

*Before M.M. Kumar & Gurdev Singh. JJ.*

**STATE OF HARYANA AND ANOTHER,—Appellants**

*versus*

**MANI DEVI,—Respondent**

**L.P.A. No. 434 of 2004**

**23rd August, 2011**

*Land Acquisition Act, 1894 - S. 4, 5A, 17, 17(1) & (2), 17(4), 48 - Land of respondent acquired invoking S.17 of the Act - possession not taken for 12 years - Appellants issued an order de-notifying 1000 sq. yard of land in same khasra number belonging to one Parmod Kumari - Application of respondent/landowner for denotifying was rejected - Respondent/landowner filed writ petition - Petition allowed - State filed LPA - Appeal dismissed holding that possession was not taken for a long time, hence there was no justification for invoking Section 17 of the Act.*

*Held,* That There is nothing on the record to show that there was any factor for reaching to a conclusion that there was such an emergency that 30 days' period for making enquiry under Section 5A of the Act could not have been granted whereas there is delay of more than 12 years on the date of filing of the writ petition and even in taking possession. Therefore, the invocation of emergency/urgency itself suffers from colourable exercise of power and is unsustainable in the eyes of law.

(Para 5)

*Further held,* That however, it has been observed that the land owners whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition and where the State Government has exercised its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the land owners who are similarly situated have a right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which the edifice of the rule of law rests. All actions of the State have to be fair and for legitimate reasons.

(Para 6)

Ajay Gupta, Addl. Advocate General, Haryana, *for the appellants.*

None for the writ petitioner-respondent.

**M.M. KUMAR, J.**

(1) The instant appeal under clause X of the Letters Patent is directed against judgment dated 28.4.2004 rendered by learned Single Judge holding that the acquisition in respect of the plot of the writ petitioner-respondent was bad in the eyes of law for two reasons. The first reason which emerges from the perusal of the order is that the provisions of emergency/urgency under Section 17 of the Land Acquisition Act, 1894 (for brevity, 'the Act') had been invoked without any justifiable reason. According to the learned Single Judge, the notification invoking the emergency/urgency provisions for acquiring the land in question was issued on 22.11.1972 and for 12 long years possession was not taken i.e. when the writ petitioner-respondent filed the writ petition relating to the instant appeal. According to the learned Single Judge, once emergency provisions had been invoked, then it is natural that the land would be utilized for a public purpose without any delay whereas in the instant case, the land has not been utilized for a long time taking into consideration the time which elapsed for deciding the controversy. The learned Single Judge further noticed that from the date of issuance of Notification under Section 4 of the Act three decades have passed and the writ -petitioner-respondent continued to be in possession of the acquired land. In fact she has built two big rooms, a kitchen and a boundary wall which is a residential house. The second reason given by the learned Single Judge for allowing the writ petition and quashing the acquisition is the discrimination perpetrated by the appellant on her. In that regard the learned Single Judge has noticed that the plot measuring 1000 square yards owned by one Parmod Kumari was released from acquisition by exercising powers under Section 48 of the Act. That plot falls in the same khasra number in which the plot of the writ petitioner-respondent measuring 450 square yards falls. There was hardly any justification given for discriminating between the case of the writ petitioner-respondent and that of Parmod Kumari. It was on the aforesaid basis that the order dated 1.8.1984 rejecting the prayer of the writ petitioner-respondent for releasing her plot measuring 450 square yards from acquisition had been quashed and direction has been issued to pass an order denotifying the land measuring 450 square yards belonging to her in accordance with law.

(2) We have heard learned State counsel for the appellants and have perused the paper book with his able assistance. It is pertinent to notice that on 28.10.2005, a Division Bench of this Court had ordered for maintenance of status quo with regard to the nature, title and possession of the property in question. We are of the considered view that the writ petition has been rightly accepted by the learned Single Judge although for different and additional reasons.

(3) The principles on which the urgency provision could be invoked have been laid down in various judgments of Hon'ble the Supreme Court. In a recent judgment rendered in **Union India and others versus Mukesh Hans (1)**, it has been laid down that invoking Section 17(4) of the Act would not automatically result into dispensing with a right of hearing granted by Section 5A of the Act where an individual owner can file objections in support of the claim that his/her land cannot be acquired. Invoking the emergency /urgency provisions is one thing and dispensing with an enquiry under Section 5A of the Act is quite another. Therefore, the requirement of law as laid down by Hon'ble the Supreme Court in the case of **Mukesh Hans (supra)** is that it is not merely by directing that the provisions of Section 5A of the Act would not apply, which would automatically result into dispensation of an enquiry under that provision. Such type of cases would be where on account of river action the bridges are to be built and there is hardly any time with the State to grant an opportunity of hearing or holding enquiry under Section 5A of the Act.

(4) The principles concerning invocation of urgency/ emergency provisions of Section 17(1) and (2) dispensing with enquiry under Section 5A of the Act have been comprehensively examined by Hon'ble the Supreme Court in the case of **Radhy Shyam versus State of Uttar Pradesh (2)**. On the basis of analysis of statutory provisions and a large number of judgments their Lordships' have summed up these principles. Those principles in so far applicable to the facts of present case are as under:-

“(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriators legislation and such legislation must be construed strictly - DLF

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(1) 2004 (8) SCC 14

(2) 2011 (5) SCC 553

Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622; State of Maharashtra v. B.E. Billimoria, (2003) 7 SCC 336 and Dev Sharan v. State of U.P., (2011) 4 SCC 769.

- (iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.
- (iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.
- (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 few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority 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.

- (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 concerned authorities did not apply mind to the relevant factors and the records.
  - (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).
  - (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 Section 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 purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A(1) and (2) is not at all warranted in such matters.”
- (5) The present case is a classical example of invoking the provisions of Section 17 of the Act without any application of mind exercising the power of emergency/urgency. There is nothing on the record to show that there was any factor for reaching to a conclusion that there was such an emergency that 30 days’ period for making enquiry under Section 5A of

the Act could not have been granted whereas there is delay of more than 12 years on the date of filing of the writ petition and even in taking possession. Therefore, the invocation of emergency/urgency itself suffers from colourable exercise of power and is unsustainable in the eyes of law.

(6) Apart from the aforesaid, we agree with the learned Single Judge that lapse of 12 years itself be a circumstance to show that there was a colourable exercise of power. Even on the question of discrimination reference may be made to the observations made by Hon'ble the Supreme Court in **Hari Ram and another versus State of Haryana and others (3)**. In that case the plot owners of the adjoining area were granted the benefit of Section 48 of the Act by releasing their land whereas those approached the Court were denied the benefit. In para 40, their Lordships of Hon'ble the Supreme Court has held that an order which may not be consistent with law, would not confer any right upon any person for grant of similar treatment. However, it has been observed that the land owners whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition and where the State Government has exercised its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the land owners who are similarly situated have a right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which the edifice of the rule of law rests. All actions of the State have to be fair and for legitimate reasons. The view of their Lordships is discernible from para 41, which reads as under:-

“The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and chose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to the same acquisition proceedings and for the same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.”

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(1) 2010 (3) SCC 621

(7) All the aforesaid reasons are fully applicable to the facts of the present case. Therefore, we are of the view that the order passed by learned Single Judge directing the respondents to de-notify the land does not suffer from any legal infirmity, which may warrant interference of this Court. On equity also we are of the view that the land which was purchased on 19.3.1974 and of which possession had not been taken till the year 1985 could not now be permitted to be utilized by the State Government for the so called public purpose. Accordingly the appeal fails and the same is dismissed.

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*J.S. Mehndiratha*

*Before K. Kannan, J.*

**VAID FAMILY CHARITABLE TRUST  
AND ANOTHER,—*Petitioners***

*versus*

**STATE OF HARYANA & OTHERS,—*Respondents***

**CWP No. 4638 of 2010**

11th July, 2011

***Constitution of India - Art.226/227 - Registration Act - Ss.34 & 35 - Deputy commissioner-cum-Collector-cum-Registrar cancelled sale deed executed by representatives of religious & charitable trust - Whether Registrar had power under Indian Registration Act to cancel the sale deed - Held, Registering authority has no power to adjudicate - To legally record existence of contract is administrative act - Petition allowed for quashing of order.***

*Held*, That it must be remembered that the Court was considering the provisions of Sections 34 and 35, which definitely contains the power to the Sub-Registrar to refuse to register a document. If there was denial of execution or if it was at the instance of a person who was incapable of executing a document such as a minor or a lunatic, refusal to register could be sustained. Inherent lack of capacity to execute document is quite different from the legal competence of some persons who could validly transfer title under the instrument. If the contention of the respondents were to be