



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 778 OF 2018

- | | | | |
|----|---------------------------------------|---|----------------|
| 1. | Avinash Dhavji Naik |] | |
| | Age:- 54 years, |] | |
| 2. | Arun Dhavji Naik |] | |
| | Age:- 51 years, |] | |
| | Both residing at Bamandongri, |] | |
| | Taluka Panvel, District Raigad 410206 |] | ...Petitioners |

VERSUS

- | | | | |
|----|-------------------------------------|---|--|
| 1. | The State of Maharashtra |] | |
| | Through the Secretary |] | |
| | Revenue and Forest Department, |] | |
| | Mantralaya, Mumbai. |] | |
| 2. | The Deputy Collector |] | |
| | (Land Acquisition), |] | |
| | Metro Centre No.1, Panvel, |] | |
| | Having address as CIDCO Samaj |] | |
| | Mandir Building, Near Banthia High |] | |
| | School, Taluka Panvel, |] | |
| | District Raigad 410206. |] | |
| 3. | The Deputy Collector |] | |
| | (Land Acquisition), |] | |
| | Metro Centre No. 3, Panvel, |] | |
| | Having address as CIDCO Samaj |] | |
| | Mandir Building, Near Banthia High |] | |
| | School, Taluka Panvel, |] | |
| | District Raigad 410206. |] | |
| 4. | The City and Industrial Development |] | |
| | Corporation (Maharashtra) Limited |] | |

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(CIDCO),]
 Having its registered office at]
 Nirmal, 2nd floor, Nariman Point,]
 Mumbai 400021, And having its]
 Head Office at CIDCO Bhavan,]
 C.B.D. Belapur, Navi-Mumbai 400614]
 Through its Managing Director]...Respondents

**WITH
 INTERIM APPLICATION NO. 695 OF 2022
 IN
 WRIT PETITION NO. 778 OF 2018**

City and Industrial Development]
 Corporation (Maharashtra) Limited]
 CIDCO]...Applicant

VERSUS

Avinash Dhavji Naik & Anr.]...Respondents

**WITH
 INTERIM APPLICATION (ST) NO. 33503 OF 2024
 IN
 WRIT PETITION NO. 778 OF 2018**

M/s Shivam Enterprises thr. its]
 proprietor Prakash M. Nakrani]...Applicant

VERSUS

Avinash Dhavji Naik & Anr.]...Respondents

**WITH
 WRIT PETITION NO. 11646 OF 2017**

1. Dilip Gopal Naik,]
 Age:- 54 years,]

2. **Pritam Gopal Naik**]
 Age:- 48 years,]
 Both residing at Bamandongri,]
 Taluka Panvel, District Raigad 410206]...Petitioners

VERSUS

1. **The State of Maharashtra**]
 Through the Secretary]
 Revenue and Forest Department,]
 Mantralaya, Mumbai.]
2. **The Deputy Collector**]
(Land Acquisition),]
 Metro Centre No.1, Panvel,]
 Having address as CIDCO Samaj]
 Mandir Building, Near Banthia High]
 School, Taluka Panvel,]
 District Raigad 410206.]
3. **The Deputy Collector**]
(Land Acquisition),]
 Metro Centre No. 3, Panvel,]
 Having address as CIDCO Samaj]
 Mandir Building, Near Banthia High]
 School, Taluka Panvel,]
 District Raigad 410206.]
4. **The City and Industrial Development**]
Corporation (Maharashtra) Limited]
(CIDCO),]
 Having its registered office at]
 Nirmal, 2nd floor, Nariman Point,]
 Mumbai 400021, And having its]
 Head Office at CIDCO Bhavan,]
 C.B.D. Belapur, Navi-Mumbai 400614]
 Through its Managing Director]...Respondents

WITH
 INTERIM APPLICATION NO. 727 OF 2022
 IN

WRIT PETITION NO. 11646 OF 2017

City and Industrial Development]
 Corporation (Maharashtra) Limited]
 CIDCO]...Applicant

VERSUS

Dilip Gopal Naik & Anr.]...Respondents

WITH
WRIT PETITION NO. 779 OF 2018

Yashwant Jana Mhatre]
(Since Deceased), Through his Legal]
Representatives]

1A) Ramubai Yashwant Mhatre]
 Age:- 62 years,]

1B) Alankar Yashwant Mhatre]
 Age:- 37 Years,]

1C) Jagruti Yashwant Mhatre]
 Age:- 32 Years]
 R/at:- Chirner,]
 Tal. Uran, Dist. Raigad, 410206]

1D) Akash Yashwant Mhatre]
 Age:- 29 Years]

Nos. A, B & D R/at Bamandongri,]
 Wahal, Tal. Panvel,]
 District Raigad 410206]...Petitioners

VERSUS

1. The State of Maharashtra]
 Through the Secretary]
 Revenue and Forest Department,]

- Mantralaya, Mumbai.]
2. **The Deputy Collector**]
(Land Acquisition),]
Metro Centre No.1, Panvel,]
Having address as CIDCO Samaj]
Mandir Building, Near Banthia High]
School, Taluka Panvel,]
District Raigad 410206.]
3. **The Deputy Collector**]
(Land Acquisition),]
Metro Centre No. 3, Panvel,]
Having address as CIDCO Samaj]
Mandir Building, Near Banthia High]
School, Taluka Panvel,]
District Raigad 410206.]
4. **The City and Industrial Development**]
Corporation (Maharashtra) Limited]
(CIDCO),]
Having its registered office at]
Nirmal, 2nd floor, Nariman Point,]
Mumbai 400021, And having its]
Head Office at CIDCO Bhavan,]
C.B.D. Belapur, Navi-Mumbai 400614]
Through its Managing Director]...Respondents

WITH
INTERIM APPLICATION NO. 696 OF 2022
IN
WRIT PETITION NO. 779 OF 2018

City and Industrial Development]
Corporation (Maharashtra) Limited]
CIDCO]...Applicant

VERSUS

Yashwant Jana Mhatre & Ors.]...Respondents

WITH
INTERIM APPLICATION (ST) NO. 7277 OF 2024
IN
WRIT PETITION NO. 779 OF 2018

Yashwant Jana Mhatre Since]
Decd. Thru LHRS]...Applicant

VERSUS

The State of Maharashtra & Ors.]...Respondents

WITH
INTERIM APPLICATION (ST) NO. 33508 OF 2024
IN
WRIT PETITION NO. 779 OF 2018

Subhash Ragho Patil and Anr.]...Applicants

VERSUS

Yashwant Jana Mhatre & Ors.]...Respondents

WITH
WRIT PETITION NO. 11159 OF 2017

1. **Suresh Shantaram Gondhali,**]
Age:- 58 years,]
2. **Avinash Shantaram Gondhali**]
Age:- 54 years,]
Both residing at Bamandongri,]
Taluka Panvel, District Raigad 410206]...Petitioners

VERSUS

1. **The State of Maharashtra**]
Through the Secretary]
Revenue and Forest Department,]
Mantralaya, Mumbai.]

2. **The Deputy Collector**]
(Land Acquisition),]
Metro Centre No.1, Panvel,]
Having address as CIDCO Samaj]
Mandir Building, Near Banthia High]
School, Taluka Panvel,]
District Raigad 410206.]

3. **The Deputy Collector**]
(Land Acquisition),]
Metro Centre No. 3, Panvel,]
Having address as CIDCO Samaj]
Mandir Building, Near Banthia High]
School, Taluka Panvel,]
District Raigad 410206.]

4. **The City and Industrial Development**]
Corporation (Maharashtra) Limited]
(CIDCO),]
Having its registered office at]
Nirmal, 2nd floor, Nariman Point,]
Mumbai 400021, And having its]
Head Office at CIDCO Bhavan,]
C.B.D. Belapur, Navi-Mumbai 400614]
Through its Managing Director]...Respondents

WITH
INTERIM APPLICATION NO. 729 OF 2022
IN
WRIT PETITION NO. 11159 OF 2017

City and Industrial Development]
Corporation (Maharashtra) Limited]
CIDCO]...Applicant

VERSUS

Suresh Shantaram Gondhali & Anr.]...Respondents

WITH

WRIT PETITION NO. 11168 OF 2017

- | | | |
|-----|--|----------------|
| 1. | Suresh Dattatrya Naik, |] |
| | Age:- 54 years, |] |
| 2. | Janardan Dattatrya Naik, |] |
| | Age:- 67 years, |] |
| 3. | Murlidhar Dattatrya Naik, |] |
| | Age:-65 years, |] |
| 4. | Dhanaji Dattatrya Naik, |] |
| | Age:-60 years, |] |
| 5. | Ashok Dattatrya Naik, |] |
| | Age:-52 years, |] |
| 6. | Mahendra Dattatrya Naik, |] |
| | Age:-50 years, | |
| 7. | Girjabai Dattatrya Naik, |] |
| | Age:-85 years, |] |
| 8. | Ramdas Dattatrya Naik, (Deceased) |] |
| | Age:-60 years, |] |
| 8/a | Ravindra Ramdas Naik, |] |
| | Age 35 years, |] |
| 8/b | Randhir Ramdas Naik, |] |
| | Age 35 years, |] |
| 8/c | Rekha Ramdas Naik, |] |
| | Age 65 years, |] |
| | All residing at Bamandongri, |] |
| | Taluka Panvel, District Raigad 410206 |] |
| | | ...Petitioners |

VERSUS

- | | | |
|----|---------------------------------|---|
| 1. | The State of Maharashtra |] |
|----|---------------------------------|---|

- Through the Secretary]
 Revenue and Forest Department,]
 Mantralaya, Mumbai.]
2. **The Deputy Collector**]
(Land Acquisition),]
 Metro Centre No.1, Panvel,]
 Having address as CIDCO Samaj]
 Mandir Building, Near Banthia High]
 School, Taluka Panvel,]
 District Raigad 410206.]
3. **The Deputy Collector**]
(Land Acquisition),]
 Metro Centre No. 3, Panvel,]
 Having address as CIDCO Samaj]
 Mandir Building, Near Banthia High]
 School, Taluka Panvel,]
 District Raigad 410206.]
4. **The City and Industrial Development**]
Corporation (Maharashtra) Limited]
(CIDCO),]
 Having its registered office at]
 Nirmal, 2nd floor, Nariman Point,]
 Mumbai 400021, And having its]
 Head Office at CIDCO Bhavan,]
 C.B.D. Belapur, Navi-Mumbai 400614]
 Through its Managing Director]...Respondents

WITH
 INTERIM APPLICATION NO. 728 OF 2022
 IN
 WRIT PETITION NO. 11168 OF 2017

City and Industrial Development]
 Corporation (Maharashtra) Limited]
 CIDCO]...Applicant

VERSUS

Suresh Dattatray Naik & Ors.

]...Respondents

APPEARANCES-

Mr A. V. Anturkar, *Senior Advocate, with Mr Sachin S Punde, Mr Kaustubh Patil, for the Petitioners in all Petitions.*

Mr A. I. Patel, *Addl GP, with Mrs. M. S. Bane, AGP, for the Respondent No.1-State.*

Mr G. S Hegde, *Senior Advocate, with Ms Pinky Bhansali, i/b, Mr Ashutosh M Kulkarni, for the Respondent no. 2 to 4-CIDCO.*

Mr Atul Damle, *Senior Advocate, with Mr Sachin K Hande, for the Intervenor in IA(ST) No. 33503/2024.*

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 28 February 2025

PRONOUNCED ON : 04 March 2025

JUDGMENT (Per MS Sonak J):-

1. Heard learned Counsel for the parties.
2. By order dated 13 September 2022, the Coordinate Bench of this Court comprising Nitin Jamdar (as his Lordship then was) and Sharmila Deshmukh JJ grouped these five Writ

Petitions as Group (2b) and directed that Writ Petition No. 778 of 2018 be treated as the lead Petition.

3. The order dated 13 September 2022 directs the learned Counsel for the parties to circulate the summary of propositions with reference to pleadings (with page numbers) and statutory provisions. Directions were also issued to supply case law compilations with index, and the relevant paragraphs were to be marked for the proposition for which they were proposed to be cited. The summary and compilation were directed to be circulated in advance so that these matters and other grouped matters would be taken up for final hearing. There has only been a token of compliance with these detailed directions issued by the Coordinate Bench.

4. Accordingly, we issue Rule in each of these Petitions. The rule is made returnable immediately, given the earlier orders, and at the request of and with the consent of the learned Counsel for the parties.

5. The learned Counsel for the parties submit that substantially common issues of law and fact arise in these Petitions. Therefore, a common judgment and order can dispose of these Petitions by treating Writ Petition No. 778 of 2018 as the lead Petition.

6. The lead Petition was instituted in September 2017. This Petition was amended by orders dated 26 July 2018, 16 March 2022 and 13 April 2022. The amendment allowed and carried out under the order dated 26 July 2018 was crucial. Despite ample opportunities, the Respondents have not responded to the amended Petition. No further opportunity

was sought when the final hearing commenced. The CIDCO insisted that the interim orders made in 2018 be vacated at the earliest for which the CIDCO had also filed an interim application.

7. The Petitioners challenge the acquisition of their agricultural lands for the public purpose of setting up the “Navi Mumbai Project” at Village Vahal, Taluka Panvel, District Raigarh, Maharashtra.

8. Mr Anturkar and Mr Punde submitted that Section 4 notification dated 7 December 2013 (Exhibit B), Section 6 declaration dated 20 May 2015 (Exhibit E) and the impugned award dated 7 July 2017 (Exhibit L) were vitiated on several grounds as urged in the Petitions. However, the learned Counsel focused on two broad submissions supporting their challenges.

9. Firstly, the learned Counsel for the Petitioners submitted that the Section 6 declaration dated 20 May 2015 (Exhibit E) (pages 56 to 67 of the paper book) referred to some notification or direction applying the provisions of Section 17(4) of the Land Acquisition Act, 1894 (LA Act) and the dispensing of the requirements under Section 5A of the LA Act in case of the said acquisition. However, they pointed out that, factually, no such notification or direction was ever issued in these matters. Thus, they submitted that the Section 6 declaration dated 20 May 2015 was vitiated by complete non-application of mind. In any event, they submitted that this declaration was vitiated by an error apparent on the face of

the record or a gross misconception regarding the true and correct facts concerning the issue of notification/direction under Section 17(4) and the dispensation of enquiry under Section 5A of the LA Act. The learned Counsel submitted that this was sufficient to strike down the Section 6 declaration dated 25 May 2015 and the entire acquisition proceedings based thereon.

10. Secondly, and without prejudice to the above contention, Mr Anturkar and Mr Punde submitted that even if it was assumed that there was some notification or direction under Section 17(4) to dispense the enquiry under Section 5A of the LA Act, then the invocation of such urgency provision and the dispensation of the most valuable right available under Section 5A of the LA Act was null and void because this was not at all a case of any real urgency that could not brook a delay of even a few weeks or months. The learned Counsel for the Petitioners pointed out the material on record and relied upon several decisions to urge that the right given under Section 5A of the LA Act was one of the most valuable rights and the mandate of Section 5A could not have been lightly dispensed with as was allegedly done in the present matters. Accordingly, they submitted that the Section 6 declaration dated 20 May 2015 and the entire acquisition proceedings are liable to be struck down on this ground, which they urged without prejudice to the first ground.

11. Mr Anturkar and Mr Punde relied upon several decisions in support of the above two contentions and, based upon the

same, submitted that the acquisition proceedings be struck down. They also pointed out that interim reliefs directing maintenance of the status quo have been in operation since January 2018. They pointed out that CIDCO, for whose benefit the lands were being acquired, had filed Interim Applications for the vacation of the status quo order and handing over the possession of the Petitioners' lands to it. The learned Counsel for the Petitioners maintain that the Petitioners continue in possession of the lands which are the subject matter of the acquisition proceedings. Therefore, relief, as prayed for in these Petitions, may be granted.

12. Mr Patel learned Additional Government Pleader for the State Government and its functionaries (R1 to R3) was unclear as to whether, factually, any notification or direction was issued by any authority under Section 17(4) of the LA Act. On 27 February 2025, when the arguments in this batch of Petitions commenced, he informed the Court that the officials were present in the Court with all the case papers and original files. He stated that the officials were searching for the notification/direction, if any, in the original files. If such notification/direction were available, the same would be produced by 28 February 2025. On 28 February 2025, when the final arguments recommenced, the officials were still searching for the notification/direction, if any, under Section 17(4) of the LA Act. However, no such notification or direction under Section 17(4) was made available when the arguments concluded.

13. Mr Patel, learned Additional Government Pleader then submitted that since the declaration dated 20 May 2015 (Exhibit E), under Section 6 of the LA Act did refer to a notification/direction under Section 17(4) dispensing with the requirement of Section 5A of the LA Act, *“there must have been some such notification/direction and therefore, this Court, should proceed on such a premise”*. In any event, Mr Patel submitted that the *“statement in the Section 6 declaration dated 20 May 2015 may itself be regarded as the notification/direction under Section 17(4) for dispensing with the requirement of Section 5A of the LA Act”*.

14. After the above submissions, Mr Patel handed the Court a compilation of the following eight decisions: -i) **State of Gujarat Vs Shantilal Maganlal & Ors¹** ii) **Jamnadas Devsibhai Bhate & Ors Vs the Commissioner, Nagpur, Division Nagpur & Ors²** iii) **Municipal Corporation of Greater Mumbai & Ors Vs Advanced Builders (India) Pvt Ltd³** iv) **S.H. Rangappa Vs State of Karnataka & Ors⁴** v) **Kanhaylal & Ors Vs State of Uttar Pradesh & Ors⁵** vi) **Mahadev S/o Pandurang Tambare & Anr Vs State of Maharashtra & Ors⁶** vii) **Savitri Devi Vs State of Uttar**

¹(1969) 1 SCC 509.

²AIR 1976 Bom 129.

³1971 (3) SCC 381.

⁴(2002) 1 SCC 538.

⁵2017 SCC (01) All 2799.

⁶2002 SCC (01) Bom 949

Pradesh & Ors⁷ viii) Mehtab Laig Ahmed Shaikh & Ors Vs State of Maharashtra & Ors⁸

15. Of these, Mr Patel invited our attention to only two decisions at numbers (vi) and (vii) above. *Mahadev Tambare* (supra) concerns the lapsing of acquisition under Section 11A of the LA Act and is, therefore, not quite relevant to the controversy at hand.

16. Mr Patel, relying on *Savitri Devi* (supra) submitted that even if this Court were to find that the acquisition proceedings were illegal for want of any notification/direction under Section 17(4) of the LA Act dispensing with the requirement under Section 5A of the LA Act or because such notification/direction was illegal, null and void, still, this Court, should mould the relief and refrain from interfering with acquisition proceedings. He submitted that the alternate reliefs as were granted or upheld in *Savitri Devi* (supra) could be granted, given the importance of the acquisition.

17. Mr Patel submitted that the records contain a Panchanama showing that the possession of the acquired lands had already been taken over. However, because of the status quo order granted by this Court in 2018, the acquired lands were not being used for any purposes. He also pointed out that the impugned award which the Petitioners have challenged in this Petition had already determined the compensation payable to the Petitioners under the provisions

⁷2015 (7) SCC 21.

⁸2017 SCC (01) Bom 8841.

of the New Land Acquisition Act, i.e., The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 LA Act). As such, Mr Patel submitted that there was no actual prejudice to any Petitioners, who would all be suitably compensated following the law.

18. For all the above reasons, Mr Patel submitted that these Petitions may be dismissed, or, in any event, the reliefs may be molded following the precedent in *Savitri Devi* (supra).

19. Mr Hegde, learned Senior Advocate for CIDCO, submitted that these Petitions were barred by delay and laches. He submitted that since the challenge was to dispensing enquiry under Section 5A, these Petitions should have been filed soon after the publication of the Section 6 declaration dated 20 May 2015. He submitted that these Petitions were filed only in September 2017 after an Award was made on 7 July 2017. Accordingly, he submitted that these Petitions be dismissed for delay and laches.

20. Mr Hegde submitted that after the Award was made on 7 July 2017 and the Petitioners were served notice under Section 12(2) on 4 August 2017, the Petitioners, by their application dated 11 July 2017, applied for rehabilitation by allotment of alternate land after deducting 20% of the compensation payable to them. He submitted that such a demand amounts to acquiescence, and the petitioners were estopped from challenging the acquisition proceedings. He submitted that such conduct of the Petitioners disentitled

them to any discretionary relief under Article 226 of the Constitution of India.

21. Mr Hegde submitted that the statement in the Section 6 declaration that at some point a notification or direction was issued under Section 17(4) of the LA Act must itself be treated as a notification/direction under Section 17(4) for dispensing with enquiry under Section 5A of the LA Act. He submitted that the circumstance that the State Government (Respondent Nos. 1 to 3) were unable to produce any separate notification/direction could never be fatal to the acquisition proceedings. Accordingly, he submitted these Petitions may be dismissed.

22. Mr Hegde submitted that the impugned acquisition was to set up a new township under the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"). He submitted that necessary notifications under Sections 113 and 113A of the MRTP Act had already been issued by the government, declaring that it was in the public interest to have a new township. He, therefore, submitted that this was a matter where there was substantial compliance with the provisions of Section 5A of the LA Act.

23. Mr Hegde submitted that since the State government had already opined that such a township was in the public interest, no useful purpose would be served by going through the formality of considering objections or granting a personal hearing in these matters. He, therefore, submitted that the

acquisition proceedings may not be interfered with on the “*technical pleas*” raised by and on behalf of the petitioners.

24. In any event, Mr Hegde submitted that once notifications were issued under Section 113 read with Section 113A of the MRTP Act, nothing remained for the Petitioners to object. He submitted that the Petitioners have nowhere pleaded that setting up a new township did not constitute public purpose as defined under Section 3(f) of the LA Act. He submitted that even otherwise, the provisions of Section 3 (f) of the LA Act were sufficiently broad to include acquisition to set up a new township through a special purpose vehicle like the CIDCO.

25. Mr Hegde submitted that since this was an acquisition in terms of Section 113A of the MRTP Act, the provisions of the old LA Act 1894 would govern such acquisition until the provisions of the 2013 Act were applied by amending Section 113A. He submitted that this was a case of legislation by incorporation and, therefore, even compensation payable to the Petitioners had to be determined under the LA Act of 1894 and not under the LA Act of 2013).

26. Based upon the above contentions, Mr Hegde submitted that these petitions be dismissed, and the interim reliefs granted in 2018 may be vacated. In the alternate, relying upon the **Noida Industrial Development Authority vs Ravindra Kumar and Others⁹** and **New Okhla Industrial Development vs**

⁹ (2022) 13 SCC 468

Darshan Lal Bohra and Others¹⁰, Mr Hegde submitted that this was a fit case to mould the reliefs instead of quashing the acquisition proceedings.

27. Mr Hegde submitted that the CIDCO had filed IAs to vacate the interim reliefs because there was no clarity about the State Government having taken possession and, secondly, because the status-quo order had rendered it difficult for the CIDCO to commence developmental works that were necessary at the site. He, therefore, submitted that the Petitioners may not be regarded as continuing in possession of the acquired lands simply because the CIDCO applied for vacation or interim reliefs granted by this Court.

28. The rival contentions now fall for our determination.

29. The lead Petition, WP No. 778 of 2018, is concerned with the following agricultural properties in the village of **Vahal, Tal. Panvel, Dist. Raigad**, which the Petitioners claim to own: -

Sr. No.	Survey No. Gat No	Hissa No.	Area	
			H R P (Square Meter)	
1	306	1	00-21-0	(2100)
2	306	6	00-07-0	(700)
3	320	6	00-14-0	(1400)
4	355	2	01-47-0	(14700)

¹⁰ 2024 SCC Online SC 1690

5	369	7	00-06-0	(600)
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(hereinafter referred to as the ‘said properties’ or “acquired properties”).

30. By Notification dated 7 December 2013 (Exhibit-B at Pages 30-40), under Section 4 of the LA Act, issued by the Deputy Collector [land acquisition]-R3, the Government proposed to acquire the said properties for the public purpose of setting up a new township. This notification was published in the Official Gazette dated 16 December 2013.

31. Section 4 Notification dated 7 December 2013 did not refer to invoking the urgency provisions under Section 17 of the LA Act. Instead, Section 4 notification stated that should the Commissioner (Konkan Division) be satisfied that the land set out in the schedule was indeed required for the public purpose, then a notification/declaration to that effect under Section 6 of the LA Act would be published in the Official Gazette as required under the Law.

32. After the publication of Section 4 notification dated 7 December 2013 (Exhibit-B), vide notices placed on record by the Petitioners at Exhibit-C (pages 41-45 of the paper book), the Petitioners were notified about the Section 4 notification dated 7 December 2013 being published in the Official Gazette dated 16 December 2013 in terms of Section 4(1) of the LA Act. These notices crucially stated that since the Petitioners were “persons interested” in the lands referred to

in the schedule to the Section 4 notification, they could file their objections to the proposed acquisition or give their say on the proposed acquisition on or before 3 July 2014 in writing. The notice stated that the Deputy Collector (The Land Acquisition) Metro Center-3 (Panvel) would hear the Petitioners or their lawyers under Section 5A of the LA Act.

33. Thus, a conjoint reading of the Section 4 notification dated 7 December 2013 and the notices under Section 4(1), which followed, indicate that there was no notification or direction under Section 17(4) to dispense with the requirements under Section 5A of the LA Act. Otherwise, there was no question of the above notices being issued requiring the Petitioners to furnish their objections, if any, on or before 3 July 2014 and informing the Petitioners that they or their Advocates would be heard on such objections by the Deputy Collector (Land Acquisition) under Section 5A of the LA Act.

34. The Petitioners filed their objections to the acquisition on 3 July 2014. These objections are placed on record at Exhibit-D (pg 46-55 of the paper book). Each of these objections bears the endorsement of the Special Land Acquisition Officer, Metro Center 3 (Panvel), who was admittedly the prescribed authority to receive and deal with such objections. Thus, this is not a case where the Petitioners defaulted or delayed in objecting to the acquisition proceedings. The Petitioners expressly referred to their valuable rights under Section 5A of the LA Act. They said they

would make detailed submissions during the Section 5A enquiry before the Special Land Acquisition Officer (R3).

35. Section 5A of the LA reads as follows: -

5-A. Hearing of objections.— “(1) Any person interested in any land which has been notified under section 4, Sub – Section (1), as being needed or likely to be needed for a public purpose or for any company may, [within thirty days from the date of the publication of the notification] object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person person authorised by him in this behalf] or by pleader shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, 2[either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the ³[appropriate Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]

36. Admittedly, the Petitioners are ‘persons interested’ in the lands proposed to be acquired. They lodged their objections in writing to R3 as directed within the prescribed period.

Accordingly, in terms of Section 5A, R3 or any other competent officer was required to give the Petitioners an opportunity to be heard in person or by a pleader. After hearing of all such objections and making such further enquiries, if any as he thinks necessary, make a report to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

37. There is no dispute that the provisions of Section 5A of the LA Act 1894 were not complied with in all these matters. Respondents 1 to 3 did not consider the petitioners' objections, and neither the Petitioners nor their pleaders were given an opportunity to be heard as contemplated by Section 5A(2) of the LA Act 1894. The Petitioners have made averments in this regard in the Petitions, which have not been denied by any of the Respondents.

38. Apart from no denials, no material is produced on record showing compliance with Section 5A of the LA Act, 1894 provisions. Even the learned counsel for the Respondents did not urge that R1 to R3 duly considered the objections lodged by the Petitioners, any hearing opportunity was afforded to the Petitioners, or any report/reports as contemplated by Section 5A were made and sent to the appropriate government for its decision.

39. Instead, a Section 6 declaration dated 20 May 2015 was published in the official gazette. This Section 6 declaration at

Exhibit-E (pages 56 to 67 of the paper book) contains the following two recitals: -

“आणि ज्याअर्थी, उक्त नविन शहर विकास प्राधिकरणास मौजे वहाळ, ता. पनवेल, जि. रायगड, येथील उक्त जमिनी नवी मुंबई प्रकल्पासाठी आवश्यक आहेत. आणि ज्याअर्थी, उक्त जमिनीचे संपादन तातडीने करणे आवश्यक असल्याने अपर आयुक्त, कोंकण विभाग यांनी त्यांची उपनिर्देशित अधिसूचनेद्वारे भूसंपादन अधिनियम कलम १७, पोट कलम (४) अन्वये असे निर्देश दिले होते की, संपादन अधिनियम कलम ५क चे उपबंध जमिनीना लागू होणार नाहीत.

अपर आयुक्त, कोंकण विभाग, भूसंपादन अधिनियमाच्या कलम १७, पोट कलम (१) अन्वये याद्वारे असा निर्देश देत आहेत की संपादन अधिनियमाचे कलम ९(१) अन्वये उक्त जमिनीच्या संबंधात नोटीस प्रसिध्द झाल्यापासून पंधरा दिवसाची मुदत संपाल्यावर उक्त जमिनीचा ताबा जिल्हाधिकारी घेतील.”

40. The official translations of the aforesaid two recitals in Section 6 declaration dated 20 May 2015 are set out herein below for the convenience of reference:-

“And Whereas, the aforesaid New City Development Authority requires the aforesaid lands situated at Village - Vahal, Taluka - Panvel, District - Raigad for the 'Navi Mumbai Project'. And whereas, as it is necessary to acquire the said lands immediately, the Additional Commissioner, Konkan Division, by his aforesaid notification, **had given directions under Sub Section (4), Section 17 of the Land Acquisition Act that, the provisions of Section 5-C of the Land Acquisition Act will not be applicable to the said lands.**

The Additional Collector, Konkan Division hereby gives directions under Sub-Section (1) of Section 17 of the Land Acquisition Act that as per Section 9(1) of the Land Acquisition Act, the Collector shall take the possession of the aforesaid land after the period of fifteen days from the date of publication of the notice in respect of the aforesaid land, gets over.”

41. The above recitals in the Section 6 declaration dated 20 May 2015, at least prima facie, suggested that the Additional Commissioner (Konkan Division) had issued notification or direction under Section 17(4) and 17(1) invoking the urgency provisions and dispensing with the compliance of the salutary provisions under Section 5A of the LA Act 1894 and for adoption of the expedited procedure to take over the possession of the acquired lands after tendering the payment of 80% of the compensation amount.

42. The Petitioners, however, squarely challenged the existence of any such notifications/directions invoking the urgency provisions under Section 17 of the LA Act, 1894. Mr. Anturkar and Mr. Punde argued that the Section 4 notification had indicated the Deputy Collector (Land Acquisition) as the Special Land Acquisition Officer. Therefore, the Additional Commissioner (Konkan Division) had no authority to issue a declaration under Section 6 or, in any event, to invoke the urgency provisions under Section 17 and dispense with the compliance of Section 5A of the LA Act, 1894.

43. In the replies filed by and on behalf of Respondents 1 to 3 or the CIDCO, there is no denial to the Petitioners' pleadings that no such notification or direction invoking the provisions of Section 17 of the LA Act, 1894. Apart from the pleadings, despite ample opportunity, none of the Respondents could produce any document in the form of a notification or direction invoking the urgency provisions of Section 17 of the LA Act, 1894.

44. Suppose there was any such notification/direction under Section 17, whether made by the Additional Commissioner or the Deputy Collector (Land Acquisition). In that case, the same should have been produced on record along with the replies or even otherwise when this Court repeatedly sought the same. Further, if such notification/direction existed, then, ordinarily, the same would have found a reference in the Section 4 notification dated 7 December 2013.

45. Suppose there was any such notification/direction under Section 17, the notices issued under Section 4(1) to the Petitioners would not have required them to file their objections or informed them that they would be heard personally or through their pleaders during the inquiry under Section 5A of the LA Act, 1894. All this is more than sufficient to conclude that there was no notification/direction invoking the urgency provisions in Section 17 of the LA Act,

1894, in so far as the acquisition under Section 4 notification dated 17 December 2013 was concerned.

46. Without any notification/direction under Section 17 invoking the urgency provisions, compliance with the provisions of Section 5A was mandatory. Admittedly, the requirements of Section 5A were not complied in these matters. The issuance of the Section 6 declaration dated 20 May 2014 without compliance with the mandatory requirements of Section 5A vitiates the Section 6 declaration. On this ground alone, the declaration is liable to be declared null and void.

47. Mr. Patel and Mr. Hegde then submitted that the recitals in the Section 6 declaration “*should now be construed as notification/direction of the Additional Commissioner (Konkan Division) regarding invoking the urgency provisions in Section 17 of the LA Act, 1894*”. Mr Hegde referred to the Maharashtra Amendment in Section 17 of the LA Act, 1894. He pointed out that the “appropriate government’ or the “Commissioner” were empowered to exercise powers under Section 17 of the LA Act of 1894. Given the reference in the recital, “*such power must be deemed to have been exercised*”.

48. The above contention is untenable. Firstly, the recitals referred to the issue of notification/direction under Section 17 in the past, i.e. after the issue of Section 4 notification dated 17 December 2013 but before the issue of declaration under Section 6 dated 20 May 2014. Secondly, the dichotomy,

in which the Deputy Collector (Land Acquisition) was duly appointed as the Special Land Acquisition Officer in this matter, issuing Section 4 notification and the Additional Commissioner issuing Section 6 declaration and therein purporting to invoke the urgency provisions is nowhere explained by the Respondents.

49. This contention, now raised by Mr. Patel and Mr. Hegde, is not mentioned in the affidavits filed on behalf of the Respondents. This argument is backed by neither any pleadings nor legal provisions to support the same. There can be no “*deemed invocation of the urgency provisions*”. Either it is invoked after due record of satisfaction and application of mind, or it is not. There can be no casualness or ambiguity of the level now displayed in these matters. Invoking the urgency provisions under Section 17 is a grave matter because, by such invocation, one of the most salutary provisions in Section 5A is sought to be dispensed with.

50. Section 5A embodies the principles of natural justice and fair play before a person’s land is compulsorily acquired. Therefore, invoking the urgency provisions in Section 17 must be preceded by due application of mind and satisfaction regarding real urgency. The Hon’ble Supreme Court has held that urgency should be of such nature as to brook no delay of a few days or weeks within which the prescribed authorities at least hear the potential land losers before their land is

compulsorily acquired. Accordingly, this contention, backed by no pleadings or legal provisions, cannot be accepted.

51. Mr. Punde, with the leave of the Court, produced on record a Draft Award dated 06 July 2017 prepared by the Additional Commissioner (Konkan Division) in this matter. This Draft Award, dated 06 July 2017, contains an endorsement that the last date for publication of this award is 07 July 2017. This means that the Draft Award was prepared hardly a day before 07 July 2017, which was perceived as the last date for publication of the award. This Draft Award was obtained under the Right to Information Act, as the endorsement shows. Therefore, no objection was raised or could be raised to its consideration.

52. Clause 6 of the Draft Award dated 06 July 2017 deals with the requirement to comply with the provisions of Section 5A of the LA Act, 1894. Clause 6 is transcribed below for the convenience of reference: -

“६) कलम ५ (क) खालील कार्यवाही :- सदर प्रकरणी भूसंपादन अधिनियम १८९४ चे कलम १७ चे तरतुदी लागू केल्याने म्हणजेच संपादन प्रक्रीया तातडीचे कलमान्वये करण्यात येत असल्याने प्राप्त हरकतीवर भूसंपादन अधिनियम १८९४ चे कलम ५ क ची चौकशी वगळण्यात आली. असे प्रारूप निवाड्यात नमूद केले आहे.

सूचना/अट/शर्त :-

उपजिल्हाधिकारी (भूसंपादन) यांनी संपादन प्रक्रीया तातडीचे कलम लावून कलम ४ खालील

अधिसूचना प्रसिध्द केलेली असल्याचे आढळून येत नाही. याबाबत पुनश्चः खतरचमा करावी कलम ५ (क) खालीलचौकशी केल्याचे दिसून येत नाही. भविष्यात वाद उद्भवल्यास अथवा न्यायालयीनबाब उपस्थित झाल्यास किंवा असंवैधानिक बाब घडल्यास त्यास संबंधित भूसंपादन अधिकारी वैयक्तिकरित्या जबाबदार राहतील. कलम ५ (क) ची चौकशी वगळल्याबाबत संबंधितांचा लेखी खुलासा प्राप्त करून जिल्हाधिकारी यांनी नियमोचित कारवाई करावी”

53. The official English translation of paragraph 6 of the Draft Award dated 06 July 2017 is also transcribed below for the convenience of reference: -

6) Action under section 5(C) :- In the Draft Award, it has been mentioned that in this matter, the enquiry under section 5(C) of the Land Acquisition Act, 1894 on the objections that have been received, has been omitted as the provisions of Section 17 of the Land Acquisition Act, 1894 have been made applicable, i.e. the acquisition process is undertaken under the urgency clause.

Instruction/Term/Condition:-

The Deputy Collector (Land Acquisition) does not seem to have published a Notification under section 4 for acquisition process by citing the urgency clause. Therefore, the same should be ascertained once again. The enquiry under section 5(C) does not seem to have been held. Therefore, in future, if any dispute arises or any court litigation is filed or any non-statutory incident occurs, then, the Land Acquisition Officer concerned shall be personally responsible therefor. The Collector shall obtain an explanation in writing from the persons concerned for omission of the enquiry under section 5(C) and shall take action as per the Rules.”

54. Paragraph 6 of the Draft Award dated 06 July 2017 records no compliance with Section 5A requirements on the

premises that the urgency provisions under Section 17 had been invoked. However, in the Section 4 notification issued by the Deputy Collector (Land Acquisition), there was no reference to invoking the urgency provisions. Therefore, the Draft Award suggests that this matter should be once again inquired into since there is no record of inquiry under Section 5A. The Draft Award records that in future, if any, controversy arises on this issue or if there is any litigation in the courts of law or any unconstitutionality is alleged, the Land Acquisition Officer must be held personally responsible. Accordingly, the Draft Award suggests that a written clarification should be obtained regarding dispensing with Section 5A inquiry from all concerned. The Collector should take necessary action under the Rules upon receiving written clarification.

55. Thus, this is a matter where the Respondents have failed to produce any notification/direction, or, for that matter, any document regarding the invocation of the urgency clause under Section 17 of the LA Act, 1894. There was no reference to such invocation in the Section 4 notification. The notices under Section 4(1) called upon the Petitioners to submit their objections on or before 03 July 2014 and informed them that they or their pleaders would be heard in the inquiry under Section 5A. The Draft Award flags the issue of no clarity on invoking urgency provisions and dispensing with the Section 5A requirements. Factually, there was no compliance with the mandatory Section 5A requirements. Based on all this, a case is made to quash the Section 6

declaration dated 20 May 2014 and all subsequent proceedings, including the impugned award dated 07 July 2017.

56. Mr Hegde did try to urge the reference to the Land Acquisition Act, 1894, in Section 113A of the Maharashtra Regional Town Planning Act, 1966 was an an instance of “legislation by incorporation”. Therefore, he contended that until Section 113A was amended with effect from 29 August 2015, the acquisition for the purposes set out in Section 113 or 113A was under the Land Acquisition Act 1894 provisions. However, Mr. Hegde could not say what the sequitur of this argument was.

57. In any event, Section 5A was inserted in the LA Act, 1894, by Act of 38 of 1923, effective 01 January 1924. Thus, when the MRTP Act 1966 was enacted, Section 5A was a part of the Land Acquisition Act of 1894. In terms of Mr. Hegde’s arguments, this position continued up to 29 August 2015 when the reference to the Land Acquisition Act, 1894, was substituted with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

58. The Privy Council in **Ezra Vs. Secretary of State for India-in-Council**¹¹ had held that in acquisition of land the wishes of the owners of the land are wholly irrelevant. The landowners could only object to the compensation amount,

¹¹32 Cal 605 (PC)

measurement area, etc., but never in respect of the acquisition itself. To remedy this position and offer the landowners an opportunity to object to the acquisition of the land Section 5A was introduced with effect from 01 January 1924. The statement of objects and reasons annexed to the Bill read as follows: -

“The L.A. Act (Act I of 1894) does not provide that persons having an interest in land which is proposed to acquire shall have the right of objecting to such acquisition; nor is Govt. bound to enquire into and consider any objections that may reach them. **The object of this Bill is to provide that a Local Government shall not declare, under s. 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under s. 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government**”. In England the English Land clauses Consolidation Act 1845 and subsequent amendments do not contain any similar provision to object against acquisition as such, but in the Railways Clauses Consolidation Act 1845 there is a similar provision enabling the owner or occupier to object against acquisition by Railway Companies.”

59. Thus, the legislative intent behind introducing Section 5A was to ensure that the government shall not declare, under Section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after notification under Section 4 for the persons interested in the land to put in objections and for such objections to be considered by the local government. In the present matters, without invoking the urgency provisions in Section 17, Section 5A requirements were dispensed with, and a Section 6 declaration was issued. Such declaration is ultra vires the

provisions of the Land Acquisition Act, 1894 and the legislative intent behind inserting Section 5A on the statute. There is a plethora of precedents clarifying this position. Mr Patel or Mr Hegde did not cite any decision saying that compliance with Section 5A, where it was not validly dispensed with, was only optional or did not affect the acquisition.

60. In **Farid Ahmed Abdul Samad and another Vs. The Municipal Corporation of the City of Ahmedabad and another**¹² the Hon'ble Supreme Court was concerned with the provisions of Section 284J of the Bombay Provincial Municipal Corporations Act 1949, which provided that the Commissioner may, for the purposes of the foregoing section, on behalf of the Corporation acquire any land including any buildings thereon as a site for the erection of buildings for the poorer classes. Section 284N provided that the Land Acquisition Act of 1894 shall, to the extent set forth in Appendix I, regulate and apply to land acquisition under this Chapter. The acquisition which the Hon'ble Supreme Court was concerned with was made without compliance with the provisions of Section 5A of the Land Acquisition Act, 1894.

61. Accordingly, the Hon'ble Supreme Court held that *the acquisition without compliance with the mandatory provisions of Section 5A of the Land Acquisition Act was invalid at its inception*. Its invalidity could not be cured by its approval of

¹²AIR 1976 SC 2095

the Standing Committee or by its confirmation by the State Government. *The Court held that the heart of Section 5-A of the Land Acquisition Act is the hearing of objections, and under sub-section (2) of that section, a personal hearing is mandatorily provided for. Section 5A does not rest on a person's demand for a personal hearing. Provision of appeal is also not a substitute for a personal hearing provided for under Section 5-A of the Land Acquisition Act.*

62. Mr. Hegde submitted that the New Township had an extremely laudable purpose, and therefore, a technical objection like non-compliance with Section 5A should not be taken too seriously. In **Farid Ahmed Abdul Samad** (supra), the Hon'ble Supreme Court rejected a similar argument by observing in Paragraph 27 that beneficial schemes under welfare legislation must be executed in accordance with the law which creates the schemes. *The end does not always justify the means, and it is no answer that the object of the scheme is such that it justifies the implementor of the law to be absolutely oblivious of the manner of enforcement even though the manner in an integral part of the scheme, imposing under the law, restrictions on the rights of individuals.*

63. In **Bedenshah Fatenshah, Fakir and another Vs The State of Maharashtra and others**¹³ the Division Bench of this Court (M. N. Chandurkar and R. S. Bhonsale, JJ) held that the provisions of section 5A are mandatory, and it is now well

¹³1980 Bom. C.R. 791

settled that the core and essence of section 5A is the personal hearing of the objections. The absence of a hearing renders the acquisition invalid from its inception. *Eliminating enquiry under section 5A must be justified by exceptional and genuine reasons.* Since no reasons and exceptional circumstances warranted a recourse to the application of the urgency clause, the notification under Sections 6 and 17 was quashed and set aside.

64. Mr Hegde argued that since the government had already issued a notification under Section 113 r/w 113A of the MRTP Act, there was no reason to go through the process of entertaining objections under Section 5A for the Collector/Land Acquisition Officer making a report under Section 5A of the Petitioners or their pleaders. He submitted that in any event, even recommendations of the Collector/Land Acquisition Officer never bind the appropriate government.

65. Again, we are unable to accept the above contentions. Even Section 113A, which was relied upon by Mr. Hegde, requires the authorities to acquire lands under the Land Acquisition Act, 1894 provisions. This means that the provisions of section 5A, which are very much a part of the Land Acquisition Act of 1894, need to be complied with. An argument based on eventual futility cannot be readily accepted. When the law prescribes that a particular act must be done in a specific manner, it is well settled that such an act

must be done in that manner, and all other modes are impliedly prohibited. This is more so when the requirement breached embodied the principles of natural justice, which is now accepted as a concomitant of the non-arbitrariness clause in Article 14 of the Constitution.

66. In *Mandir Sita Ramji Vs. Governor of Delhi and others*¹⁴ an argument very similar to that made by Mr Hegde, was rejected by the Hon'ble Supreme Court. The Land Acquisition Officer declined to hear the Appellant in the inquiry under Section 5A and make a recommendation to the appropriate Government. The Court held that such failure of the Land Acquisition Collector to enquire into the objection after giving the Appellant an opportunity to be heard would show that the Collector declined to exercise his jurisdiction under Section 5A.

67. The Court held that the fact that the State Government must make the ultimate decision did not relieve the Collector from his statutory duty to inquire into the objection and make a recommendation. The Court that the Division Bench of the High Court should not have departed from the procedure prescribed by the statute. *The observation of the procedure laid down by the statute before depriving a person of his property is necessary to generate the feeling that rule of law prevails in this country. When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its*

¹⁴AIR 1974 SC 1868

notion of justice. When the legislature has spoken, the judges cannot afford to be wiser. Accordingly, the notification under Section 6 was quashed for failure to comply with the mandatory procedure under Section 5A of the LA Act of 1894.

68. Now, on a demurer, even if we were to proceed on the premise that the reference to Section 17(4) or 17(1) in the Section 6 declaration dated 20 May 2014 amounts to some notification or direction invoking urgency provisions under Section 17 of the LA Act, 1894, that cannot be the end of the matter for the Petitioners. Since a challenge was thrown to such invocation, it was incumbent on the Respondents to justify invoking the urgency provisions by filing a proper affidavit backed by relevant material.

69. No material is produced on record to justify the alleged invocation of the urgency provisions. None of the affidavits explain or give any reasons justifying the alleged invocation of the urgency clause in these matters. The urgency provisions can be invoked only in grave and real urgency cases. Application of mind is necessary before urgency provisions are invoked and section 5a provisions are excluded. The statutory satisfaction must not relate only to the urgency but specifically to the need to dispense with Section 5A safeguards. All this is absent in the present case. Therefore, such alleged invocation of the urgency provisions is liable to be quashed and set aside.

70. Apart from the fact that the public purpose, in this case, was the establishment of a new township, we note that Section 4 notification was issued on 7 December 2013 and published in the Gazette on 16 December 2013. This notification was published in Dainik Krushival on 24 December 2013. After almost six months, the Section 4 notification was published in a conspicuous place, i.e., on the notice board of Talathi Saja Vahal. Section 4 notification was then published in Dainik Bahuratna Loknayak on 25 January 2015, i.e., almost 13 months after its publication in the official gazette on 16 December 2013. All these dates are not disputed and are reflected in the award made on 7 July 2017.

71. Even if the post-notification delay is to be excluded, the delay of almost two years between the issue of Section 4 and Section 6 notifications or the delay of about 13 months in simply publishing the Section 4 notification at a conspicuous place in the village is sufficient to infer that this was not a case of any real urgency justifying the invocation of the urgency provisions under Section 17 of the LA Act, 1894.

72. In **Narayan Govind Gavate Vs State of Maharashtra & Ors**¹⁵ the Hon'ble Supreme Court was concerned with acquiring land to develop industrial areas and residential tenements. Still, the urgency provisions were invoked and compliance with Section 5A was dispensed with. Such invocation of urgency provisions was challenged. The Hon'ble

¹⁵ AIR 1977 SC 183

Supreme Court held that *“where lands are sought to be acquired for development of area for industrial and residential purposes that in itself, on the face of it does not call for invocation of the urgency provisions under Section 17 or the dispensation with the compliance of Section 5A enquiry and opportunity for personal hearing”*.

73. The Court held that Section 17(4) cannot be read in isolation from Sections 4(1) and 5A of the Act. The immediate purpose of a notification under Section 4(1) is to enable those who may have any objections to lodge them for the purpose of an enquiry under Section 5A of the Act. *The Court held that “it is not the existence of an urgency but the need to dispense with an enquiry under Section 5A which has to be considered”*. The Court held that when the notification invoking the urgency provisions was challenged, *“it was incumbent on the appropriate government to produce evidence on facts, especially within its knowledge, to justify such invocation”*. The Hon’ble Supreme Court, therefore, quashed the notification, invoking the urgency provisions.

74. In **Union of India & Ors Vs Deepak Bhardwaj & Ors**¹⁶, the challenge was invoking urgency provisions under Section 17(1)(4) when the acquisition of land was for developing a growth point in an area. The High Court quashed the notification by holding *that setting a growth point was a part of the process of development of rural areas by creating necessary infrastructure. Such works keep going on as the society grows*

¹⁶ AIR 2004 SC 3289

and these are long terms measures. The High Court held that invocation of urgency provisions under such circumstances was not justified. The High Court further held that there was a total absence of material for the decision to dispense with Section 5A. The Hon'ble Supreme Court found no reason to interfere with the High Court's decision quashing the invocation of the urgency provisions.

75. In Darshan Lal Nagpal & Ors Vs Government of NCT Delhi & Ors¹⁷ the Hon'ble Supreme Court held although in the exercise of power of eminent domain, the State can acquire private property for public purposes, *"it must be remembered that compulsory acquisition of property belonging to a private individual is a serious matter and has grave repercussions on his constitutional right of not being deprived of his property without the sanction of law - Article 300A and the legal rights. Therefore, the State must exercise the power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 because that results in depriving the owner of his property without being afforded an opportunity of hearing"*.

76. The Hon'ble Supreme Court further held that invocation of the urgency clause is justified *"only if urgency is such that it*

¹⁷ AIR 2012 SC 412

cannot brook the delay of a few weeks or months". The Court also rejected the argument that the invocation of the urgency provision was justified because the land was required for a project which would benefit a large section of society.

77. The Court held that it needs no emphasis that the majority of the projects undertaken by the State and its agencies/instrumentalities, the implementation of which requires public money, are meant to benefit people at large or substantially large segments of the society. If the proposition that invocation of urgency provision is justified for projects of public importance is treated as correct statement of law, then in all such cases, acquiring authority will be justified in the invocation of Section 17 of the Act and dispense with enquiry contemplated under Section 5A, which would necessarily result in depriving the owner of his property without any opportunity to object.

78. The Court emphasised that the invocation of urgency provisions can be justified only if a real emergency cannot brook a delay of even a few weeks or months. In other words, urgency provisions can be invoked only if even a few weeks or months' delay may frustrate the public purpose for which the land is sought to be acquired. It is one thing to say that the State and its instrumentality want to execute a project for public importance without loss of time, and it is altogether different to say that in the execution of such a project, private individual should be deprived of their property without even being heard.

79. In **Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others**¹⁸, the Hon'ble Supreme Court has held that it is true that after the 44th Constitutional amendment, the right to property drifted from Part III to Part XII of the Constitution, there continues a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A, which declares that no person shall be deprived of his property save by authority of law, has been characterized both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and offensive to the egalitarian spirit of the Constitution. A post-colonial reading of the Constitution cannot limit itself to the discourse on compulsory acquisitions being for public purpose and subject to payment of compensation alone. This binary reading of the Constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

¹⁸ [2024] 10 SCC 533

80. The Court has identified seven such sub-rights, albeit non-exhaustively. *One of the sub-rights is the duty of the State to hear objections to the acquisition-the right to be heard. The next is the duty of the State to inform the person of its decision to acquire-the right to a reasoned decision.* The Court held that these seven rights are the foundational components of a law that is tune with Article 300-A, and the absence of one of these or some of them would render the law susceptible to challenge. The Court held that it is, of course, precedentially sound to describe some of these sub-rights as “procedure”, a nomenclature that often tends to undermine the inherent worth of these safeguards. *These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300-A, non-compliance of these will amount violation of the right, being without the authority of law.*

81. In paragraphs 33.2 and 33.3, the Hon’ble Supreme Court has discussed the scope and ambit of the right to be heard and the right to a reasoned decision in the context of compulsory acquisition of private property. The Court held that following a right to meaningful and effective prior notice of acquisition is the right to the property bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham. Section 5-A of the Land Acquisition Act, 1894 or Section 15 of the 2013 Act are some of the statutory embodiments of this

right. The Court held that the judicial opinions recognising the importance of this right are far too many to reproduce. Suffice it to say that the enquiry in which a landholder would raise his objection is not a mere formality¹⁹.

82. The Court further held the fact that the authorities have heard and considered the objections to the acquisition is evidenced only through a reasoned order. It is therefore incumbent upon the authority to take an informed decision and communicate the same to the objector. Section 6 of the Land Acquisition Act, 1894 or Section 19 of the 2013 Act are the statutory incorporations of this principle. Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

83. Following the above principles and applying them to the facts of the present case, we are satisfied that, factually, there was no invocation of any urgency clause, and Section 5A compliance was wrongly dispensed with even without such

¹⁹ In *Nandeshwar Prasad v. State of U.P.*, 1963 SCC OnLine SC 245; AIR 1964 SC 1217, this Court has held the right under Section 5-A of the Land Acquisition Act, 1894 to be a substantial one and it cannot be taken away. In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627, this Court has held that the right of submitting objections under Section 5-A of the Land Acquisition Act, 1894 is a valuable right and the hearing given in pursuance of exercise of this right must not be rendered to a mere formality. In *Union of India v. Shiv Raj*, (2014) 6 SCC 564; (2014) 3 SCC (Civ) 607, this Court held that the rules of natural justice have been ingrained in the scheme of Section 5-A of the Land Acquisition Act, 1894. In *Competent Authority v. Barangore Jute Factory*, (2005) 13 SCC 477, this Court observed that in the process from the initial notification to the final declaration, objections play a vital road. In *Kamal Trading (P) Ltd. v. State of W.B.*, (2012) 2 SCC 25; (2012) 1 SCC (Civ) 506, this Court quashed the land acquisition proceedings when a proper hearing under Section 5-A of the Land Acquisition Act, 1894 was not accorded. In *Gojer Bros. (P) Ltd. v. State of W.B.*, (2013) 16 SCC 660; (2014) 5 SCC (Civ) 588, this Court quashed the land acquisition proceedings when it was observed that a mere formality was rendered in the name of a hearing under Section 5-A of the Land Acquisition Act, 1894.

invocation. In any event, even if we assume there was such invocation vide the ambiguous recitals in Section 6 declaration dated 20 May 2015. Still, such invocation was ex-facie illegal, null and void because this was not a real urgency or urgency that would brook no delay of even a few days or months. No material has been produced on record justifying the alleged invocation of the urgency clause. The alleged invocation contradicts the principles the Hon'ble Supreme Court laid down in such matters and is liable to be set aside.

84. For all the above reasons, we are satisfied that the impugned notification dated 20 May 2015 and the impugned award dated 7 July 2017 based thereon are liable to be quashed and set aside and are hereby quashed and set aside.

85. Typically, when awards or notifications under Section 6 of the LA Act, 1894, are quashed and set aside on account of invalid invocation of the urgency clause and dispensation with the Section 5A requirements, a Section 4 notification is not quashed and set aside unless there are good reasons to do so.

86. In the present case, Mr Hegde submitted that the Petitioners should not be compensated under the 2013 Act. Mr Patel, AGP, did not readily accept this position. Still, leaving Section 4 notification untouched might imply that the compensation rate is determined as of 7 December 2013 or 25 January 2015, should the acquisition proceed after due compliance with the statutory requirements. This may not be

very equitable to the Petitioners' interest. The Petitioners right to an efficient and expeditious process might be a casualty.

87. However, the Petitioners have asserted that they continue possessing the said properties given the interim relief granted by this Court in these Petitions. From the photographs placed on record by the Petitioners, it is apparent that the Respondents have not carried out any activity on the said properties. However, a vague contention of possession being with them is raised by relying upon one panchanama. The CIDCO filed an interim application in this Court to vacate the interim order granted by this Court. In this interim application, the CIDCO requested possession of the said property, which contradicts the claim that it already possesses the said properties.

88. Considering all the above factors, while we do not wish to quash the Section 4 notification dated 7 December 2013 formally, we leave the question of compensation rate open should the Respondents proceed with the acquisition from the Section 4 notification stage in these matters. The reliefs in these petitions can be moulded to this extent.

89. The arguments regarding the denial of reliefs in the name of moulding do not appeal to us in the peculiar facts of the present case. As noted above, this is not a case where the Petitioners could be held guilty of laches. The Petitioners have approached this Court within a reasonable period, given that the impugned Award was made on 7 July 2017 and the

notices of its making were issued in August 2017. These Petitions were instituted in September 2017. The Petitioners also secured interim reliefs from this Court.

90. Though there is some controversy on the possession aspect, from the photographs on record, the Respondents do not appear to have undertaken any activities on the said properties. The CIDCO, in its application for vacating the interim reliefs filed in 2021, requested possession of the said properties, meaning that it did not have the said properties. In **Noida Industrial Development Authority** (supra) and **New Okhla Industrial Development Authority** (supra), material showed that considerable development was completed on the acquired land. The fact situation in **Savitri** [Supra] was also quite different. That is not the position in the present matters. Mr. Damle, who appeared for the intervenors, did not claim that the intervenor allottees were in possession or were using the said properties. His contention was that the interests of the allottees may be protected. Considering all these factors, no case is made to deny relief to the petitioners.

91. Besides, the petitioners were guilty of laches in the decisions relied upon by Mr Hegde and Mr Patel. Still, the Court found that the acquisition was illegal. Therefore, instead of quashing the acquisition, the Court, by balancing the equities, directed payment of compensation under the New Act of 2013 or treated the date of the judgement itself as the benchmark for determining the compensation rate. Such are not the facts in the present batch of matters.

92. The circumstance that the Petitioners applied for rehabilitation by abundant caution cannot be construed as acquiescence to a void acquisition. As a matter of abundant caution and without prejudice, such a request may have been made by the Petitioners. Even in the present Petitions, the Petitioners have prayed for rehabilitation benefits through alternate relief. Incidentally, the impugned Award declined such relief to the Petitioners on the specious plea that the Petitioners made no such specific claim when records prima facie show that such a claim was made. This is neither a case of acquiescence nor estoppel.

93. Ultimately, we cannot forget the Petitioners are Agriculturists whose lands are sought to be compulsorily acquired without even hearing them or without complying with the mandatory provisions of the statute. In their never-considered objections, the Petitioners had pointed out how they would suffer and even be rendered landless. Though the property right may no longer be a fundamental right, it is accepted as the Constitutional Right vide Article 300A. The Hon'ble Supreme Court has held that property rights are also Human Rights. [See *Tukaram Kana Joshi v. MIDC*²⁰]

94. Therefore, based on the arguments urged, no case is made to deny the Petitioners the relief they are entitled to or to mould the relief and compel them to accept something significantly less than what is due to them. Mr Patel and Mr Hegde were unclear about the moulded relief in these

²⁰ [2013] 1 SCC 353

matters. Nothing was proposed except to urge that these Petitions may be dismissed.

95. Incidentally, the Respondents did not offer the Petitioners substantial compensation or rehabilitation. Instead, they raised defences neither backed by facts nor the law. None of the Respondents was candid with the Court, and most of their arguments were not even reflected in their replies. They made confusing statements and sought to gain an advantage from them.

96. For all the above reasons, we allow these Petitions and quash and set aside the Section 6 declaration dated 20 May 2015 (Exhibit—E) and the impugned Award dated 7 July 2017 (Exhibit- L) to the extent they concern the Petitioners' properties as described in their respective Petitions. The notices dated 4 August 2017 under Section 12(2) will also not survive and are hereby quashed. However, nothing in this judgment and order will preclude the respondents from acquiring the Petitioners' properties by following the law and lawful procedures.

97. Given the interim orders made in these Petitions, the petitioners assert that they continue to possess the said properties. Therefore, there is no question of issuing orders restoring possession to them. The Petitioners have not prayed for any such reliefs. The interim orders are now made absolute.

98. Interim Applications, mainly seeking to vacate the interim reliefs granted in these Petitions, will not survive and are now disposed of. Some interim applications sought interventions. The State and CIDCO defended the interests of the intervenors. Mr Damle was also heard on behalf of the intervenors. These applications also stand worked out and are now disposed of.

99. The Rule is made absolute in the above terms in all these Petitions without any cost order.

100. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)

After Pronouncement

101. At this stage, Mr Deolekar, the learned AGP seeks a stay on the judgment and order that we have just pronounced. As noted earlier, there was an interim order operating in favour of the Petitioners since 2018. Now that we have allowed the Petition, this interim order is made absolute. A stay at this stage would virtually amount to vacating the interim order in operation since 2018. Such a stay cannot be granted. Mr Deolekar states that the Respondents may have to implement this order. There is no question of implementation as such since we have quashed the acquisition qua the Petitioners lands. As noted earlier, the Petitioners were protected by an

interim order since 2018.

102. Accordingly, the application for stay is hereby rejected.

(Jitendra Jain, J)

(M. S. Sonak, J)