

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.10542 of 2009

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Rajkumar Gunawant,
Son of Mathura Dutt Gunawant,
Village: Barbil (Punjabi para)
PO: Barbil, Dist: Keonjhar and another ... Petitioners

-Versus-

State of Orissa and others ... Opp. Parties

For Petitioners : M/s. H.S.Mishra, A.K.Mishra,
T.K.Sahoo & S.S.Rao

For opp. parties : M/s J.Patnaik, Sr. Advocate
B.Mohanty, T.K.Patnaik, A.Patnaik,
S.Patnaik & R.P.Ray
(For O.P. No.5)

M/s S.K.Padhi, M.Padhi, A.Das &
B.Panigrahi
(For O.P. No.6)

M/s J. Pal, Md. G.Madani,
B.K.Mishra & G.N.Rana
(For O.P. No.7)

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND**

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 27.03.2012

B.N. Mahapatra, J. This writ petition has been filed with a prayer for quashing Notification dated 05.02.2008 (Annexure-4/1) issued by opposite party no.3-Additional District Collector, Keonjhar under Section 4(1) read

with Section 17(4) of the Land Acquisition Act, 1894 (for short, “the L.A. Act”) for acquiring Ac.18.999 decimals of land belonging to various persons in village Matkembeda and Notification dated 26.02.2009 (Annexure-5) issued by the Joint Secretary (Administration) under Section 6(1) of the L.A. Act. The petitioners further pray to direct opposite party No.2-Collector & District Magistrate, Keonjhar and opposite party No.4-Special Land Acquisition Officer, Keonjhar to allow the application dated 30.03.2009 (Annexure-6) and direct opposite parties to exclude the petitioner’s land covered under Notification issued under Annexure-5 or in the alternative to dispose of the application of the petitioners under Annexure-6 within a stipulated period.

2. Petitioners’ case in a nutshell is that on 24.11.2006, opposite party no.7-M/s Aryan Iron and Steel Co. Pvt. Ltd. (for short, ‘Company’) made an application to opposite party No.6-Industrial Promotion & Investment Corporation of Orissa Limited, Bhubaneswar (IPICOL) for allotment of Ac.30.0 land for expansion of their industry. On 10.01.2007, opposite party No.6 recommended opposite party No.5-Industrial Development Corporation of Orissa, Bhubaneswar (IDCO) for Ac.55.0 acres of land for alienation/acquisition at Matkambada at Barbil. Since the Company had already got 25 acres, it was recommended for acquiring another 30 acres of land adjoining the industry from the Government and private lands. On 20.06.2007, Department of Steel and

Mines, Government of Orissa has granted administrative approval for acquisition of private land of Ac.18.999 decimals in village Matkambeda at Barbil for the above purpose. On 02.07.2007, opposite party No.5 wrote a letter to opposite party No.4-Special Land Acquisition Officer, Keonjhar to acquire the private land measuring Ac.18.999 decimals in village Matkambeda under Barbil Tahasil. On 05.02.2008, opposite party No.3 issued Notification under section 4(1) read with Section 17(4) of the L.A. Act. Subsequently on 26.02.2008 (Annexure-4/2) another notice under Section 4(1) of the L.A. Act was issued by the Joint Secretary to Government, Department of Revenue and Disaster Management. On 26.02.2009, Notification (Annexure-5) under Section 6(1) of the L.A. Act was issued. According to the petitioners, though notice dated 26.02.2009 (Annexure-5) was issued under Section 6(1) of the L.A. Act it refers to Notification under Section 4(1) dated 26.02.2008 and 10.03.2009. On 31.07.2007, the petitioners purchased Plot No.486/1287 measuring Ac.1.0 of land vide RSD No.330 dated 31.07.2007 for setting up of a petrol pump. On 30.03.2009, petitioners applied to the Collector, Keonjhar for release of the aforesaid land purchased by them from the acquisition. On 30.04.2009, opposite party No.4 requested opposite party No.5 for consideration of exclusion of the said plot.

3. Mr. H. S. Mishra, learned counsel for the petitioners submitted that the Notification under section 4(1) read with Section 17(4)

of the L.A. Act as per Annexure-4/1 and Notification in continuation thereof under Annexure-5 are nothing but a colourable exercise of power by the State Government. In order to exercise the power under Section 17 of the L.A. Act, it is incumbent upon the State to consider the requirements before taking possession, such as, declaration under Section 6(1), general notice under Section 9(1), demarcation under Section 8, 15 days' time to take possession and that there is urgency. In the instant case, there is no urgency because the requisitionist as well as the State Government is casual in acquiring the land, as urgency was pleaded in 2006 and the Notification was published in 2009. Possession of the land is not taken till now as no amount is deposited by the requisitionist with the District Collector. In these circumstances, the notifications as per Annexures- 4/1 and 5 cannot be said to be valid in law. Therefore, in the circumstances, invoking of power under Section 17(4) of the L.A. Act is bad in law and Notification thereto is liable to be quashed. Apart from the long delay the beneficiary Company on the demand of Land Acquisition Officer has not deposited the amount required to meet the need of payment of compensation to the land owners. Request for acquisition was made on the ground that the land is required for expansion of the industry, but the notification and material suggest that as if such land is required for setting up of industry. This shows that no care has been taken to exercise the power to acquire the

land and to examine the need which vitiates the entire action of the Government. The Notifications as per Annexures-4(1) and 5 issued under Sections 4(1) and 6(1) respectively cannot sustain and therefore are liable to be quashed. Both the circumstances indicate that no due diligence has been adopted to deprive the individual land owners, whose properties are to be taken away against their will, depriving them of the right to protect their own property and that too without affording opportunity of hearing. Annexures- 4/1 and 5, therefore, cannot be allowed to sustain and are liable to be quashed. Petitioners' application to exclude the land purchased by them ought to have been considered by the State Government in their favour as they are also planning to set up a petrol pump, which is also a public purpose. Collector, Keonjhar has recommended for exclusion of the said land. The Notifications under Sections 4(1) and 6 of the L.A. Act are even otherwise vulnerable and liable to be quashed as the emergency provisions invoked by issuing Section 17(4) notification dispensing with the enquiry as provided under Section 5A of the L.A. Act even though the said provisions of the L.A. Act are not attracted to the fact situation and thereby the petitioners are deprived of their valuable statutory and human right as held by the Hon'ble Supreme Court in ***Devinder Singh and others v. State of Punjab and others***, (2008) 1 SCC 728.

4. Mr. Mishra further submitted that since the land is acquired for private Company, Sections 41-A and 44 of the L.A. Act are applicable. The Notifications do not whisper that the land is acquired for the workers of the private Company. Therefore, acquisition of land in question by the State Government is illegal. Annexure-5 shows that there is non-application of mind.

5. Mr.J.Pattnaik, learned Senior Advocate appearing for opposite party No.5 (IIDCO) submitted that opposite party No.6 (IPICOL) is the nodal agency. Award has been passed and money has been received in almost all cases by the land owners. There is a single window system and IPICOL being the nodal agency, on its recommendation IIDCO files requisition with the State Government for acquisition of land for the project authority. State Government represented by its Steel and Mines Department, vide its letter dated 20.06.2007, accorded administrative approval for acquisition of private land measuring Ac.18.999 decimal in village Matkambeda in the district of Keonjhar under the L.A. Act. The land was immediately required by IIDCO for infrastructure development and allotment of industrial plots to industries. The Joint Secretary, Revenue and Disaster Management Department through his letter dated 06.02.2008, requested the Secretary to Government in Revenue and Disaster Management Department, Bhubaneswar for publishing the notifications of the land of the

petitioners under Section 4(1) read with Section 17(4) of the L.A. Act, in the official gazette along with a draft notification. Subsequently, the aforesaid Department issued notice vide No.9899 dated 26.02.2008 and Government letter No.595 dated 10.03.2009 for acquisition of the said land and declaration of the land under Section 6(1) of the L.A. Act stating that it is required for industrial infrastructure development.

6. On 04.09.2009, IIDCO deposited a sum of Rs.3,75,76,926/- towards land cost before opposite party No.4. Petitioners allegation of colourable exercise of power by the State Government in acquiring the land of the petitioners by issuing notifications is false. Further, it is contended that the undisputed fact is that the case land has been acquired invoking Section 4 read with Section 17(4) of the L.A. Act as the said land was immediately required by IIDCO for the purpose of infrastructure development and allotment of industrial plots in favour of various industrial entrepreneurs. Submission of requisition by IIDCO with the State Government for acquisition of private land under the L.A. Act, is made on the strength of Section 31 of OIIDC Act, 1980. It is deemed to be presumed that as if such lands were needed for a public purpose within the meaning of the L.A. Act. Therefore, it is submitted that the acquisition proceedings are not vitiated. The land has been acquired under the provisions of the L.A. Act to which effect notifications under Section 4(1) read with Section 17(4) of the said Act has been

issued on 06.02.2008. Declaration under Section 6(1) of the said Act was made on 26.02.2009. The State Government in its Steel and Mines Department by their letter dated 20.06.2007 have accorded administrative approval for acquisition of private land measuring Ac.18.999 decimals in village Matkambeda, Dist: Keonjhar. Further, opposite party No.4 in his letter dated 13.03.2009 has directed IDCO to deposit the land acquisition cost, which was duly deposited by IIDCO through Bank Draft bearing No.498795 dated 03.09.2009 amounting to Rs.3,75,76,926/- towards the land cost, with letter No.15980 dated 04.09.2009. The land has been acquired under the provisions of the L.A. Act by taking recourse to all relevant legal procedures. Therefore, the application of the petitioners to the State Government for exclusion of land purchased by them is untenable and there is no substantial ground mentioned in the writ petition. Hence, the writ petition is devoid of any merit and is liable to be quashed.

7. Mr.S.K.Padhi, learned Senior Advocate appearing for opposite party No.6 submitted that IPICOL is not the final authority for allotting/granting land for any project and it is only the recommending authority. As per the Orissa Industries Facilitation Act, 2004, IPICOL, the SLNA handles projects, which involves cost of more than Rs.50.0 crores and in case of any project less than that amount; the proposals are handled by the District Level Nodal Authority (DLNA). In any case,

even after the recommendation of DLNA or SLNA, as the case may be, it is ultimately up to IIDCO to take a final decision with regard to availability and allotment of suitable land in favour of Industrial Entrepreneurs.

8. Mr. R.K. Mohapatra, learned Government Advocate appearing for opposite party no.4-Special Land Acquisition Officer, Keonjhar submitted that the petitioners have not approached this Hon'ble Court with clean hands. Therefore, they are not entitled to any relief as prayed in this writ petition. Since the State Government in the interest of public have issued the impugned notifications for acquisition of land in question for expansion of industries by M/s. Arya Iron and Steel Company Pvt. Limited, which would improve the economic condition of the people of the State, there is no infirmity or defect in the impugned notifications in acquiring the land of the petitioners. Hence, the prayer sought for in the writ petition merits no consideration and the same is liable to be dismissed. The notifications under Section 4(1) read with Section 17(4) of the L.A. Act was published in the Orissa Gazette on 05.02.2008 and subsequently declaration notification was published to acquire the land for public purpose u/s.6(1) of the L.A. Act on 26.02.2009. After publication of the notifications, though the requisitioning authority viz. IDCO has deposited the entire land cost, the same has not yet been paid to the persons whose lands have been

acquired because of non-issuance of order under Section 7 of the L.A. Act by the Government which is to be issued very shortly and, thereafter the payment shall be made to the land oustees. The petitioners have filed an application before the Collector praying therein not to acquire their lands as they have purchased the said land for setting up of a petrol pump over the said land and to exclude the said land from the purview of acquisition. Since the Land Acquisition Officer is not competent to make any deletion/exclusion of any piece of land, he requested the requisitioning authority to consider the application of the petitioners. Further, the petitioners have neither filed any objection during the process of acquisition under Section 4(1) of the L.A. Act nor at any time they have approached the competent authority to take any step before notification was published, as required under Section 6(1) of the L.A. Act.

The authorities did not secure objections from the petitioners. The State Government proceeded in the matter to publish the final declaratory notification declaring the land in question along with other lands require for public purpose in favour of IIDCO for the purpose of forming industrial plots in the industrial Estate.

9. Mr. Mohapatra, further submitted that on verification of the records, it is found that the petitioners are not the applicants for setting up of a petrol pump. On the contrary, one Neha Manek has applied for setting up of a petrol pump over the said land. Till date, no NOC has

been issued in her favour by the competent authority. On further verification of sale deed, it is found that nowhere it is mentioned that the land has been purchased for setting up of a petrol pump. The land in question has not been converted for commercial purpose and still it stands as agricultural land. The application was filed on 02.01.2008 for setting up of a petrol pump, which is much prior to issuance of patta i.e. on 25.04.2008. The Grama Sabha, for acquisition of land in the village was conducted on 27.11.2007, which is much prior to the application of the petitioners dated 02.01.2008, submitted to the District Collector for setting up of a petrol pump upon the land in question. Therefore, it is clear that the petitioners are trying to defeat the very purpose of the land acquisition process for establishment of a Steel Industry to provide employment to the inhabitants of the area. On the other hand, the petitioners with oblique motive have been pursuing for setting up of a petrol pump over the said land which speaks the intention of the petitioners in creating hurdles in the process. The contentions and averments contained in the writ petition are not correct.

10. Mr. J. Pal, leaned counsel appearing for opposite party no.7-M/s. Arya Iron & Steel Company Pvt. Ltd. submitted that on 2.7.2007 an application for acquisition of land for an area of Ac.18.999 was made by the IIDCO as the land in question was required for opposite party No.7-Company. On 31.7.2007 the petitioners along with one Rahul

Kumar Gunawant purchased the land from one Bijay Kumar Das appertaining to area measuring Ac.1.000. On 2.1.2008 one Mrs. Neha Manek alleged to have applied for HPCL retail outlet on Matkembeda-Bolani road stating in her application that she proposed to have the outlet over the land of the present petitioners. On 06.02.2008 a notification under Sec.4(1) of the L.A. Act was published for acquisition of land in mouza Matkembeda, Unit-11, under P.S./Tahasil of Barbil in the district of Keonjhar by the Land Acquisition Officer and the land is to be acquired for IIDCO. On 10.3.2008 notification u/s. 17(4) of the L.A. Act was published by the Land Acquisition Officer as per the request of the Managing Director, IDCO. Accordingly, the Revenue Department was moved for publishing the notice in the newspaper. On 26.2.2009 a notification u/s. 6(1) of the L.A. Act was published by the Land Acquisition Officer declaring that the land is acquired on behalf of IIDCO for opposite party No.7- Company for the purpose of expansion of the Industry. On 16.11.2009 a lease deed was executed between the petitioners and Mrs. Neha Manek wherein it has been mentioned that the land in question has been given on lease for a period of 30 years to said Neha Manek w.e.f. 16.11.2009. Mr. Pal further submitted that no objection whatsoever was ever filed by the petitioners after Section 4(1) notification under the L.A. Act was published. The possession of all the acquired lands except the land of the petitioners were handed over to the

opposite party no.7 for the purpose of expansion of the Industry and the opposite party no.7 has already deposited the money with the Special Land Acquisition Officer for acquiring the land for the aforesaid purpose. Therefore, he has prayed for dismissal of the writ petition.

11. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Sooraram Pratap Reddy and others Vrs. District Collector, Ranga Reddy District and others*, (2008) 9 SCC 552 it was argued that development of infrastructure is legal and a legitimate "public purpose" for exercising power of eminent domain. Simply because a company has been chosen for fulfillment of the public purpose of infrastructure development project, does not mean that larger public interest has been sacrificed, ignored or disregarded.

Further, placing reliance on the judgment of *Nand Kishore Gupta and others v. State of U.P. and others*, AIR 2010 SC 3654, Mr. Pal, submitted that when a question of legality of acquisition is subject-matter of judicial review, the Court should take holistic view in deciding the legality of acquisition.

Referring to the judgment of the Hon'ble Supreme Court in the case of *Devinder Singh (supra)*, it was submitted that declaration under Section 6 is subject to judicial review on the ground of jurisdictional error only.

Further placing reliance upon the decision of the Hon'ble Supreme Court in *Pratibha Nema and others v. State of M.P. and others*, AIR 2003 SC 3140, it is submitted that a public purpose is involved in the acquisition of land for setting up an industry in private sector as it would ultimately benefit the people.

Placing reliance upon the judgment of the Hon'ble Supreme Court in *Narayan Govind Gavate etc. v. State of Maharashtra and others*, AIR 1977 SC 183, it was submitted that acquisition of land for development of industrial area and residential tenement for persons to live on industrial estates is for public purpose.

Further referring to judgment of the Hon'ble Supreme Court in the case of *State of U.P. v. Smt. Pista Devi and others, etc.* AIR 1986 SC 2025, it was argued that merely because there is delay of one year between publication of notification u/s.4 and publication of declaration u/s.6 by itself was not sufficient to render decision of the State Government taken u/s. 17(1) improper or illegal.

12. On the rival factual and legal contentions urged on behalf of the parties, the following questions fall for consideration by this Court

- (i) Whether IIDCO can cause acquisition of land solely and exclusively for opposite party no.7-M/s. Arya Iron & Steel Company Pvt. Ltd. at the cost of such private company ?
- (ii) Whether the State Government can acquire the land in question in favour of the beneficiary private limited

company-opposite party No.7 in exercise of its eminent domain power for the purpose of setting up of 1.2 MPTA Pillat Session Plant in view of Section 44(B) of the L.A. Act ?

- (iii) Whether the State Government on requisition of opposite party No.6 could initiate the acquisition proceedings in favour of opposite party no.7-Company. by issuing notification under Section 4(1) read with Section 17(4) of the L.A. Act without complying with the mandatory provisions of Sections 39, 41 and 42 of the L.A. Act read with Rules 3(2) and (4) of the Land Acquisition Rules, 1963 ?
- (iv) Whether in the facts and circumstances of the case there was any emergency existed for which the opposite party-authorities are justified to invoke Section 17 of the L.A. Act ?
- (v) Whether the petitioners are entitled to the relief sought for in this writ peittion?

13. Question No.(i) is as to whether the IIDCO can cause acquisition of land solely and exclusively for opposite party no.7-M/s. Arya Iron & Steel Company Pvt. Ltd. at the cost of such private company.

Admittedly, opposite party no.7-Company is a private Company and requested opposite party No.6 for additional land of Ac 30.00 to set up of its company. Opposite party no.6 on 10.01.2007 recommended opposite party no.5- IIDCO to alienate/acquire 55 acres of land for the Company. On 20.6.2007 the Department of Steel and Mines,

Government of Orissa gave administrative approval for acquisition of private land of 18.999 acres for the Company for the purpose of Section 4(1) notification under the L.A. Act. On 02.07.2007 opposite party no.5 wrote a letter to opposite party no.4-Special Land Acquisition Officer, Keonjhar to acquire the private land measuring Ac.18.999 decimals in village Matkambeda under Barbil Tahasil for the Company. On 5.2.2008 opposite party no. 1 issued notification under Section 4(1) read with Section 17(4) of the L.A. Act under Annexure-4(1) for acquisition of Ac. 18.999 decimals for the Company through IIDCO. On 26.2.2009 notification under Section 6(1) of the L.A. Act was issued by opposite party no.1 for acquisition of Ac.18.999 decimals of land for the Company through IIDCO, Bhubaneswar. Thus, the case land under the acquisition invoking the provisions of Section 4(1) read with Section 17(4) of the L.A. Act was immediately required by IDCO for the purpose of infrastructural development and allotment of the land in favour of opposite party No.7-Company. In the affidavit dated 30.10.2009, opposite party No.4-Special Land Acquisition Officer stated that after the notification the requisitioning authority has deposited the entire land cost but the same has not yet been paid to the person whose lands have been acquired because of none issuance of order under Section 7 of the L.A. Act by the Government which is likely to be issued very shortly to the land oustees.

14. On a reading of the objects and reasons of the preamble of the OIIDCO Act, 1980 and definition of 'Industrial Area' and 'Industrial Estate' as defined in Sections 2(h) and 2(i) and provisions of Sections 14, 15 and 31 of the OIIDCO Act, 1980, it appears that the Corporation has to acquire land for any 'industrial area' to form 'industrial estate' as defined in Section 2(h), 2(i) of the OIIDCO Act. Thus, IDCO can only cause acquisition of land for an 'industrial area' in which area 'industrial estate' can be established and not solely and exclusively for a Private Limited Company at the cost of such a Company. In the instant case, no notification is published covering the land in question for any industrial area to establish industrial estate as required under Section 14(ii)(a) of the IDCO Act. Therefore, the Corporation could not have sent requisition to opposite party No.4-Special Land Acquisition Officer to acquire Ac.18.999 decimals of land for establishment of industries by opposite party No.7-Company though its purpose is to form an industrial estate. The Notifications under Section 4(1) read with Section 17(4) of the L.A. Act being fatally vitiated and ab initio void, the exercise of power by State Government under Section 6 and the alleged awards under Section 11 are also ab initio void and non est.

15. Question Nos.(ii) and (iii) being interlinked, they are dealt with together.

Undisputedly, the lands in question are required to be acquired for opposite party No.7-Company for the purpose of setting up of 1.2 MTPA Pillat Session Plant. Section 44-B of the L.A. Act provides that notwithstanding anything contained in the L.A. Act, no land shall be acquired under Part VII except for the purpose mentioned in clause (a) of sub-section (1) of Section 40 for a private company, which is not a Government company. The provisions of Section 40(1) of the L.A. Act provides that consent for acquisition of land shall be given by the appropriate Government if it is satisfied either on the report of the Collector under Section 5-A (2) or by an enquiry held that the purpose of the acquisition of lands is for erection of dwelling house for workmen employed by the company or for the provision of amenities directly connected therewith, or that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose or that such acquisition is needed for the construction of some work and such work is likely to prove useful to the public. The acquisition of lands in favour of the beneficiary company is not permissible for any purpose other than the purposes as provided under Section 40(1)(a) of the L.A. Act.

In view of the above, the acquisition of land in question in favour of opposite party no.7-Company pursuant to the impugned

notification under Section 4(1) read with Section 17(4) of the L.A. Act for setting up a 1-2 MPTA Pillat Session Plant at Matkambeda is illegal in the eyes of law. The acquisition of land by the State Government on requisition of opposite party No.7 is totally impermissible in law. Hence, the impugned notifications are void *ab initio* in law.

16. For acquisition of land in favour of a private company in terms of section 40(1) of the L.A. Act read with Rules 3 and 4 of the Rules, it is incumbent on the part of opposite party-authority to follow the procedure laid down in Part-VII of the L.A. Act read with Rules 3 and 4 of the Rules.

Rule 3 of the said Rules provides for constitution of a Committee called 'Land Acquisition Committee' and the State Government shall publish the same in the Official Gazette. In the case at hand, undisputedly no such Committee was constituted by the State Government from among the persons notified under sub-rule (2) of Rule 3 and clauses (i) and (ii) of the Rules. Further whenever any Company makes an application to the State Government for acquisition of any land, it shall direct the Collector to submit a report on the matters provided under sub-rule (2) and clauses (i), (ii), (iii) and (iv) of the Rule 4 and further sub-rule (2) of Rule 4 provides that the Collector should give reasonable opportunity to the Company to make representation and hold an enquiry into the matters referred to in sub-rule (1) and while

conducting such an enquiry he is required to indicate in his report the aspects, which are referred to in clauses (i), (ii) and (iii) of sub-rule (2) of Rule 4. Sub-rule (4) of Rule 4 mandates that no declaration under section 6 in respect of the lands notified under Section 4 (1) of the L.A. Act shall be made unless the State Government has consulted the Committee and has considered the reports submitted by the Collector under the Rule and the report, if any submitted under Section 5A of the L.A. Act and the agreement under Section 41 of the L.A. Act has been executed by the Company and published in the Official Gazette. The above said mandatory procedure has not been complied with by the State Government and the Collector before publishing the Section 6 notifications.

17. In view of the above, the State Government on requisition of opposite party no.6 should not have initiated the acquisition proceedings in favour of opposite party no.7-Company by issuing notification under Section 4(1) read with Section 17(4) of the L.A. Act without complying with the mandatory provisions of Sections 31, 41, & 42 of the L.A. Act read with Rule 3(2) & 4 of L.A. Rules, 1963.

18. Question No.(iv) is as to whether in the facts and circumstances of the case there was any emergency existed for which the opposite party-authorities are justified to invoke Section 17(4) of the L.A. Act.

Undisputedly, in the present case notification U/s.4(1) read with Sec. 17(4) was published on 6.2.2008, but notification under Section 6(1) was made on 26.02.2008. The time between publication of notification under Section 4(1) read with Section 17 (4) and Section 6 declaration is more than a year. This shows that there was no urgency for acquisition of land so as to warrant invoking Section 17(4). Therefore, in the circumstances, invoking power under Section 17(4) of the L.A. Act is bad in law. The Hon'ble Supreme Court in the case of ***Dev Sharan and others v. State of Uttar Pradesh, (2011) 4 SCC 769***, held as under:

“37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

38. In Para 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5-A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.”

19. In view of the above, no emergency existed and therefore, the opposite parties are not justified to invoke Section 17(4) of the L.A. Act.

20. For the reasons stated above, the decisions of the Apex Court relied upon by the learned counsel for petitioner are of no help to the petitioners as the facts and circumstances of those cases are completely different from the facts circumstances of the present case.

21. In the facts situation, the acquisition proceedings in respect of the land covered in the notifications in favour of opposite party No.7 are bad in law and are liable to be quashed, which we direct.

22. In view of the answers given in respect of Question Nos.(i), (ii), (iii) and (iv), the petitioners are entitled to the relief sought for in this writ petition and opposite parties are directed to exclude the petitioners' land covered under notification dated 26.02.2009 (Annexure-5) issued under Section 6(1) of the L.A. Act. Question No.(v) is accordingly answered.

23. With the aforesaid observation and direction, the writ petition is allowed.

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B.N.Mahapatra, J.

V. Gopala Gowda, C. J.

I agree.

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Chief Justice