

A LAXMAN LAL (DEAD) THROUGH LRS. AND ANR.
v.
STATE OF RAJASTHAN AND ORS.
(Civil Appeal No. 6392 of 2003)

B MARCH 1, 2013.

[R.M. LODHA AND J. CHELAMESWAR, JJ.]

Rajasthan Land Acquisition (Amendment and Validation) Act, 1981:

C s.5(2) – Validation of certain acquisitions – Notice u/s
4(5) of principal Act given prior to commencement of
Amendment Act – Notification u/s 6 of principal Act issued
after more than 5 years of the commencement of the
D Amendment Act – Held: The provision of sub-s. (2) of s.5 of
Amendment Act leaves no manner of doubt that two years’
time prescribed for making declaration u/s 6 in respect of the
notice issued u/s 4(5) prior to the commencement of the 1981
Amendment Act is mandatory and permits no departure –
E Therefore, the preliminary notification, which was followed by
notice u/s 4(5) before the commencement of the 1981
Amendment Act, has lapsed and does not survive since
declaration u/s 6 has been made much beyond the time limit
prescribed in law – The impugned orders are set aside – It is
F declared that preliminary notification dated 01.05.1980 has
lapsed and the declaration made on 19.03.1987 is legally
unsustainable – Rajasthan Land Acquisition Act, 1953 – ss.
4(5) and 6.

Rajasthan Land Acquisition Act, 1953:

G ss. 5-A, 17(1) and 17(4) – Special powers in case of
urgency – Acquisition of land for construction of bus stand –
After a lapse of 7 years from the date of notification u/s 4,
Notification u/s 6 issued and powers u/ 17(1) read with s/17(4)

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invoked dispensing with provision of s. 5-A – Held: Any construction of building (institutional, industrial, residential, commercial etc.) takes some time and, therefore, acquisition of land for such purpose can always brook delay of few months – Ordinarily, invocation of power of urgency by State Government for such acquisition may not be legally sustainable – In the instant case, a very valuable right conferred on the land owner/person interested u/s 5-A has been taken away without any justification – It is so because construction of bus stand would have taken some time – The exercise of power by State government u/s 17(1) read with s. 17(4) and dispensation of inquiry u/s 5-A cannot be legally sustained – Land Acquisition Act, 1894 – ss. 17(1), 17(4) and 5-A.

s. 17(1) read with s. 17(4) – Exercise of power under – Affidavit with regard to – Held: Counter affidavit filed by Rajasthan State Road Transport Corporation is not relevant as s. 17 confers power of urgency only on the State government alone and it is the State government that has to justify that the urgency was so imminent that dispensation of inquiry u/s 5-A was necessary – Constitution of India, 1950 – Art. 300-A – Eminent domain – Affidavit.

In the instant appeal arising out of acquisition of appellants' land for construction of a bus stand, the questions for consideration before the Court were: (i) "Whether invocation of power of urgency and dispensation of inquiry u/s 5-A after 7 years of issuance of preliminary notification u/s 4 of the 1953 Act are legally sustainable?" and (ii) "Whether preliminary notification u/s 4 of the Rajasthan Land Acquisition Act, 1953 issued on 01.05.1980 has lapsed since declaration u/s 6 of that Act was made on 19.03.1987 after the expiry of two years from the commencement of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1981?"

Allowing the appeal, the Court

A HELD: 1.1 The statutory provisions of compulsory acquisition contained in the Rajasthan Land Acquisition Act, 1953 (the 1953 Act) are not materially different from the Land Acquisition Act, 1894 (the 1894 Act). The power of urgency which takes away the right to file objections
 B can only be exercised by the State government for such public purpose of real urgency which cannot brook delay of few weeks or few months. This Court has held that the right to file objections u/s 5-A is a substantial right. The State government, therefore, has to apply its mind
 C before it invokes its power of urgency and dispensation of inquiry u/s 5-A that the compliance of the mandate of s. 5-A may lead to precious loss of time which may defeat the purpose for which land is sought to be acquired. Any construction of building (institutional, industrial, residential, commercial etc.) takes some time and,
 D therefore, acquisition of land for such purpose can always brook delay of few months. Ordinarily, invocation of power of urgency by the State government for such acquisition may not be legally sustainable. [para 16, 17 and 27] [230-H; 231-E-F; 240-F-G]

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 F *Nandeshwar Prasad & Ors. v. U.P. Govt. & Ors.* 1964 SCR 425 = AIR 1964 SC 1217; *Munshi Singh & Ors. v. Union of India* 1973 (1) SCR 973 = (1973) 2 SCC 337; *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors.* 2005 (3) Suppl. SCR 388 = 2005 (7) SCC 627; *Anand Singh and Another v. State of Uttar Pradesh and Others* 2010 (9) SCR 133 = 2010 (11) SCC 242 - relied on.

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 H *Narayan Govind Gavate & Ors. v. State of Maharashtra & Ors.* 1977(1) SCR 763 = 1977 (1) SCC 133, *Deepak Pahwa & Ors. v. Lt. Governor of Delhi & Ors.* 1985 (1) SCR 588 = 1984 (4) SCC 308; *State of U.P. v. Smt. Pista Dev & Ors.* 1986 (3) SCR 743 = 1986 (4) SCC 251, *State of U.P. & Anr. v. Keshav Prasad Singh* 1995 (2) Suppl. SCR 329 = 1995 (5) SCC 587; *Chameli Singh & Ors. v. State of U.P. & Anr.*

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1995 (6) Suppl. SCR 827 = 1996 (2) SCC 549; *Meerut Development Authority & Ors. v. Satbir Singh & Ors.* 1996 (6) Suppl. SCR 529 = 1996 (11) SCC 462; *Om Prakash & Anr. v. State of U.P. & Ors.* 1998 (3) SCR 643 = 1998 (6) SCC 1, *Union of India & Ors. v. Mukesh Hans* 2004 (8) SCC 14 *Union of India & Ors. v. Krishan Lal Armeja & Ors.* 2004 (1) Suppl. SCR 801= 2004 (8) SCC 453; *Mahadevappa Lachappa Kinagi & Ors. v. State of Karnataka & Ors.* 2008 (12) SCC 418; *Babu Ram & Anr. v. State of Haryana & Anr.* 2009 (14) SCR 1111 = 2009 (10) SCC 115; and *Tika Ram & Ors. v. State of U.P.* 2009 (14) SCR 905 = 2009 (10) SCC 689; *Radhy Shyam (Dead) Through LRs & Ors. v. State of Uttar Pradesh and Others* 2011 (8) SCR 359 = 2011 (5) SCC 553 – referred to.

1.2 In the instant case, the preliminary notification u/s 4 was issued on 01.5.1980. After lapse of about 7 years on 19.03.1987, the State government issued declaration u/s 6 without complying with the mandate of s. 5-A and in that declaration it was stated that it has invoked its powers conferred u/s 17(1) read with s. 17 (4) of the 1953 Act and dispensed with the provisions of s. 5-A. Had the State government intended to hold and complete the inquiry u/s 5-A, it could have been done in few months. However, no steps for commencement of the inquiry u/s 5-A were even taken by the State government. Thus, a very valuable right conferred on the land owner/person interested u/s 5-A has been taken away without any justification. The counter affidavit filed by respondent no. 4, i.e., Rajasthan State Road Transport Corporation is not relevant as s. 17 confers power of urgency only on the State government alone and it is the State government that has to justify that the urgency was so imminent that dispensation of inquiry u/s 5-A was necessary. The exercise of the power by the State government u/s 17(1) read with s. 17(4) of the 1953 Act and dispensation of

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A inquiry u/s 5-A can not be legally sustained and has to be declared as such. [para 26 and 28] [240-A-B, H; 241-A-D]

B 2.1 At the time of issuance of the preliminary notification, the 1953 Act did not prescribe any time limit for issuance of declaration u/s 6. However, with effect from 27.06.1981 by the 1981 Amendment Act, s. 6 was amended and a proviso was inserted that no declaration in respect of any land covered by notice u/s 4, sub-s. (5), after the commencement of the 1981 Amendment Act shall be made after the expiry of three years from the date of giving of such notice. As regards the acquisition proceedings which had already commenced by issuance of preliminary notification before coming into force of the 1981 Amendment Act, sub-s. (2) of s. 5 of the 1981 Amendment Act, provides that notwithstanding anything contained in clause (b) of sub-s. (1), no declaration u/s 6 of the 1953 Act in respect of any land for the acquisition of which notice under sub-s. (5) of s. 4 has been given before the commencement of the 1981 Amendment Act shall be made after the expiry of two years from the commencement of the 1981 Amendment Act. Sub-s. (2) of s. 5 of the 1981 Amendment Act begins with non obstante clause. The provision leaves no manner of doubt that two years' time prescribed for making declaration u/s 6 in respect of the notice issued u/s 4(5) prior to the commencement of the 1981 Amendment Act is mandatory and permits no departure. [para 29] [241-E-H, B-D, E-F]

G *Indrapuri Grah Nirman Sahakari Samiti Ltd. v. State of Rajasthan and Others* 2002 (3) WLN 122; *Pesara Pushapmala Reddy v. G. Veera Swamy and Others* 2011 (3) SCR 496 = 2011 (4) SCC 306 – held inapplicable.

H *Chain Singh and etc., v. State of Rajasthan and Others* AIR 1991 Rajasthan 17 – distinguished.

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2.2 In the instant case, s. 4(5) notice under the 1953 Act was issued by the state government in 1980 and declaration u/s 6 was made on 19.03.1987. Having regard to clear and unambiguous mandate of s. 5(2) of the 1981 Amendment Act, this Court holds that preliminary notification dated 01.05.1980, which was followed by notice u/s 4(5) before the commencement of the 1981 Amendment Act, has lapsed and does not survive since declaration u/s 6 has been made much beyond the time limit prescribed in law. The impugned orders are set aside. It is declared that preliminary notification dated 01.05.1980 has lapsed and the declaration made on 19.03.1987 is legally unsustainable. If possession of the subject land has been taken from the appellants, the same shall be restored to them without any delay. [para 23, 32 and 33] [238-C-E; 243-G; 244-A-C]

Case Law Reference:

1964 SCR 425	relied on	Para 17	
1973 (1) SCR 973	relied on	Para 18	
2005 (3) Suppl. SCR 388	relied on	para 19	E
2010 (9) SCR 133	relied on	para 20	
1977 (1) SCR 763	referred to	para 21	
1985 (1) SCR 588	referred to	para 21	F
1986 (3) SCR 743	referred to	para 21	
1995 (2) Suppl. SCR 329	referred to	para 21	
1995 (6) Suppl. SCR 827	referred to	para 21	G
1996 (6) Suppl. SCR 529	referred to	para 21	
1998 (3) SCR 643	referred to	para 21	
2004 (8) SCC 14	referred to	para 21	H

A	2004 (1) Suppl. SCR 801	referred to	para 21
	2008 (12) SCC 418	referred to	para 21
	2009 (14) SCR 905	referred to	para 21
B	2009 (14) SCR 1111	referred to	para 21
	2011 (8) SCR 359	referred to	para 21
	2002 (3) WLN 122	held inapplicable	para 30
	AIR 1991 Rajasthan 17	distinguished	para 30
C	2011 (3) SCR 496	held inapplicable	para 31

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D From the Judgment & Order dated 11.01.2002 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No. 894 of 1999.

Manu Mridul, Priyambada Sharma (for Surya Kant) for the Appellants.

E Dr. Manish Singhvi, AAG Amit Lubhaya (for Milind Kumar), Puneet Jain (for Sushil Kumar Jain) for the Respondents.

The Judgment of the Court was delivered by

F **R.M. LODHA, J.** 1. The compulsory acquisition of the land admeasuring 4 bigha and 2 biswa comprised in Khasra no. 1013 at Dungarpur (Rajasthan) is the subject matter of this appeal by special leave. The appellants were unsuccessful in challenging the acquisition of the above land in the High Court. They failed before the Single Judge as well as the Division
G Bench.

2. The two questions that arise for consideration are :

H (i) Whether preliminary notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 (for short, "1953 Act") issued on 01.05.1980 has lapsed since

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declaration under Section 6 of that Act was made on 19.03.1987 after the expiry of two years from the commencement of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1981 (for short, "1981 Amendment Act").

- (ii) Whether invocation of power of urgency and dispensation of inquiry under Section 5-A after 7 years of issuance of preliminary notification under Section 4 of the 1953 Act are legally sustainable?

3. The above two questions arise from these facts: on 01.05.1980, the state government issued a preliminary notification under Section 4 that the subject land was needed or likely to be needed for a public purpose, namely, construction of bus stand. The state government required and authorised Land Acquisition Officer (SDO), Dungarpur to enter upon, do survey and all other acts necessary to ascertain whether land was suitable for such public purpose and enquire into and ascertain the particulars of the persons interested in such land.

4. On 19.03.1987, a notification was issued under Section 6 of the 1953 Act. By that notification the state government also invoked its powers conferred under Section 17(1) read with Section 17(4) of the 1953 Act and dispensed with the provisions of Section 5-A.

5. An important event occurred between 01.05.1980 and 19.03.1987. The State Legislature following the Ordinance promulgated by the Governor amended the 1953 Act by the 1981 Amendment Act. Effective from 27.06.1981, by the 1981 Amendment Act, Section 6 of 1953 Act was amended and the following proviso in Section 6 was inserted:

"Provided that no declaration in respect of any particular land covered by a notice under section 4, sub-section 5, given after the commencement of the Rajasthan Land

A Acquisition (Amendment and Validation) Act, 1981, shall be made after the expiry of three years from the date of giving of such notice.”

B 6. Section 5 of the 1981 Amendment Act provides for validation of certain acquisitions. Sub-sections 1(b) and (2) thereof, which are relevant for the present controversy, read as follows :

“S. 5. Validation of certain acquisitions.—

C (1) (a) xxx xxx xxx

D (b) any acquisition in pursuance of any notice given under sub-section (5) of section 4 of the principal Act before the commencement of this Act may be made after such commencement and no such acquisition and no action taken or thing done (including any order made, agreement entered into or notice given), whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.

E (2) Notwithstanding anything contained in clause (b) of sub-section (1) no declaration under section 6 of the principal Act in respect of any land for the acquisition of which notice under sub-section (5) of section 4 of the principal Act has been given before the commencement of this Act, shall be made after the expiry of two yeas from the commencement of the said Act.”

F 7. The above acquisition was challenged in three writ petitions before the High Court. One of these writ petitions was filed by Laxman Lal and Manohar Lal. Both these petitioners are dead and now represented by their legal representatives who are appellants herein. The challenge to the acquisition was laid on diverse grounds but none of the grounds persuaded the Single Judge and all the three writ petitions were dismissed by a common order dated 11.05.1999.

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8. The order of the Single Judge was challenged in intra- court appeal by the writ petitioners. Before the Division Bench, the following three points were raised in support of the appeal:-

I) Proceedings could not be continued because notification under Section 6 of the Act was issued after a lapse of about 7 years. This was in view of the provisions of sub-section (2) of Section 5 of the Rajasthan Land Acquisition (Amendment and Validation) Act, 1981. The said provisions provided a limitation of two years from the date of commencement of the Validation Act for issuing the declaration under Section 6. Since the declaration was issued much beyond this period of limitation the same was liable to be quashed. It was further contended that Section 17(4) notification could not be used to validate the proceedings.

II) Notice under Section 17(4) was void ab initio because the respondents failed to tender payment of 80 percent of compensation as envisaged under sub-section (3)(a) of Section 17 of the Land Acquisition Act.

III) The action of the respondents is highly arbitrary. By issuing a notification under Section 4 of the Act in the year 1980 the appellants were being pegged down for purposes of payment of compensation although effectively the acquisition was being made in the year 1987.

9. Dealing with the first point, the Division Bench held as under:

It will be seen from the above that a declaration under Section 6 in respect of the land can be made at any time after the publication of the notification under Section 4(1). *In view of this specific statutory provision which is admittedly applicable, it cannot be said that a declaration under Section 6 could not have been issued after a lapse of 7 years or more.* Learned counsel for the appellants

A fairly conceded that Section 17 is a Code in itself. It contains complete procedure for acquisition made under the said provision. Section 17 is a provision to be resorted to in cases of urgency. Notification under Section 4 of the Act already stood issued with respect to the land in question as far back as the year 1980. The Government felt the urgency for the acquisition and, therefore, Section 17(4) notification, read with Section 6, was issued on 19.03.1987. We find no illegality in the procedure following in the facts of the case.

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C 10. It is not necessary to deal with the second ground urged before the Division Bench as it has not been pressed before us. As regards the third ground, the Division Bench held as under:

D “Lastly, the learned counsel raised an argument suggesting arbitrariness on the part of the respondents. As already noted, Section 17 permits the Government to invoke its provisions at any time, therefore, there is no statutory bar so far as the action is concerned. If the action of the respondents results in some hardship to the landowners normally, the provision regarding payment of interest takes care of the hardship. The power of compulsory acquisition of land is in the nature of a power of eminent domain which the State is entitled to exercise keeping in view the larger public interest as against individual interest.”

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G 11. We shall deal with the second question first. Two basic facts are not in dispute, namely, one, preliminary notification under Section 4 showing intention to acquire the subject land for a public purpose, namely, construction of bus stand was issued by the state government on 01.05.1980 and two, the declaration under Section 6 of the 1953 Act was made on 19.03.1987 and by means of that very notification the state government exercised its power of urgency under Section 17(1) read with Section 17(4) and dispensed with enquiry under

H Section 5A. Thus, the power of urgency was invoked for the first

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time by the state government after seven years of issuance of the preliminary notification under Section 4. **A**

12. Section 4 of the 1953 Act is identical to Section 4 of the Land Acquisition Act, 1894 (for short, "1894 Act"). It provides that whenever the state government considers it necessary or expedient to acquire land in any locality, needed or likely to be needed for a public purpose, it shall, by an order published in accordance with the provisions of sub-section (4) of Section 45, require any officer subordinate to it and generally or specially authorised in this behalf, to enter upon or into any land in such locality accompanied by his servants and workmen for the purpose stated therein. Sub-section (5) of Section 4 empowers the Collector to issue notice to the persons interested of the proposed acquisition and also issue a public notice to that effect at convenient places on or near about the land proposed to be acquired. **B**
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13. Section 5A enables the person interested in any land in respect of which notice has been issued under Section 4 (5) to object to acquisition of that land. **E**

14. Section 6 is also similar to Section 6 of the 1894 Act. Inter alia, it provides that when the state government is satisfied after considering the report, if any, made under Section 5-A that any particular land is needed for a public purpose, a declaration shall be made to that effect. Such declaration is conclusive evidence that the land is needed for a public purpose and after making such declaration the state government may acquire the land in the manner provided in sub-section (4) thereof. As noticed above, Section 6 came to be amended by the 1981 Amendment Act and, inter alia, limitation of three years for issuance of notification under Section 6 was fixed from the date of issuance of notice under Section 4(5). As regards the notice issued under Section 4(5) prior to the 1981 Amendment Act, limitation of two years from coming into force of the 1981 Amendment Act was fixed. **F**
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A 15. Section 17 of the 1953 Act gives special powers to the state government in the cases of urgency and emergency. To the extent it is relevant, Section 17 reads as under:

B "S. 17. Special powers in case of urgency.—In cases of urgency, whenever the State Government so directs the Collector though no such award has been made may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the State Government free from all encumbrances.

	xxx	xxx	xxx
D 2.	xxx	xxx	xxx
3.	xxx	xxx	xxx

E 4. In the case of any land to which in the opinion of the State Government the provisions of sub-sections (1) or sub-section (2) are applicable the State Government may direct that the provisions of section 5-A shall not apply and, if it does so direct a declaration may be made under section 6 in respect of the land at any time after the publication of the order under sub-section (1) of section 4.

F 5.	xxx	xxx	xxx
6.	xxx	xxx	xxx
G 7.	xxx	xxx	xxx"

H 16. The statutory provisions of compulsory acquisition contained in the 1953 Act are not materially different from the 1894 Act. This Court has explained the doctrine of eminent domain in series of cases. Eminent domain is the right or power

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of a sovereign state to appropriate the private property within the territorial sovereignty to public uses or purposes. It is an attribute of sovereignty and essential to the sovereign government. The power of eminent domain, being inherent in the government, is exercisable in the public interest, general welfare and for public purpose. The sovereign is entitled to reassert its dominion over any portion of the soil of the state, including private property without its owner's consent provided that such assertion is on account of public exigency and for public good.

17. Article 300-A of the Constitution mandates that no person shall be deprived of his property save by authority of law. Though right to property is no longer a fundamental right but the constitutional protection continues in as much as without the authority of law, a person cannot be deprived of his property. Accordingly, if the state intends to appropriate the private property without the owners' consent by acting under the statutory provisions for compulsory acquisition, the procedure authorised by law has to be mandatorily and compulsorily followed. The power of urgency which takes away the right to file objections can only be exercised by the state government for such public purpose of real urgency which cannot brook delay of few weeks or few months. This Court as early as in 1964 said that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition; such right cannot be taken away as if by a side wind (*Nandeshwar Prasad & Ors. v. U.P. Govt. & Ors.*¹).

18. In *Munshi Singh & Ors. v. Union of India*², this Court explained the importance of Section 5-A in the following terms:

"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and

1. AIR 1964 SC 1217.

2. (1973) 2 SCC 337.

A reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. We may refer to the observation of this court in *Nandeshwar Prasad v. The State of U.P.* [AIR 1964 SC 1217] that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side wind. Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A: [See Section 17(4) of the Acquisition Act.]”

F 19. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors.*³, it was reiterated by this Court that Section 5-A confers a valuable right in favour of a person whose lands are sought to be acquired.

G 20. We do not think it is necessary to multiply the authorities. In a comparatively recent judgment, this Court speaking through one of us (R.M. Lodha, J.) in *Anand Singh and Another v. State of Uttar Pradesh and Others*⁴ explained the importance of Section 5-A in the following words:

3. (2005) 7 SCC 627.

H 4. (2010) 11 SCC 242.

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"41.....That Section 5-A of the Act confers a valuable right to an individual is beyond any doubt. As a matter of fact, this Court has time and again reiterated that Section 5-A confers an important right in favour of a person whose land is sought to be acquired.

42. When the Government proceeds for compulsory acquisition of a particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time under Section 5-A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose, etc. Moreover, the right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice."

21. This Court has dealt with the scope, extent and ambit of the power of the state government under Section 17(1) and (4) of the 1894 Act from time to time. *Narayan Govind Gavate & Ors. v. State of Maharashtra & Ors.*⁵, *Deepak Pahwa & Ors. v. Lt. Governor of Delhi & Ors.*⁶, *State of U.P. v. Smt. Pista Dev & Ors.*⁷, *State of U.P. & Anr. v. Keshav Prasad Singh*⁸, *Chameli Singh & Ors. v. State of U.P. & Anr.*⁹, *Meerut Development Authority & Ors. v. Satbir Singh & Ors.*¹⁰, *Om*

5. (1977) 1 SCC 133.

6. (1984) 4 SCC 308.

7. (1986) 4 SCC 251.

8. (1995) 5 SCC 587.

9. (1996) 2 SCC 549.

10. (1996) 11 SCC 462.

A *Prakash & Anr. v. State of U.P. & Ors.*¹¹, *Union of India & Ors. v. Mukesh Hans*¹², *Union of India & Ors. v. Krishan Lal Arneja & Ors.*¹³, *Mahadevappa Lachappa Kinagi & Ors. v. State of Karnataka & Ors.*¹⁴, *Babu Ram & Anr. v. State of Haryana & Anr.*¹⁵ and *Tika Ram & Ors. v. State of U.P.*¹⁶ have
 B been referred to in *Anand Singh*⁴ and the legal position in paragraphs 43 to 48 of the Report (pgs. 265-266) is culled out as follows :

C “43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save
 D circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to
 E apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

F 44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of

G 11. (1998) 6 SCC 1.

12. (2004) 8 SCC 14.

13. (2004) 8 SCC 453.

14. (2008) 12 SCC 418.

15. (2009) 10 SCC 115.

H 16. (2009) 10 SCC 689.

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such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it.

45. It is true that power conferred upon the Government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary.

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

47. The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and

A cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. *Narayan Govind Gavate* [(1977) 1 SCC 133] and *Pista Devi* [(1986) 4 SCC 251]. In *Om Prakash* [(1998) 6 SCC 1] this Court held that the decision in *Pista Devi* [(1986) 4 SCC 251] must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in *Narayan Govind Gavate* [(1977) 1 SCC 133]. We agree.

D 48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A."

F 22. *Anand Singh*⁴ has been referred to in later cases, one of such decisions is *Radhy Shyam (Dead) Through LRs & Ors. v. State of Uttar Pradesh and Others*¹⁷ wherein this Court in paragraph 77 (v) to (ix) of the Report stated as follows:

G "77(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks

H ¹⁷. (2011) 5 SCC 553.

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or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

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(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

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(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

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(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such

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- A purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters.
- B (ix) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition."
- C 23. In light of the above legal position which is equally applicable to Section 17(1) and (4) of the 1953 Act, we may turn to the fact situation of the present matter. Section 4(5) notice under the 1953 Act was issued by the state government in 1980. For almost seven years, no steps were taken in taking
- D the acquisition proceedings pursuant to the Section 4(5) notice to the logical conclusion. Even inquiry under Section 5-A was not commenced, much less completed. Abruptly on 19.03.1987, without following the procedure contemplated in Section 5-A, the declaration under Section 6 was made
- E and in that notification the state government stated that it has invoked its power of urgency under Section 17(1) and dispensed with inquiry under Section 5-A in exercise of its power under Section 17(4). Can it be said that an inquiry under Section 5-A could not have been completed in all
- F these years? We think that it could have been done easily and conveniently in few months leave aside few years. There were not large number of owners or persons interested in respect of the subject land. Section 5-A, which gives a very limited right to an owner/person interested, is not an empty formality. The substantial right under Section 5-A is the only
- G right given to an owner/person interested to object to the acquisition proceedings. Such right ought not to be taken away by the State Government sans real urgency. The strong arm of the government is not meant to be used nor it should be used against a citizen in appropriating the property against his
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consent without giving him right to file objections as incorporated under Section 5-A on any ostensible ground. The dispensation of enquiry under Section 17(4) has to be founded on considerations germane to the purpose and not in a routine manner. Unless the circumstances warrant immediate possession, there cannot be any justification in dispensing with an enquiry under Section 5-A. As has been stated by this Court in *Anand Singh*⁴, elimination of enquiry under Section 5-A must only be in deserving and in the cases of real urgency. Being an exceptional power, the government must be circumspect in exercising power of urgency.

24. In *Anand Singh*⁴, dealing with the issue whether the pre-notification and post-notification delay would render the invocation of urgency power void, this Court said that such delay would have material bearing on the question of invocation of urgency power, more so, in a situation where no material has been placed by the appropriate government before the Court justifying that urgency was of such nature that necessitated elimination of inquiry under Section 5-A.

25. In the counter affidavit filed on behalf of the respondent nos. 1 to 3 before this Court, in respect of invocation of power of urgency under Section 17(1) and dispensation of inquiry under Section 17(4), it is stated as follows:

"..... Section 17 of the Rajasthan Land Acquisition Act which is a code containing complete procedure for acquisition made under the said provision in case of urgency. In the present petition, urgency of the acquisition has been shown by the respondent. For the purpose of public interest, as a bus stand was to be put up, hence the nature of urgency is quite apparent.

The government issued notification under Section 6 read with 17(4) of the Act on 19.03.1987 under the compulsory need of the land

A 26. The counter affidavit filed by the respondent no. 4, i.e.,
 Rajasthan State Road Transport Corporation is not relevant as
 Section 17 confers power of urgency only on the state
 government alone and it is the state government that has to
 justify that the urgency was so imminent that dispensation of
 B inquiry under Section 5-A was necessary.

C 27. The explanation by the state government unsupported
 by any material indicates that the state government feels that
 power conferred on it under Section 17(1) and (4) is unbridled
 and uncontrolled. The state government seems to have some
 misconception that in the absence of any time limit prescribed
 in Section 17(1) and (4) for exercise of such power after
 issuance of notice under Section 4 of the 1953 Act, it can
 invoke the power of urgency whenever it wants. We are afraid
 the whole understanding of Section 17 by the state government
 D is fallacious. This Court has time and again said with regard
 to Section 17(1) read with Section 17 (4) of the 1894 Act that
 the provisions contained therein confer extraordinary power
 upon the state to appropriate the private property without
 complying with the mandate of Section 5-A and, therefore,
 E these provisions can be invoked only when the purpose of
 acquisition cannot brook the delay of even few weeks or
 months. This principle equally applies to the exercise of power
 under Section 17(1) and (4) of the 1953 Act. The state
 government, therefore, has to apply its mind before it invokes
 F its power of urgency and dispensation of inquiry under Section
 5-A that the compliance of the mandate of Section 5-A may
 lead to precious loss of time which may defeat the purpose for
 which land is sought to be acquired. Any construction of
 building (institutional, industrial, residential, commercial etc.)
 G takes some time and, therefore, acquisition of land for such
 purpose can always brook delay of few months. Ordinarily,
 invocation of power of urgency by the state government for such
 acquisition may not be legally sustainable.

H 28. In this case, as noted above, the preliminary notification

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under Section 4 was issued on 01.5.1980. After lapse of about 7 years on 19.03.1987, one fine morning the state government issued declaration under Section 6 without complying with the mandate of Section 5-A and in that declaration it was stated that it has invoked its powers conferred under Section 17(1) read with Section 17 (4) of the 1953 Act and dispensed with the provisions of Section 5-A. Had the state government intended to hold and complete the inquiry under Section 5-A, it could have been done in few months. However, no steps for commencement of the inquiry under Section 5-A were even taken by the state government. We find that a very valuable right conferred on the land owner/person interested under Section 5-A has been taken away without any justification. It is so because the bus stand construction would have taken some time. The exercise of the power by the state government under section 17(1) read with Section 17(4) of the 1953 Act and dispensation of inquiry under Section 5-A can not be legally sustained and has to be declared as such.

29. Now, coming to the first question, it will be seen that preliminary notification under Section 4 was issued on 01.05.1980. At the time of issuance of the preliminary notification, the 1953 Act did not prescribe any time limit for issuance of declaration under Section 6. However, with effect from 27.06.1981 by the 1981 Amendment Act, Section 6 was amended and a proviso was inserted that no declaration in respect of any land covered by notice under Section 4, sub-section (5), given after the commencement of the 1981 Amendment Act shall be made after the expiry of three years from the date of giving of such notice. This proviso is obviously applicable to the acquisition proceedings initiated after coming into force of the 1981 Amendment Act and has no application to the present fact situation. As regards the acquisition proceedings which had already commenced by issuance of preliminary notification before coming into force of the 1981 Amendment Act, Section 5(1)(b) of the 1981 Amendment Act, inter alia, provides that acquisition pursuant to such preliminary

A notification may be completed after commencement of the 1981 Amendment Act and no such acquisition and no action taken or thing done including any order made, agreement entered into or notice given, whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any one of them. Sub-section (2) of Section 5 of the 1981 Amendment Act, however, provides that notwithstanding anything contained in clause (b) of sub-section (1), no declaration under Section 6 of the 1953 Act in respect of any land for the acquisition of which notice under sub-section (5) of Section 4 has been given before the commencement of the 1981 Amendment Act shall be made after the expiry of two years from the commencement of the 1981 Amendment Act. Sub-section (2) of Section 5 of the 1981 Amendment Act begins with non obstante clause. Section 5(2) of the 1981 Amendment Act thus mandates that no declaration under Section 6 in respect of the notice issued under Section 4(5) before the commencement of the 1981 Amendment Act shall be made after expiry of two years from the commencement of the said Act. The provision leaves no manner of doubt that two years' time prescribed for making declaration under Section 6 in respect of the notice issued under Section 4(5) prior to the commencement of the 1981 Amendment Act is mandatory and permits no departure. This is clear from the words "no declaration" and "shall be made" used in Section 5(2). The intention of the legislature admits of no ambiguity and it is clear that in respect of the notice issued under Section 4(5) before the commencement of the 1981 Amendment Act, it is obligatory on the state government to make declaration on or before the expiry of two years from the commencement of the 1981 Amendment Act. The provision is imperative in nature and has to be followed as it lays down the maximum time limit within which the declaration under Section 6 of the 1953 Act can be made in respect of the notice under Section 4(5) issued before the commencement of the 1981 Amendment Act.

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30. On behalf of the respondents, two decisions of the Rajasthan High Court, one, *Indrapuri Grah Nirman Sahakari Samiti Ltd. v. State of Rajasthan and Others*¹⁸ and the other, *Chain Singh and etc., v. State of Rajasthan and Others*¹⁹ were cited. We are afraid insofar as *Indrapuri Grah Nirman Sahakari Samiti Ltd.*¹⁸ is concerned, it has no application whatsoever. As regards *Chain Singh*¹⁹, the Division Bench of the Rajasthan High Court was concerned with the provisions of the Land Acquisition (Rajasthan Amendment) Act, 1987 amending the 1894 Act. The provisions under consideration before the Rajasthan High Court in *Chain Singh*¹⁹ were materially different and, therefore, that decision is of no help to the respondents.

31. Learned counsel for the respondents also cited a decision of this Court in *Pesara Pushpamala Reddy v. G. Veera Swamy and Others*²⁰. In *Pesara Pushpamala Reddy*²⁰, this Court was concerned with the questions whether it was mandatory for the special tribunal or the special court to call for a report of the Mandal Revenue Officer before taking cognizance of a case under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, "Land Grabbing Act") and whether it was mandatory for the special tribunal or the special court to publish a notification in the gazette notifying the fact of cognizance of a case under the Act. This Court considered the provisions of the Land Grabbing Act. In our view, *Pesara Pushpamala Reddy*²⁰ is not even remotely relevant for the present case and has no application at all.

32. Having regard to clear and unambiguous mandate of Section 5(2) of the 1981 Amendment Act that no declaration under Section 6 of the 1953 Act in respect of any land for the acquisition of which notice under Section 4(5) has been given before the commencement of the 1981 Amendment Act shall be made after the expiry of two years from the commencement

18. 2002 (3) WLN 122.

19. AIR 1991 Rajasthan 17.

20. (2011) 4 SCC 306.

- A of the 1981 Amendment Act, it has to be held and we hold that preliminary notification dated 01.05.1980, which was followed by notice under Section 4(5) before the commencement of the 1981 Amendment Act, has lapsed and does not survive since declaration under Section 6 has been made much beyond the time limit prescribed in law.
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33. Civil appeal is, accordingly, allowed. The impugned orders are set aside. It is declared that preliminary notification dated 01.05.1980 has lapsed and the declaration made on 19.03.1987 is legally unsustainable. If possession of the subject land has been taken from the appellants, the same shall be restored to them without any delay. No orders as to costs.

C

R.P.

Appeal allowed.