CHAMELI SINGH

v.

THE STATE OF U.P.

DECEMBER 15, 1995

[K. RAMASWAMY, FAIZAN UDDIN AND B.N. KIRPAL, JJ.]

Land Acquisition Act 1894, Ss. 4, 5-A and 17(1) r/w 17 (4)—Acquisition of land for constructing houses for dalits—Invocation of urgency clause and dispensing with enquiry under s.5-A—Pre and post-notification delay of three years—Whether S.4 notification invalid—Held, government's opinion on urgency subjective; court will not interfere unless opinion malafide—Held further, till problem of providing houses to dalits remains unsolved, urgency subsists.

Constitution of India, Article 21—Land Acquisition Act 1894, S.4—Whether acquisition of lands for constructing houses for dalits deprives right to livelihood of land owners—Held, no; individual's right must yield to large public purpose.

Land Acquisition Act 1894, Ss.4 r/w S. 17(1), 17(1A) (U.P. Amendment) and 17 (4)—Whether lands that are neither waste nor arable can be acquired under S.17(4)—Held, yes; under U.P. amendment to S.17(1A) power under S.17(4) can be invoked in case of lands other than waste or arable land.

Simultaneous with the notification under S.4(1) of the Land Acquisition Act, 1894, acquiring the appellants' lands for the purpose of constructing houses for dalits, the declaration under S.6 was published dispensing with the enquiry under S.5-A. The appellants challenged the notification before the High Court on the ground that the lands not being arable or waste lands and there being no urgency the State Government was not justified in resorting to its powers under S.17(1) read with S.17(4) of the Act. They further contended that the acquisition took away their only source of livelihood and was violative of their fundamental rights under Article 21. The High Court negatived these contentions and dismissed the writ petitions. Hence these appeals.

Dismissing the appeals, this Court

A **HELD : 1.1. So long as the unhygienic conditions and deplorable housing needs of dalits, tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power *mala* B *fide*. [841-D]**

1.2. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account. Larger the delay, greater would be the C **urgency. [842-A]**

Kasiredi Papaiah v. *Government of A.P.*, AIR (1975) AP 269, *State of U.P.* v. *Pista Devi & Ors.*, [1986] 4 SCC 251; *Deepak Pahwa* v. *Lt. governor of Delhi*, [1985] 1 SCR 588; *Aflatoon & Ors. Etc.* v. *Lt. Governor, Delhi & Ors.*, [1975] 4 SCC 285; *Jage Ram & Ors.* v. *State of Haryana & Ors.*, [1971] D 1 SCC 671; *Rajasthan Housing Board & Ors.* v. *Shri Kishan & Ors.*, [1993] 2 SCC 84 and *State of U.P. & Ors.* v. *Keshav Prasad Singh*, [1995] 5 SCC 587, relied on.

Narayan Govind Gavate Etc. v. *State of Maharashtra*, [1977] 1 SCR E 763, explained and distinguished.

1.3. To bring the dalits and tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the state as fundamental to their basic human and constitutional rights. [834-F]

F **2.1. The Plea of deprivation of the right to livelihood under Article 21 is unsustainable. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, sub-section (2) of Section 23 provides payment of solatium to the owner who declines to** G **voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. [842-C, E]**

2.2. The right to shelter, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to H **live and develop as a human being. Right to shelter when used as an**

essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. [834-C-D] A

Sri P.G. Gupta v. *State of Gujarat & Ors.*, JT (1995) 2 SC 373; *M/s. Shantistar Builders* v. *Narayan Khimalal Totame & Ors.*, [1990] 1 SCC 520; *Olga Tellis & Ors.* v. *Bombay Municipal Corpn. & Ors.*, [1985] 3 SCC 545; *Francis Coralie* v. *Union Territory of Delhi*, [1981] 1 SCC 608; *Gauri Shankar & Ors.* v. *Union of India & Ors.*, [1994] 6 SCC 349; *State of Karnataka & Ors.* v. *Narasimhamurthy & Ors.*, JT (1995) 6 SC 375 and *Kurra Subba Rao* v. *Distt. Collector*, (1984) 3 A.P.L. J. 249, referred to. B

3. The State Government is statutorily empowered to exercise the power under S.17 (4). S.17(1A) as amended by the U.P. State Legislature provides power to take possession under sub-section (1) which may also be exercised in case lands other than waste or arable land, where the land is required for or in connection with sanitary improvements of any kind or planned development. [830-G] C

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12122 of 1995 Etc.

From the Judgment and Order dated 5.2.93 of the Allahabad High Court in C. Misc. W.P. No. 15377 of 1983.

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R.K. Jain and P.K. Jain for the Appellants.

Dr. N.M. Ghatate and Ashok K. Srivastava, for the Respondents.

The Judgment of the Court was delivered by

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K. RAMASWAMY, J. Leave granted.

C.A. No. 12122/95@ SLP (C) No. 4896/93.

This appeal by special leave arises from the judgment and order dated february 5, 1993 by the Division Bench of the Allahabad High Court in Writ Petition No. 15377 of 1983. The appellants are owners of the lands in plot No. 16 of an extent of 5 bighas 6 biswas and 14 biswas respectively in village Bairam Nagar, Parganas, Nahtaur, Tahsil Dhampur, District Bijnore. These lands alongwith other lands were notified by publication in the State Gazette under Section 4(1) of the Land Acquisition Act 1894 (for G H

A short, "the Act") on July 23, 1983 and the declaration under Section 6 was also published simultaneously dispensing with the inquiry under Section 5-A. The appellants challenged the validity of the Notification under Section 4(1) and the exercise of the power given under Section 17(1) read with Section 17(4) dispensing the inquiry under Section 5-A. Three contentions were raised and negatived by the Division Bench. The first contention was that since the lands are not waste or arable lands, notification under Section 17(4) is invalid. Secondly, it was contended that dispensing with the inquiry under Section 5-A is not justifiable as there is no urgency to take possession even though the land was acquired for providing houses to scheduled Castes (for short, 'Dalits'). Thirdly, it was contended that on account of the acquisition, the appellants will be deprived of their lands which is the only source of their livelihood violating Article 21 of the Constitution. Thus this appeal by special leave. Shri R.K. Jain, their learned senior counsel reiterated with added vehemence highlighting that there was pre and post-notification delay of more than three years. The proposal was put up in 1979 and the notification was approved in February but published in April 30, 1983 which would show that the urgency is not such which does not brook the delay of 30 days in conducting inquiry under Section 5-A. Right to conduct an inquiry under Section 5-A is valuable right and minimal safeguard to the owner and it would not be abrogated by exercising power of invoking urgency clause under Section 17(4) of the Act. He contended that in all the acquisitions for housing purpose conducting inquiry under Section 5-A should be the rule and dispensing with such inquiry should be exceptional and only in rare cases like those covered by Section 17(2). In support thereof he placed strong reliance on the holding of this Court in *Narayan Govind Gavate Etc.* v. *State of Maharashtra*, [1977] 1 SCR 763. Acquisition of the land deprives the owner of his source of livelihood enshrined under Article 21 of the Constitution which cannot be deprived by denuding the owner of the means of livelihood, viz., the land by resorting to compulsory acquisition.

It is found as a fact that the houses put up by the appellants do not form part of agricultural lands. Section 17(1A) as amended by the U.P. State Legislature provides power to take possession under sub-section (1) which may also be exercised in the case lands other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development. It would, therefore, be clear that the State Government is statutorily empowered to exercise the power

under Section 17(4). When the Government forms an opinion that it is necessary to require immediate possession of the land for building houses for the Dalits, it forms the opinion of urgency to take immediate possession for the said purpose. Accordingly it is entitled to direct dispensing with the inquiry under Section 5-A and publish the declaration under Section 6 after the date of the publication of Section 4(1) notification. Thereafter, under sub-section (1) of Section 17 the Land Acquisition officer, after service of notice under Section 9 and expiry of 15 days therefrom, becomes entitled to take possession of land to proceed with the public purpose. The question therefore, is whether the Government would be justified in dispensing the inquiry under Section 5-A.

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It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by *mala fide* or colourable exercise of power. Article 25(1) of the Universal Declaration of Human Rights declares that "everyone has the right to standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services." Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, 1966 laid down that State Parties to the Covenant recognise "the right to everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions." The State parties will take appropriate steps to ensure realisation of this right. In *Sri P.G. Gupta* v. *State of Gujarat & Ors.*. JT (1995) 2 SC 373, a Bench of three Judges of this Court considering the mandate of human right to shelter read it into Article 19(1)(e) and Article 21 of the Constitution of India to guarantee right to residence and settlement. Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The Preamble to the Indian Constitution assures to every citizen social and economic justice and equity of status and of opportunity and dignity of person so as to fasten fraternity among all sections of society in an integrated Bharat. Article 39(b) enjoins the State that ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequality in income and endeavour to eliminate inequality in status. Article 46 enjoins the State to promote with special care social,

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A economic and educational interests of the weaker sections of the society, in particular, Schedules Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with right to shelter as inseparable component for meaningful right to life. It was therefore, held that right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21, Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy of planned development of massive housing schemes. The right to allotment of houses constructed by the Housing Board to the weaker sections, lower income-group people under Lower Income Group Scheme, was held to be constitutional strategy, an economic programme undertaken by the State and that the weaker sections are entitled to allotment as per the scheme.

In *M/s. Shantistar Builders* v. *Narayan Khimalal Totame & Ors.*, [1990] 1 SCC 520, another Bench of three Judges had held that basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within its sweep the right to food, the right to clothing, the right to descent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home, particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation. When the urban land under Sections 20 and 21 of the Urban Land Ceiling Act was exempted subject to the condition of constructing houses to weaker sections by the builders, this Court recognised the above right to shelter as an in-built right to life under Section 21 and upheld the validity of exemption and gave directions to effectively implement the scheme. In *Olga Tellis & Ors.* v. *Bombay Municipal Corpn. & Ors.*, [1985] 3 SCC 545 considering the right to dwell on pavements or in slums by the indigent was accepted as a part of right to life enshrined under Article 21, and ejectment of them from the place nearer to their work would be deprivation of their right to livelihood. They will be deprived of their livelihood if they are evicted from

their slum and pavement dwellings. Their eviction tantamounts to deprivation of their life. The Constitution Bench had held that if the right to livelihood is not treated as a traditional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effect content and meaningfulness but it would make life impossible to live. The deprivation, therefore, must be consistent with the procedure established by law. It was further held that which alone makes it possible to live, leave aside what makes livable, must be deemed to be an integral component of the right to life. In *Francies Coralie* v. *Union Territory of Delhi*, [1981] 1 SCC 608 considering detention under Article 22 and its effect on Article 21, this Court held that the right to life includes the right to live with human dignity and all that goes alongwith it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading. Writing and expressing oneself in diverse forms, free movement and commingling with fellow human beings are part of the right to live with human dignity and they are components of the right to life.

In *Gauri Shankar & Ors.* v. *Union of India & Ors.*, [1994] 6 SCC 349, in the context of eviction of a tenant under the Delhi Rent Control Act, this Court observed that the right to shelter is not Constitutionally guaranteed right. Restrictions on the right to shelter placed by the statute on the statutory tenants were not violative of Article 21. The ratio must be understood in the light of the statutory operation under the Rent Control Act.

In *State of Karnataka & Ors.* v. *Narasimhamurthy & Ors.*, JT (1995) 6 SC 375 at 378, para 7, this Court held that right to shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house. Acquisition on the land to provide house sites to the poor houseless is a public purpose as it is the Constitutional duty of the State to provide house sites to the poor.

In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this

A object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical, care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal declaration of Human Rights and convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, B therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. C so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental D right. As is enjoined in the Directive principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be E useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to F residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the state as fundamental to their basic human and constitutional rights.

G In *Kurra Subba Rao* v. *Distt. Collector* , (1984) 3 A.P.L.J 249 Andhra Pradesh High Court considering the obligation of the State to provide shelter to the weaker sections of the society by acquiring lands for public purpose and distribution thereof had held that in all stages of social development a man must have some property or capacity for acquiring property. There could be no individual liberty without a minimum of H property. People who cannot buy bread cannot follow the suggestion that

they can eat cake. People bowed under the weight of poverty are unlikely to stand up for their constitutional rights. Welfare State exists not only to enable the people to eke out their livelihood but also to make it possible for them to lead good life. State strives to provide facilities and opportunities to them to improve excellence transcending all sections with diversities in the society so as to enable them to lead good life assuring dignity of person under legal order. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Liberty is freedom and justice is equality which are the bedrock of modern democracy. The challenge of social justice is the challenge for equal opportunity not in form but in substance and the challenge of social justice a constitutional mandate has to be accepted and answered on the basis of day-to-day experience of the performance of law, articulating diverse provisions of the Constitution, while meeting the challenging situation in the society. The Directive Principles are beacon light leading to reach the ultimate goal of economic equality and social justice to all. It accordingly had upheld the power of the State Government invoking urgency clause under Section 17(4) of the Act when the State discharged its constitutional mandate to provide shelter to the poor.

The need to provide right to shelter is not peculiar to India alone but is a global problem being faced by all the developing and developed nations. In 1980 the United Nations General Assembly in its Resolution No. 35/76 expressed the view that an international year devoted to the problems of homeless people in urban and rural areas of the developing countries could be an appropriate occasion to focus attention of the international community on those problems. In Resolution No. 37/221 of 1987 the International Year of Shelter for the Homeless was adopted and request was made to member States to sustain the momentum generated during the programme for the year and to continue implementing concrete and innovative activities aimed at improving shelter and neighbourhoods of the poor and the disadvantaged and requested the Secretary General of UNO to keep it informed periodically on the progress achieved. At the close of the international year the General Assembly received and noted in Resolution No. 42/191 the reports of the Executive Director of the U.N. Centre for Human Settlement entitled "Shelter and services for the poor - a call to action". It recognised that adequate and secure shelter is a basic human right and is vital for the fulfilment of human aspirations and that a

A squalid residential environment is a constant threat to health and to life itself, thereby constituting a drain on human resources, a nation's most valuable asset. The General assembly expressed deep concern about the existing situation in which, in spite of efforts of Government at the national and local levels and of international organisations, more than one billion
B people find themselves either completely without shelter or living in homes unfit for human habitation; and that owning to prevailing demographic trends, the already formidable problems will escalate in the coming years unless concerted and determined efforts are taken immediately. As a consequence, Global Strategy for shelter to the year 2000, including a plan of action for its implementation monitoring and evaluation was chalked out
C and its objective would be to stimulate measures to facilitate adequate shelter for all by the year 2000. It requested the executive director of the central for Human Settlements to prepare a proposal for such a global strategy and called upon the Commission on human Settlements to formulate the strategy for consideration by the Assembly. In furtherance thereof,
D guidelines have been laid to take steps at the national level which was accepted by the Assembly. Guidelines which are relevant for the present purpose are as under :

> "2..... The objectives should be based on a comprehensive view of the magnitude and nature of the problem and of the available
E resource base, including the potential contribution of men and women. In addition to finance, land, manpower and institutions, building materials and technology also have to be considered irrespective of whether they are held by the public or private, formal or informal sector.
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> 3. The objectives of the shelter sector need to be linked to the goals of overall economic policy, social policy, settlement policy and environmental policy.
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> 4. The strategy need to outline the action through which the
G objectives can be met. In an enabling strategy actions such as the provision of infrastructure may mean the direct involvement of the public sector in shelter construction. The objective of "facilitating adequate shelter for all" also implies that direct government support should mainly be allocated to the most needy population
H groups.

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6. Another important component is the development of administrative, institutional and legislative tasks that are the direct responsibility of the Government, for example, land registration and regulation of construction.

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8. The appropriate institutional framework for the implementation of a strategy must be identified, which may require much institutional reorganisation. Each agency involved must have a clear C understanding of its role within the overall organisation framework and of the tasks expected of it. Mechanisms for the co-ordination of inter and intra-agency activities need to be developed. Mechanism such as shelter coalitions are recommended and may be developed in partnership with the private and non-governmental sectors. Finally, arrangements for the continuous monitoring, D review and revision the strategy must be developed.

14. Prepare a plan of action in consultation and partnership with non-governmental organisations, people and their representatives, which :

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(a) Lists the activities that are the direct responsibility of the public sector;

(b) Lists the activities to be taken to facilitate and encourage the other actors to carry out their part of the task; F

(c) Outlines resource allocation to the aforementioned activities;

(d) Outlines the institutional arrangements for the implementation, co-ordination, monitoring and review of the strategy; G

(e) Outlines a schedule for the activities of the various agencies."

Guidelines or steps to be taken at the international level were formulated Guideline Nos. 15 to 17 are relevant and are stated thus : H

A "15. International action will be necessary to support the activities of countries in their endeavour to improve the housing situation of their poor and disadvantaged inhabitants. Such assistance should support national programmes and use know- how available locally and within the international community.

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17. Mutual co-operation and exchange of information and expertise between developing countries in human settlement work stimulate and enrich national human settlement work."

C (Vide "Encyclopedia of Human Rights" by Edward Lawson).

In Encyclopaedia of Social Work in India (Volume 2) at page 82 it stated that supply of housing in India does not fully meet the present needs of the population whether in terms of location, size tenure, type or facilitation. The share of housing sector in India's economy is fluctuating from year to year. Of the total housing stock of 7.44 crore dwelling units available in 1971 in rural areas, 0.80 crores was unserviceable kutcha, 2.44 crores were serviceable kutcha, 2.79 crores were semi-pucca and only 1.41 crores unit were pucca. The housing accommodation as a whole in the rural areas as dwelling units is inadequate. With ever-growing population and migration of poor to urban areas for livelihood, slums are getting escalated and resultantly with the passage of time housing problem is becoming increasingly acute. Under Minimum Needs Programme provision of house sites and construction of houses for rural landless poor was envisaged in the Sixth Plan 1980-85 which continued in the Seventh Plan. Finances are provided for construction of the houses under the Planned Expenditure.

Indira Awas Yojana is evolved to provide housing accommodation on war footing exclusively for the Scheduled Castes and Scheduled Tribes. Their appalling housing condition is judicially taken notice by this Court upholding the pragmatic approach of Chinnappa Reddy, J. in *Kasiredi Papaiah* v. *Government of A.P.*, AIR (1975) AP 269 as well in the following words: "That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore,

one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the land Acquisition Act cannot be said to be improper, in the absence of *mala fides*, merely because of the delay on the part of some government officials". A B C

What was said by Chinnappa Reddy, J. in the context of provisions of housing accommodation to Harijans is equally applied to the problem of providing housing accommodation to all persons in the country in *State of U.P.* v. *Pista Devi and Ors.*, [1986] 4 SCC 251 holding that today having regard to the enormous growth of population urgency clause for planned development in urban area was upheld by two-Judge Bench. The ratio of *Kasiredi Papaiah'* case was quoted with approval by a three-Judge Bench in *Deepak Pahwa* v. *Lt. Governor of Delhi*, [1985] 1 SCR 588. The delay by the officials was held to be not a ground to set at naught the power to exercise urgency clause in both the above decisions, it would thus be clear that housing accommodation to the Dalits and Tribes is in acute shortage and the State has undertaken as its economic policy under Planned Expenditure to provide shelter to them on war-footing, in compliance with the Constitutional obligation undertaken as a member of the U.N.O. to the resolution referred to hereinbefore. D E F

The question, therefore, is whether invocation of urgency clause under Section 17 (4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In *Aflatoon & Ors. etc.* v. *Lt. Governor, Delhi & Ors.*, [1975] 4 SCC 285 at 290 a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17 (4) dispensing with the inquiry under Section 5- A for the planned development of Delhi. In *Smt. Pista Devi's* case, this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for G H

A planned development of Meerut, had held that providing housing accommodation is national urgency of which Court should take judicial notice. The pre-notification and post-notification delay caused by the concerned office does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till
B day is a fact of which courts are bound to take judicial notice. The ratio of *Deepak Pahwa's* case (supra) was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17 (4), even though lapse of time of 8 years had occurred due to inter-departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held
C that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In *Jage Ram & Ors.* v. *State of Haryana & Ors.*, [1971] 1 SCC 671 this Court upheld the exercise of the power of urgency under
D Section 17 (4)and had held that the lethargy on the part of the officers at an earlier stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In *Deepak Pahwa's* case this Court had held that very often persons interested
E in the land proposed to be acquired may make representations to the concerned authorities against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of
F the necessity for acquisition. *Rajasthan Housing Board & Ors.* v. *Shri Kishan & Ors.*, [1993] 2 SCC 84 at 91 this Court had held that it must be remembered that the satisfaction under Section 17(4) is subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In *State of U.P. & Ors.* v.
G *Keshav Prasad Singh*, [1995] 5 SCC 587 at 590 this Court had held that the Government was entitled to exercise the power under Section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the facts available on record. In *Narayana Govind Gavate's* case (supra) a three-Judge Bench of this Court had held
H that Section 17 (4) cannot be read in isolation from Section 4(1) and

Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of *prima facie* public purpose such as the one present in those cases before the Court, could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasised that :

> "..... The mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 50A which has to be considered".

It would thus be seen that this court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17(4) to dispense with Section 5-A inquiry.

It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power *mala fide*. Providing house sites to the Dalits, Tribes and the poor itself is a national problem, and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The

A State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

B In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public C purpose. For compulsory nature of acquisition, sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23 (1) provides compensation D for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation interest is payable under Section 23 (1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23(1-A) and from the date of possession till E compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable.

Thus considered, we hold that we do not find any illegality in the notification warranting interference. The appeal is accordingly dismissed F but. in the circumstances, without costs.

C.A. 12123/95 @SLP (C) No. 6831/93

In view of decision rendered above in Civil Appeal No. 12122/95 @ G SLP (C) No. 4896/93, this appeal is also dismissed but, in the circumstances, without costs.

S.M. Appeals dismissed.