the acquisition of land in the event of issue of

notification under Section 6(1). The operative portion of that

order reads as under:

> "All the writ petitions are accordingly dismissed as
> premature without deciding any point on merits, with
> liberty to the petitioner to raise all the grounds,
> which have been taken in the writ petition or such
> ground, which may become available to the

petitioners to challenge the acquisition of the land, if the State Government issues notification under sub-section (1) of Section 6 of the Act, including the applicability of sub-sections (1) and (4) of Section 17 of the Act."

After the issue of notification under Section 6(1) read with Section 17(1), a batch of writ petitions was filed questioning the acquisition of land on the ground of arbitrary, malafide and colourable exercise of power by the State Government and also on the ground that there was no valid ground or justification to invoke the urgency clause enshrined in Section 17(1) read with Section 17(4) and to dispense with the application of Section 5A. Five of the Writ Petitions bearing Nos. 17932, 17934, 17936, 17939 and 26190 of 2010 were filed by the original tenure holders, who also impleaded 3 colonizers, namely, M/s. Anjara Gold City, M/s. Supertech Echo Village and M/s. Amrapali Gold Homes as party respondents. Some writ petitions were filed by those who had purchased small

parcels of

land from the original owners prior to 10.6.2009 and some were

filed by those who had purchased land after the issue of

notification under Section 4(1) read with Section 17(1) of the

1894 Act. Shri A.D.N. Rao, learned counsel assisting Shri P.P.

Rao, senior counsel, who appeared on behalf of M/s. Supertech

Ltd. produced before the Court a list of 180 persons of the 3rd

category.

On behalf of the writ petitioners (private respondents

herein), it was argued before the High Court that the decision

of the Government to invoke Section 17 was totally arbitrary and

unwarranted and that in the guise of acquiring land for a public

purpose, namely, planned industrial development in District

Gautam Budh Nagar, the State Government and the Authority had

devised a mechanism to benefit the builders who were allotted

large chunks of the acquired land within few weeks/months of the

issue of notification under Section 6(1) read with Section 17(1)

and the entire exercise of the acquisition of land was a

colourable exercise of power vested in the State Government

under the 1894 Act.

While dealing with the question whether the impugned

acquisition was a colourable exercise of power by the State

Government, the High Court adverted to the record produced by

the counsel appearing on behalf of the State and the Authority

and recorded its conclusion in the following words:

> "The sequence of events clearly demonstrates and establishes that the GNOIDA never intended to develop the land proposed to be acquired for integrated planned industrial development. The Builders Residential Scheme-BRS-01/08-09, did not get sufficient response. In the proposals annexed to the rejoinder affidavit to convert the land use, it was clearly recommended by the Committee constituted by GNOIDA that on account of economic recession the earlier Builders Residential Scheme did not get sufficient response, and since the land in village Shahberi is close to the Ghaziabad and is

adjoining the main road, in order to earn more profits it was considered appropriate that the land be utilised for

multi storied housing complex, through a builders allotment scheme.

The motive of the GNOIDA in league with the builders is further demonstrated by the fact, that conditions in the scheme were greatly relaxed to the extent that the allotment was to be made to the builders of the plots measuring not less than 60000 square meters each, out of which one of the plots in village Shahberi measures more than 2 lac square meters, on down payment of 5% of the premium with a condition that the builders will be permitted to sub-divide and sub-lease the plots measuring at least 20000 square meters each.

The facts on record demonstrate that GNOIDA never intended to put the land for integrated planned industrial development. The entire object was to develop a residential complex with multi storied houses to be given to the builders at the proposed rate of Rs. 10000/- per square meters with relaxation of the terms to such an extent that the builders may

be permitted to develop the housing complexes by sub dividing the leased land after paying only 5% of the premium.

There is no doubt that the building houses is essential to an industrial township but that the method and manner of such development has to be bonafide for the purpose connected with the industrial use of the land. Where the record demonstrates that the entire object was to build multi storied complexes to be allotted to the builders for earning profit and no such proposal was sent to the State Government either at the stage of issuing notification under Section 4/17 and thereafter at the stage of issuing notification under Section 6/17, the acquisition of land has to be held to be in colourable exercise of powers. The GNOIDA did not want to disclose to the State Government that the land will be put to use for constructing house complexes through the builders."

The High Court then considered the question whether the

State Government could have invoked the urgency provisions

contained in Section 17(1) and (4) of the 1894 Act, extensively

referred to the judgments of this Court in Anand Singh v. State

of U.P.(2010) 11 SCC 242 and Radhy Shyam v. State of

5 SCC 553 and held:

"The facts in the present case are the same as in the case of Shri Radhey Shyam (supra). The same reasons were given as in the present case for applying Section 17 of the Act, namely that the development authority urgently requires the land for planned development; the development scheme has been duly approved by the State Government; if there is delay in acquisition of land, there is likelihood of encroachment, which will adversely affect the concept of planned industrial development and that numerous leading industrial units of the country who want to invest in the State of UP will establish their industries in other States, and therefore it is extremely urgent and necessary that the land be acquired immediately; the written and oral objections invited from the farmers will take unprecedented long time. The disposal thereof will hamper planned development of the area.

The observations of the Supreme Court are equally attracted in this case, namely, that there was no plausible reason to accept the tailor made justification for approving the impugned action, which resulted in depriving the land owners constitutional right to property, even if planned

industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Section 17 (1) and 17 (4); the objective of industrial development needs lot of deliberation and planning keeping in view various scientific and technical parameters and environmental concerns; the private entrepreneurs who are desirous of making investment in the State take their own time in setting their industrial units.

In the present case we further find that apart from mechanically applying Section 17 of the Act on the facts and circumstances which were not approved in Radhey Shyam's case, the entire action of acquiring the land was in colourable exercise of powers. The GNOIDA was fully aware and was planning to use the land in village Shahberi and neibhouring villages for multistory housing complexes to be developed by the builders on relaxed conditions. The sequence of dates and events given in the preceding paragraphs establish that on one hand, a request was made for acquiring the land for public purpose for planned industrial development, on the other hand a few days before the proposals were put up before State

Government for issuing notification under Section 6 (1) applying Section 17 (1) and (4) without informing the State Government the GNOIDA was preparing and held Board's meeting for converting the land use for residential purposes to lease of the land to builders for housing complexes for earning profits. The land is proposed to be acquired on the rates of about Rs. 850/- per square meters, and to be given within a month to the builders at Rs. 10,000/- per square meters, and that too on payment of 5% of the price, on allotment."

Shri Mukul Rohatgi, learned senior counsel appearing for the Authority produced the Development Plan and argued that even though the High Court may be justified in nullifying the decision of the State Government to invoke the urgency provisions and to dispense with the application of Section 5A, there was no warrant for quashing the acquisition proceedings as a whole and the State Government should have been allowed to proceed from the stage of Section 4 notification as was done by

the High Court while deciding CMWP No.48204/2009 - M/s. R.P.

Electronics and others v. State of U.P. and others and batch and

CMWP No.20156/2009 - Smt. Rajni and others v. State of U.P. and

others and batch, which were filed questioning the acquisition

of 72.0912 hectares land in village Surajpur and 170.098

hectares land in village Gulistanpur. Shri Rohtagi further

submitted that the High Court committed grave error by quashing

the entire acquisition ignoring that large number of tenure

holders had accepted compensation and had not challenged the

acquisition.

Shri P.P. Rao, learned senior counsel appearing for M/s.

Supertech Ltd. referred to order dated 27.10.2009 passed in CMWP

No.37512/2009 - Amit Kumar and others v. State of U.P. and

others and batch and argued that in view of the finding recorded

in that order that there were no pleadings with regard to lack

of good faith, malafides, irregularity and vagueness

in regard

to the acquisition, the High Court was not justified in quashing

the notification issued under Section 4(1). Shri Rao submitted

that in view of Section 3(f) of the 1894 Act, the acquisition of

land for planned industrial development has to be treated as an

acquisition for a public purpose and the High Court committed

grave error in holding that the acquisition of the respondents'

land was an act of colourable exercise of power by the State

Government. Learned senior counsel then argued that the

allotment of land to the builders for construction of multi-

storeyed complexes cannot lead to inference that acquisition was

vitiated due to malafides because land use specified in the

Development Plan was changed after inviting

objections/suggestions from the public and, in any case, before

pronouncing upon the legality of the acquisition, the High Court

was duty bound to give proper notice and effective opportunity

of hearing to the beneficiaries.

Shri Ranjit Kumar, learned senior counsel referred to

paragraph 23 of the impugned judgment to show that 114 out of

211 landowners had voluntarily accepted the compensation and

argued that the High Court should have quashed the acquisition

only qua those who had not accepted the compensation and had

challenged the notifications issued under Sections 4(1) and 6(1)

read with Section 17(1) and (4).
The learned senior counsel

relied upon order dated 30.5.2011 passed in CMWP No.20156/2009 -

Smt. Rajni and others v. State of U.P. and others and batch in

support of his argument that quashing of the acquisition should

have been restricted to the tenure holders and those who had

purchased before 10.6.2009 and had not accepted the

compensation.

Shri Dushyant Dave, learned senior counsel submitted that

19% of the total area covered by the notification issued under

the 1976 Act is earmarked for

residential purpose and the

acquired land was allotted to the builders so as to enable them

to construct multi-storeyed complexes, which would reduce

pressure on the capital of the country. Shri Dave submitted

that illegal plotting and mushroom growth of unauthorised

colonies in the vicinity of Greater Noida had prompted State

Government to invoke the urgency provisions and this exercise

cannot be faulted on any count.

Shri P.S. Patwalia, learned senior counsel representing

M/s. Amrapali Smart City Pvt. Ltd. and Shri Pallav Shishodia,

learned senior counsel representing M/s. Mahagun India Pvt. Ltd.

argued that the impugned order is liable to be set aside because

the allottees were not given opportunity of hearing. Shri

Shishodia pointed out that on the applications made by some of

the writ petitioners, the High Court had passed orders for

impleadment of 3 builders as parties but, the writ petitions

were decided without ensuring service of notice upon the

impleaded parties. Learned senior counsel emphasized that if

opportunity of hearing had been given, the beneficiaries of

allotment could have demonstrated that many of the writ

petitioners did not have the locus to file writ petitions

because they had purchased the land after publication of the

notification issued under Section 4(1). Shri Shishodia finally

submitted that this litigation represents a tussle between those

engaged in developing unauthorized colonies and the organized

colonizers who want to construct multi-storeyed buildings in a

planned manner and make available flats to the eligible persons

and the High Court should have refused to exercise jurisdiction

under Article 226 of the Constitution at the instance of those

responsible for unplanned development of the area.

Learned senior counsel appearing for the builders laid

considerable emphasis on the fact that after getting land, their

clients had invited applications for allotment of

flats etc.,

from the prospective buyers and accepted part of the price and

prayed that while deciding these petitions, the Court should

ensure that the innocent investors may not suffer on account of

restoration of land to the tenure holders.

Shri L.N. Rao, learned senior counsel representing the

State of Uttar Pradesh extensively referred to the provisions

contained in the 1976 Act and the Regulations and argued that

planned development of an industrial area envisages earmarking

of land for different purposes including residential and the

impugned acquisition should not have been faulted by the High

Court merely because use of the acquired land was changed from

industrial to residential. Learned senior counsel produced

satellite images of the area of village Shahberi for the period

between 2000 and 2008 to show that after issue of notification

under Section 2(d) of the 1976 Act, massive plotting of the

agricultural land has been done in an unauthorised manner and

argued that if the impugned order is not set aside, the concept

of planned development of Greater Noida will be seriously

jeopardized. Learned senior counsel then submitted that in the

absence of proper pleadings, the High Court should not have

declared that the acquisition of land was a result of colourable

exercise of power by the State Government.

Shri V.P. Choudhary, learned senior counsel appearing for

some of the respondents pointed out that there are total 211

tenure holders in village Shahberi of which 108 have small

holdings and 103 have large holdings and argued that the High

Court did not commit any error by entertaining the writ

petitions because most of the respondents were either original

tenure holders or were those who had purchased small pieces of

land before 10.6.2009. Learned senior counsel further argued

that the State Government and the Authority had misused the

provisions of the 1894 Act to benefit the builders

sacrificing

the interest of the farmers and the High Court rightly annulled

the entire acquisition by declaring it to be a case of

colourable exercise of power. Learned counsel pointed out that

while the landowners were offered compensation at the rate of

Rs.800/- per square yard, the land was allotted to the builders

at the rate of more than Rs.1100/- per square yard and, in turn,

they made huge profits by selling the to be constructed flats

etc. Shri Choudhary also referred to the civil miscellaneous

application filed in Civil Writ Petition No.6108 of 2010-Sanjay

Sharma and others v. State of U.P. to show that after depriving

the farmers of their only source of livelihood, the Authority

transferred the land to the builders on payment of 5% premium

with liberty to pay the balance amount in 20 installments spread

over a period of 10 years.

Shri P.S. Narasimha, learned senior counsel appearing for

some other respondents submitted that there was lack of bonafide

on the part of the State and the Authority right from the

beginning and in the guise of acquiring land for a public

purpose, namely, planned industrial development they wanted to

favour the chosen builders to enable them to earn profits

running into hundreds of crores. Shri Narasimha emphasized that

the concept of public purpose enshrined in the 1894 Act has

direct nexus with the doctrine of public trust and land acquired

under the 1894 Act cannot be used for subserving a private

purpose. Learned counsel relied upon the judgments of this Court

in M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 and Fomento Resorts

and Hotels Ltd. v. Minguel Martins (2009) 3 SCC 571 and

submitted that the Court should extend the doctrine of public

trust in matters involving the acquisition of land and nullify

every such acquisition, which is meant to advance the private

interest. Shri Narsimha also relied upon the

judgment of the

Constitution Bench in Padma Sundara Rao v. State of T.N. (2002)

3 SCC 533 and argued that the High Court did not commit any

error by quashing the notification because the State Government

cannot now rely upon the notification issued on 10.6.2009 for

issuing fresh notification under Section 6(1) ignoring the

prohibition contained in second proviso to Section 6(1) of the

1894 Act.

We have considered the respective submissions and carefully

scrutinised the records including the documents and papers

produced by the learned counsel for the parties during the

course of hearing.

At the outset, we deem it proper to observe that none of

the senior counsel appearing for the petitioners assailed the

finding recorded by the High Court that the decision of the

State Government to invoke the urgency provisions contained in

Section 17(1) and to dispense with the application of Section 5A

was vitiated due to arbitrary exercise of power and non

application of mind. Of course, Shri L.N. Rao and Shri Dushyant

A. Dave, learned senior counsel did suggest that Section 17(1)

and (4) was invoked to check mushroom growth of unauthorised

colonies in the area around Greater Noida Phase I, but in our

view, this did not provide a valid justification to invoke

Section 17(1) and to dispense with the application of Section 5A

and the High Court rightly nullified this exercise by relying

upon the judgments of this Court in Anand Singh's case and Radhy

Shyam's case. We may add that unauthorised plotting of

agricultural land or large scale illegal constructions could not

have been possible without active or tacit connivance of the

functionaries and officers of the State and/or its

agencies/instrumentalities. If the Authority wanted to prevent

unauthorised colonization of agricultural land or illegal

constructions, then nothing prevented

it from taking action

under Section 9 of the 1976 Act. No explanation has been given

by the State Government and the Authority as to why appropriate

measures were not taken to prevent unauthorised colonization of

land in Shahberi and elsewhere. The inefficiency of the State

apparatus to take action in accordance with law cannot be used

as a tool to justify denial of opportunity of hearing to the

landowners and other interested persons in terms of Section 5A

of the 1894 Act.

The reason which seems to have heavily weighed with the

functionaries of the State to invoke Section 17(1) and (4) was

the perceived delay which may have been caused in the

acquisition of land if opportunity of hearing was afforded to

the landowners and other interested persons. However, as held in

Radhy Shyam's case, compliance of the rules of natural justice

is a small price which the State should always be prepared to

pay before it can deprive any person of his property.

We shall now deal with the argument of the learned counsel

for the builders that the impugned order is vitiated due to

violation of the rules of natural justice because the High Court

disposed of the writ petitions without ensuring impleadment of

all the persons to whom the land was allotted by the Authority

by inviting bids and giving them reasonable opportunity of being

heard.

In our view, there is no substance in the complaint of the

builders. The writ petitioners had questioned the acquisition of

land mainly on the grounds of arbitrary exercise of power and

non-application of mind by the State Government and denial of

opportunity of hearing to the landowners. The High Court

entertained the writ petitions and directed the parties to

maintain status quo. In CMWP No. 500/2010 - Devendra Kumar and

others v. State of U.P. and others, the stay order was passed on

7.1.2010 in the presence of the counsel representing writ

petitioners, the State of U.P. and the Authority. Thereafter,

similar orders were passed in other writ petitions. It has

neither been pleaded before this Court nor Shri Mukul Rohtagi,

learned senior counsel argued that the functionaries and the

officers of the Authority were not aware of the pending

litigation and the orders of status quo passed by the High

Court. Therefore, the exercise undertaken by the Authority to

devise schemes for allotment of land to large group

housing/builders residential plots in the first week of January

2010 and thereafter allot plots measuring 60,000 to 4,00,000

square yards to the builders by inviting bids from those, who

could offer reserve price of 60 crores to 400 crores was nothing

but a brazen attempt to overreach the process of the Court. The

beneficiaries of such blatant violation of the orders of status

quo passed by the High Court cannot make a complaint that they

were not given opportunity of hearing.

Although, Shri Pallav Shishodia, learned senior counsel

appearing for M/s. Mahagun India Pvt. Ltd. claimed that the land

allotted to his client was not covered by the order of status

quo passed by the High Court, but this is of little

significance. The officers of the Authority were very much aware

of the fact that the High Court has already entertained the

challenge to the notifications issued under Section 4(1) read

with Section 17(1) and (4) and Section 6(1) read with Section

17(1) but no effort was made by them and the counsel

representing the Authority to bring to the notice of the High

Court the facts relating to allotment of large chunks of land to

the builders.

It is difficult, if not impossible to believe that the

builders were not aware of the pending litigation despite the

fact that they had successfully manipulated the change of land

use and modification of the Development Plan in active

connivance with the functionaries of the Authority and the State

Government. Note dated 22.10.2009 recorded by the Industrial

Development Department shows that the concerned officers were in

know of the pending writ petitions and with a view to make

infructuous the stay order which was likely to be passed by the

High Court, the process of issuing notification under Section

6(1) read with Section 17(1) was hastened. This shows that a

designed attempt was made by the functionaries and officers of

the State Government and the Authority, who had connived with

the builders to frustrate the right of the tenure holders and

other interested persons to seek remedy before an appropriate

judicial forum against unlawful deprivation of their legal and

constitutional rights.

For the reasons stated above, we hold that the grievance

made by the builders that they were not given opportunity of

hearing is misconceived. In any

case, their complaint of violation of audi alteram partem stands redressed because they have been given sufficient opportunity of hearing by this Court.

There is another reason for our disinclination to entertain the grievance of the builders. Although, the builders appear to have engineered the acquisition of land in question, they could neither defend and justify the invoking of urgency provisions nor contest the writ petitioners' plea that the provisions of the 1894 Act had been abused and misused for the acquisition of land in the name of planned industrial development in the district. The 1894 Act does not envisage any role of the private persons in the acquisition of land except when the acquisition is made under Chapter VII of the 1894 Act. Therefore, they cannot step into the shoes of the State functionaries and offer justification for the acquisition of a particular parcel of land.

The next issue which merits consideration is whether the

High Court was justified in recording a finding that the

acquisition impugned in the writ petitions was a colourable

exercise of power by the State Government. It is not in dispute

that after various villages were declared as part of Greater

Noida Industrial Development Area, the State Government had

resorted to large scale acquisition for the purpose of planned

industrial development. However, the pleadings filed before the

High Court show that major portion of the acquired land has

neither been developed nor used for the purpose for which it was

acquired. This is evident from the averments contained in

paragraph 25 (as contained in the copy of the writ petition

filed before this Court) of CMWP No.500 of 2010 - Devendra Kumar

and 17 others v. State of U.P. and others, which are reproduced

below:

> "25. That it is also pertinent to point out over here that the respondent-authority i.e. Greater Noida

Industrial Development Authority Noida Authority has came into existence in the year 1991 and thereafter had acquired the huge chunk of land for the purpose of industrial development, out which, to the best knowledge and information of the petitioners even about 60% land has neither been developed for the aforesaid purpose nor has been used or allotted to any industry for developing the same and is lying vacant till date. The petitioners had tried to get the detail information in respect thereof and have approached the authority under the provisions of Right to Information Act, 2005 and filed an application dated 7.12.2009. Photostat copy of the application dated 7.12.2009 filed by the petitioner under Right to Information Act is annexed herewith and marked as Annexure no. 24 to this writ petition."

The above reproduced averments were controverted in

paragraph 17 of the reply filed on behalf of respondent No.3 by

Shri G.P. Srivastava, Land Consultant, in the following words:

"17. That the contents of para 25 and 26 of the writ

petition are not admitted hence specifically

denied.

The petitioner by application dated 7.12.2009 under Right to Information Act has made query about the Village Barak. The land use of Village Bisrak is residential. Moreover, to give reply to the application the time limit is 35 days. The Authority is developing the land which is acquired by the notifications under section 4 and 6 and is transferring given lease according to the Section 7 of U.P. Act no. 6 of 1976. Moreover, to develop land, the basic facilities are to be made, which is being provided under section 2(a), Section 6 and Section 7 of U.P. Act no. 6 of 1976. All the developments on the acquired land are being made according to the drafted Master Plan 2021 of Land Acquisition Act."

Shri Nalin Kumar Awasthi, A.D.D.(L.A.), Greater Noida,

Gautam Budh Nagar filed another reply on behalf of respondent

Nos.2 and 3 in the writ petition in reply to paragraph 25 of the

writ petition. Shri Awasthi gave the following reply:

"13. That contents of paragraph nos. 25 and 26 of the writ petition are not related to the answering respondent."

The above extracted pleadings show that while the State

Government avoided giving any reply to the specific averments

made by the writ petitioners on the issue of non utilisation of

the acquired land for achieving the public purpose specified in

the notifications issued under Section 4, the Authority gave

evasive reply and did not indicate as to how much land has been

used for achieving the purpose of acquisition. It is, thus,

clear that many hundred hectares acquired land has not been used

for planned industrial development. In this scenario, it is not

possible to understand as to why the State Government and the

Authority resorted to further acquisition of land for the same

purpose and that too by invoking the urgency provision and then

allot more than 90 hectares of the acquired land to the builders

so as to enable them to earn huge profits by constructing multi-

storeyed complexes.

The lack of bonafides on the part of the State Government

and the Authority is evinced from the following facts:

(i) Section 17(1) and (4) was invoked without any tangible

emergency which could justify the exercise of power under

Section 17(1) and warrant exclusion of the inquiry envisaged

under Section 5A.

(ii) On 22.10.2009, the file was forwarded to the Law

Department for its opinion but on the same day, another note

was prepared and got approved for facilitating issuance of

notification under Section 6(1) read with Section 17(1) so

that the aggrieved persons may not be able to get interim

relief from the High Court in the pending writ petitions.

(iii)Without even waiting for the issue of notification

under Section 6(1), the Authority initiated the process for

change of land use and modification of the Development Plan

and finalized the same within a short span of 7 days and

that too without complying with the mandate of clause 6 of

the Regulations which envisages publication of notice by two

of the prescribed modes. Even notice dated 20.11.2009 was

got published in a small box of the newspaper "Dainik

Jagran" so that the affected persons may not be able to

protest against the proposed change of land use and

modification of the Development Plan.

(iv) Though not required by law, the file was sent to the

Government to approve the decision for modification of the

Development Plan. However, without waiting for the

Government's approval, the Authority proceeded to devise the

builders' scheme, issued advertisements and allotted large

chunks of land measuring 60,000 square yards to 4,00,000

square yards by inviting bids.

One could appreciate that the Authority had proposed change of

land use and modification of the Development Plan after it found

that no one had come forward to avail the offer of allotment of land

for setting up industries or major chunk of land could not be used

for industrial purpose despite sincere efforts made in that regard.

But, the facts brought on record unmistakably show that the whole

exercise of acquisition was designed to serve the interest of the

builders and the veil of public purpose was used to mislead the

people in believing that land was being acquired for a public

purpose i.e. planned industrial development. This is the reason why

even before the issue of notification under Section 6(1), the

process for change of land use was initiated and completed with

unusual haste and without waiting for the Government's approval to

the modification of the Development Plan, the Authority offered and

allotted the acquired land to the builders for construction of

multi-storeyed complexes. This was nothing but a colourable

exercise of power by the State Government under the 1894 Act and in

our considered view, the High Court did not commit any error by

recording a conclusion to that effect.
In this context, it will be

useful to notice the observations made

in State of Punjab v.

Gurdial Singh (1980) 2 SCC 471. In that case, while pronouncing

upon the correctness of the order passed by the Punjab and Haryana

High Court which had quashed the acquisition of the respondents'

land on the ground of malafide exercise of power, this Court

observed:

> "Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions -- is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian

of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust -- that we are accountable for its exercise -- that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

(emphasis supplied)

The argument of the learned senior counsel that

there was

no pleading on the issue of colourable exercise of power merits

rejection because in a number of writ petitions, the

petitioners had made specific averments to this effect. For

the sake of reference, paragraphs 7 and 8 of Writ Petition

No.17939 of 2010-Sajid Hussain and 7 others v. State of U.P.

(as contained in the copy of the writ petition filed before

this Court) are extracted below:

> "7. That under the impugned notification under section 4 & 6 of the Land Acquisition Act the purpose for acquiring the land has been shown to be Plan Industrial Development in District Gautam Budh Nagar but this is not correct. From the own action and conduct of respondents public purpose of Plan Industrial Development has been shown in the disputed notifications in colourable exercise of power. In fact, the respondent No.3 is transferring these plots to builders for constructing residential flats. This stands proved from the fact that though acquisition proceedings have yet not culminated to its logical end and the land has not vested in State government or the Greater Noida, the respondent No.3 has published a scheme of allotment of Group Housing/Builders Residential Plots Scheme BRS-01/2010(1) Plot Size Above 60,000/- sq mtrs. The scheme was opening on

22.1.2010 and is closing on 16.2.2010. The tenders were invited to be submitted between 10 am to 12 noon on 16.2.2010 and the technical qualification bids were to be opened on 3 pm on 16.10.2010 itself. The terms and conditions for allotment of group housing plot attached with the scheme show that the petitioner land which falls under GH-03 & GH-04 shown at Sl. No.15 & 16 and reserve price has been shown to the 10,000/- per sq. mtrs. In Dainik Jagran dated 24.2.2010 the name of successful bidders have been shown to be AIMS Golf Ltd. and Amrapali Builders on Land situate in village Shahberi and in Dainik Jagran dated 8.3.2010 further auction has been fixed for 23.3.2010 and must have been taken place by now. True copy of the scheme of allotment and the news items published Dainik Jagran dated 24.2.2010 & 8.3.2010 area being filed herewith and marked as ANNEXURE-8,

ANNEXURE-9 & ANNEXURE-10 & ANNEXURE-11 to this Writ Petition.

8.That in the manner a fraud is being committed and played upon the poor land holders whose land has been acquired forever and the respondent no.3 making huge profits running into Crores & Crores whereas they claim to be working on no profit no loss basis."

Theoretically, Shri L.N. Rao, learned senior counsel for

the State is right in saying that the change of land use from

industrial to residential cannot be faulted per se because in

terms of Section 6(1) read with Section 6(2)(b), the Authority

is required to demarcate and develop sites for industrial,

commercial and residential purposes and the Development Plan

itself shows various existing and proposed land uses including

for residential purpose but on a deeper examination, we are

unable to accept his submission. Section 6(2) of the 1976 Act

does provide for the acquisition of land in the industrial

development area by agreement or under the 1894 Act; preparation

of a plan for the development of the industrial development

area; demarcation and development of sites for industrial,

commercial and residential purposes according to the plan and

also for allocation and transfer of plots of land by way of sale

or lease or otherwise for industrial, commercial or residential

purposes and the Regulations do lay down detailed procedure for

framing and amendment of the Development Plan but the scheme of

the 1976 Act and the Regulations do not empower the Authority to

manipulate the acquisition of land for a private purpose which

could well be achieved by invoking the provisions of Chapter VII

of the 1894 Act. What the Authority had done in these cases is

to initiate the proposal for the acquisition of land for planned

industrial development of an area of which land use is

distinctly shown in the Development Plan as industrial but the

real object of the entire exercise was to make available land to

the builders by ensuring acquisition otherwise than by agreement

so that they may not have to pay higher price to the landowners

and/or their transferees.

The submission of the learned senior counsel Shri P.P. Rao

that in view of the order passed in CMWP No.37512 of 2009-Amit

Kumar and others v. State of U.P. and others, the High Court

should not have entertained the challenge to notification issued

under Section 4(1) does not commend acceptance

because while

dismissing the writ petitions as premature, the High Court had

given liberty to the petitioners to raise all the grounds which

were taken in the writ petition or the grounds which may become

available after issue of notification under Section 6(1).

Therefore, the absence of specific pleadings which could justify

the conclusion that the acquisition of land was a colourable

exercise of power by the State Government did not operate as a

bar to the raising of such plea in the writ petitions filed

after issue of notification under Section 6(1) read with Section

17(1).

We do not find any substance in the argument of the learned

counsel for the petitioners that quashing of the acquisition

proceedings should have been confined to those who had not

accepted the amount of compensation. Once the High Court came to

the conclusion that the acquisition of land was vitiated due to

want of good faith and the provisions of the 1894 Act had been

invoked for a private purpose, there could not have been any

justification for partially sustaining the acquisition on the

ground that some of the landowners or their transferees had

accepted compensation by entering into an agreement with the

Authority. The situation in which the people belonging to this

class are placed in the matter of acquisition of their land

leave little choice to them but to make compromises and try to

salvage whatever they can. Therefore, even though some persons

may not have resisted the acquisition and may have accepted the

compensation by entering into agreements, it is not possible to

find any fault in the approach adopted by the High Court.

The submission of the learned counsel that the State

Government should have been allowed to proceed with the

acquisition from the stage of Section 4(1) notification cannot

be accepted for two reasons. Firstly, the High Court has found

that the acquisition impugned in the writ petitions was a

colourable exercise of power by the State Government. Secondly,

in view of the judgment of the Constitution Bench in Padma

Sundara Rao v. State of T.N. (supra), the State Government

cannot now rely upon notification dated 10.6.2009 for the

purpose of issuing fresh notification under Section 6(1).

Before concluding, we consider it necessary to reiterate

that the acquisition of land is a serious matter and before

initiating the proceedings under the 1894 Act and other similar

legislations, the concerned Government must seriously ponder

over the consequences of depriving the tenure holder of his

property. It must be remembered that the land is just like

mother of the people living in the rural areas of the country.

It is the only source of sustenance and livelihood for the

landowner and his family. If the land is acquired, not only the

present but the future generations of the landowner

are deprived

of their livelihood and the only social security. They are made

landless and are forced to live in slums in the urban areas

because there is no mechanism for ensuring alternative source of

livelihood to them. Mindless acquisition of fertile and

cultivable land may also lead to serious food crisis in the

country.

In the result, the special leave petitions are dismissed.

The Greater Noida Development Authority is saddled with cost of

Rs.10 lakhs for undertaking an exercise of allotment of land to

the builders in complete violation of the purpose for which the

land was sought to be acquired and even before approval by the

State Government for the change of land use. The amount of cost

shall be deposited in the Supreme Court Legal Services Committee

within a period of three months from today.

We are not unmindful of the plight of large number of

persons, who have made investment by booking flats etc., but,

at the same time, it is impossible to ignore that the landowners

and their transferees have been deprived of their property and

the only source of livelihood in a most arbitrary and malafide

manner without following the procedure established by law. It

will be grave injustice to the people belonging to the latter

category if the acquisition impugned before the High Court is

sustained only with a view to save the investment made by those

who are aspiring to acquire some property from the builders.

However, it is made clear that those who have paid money to the

builders for booking flats etc., shall be entitled to get back

the amount along with interest at an appropriate rate and if the

builders refuse to repay the amount, then they shall be free to

avail appropriate legal remedy.

(Satish K.Yadav)
(Phoolan Wati Arora)
Court Master
Court Master