

ITEM NO.41

COURT NO.11

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).16366/2011

(From the judgement and order dated 12/05/2011 in CMWP No. 500/2010
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

GREATER NOIDA INDUSL.DEVT.AUTH.
VERSUS

Petitioner(s)

DEVENDRA KUMAR & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and permission to
place addl. documents on record and with prayer for interim relief
and office report)

WITH

S.L.P.(C)...CC NO. 10563-10593 of 2011

(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)

SLP(C) NO. 16406 of 2011

(With appln(s) for exemption from filing O.T. and with prayer for
interim relief and office report)

S.L.P.(C)...CC NO. 10641-10671 of 2011

(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)

SLP(C) NO. 16454 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16484 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16499 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16501 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16507 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16524 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16527 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16528 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16529 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16530 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16531 of 2011

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(With prayer for interim relief and office report)

SLP(C) NO. 16532 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16534 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16535 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16536 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16539 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 16540 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16542 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16543 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16544 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16547 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16585 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16590 of 2011
(With prayer for interim relief and office report)
S.L.P.(C)...CC NO. 10856-10886 of 2011
(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)
SLP(C) NO. 16533 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16602 of 2011
(With appln(s) for exemption from filing O.T. and with prayer for
interim relief and office report)
SLP(C) NO. 16604 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 16609 of 2011
(With appln(s) for exemption from filing O.T. and permission to
place addl. documents on record and with prayer for interim relief
and office report)
SLP(C) NO. 16611 of 2011
(With prayer for interim relief and office report)
S.L.P.(C)...CC NO. 10974-11004 of 2011
(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)
S.L.P.(C)...CC NO. 11017-11047 of 2011
(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)
SLP(C) NO. 16682 of 2011
(With prayer for interim relief and office report)
S.L.P.(C)...CC NO. 11190-11220 of 2011
(With appln(s) for permission to file SLP and with prayer for
interim relief and office report)

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Date: 06/07/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Mukul Rohatgi, Sr.Adv.
 Mr. Ravindra Kumar, Adv.
 Mr. M.C.Chaturvedi, Adv.
 Mr. Sameer Ali Khan, Adv.
 [For Greater Noida Dev.Authority]

Mr. L. Nageshwar Rao, Sr.Adv.
Mr. Shail Kumar Dwivedi, A.A.G.(U.P.)
Mr. Ravindra Kumar, Adv.
Mr. Anuvrat Sharma, Adv.
Mr. Samir Ali Khan, Adv.
[for State of Uttar Pradesh]

Mr. P.P. Rao, Sr.Adv.
Mr. Annam D.N. Rao, Adv.
Mr. Atul Sharma, Adv.
Mr. Rajneesh, Adv.
Ms. Neelam Jain, Adv.

Mr. Ranjit Kumar, Sr.Adv.

Mr. Dushyant A. Dave, Sr.Adv.
Mr. S.Udaya Kumar Sagar, Adv.
Ms. Bina Madhawan, Adv.
For Lawyer's Knit & CO., A.O.R.

Mr. Pallav Shishodia, Sr.Adv.

Mr. P.S. Patwalia, Sr.Adv.

For Respondent(s) Mr. V.P. Choudhary, Sr.Adv.
Mr. P.S. Narasimha, Sr.Adv.
Mr. Anand Varma, Adv.
Mr. Nitinjya Chaudhry, Adv.

Mr. Rajesh Srivastava, Adv.

UPON hearing counsel the Court made the following
O R D E R

The applications filed by the non-official petitioners
for permission to file the special leave petitions are allowed.

Delay condoned.

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Whether the acquisition of 156.903 hectares land of
Village Shahberi, Pargana Dadri, District Gautam Budh Nagar by
the Government of Uttar Pradesh in the name of planned
industrial development in District Gautam Budh Nagar through the
Greater Noida Industrial Development Authority (for short, "the
Authority") and subsequent allotment of major portion of the
acquired land (over 90 hectares) to the builders including M/s.
Supertech Ltd., M/s. Amrapali Smart City Pvt. Ltd., M/s.
Panchsheel Buildtech Pvt. Ltd., M/s. SJP Infracon Ltd., M/s.
Mahagun India Pvt. Ltd. and M/s. Gulshan Developers amounts to
colourable exercise of power vested in the State Government
under the Land Acquisition Act, 1894 (for short, "the 1894 Act")
read with the Uttar Pradesh Industrial Area Development Act,
1976 (for short, "the 1976 Act") and the New Okhla Industrial
Development Area (Preparation and Finalisation of Plan)
Regulations, 1991 (for short, "the Regulations") is the main
question which arises for consideration in these petitions filed
for setting aside order dated 12.5.2011 passed by the Division
Bench of the Allahabad High Court in CMWP No.500 of 2010 and
batch.

Before advertng to the factual matrix of the case, it will be useful to notice the relevant provisions of the 1976 Act and the Regulations. The same are as under:

U.P. Industrial Area Development Act, 1976

2.(d) "industrial development area" means an area declared as such by the State Government by notification;

3. Constitution of the Authority.-(1) The State

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Government may, by notification, constitute for the purposes of this Act, an Authority to be called "(Name of the area) Industrial Development Authority", for any industrial development area.

6. Functions of the Authority-(1)The object of the Authority shall be to secure the planned development of the industrial development areas.

(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions-

(a) to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes of this Act;

(b) to prepare a plan for the development of the industrial development area;

(c) to demarcate and develop sites for industrial, commercial and residential purpose according to the plan;

(d) to provide infrastructure for industrial, commercial and residential purposes;

(e) to provide amenities;

(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

(g) to regulate the erection of buildings and setting up of industries; and

(h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.

7. Power to the Authority in respect of transfer of land.-The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.

9. Ban on erection of buildings in contravention of regulations.-(1) No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under sub-section (2).

The New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulations,

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1991

2(d) 'Commercial Use' means the use of any land or building or part thereof for carrying on any trade,

business or profession, sale of goods of any type, whatsoever and includes private hospitals, nursing homes, hostels, restaurants, boarding houses not attached to any educational institution, consultant offices in any field, cottage and service industries;

(e) 'Industrial Use' means the use of any land or building or part thereof mainly for location of industries and other uses incidental to industrial use such as offices, eatable establishment etc.;

(f) 'Industrial Use' means the use of any land/building or part thereof for carrying on activities like testing, research, demonstration etc. for the betterment of the society and it includes educational institutions;

(g) 'Land Use' means the use of any land or part thereof in the industrial development area for industrial, residential, institutional, commercial, public water bodies, organized recreational open spaces, streets, transportation, public and semi-public buildings, agriculture and other like purposes;

(h) 'Organised recreational open space' means any land with or without structure left open or laid out and developed as a public recreational space in the form of tot lot gardens, sector or neighbourhood parks, amusement parks, woodland, playgrounds, public assembly, botanical or zoological gardens being used for public recreational purposes;

(i) 'Plan' means the plan prepared by the Authority for the development of Industrial Development Area under sub-section (2) of Section 6 of the Act, and it includes Sector Plan;

(k) 'Residential Use' means the use of any land or building or part thereof for human habitation and such other uses incidental to residential uses;

3. Town Planning and Civic Surveys form and contents of Plan.-(1) The Authority shall as soon as possible carry out town planning and civic survey and prepare Draft Plan for the industrial development area;

(2) The Draft Plan shall-

(a) define the various sectors into which the area falling within the proposed urbanisable limit is to be divided;

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(b) allocate the area of land for land use;

(c) indicate, define and provide for-

(i) the existing and proposed National Highways, arterial and primary and secondary roads;

(ii) the existing and proposed other lines of transportation and communication including railways and airport.

(3) The Draft plan may indicate, define and provide for,-

(a) the existing and proposed public buildings; and

(b) all or any of the matters specified in Regulation 4.

(4) The Draft Plan shall consist of such maps, diagrams, charts, reports and other written matter of any explanatory or descriptive nature as pertain to the development of the whole or any part of Industrial Development Area.

(5) Written matter forming part of Draft Plan shall include such summary of the main proposals and such descriptive matter as the Authority may consider necessary to illustrate or explain the proposals indicated by maps, charts, diagrams and other documents;

(6) A Plan of land use shall also form a part of the Draft Plan proposing most desirable utilisation of land for purposes mentioned in clause (b) or sub-regulation (3).

4(1) The Plan may include:

(a) Sector Plans showing various sectors into which the industrial development area or part thereof may be divided for the purpose of development.

(b) The Plan will show the various existing and proposed land uses indicating the most desirable utilisation of land for-

(i) industrial use by allocating the area of land for various scales or types of industries or both;

(ii) residential use by allocating the area of land for housing for different and defined densities and plotted development for different categories of households;

(iii) commercial use by allocating the area of land for wholesale or retail markets, specialised markets, town level shops, show-rooms and commercial offices and such other allied commercial activities;

(iv) public use by allocating the area of land for

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Government offices, hospitals, telephone exchanges, police lines, general post office, telegraph office, educational institutions, testing, research and demonstration institutions, oxidation pond and sewage farm, sanitary land fill area and other major establishments;

(v) organised recreational open spaces by allocating the area of land for regional and city park, exhibition ground, sports village, stadium, swimming pool etc.;

(vi) agricultural use by allocating the area of land for farming, horticulture, sericulture, piggery, fishery and poultry farming;

(vii) such other purposes as the Authority may deem fit in the course of proper development of the industrial development area;

(c) Traffic and transportation plan consisting of proposals for road, railway and air transportation system.

(d) Infrastructural plan showing proposal for land/building for provision of water, electricity, drainage and disposal of sewage and refuse and also indicating proposals for organised recreational open spaces, civic and cultural centres and land/building for education, medical and such other infrastructural facilities;

(e) Housing Plan consisting of estimates of housing requirement and proposals regarding standard type of new housing units.

5. Public notice regarding preparation of Plan.-(1) Authority shall as early as may be, after the Draft Plan has been prepared publish a public notice stating that -

(a) The Draft Plan has been prepared and may be inspected by any person at such time and place as may be specified in the notice.

(b) objections and suggestions, if any, in respect of the Draft Plan shall be sent in writing by any person to the Chief Executive Officer of the Authority before such date not being earlier than 30 days from the date of publication of the notice and in such manner as may be specified in the notice.

(2) This notice may be issued in Form 'A' appended to these regulations.

6. Mode of publication of the Public Notice.- Every public notice mentioned in Regulation 5 hereinunder shall be in writing under the signature of the Chief

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Executive Officer and shall be widely published in the locality to be affected thereby affixing copies thereof at conspicuous public places within the said locality, or by publishing the same by beat of drums or by advertisements in a newspaper having circulation in the locality. This publication shall be by two or more of these means, which the Chief Executive Officer of the Authority may think fit.

7. Inquiry and hearing - (a) After the expiry of the period specified in the notice for making objections and suggestions, the same will be placed before a Committee to consider the objections and suggestions. The Committee shall be constituted by the Chief Executive Officer and shall consist of three members, one of whom shall be Town Planner. The Committee shall fix date(s) for disposal of objection(s) received and shall serve notice on the affected person(s)/body who has filed objection(s) and may allow a personal hearing to the affected person(s)/body in connection with his/their objection(s), after intimating the time, date and place of hearing.

(b) The Committee shall after conclusion of the hearing submit its report/recommendation to the Chief Executive Officer of the Authority.

8. Consideration of the recommendations of the Committee.- (a) The recommendations of the Committee shall be submitted to the Chief Executive Officer for consideration thereof.

(b) If the Chief Executive Officer is of the view that some matter has not been considered by the Committee, the recommendation may be referred back by him to the Committee for consideration of the same.

(c) The Chief Executive Officer shall submit his report along with the recommendations of the Committee to the Authority.

9. Finalisation/Approval of the Draft Plan by the Authority-(a) The Authority may, after considering the report of the Chief Executive Officer and any other matter, issue directions for variations, modifications or amendments of the Draft Plan.

(b) The Authority shall approve the plan with such variations, modifications or amendments as are deemed to be necessary by the Authority.

(c) The Plan approved under clause (b) shall be effective for a period specified by the Authority but such period shall not be less than 5 years.

10. Date and commencement of Plan.-Immediately after

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a Plan has been approved by the Authority a public notice shall be published under the signature of the Chief Executive Officer in the manner provided in Regulation 5 stating therein that a Plan has been approved and naming a place where a copy of the plan may be inspected at all reasonable hours and upon the date of first publication of the aforesaid notice, the Plan shall come into operation.

11. Amendment of the Plan.- (1) The Authority may make such amendments in the Plan which do not effect important alteration in the character of the Plan and which do not relate to the extent of land use or

standards of population density.

(2) Before making any amendment in the Plan under sub-section (1), the Authority shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any affected person with regard to the proposed amendment before such date as may be specified in the notice and shall consider all objections that may be received.

(3) Every amendment made under this Regulation shall be published in any of the manner specified in Regulation 5 and the amendment shall come into operation either on the date of the first publication or on such other date as the Authority may fix.

(4) The Authority shall not make during the specified period in which the Plan is to remain effective, such amendment(s) in the Plan which affects important alteration in the character of the Plan and which relates to the extent of the land use or standards of population density.

In exercise of the power vested in it under Section 3 of the 1976 Act, the State Government constituted the Authority in 1991. Thereafter, the Governor of Uttar Pradesh, in exercise of the power vested in him, under Section 2(d) and Section 6 of the 1976 Act read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 notified various villages as part of Greater Noida Industrial Development Area. Village Shahberi which was then part of District Ghaziabad and now falls in District Gautam Budh Nagar was declared as industrial development area vide

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notification dated 21.2.1994.

After following the procedure prescribed under clauses 3(2) to (6) and 4 to 9 of the Regulations, the Authority prepared a Development Plan for Greater Noida-2021 (for short, "the Development Plan") covering a total area of 21570 hectares. This area has been described as Phase I of Greater Noida. The land use specified in the Development Plan is as under:

Land use	2021 (ha)	%age
Residential	5000	23.2
Industrial	4227.3	19.6
Commercial	1200	5.6
Institutional	3502.7	16.2
Green areas	5000	23.2
Transportation	2600	12.1
SEZ	40	0.2
Total	21570	100

The land use of village Shahberi has been shown in the Development Plan as "industrial".

As a sequel to the declaration of different villages as part of industrial development area, the State Government acquired many hundred hectares land in those villages for planned industrial development. However, as will be seen hereinafter, 60 per cent of the acquired land has neither been developed nor used for the purpose specified in the acquisition notifications.

In May, 2009, the Authority submitted a proposal to the State Government for the acquisition of 156.903 hectares land in village Shahberi ostensibly for a public purpose, namely, planned industrial development. Thereupon, Special Secretary,

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Industrial Development Department prepared note dated 26.5.2009 for issue of notification under Section 4 read with Section 17 of the 1894 Act. The Directorate of Land Acquisition made available the information required in terms of Government Order dated 26.12.2006. In the notings recorded on the file, it was proposed that application of Section 5A of the 1894 Act may be dispensed with because hearing of objections which may be filed by the landowners and interested persons is likely to take several years causing undue delay and the same would adversely affect the planned industrial development. This proposal was approved by the Chief Secretary, Rehabilitation and Industrial Development Department and the Principal Secretary to the Chief Minister, who was also the Minister of the concerned department. Thereafter, notification dated 10.6.2009 was issued under Section 4(1) read with Section 17(1) and (4) of the 1894 Act. After 3 months and 20 days, the Director in the Directorate of Land Acquisition suggested that a notification may be issued under Section 6 read with Section 17. On 22.10.2009, the file was sent to the Law Department for its opinion. On the same day, a fresh note was prepared by the Industrial Development Department with the suggestion that notification under Section 6 read with Section 17 may be issued without waiting for the opinion of the Law Department because a number of writ petitions

had been filed in the High Court and there was a possibility of the High Court granting stay. The fresh note was approved by the Special Secretary to the Chief Minister on 1.11.2009.

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Thereafter, notification dated 9.11.2009 was issued under Section 6(1) read with Section 17(1).

In the meanwhile, the property department of the Authority made a request that land use of the acquired land may be changed from industrial to housing and another area may be earmarked for industrial purpose and for this, the Development Plan may be modified. Thereupon, a committee was constituted to suggest swapping of land without changing the percentage of land use and as was expected, the committee gave a favourable report on 2.11.2009. The same was approved by the Board on the very next day i.e. 3.11.2009. (This happened 3 days before the issue of notification under Section 6(1) read with Section 17(1) of the 1894 Act). After approval by the Board, notice dated 20.11.2009 was got published in "Dainik Jagran" and suggestions/objections were invited from the members of public about the proposed modification in the Development Plan. The proposed modification of the Development Plan was finally sanctioned by the Board sometime in the month of January, 2010 and was sent to the State Government for its approval. The latter granted approval sometime in March, 2010.

The notification issued by the State Government under Section 4(1) read with Section 17(1) and (4) was challenged in C.M.W.P. No. 37512/2009 - Amit Kumar and others v. State of U.P. and others and batch, which were dismissed as premature by the Division Bench of the High Court vide its order dated 27.10.2009 with liberty to the petitioners to file fresh petitions to

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challenge the acquisition of land in the event of issue of notification under Section 6(1). The operative portion of that order reads as under:

"All the writ petitions are accordingly dismissed as premature without deciding any point on merits, with liberty to the petitioner to raise all the grounds, which have been taken in the writ petition or such ground, which may become available to the petitioners to challenge the acquisition of the land, if the State Government issues notification under sub-section (1) of Section 6 of the Act, including the applicability of sub-sections (1) and (4) of Section 17 of the Act."

After the issue of notification under Section 6(1) read

with Section 17(1), a batch of writ petitions was filed

questioning the acquisition of land on the ground of arbitrary,

malafide and colourable exercise of power by the State

Government and also on the ground that there was no valid ground

or justification to invoke the urgency clause enshrined in

Section 17(1) read with Section 17(4) and to dispense with the

application of Section 5A. Five of the Writ Petitions bearing

Nos. 17932, 17934, 17936, 17939 and 26190 of 2010 were filed by

the original tenure holders, who also impleaded 3 colonizers,

namely, M/s. Anjara Gold City, M/s. Supertech Echo Village and

M/s. Amrapali Gold Homes as party respondents. Some writ

petitions were filed by those who had purchased small parcels of

land from the original owners prior to 10.6.2009 and some were

filed by those who had purchased land after the issue of

notification under Section 4(1) read with Section 17(1) of the

1894 Act. Shri A.D.N. Rao, learned counsel assisting Shri P.P.

Rao, senior counsel, who appeared on behalf of M/s. Supertech

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Ltd. produced before the Court a list of 180 persons of the 3rd

category.

On behalf of the writ petitioners (private respondents

herein), it was argued before the High Court that the decision

of the Government to invoke Section 17 was totally arbitrary and

unwarranted and that in the guise of acquiring land for a public

purpose, namely, planned industrial development in District

Gautam Budh Nagar, the State Government and the Authority had

devised a mechanism to benefit the builders who were allotted large chunks of the acquired land within few weeks/months of the issue of notification under Section 6(1) read with Section 17(1) and the entire exercise of the acquisition of land was a colourable exercise of power vested in the State Government under the 1894 Act.

While dealing with the question whether the impugned acquisition was a colourable exercise of power by the State Government, the High Court adverted to the record produced by the counsel appearing on behalf of the State and the Authority and recorded its conclusion in the following words:

"The sequence of events clearly demonstrates and establishes that the GNOIDA never intended to develop the land proposed to be acquired for integrated planned industrial development. The Builders Residential Scheme-BRS-01/08-09, did not get sufficient response. In the proposals annexed to the rejoinder affidavit to convert the land use, it was clearly recommended by the Committee constituted by GNOIDA that on account of economic recession the earlier Builders Residential Scheme did not get sufficient response, and since the land in village Shahberi is close to the Ghaziabad and is adjoining the main road, in order to earn more profits it was considered appropriate that the land be utilised for

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multi storied housing complex, through a builders allotment scheme.

The motive of the GNOIDA in league with the builders is further demonstrated by the fact, that conditions in the scheme were greatly relaxed to the extent that the allotment was to be made to the builders of the plots measuring not less than 60000 square meters each, out of which one of the plots in village Shahberi measures more than 2 lac square meters, on down payment of 5% of the premium with a condition that the builders will be permitted to sub-divide and sub-lease the plots measuring at least 20000 square meters each.

The facts on record demonstrate that GNOIDA never intended to put the land for integrated planned industrial development. The entire object was to develop a residential complex with multi storied houses to be given to the builders at the proposed rate of Rs. 10000/- per square meters with relaxation of the terms to such an extent that the builders may be permitted to develop the housing complexes by sub dividing the leased land after paying only 5% of the premium.

There is no doubt that the building houses is essential to an industrial township but that the method and manner of such development has to be

bonafide for the purpose connected with the industrial use of the land. Where the record demonstrates that the entire object was to build multi storied complexes to be allotted to the builders for earning profit and no such proposal was sent to the State Government either at the stage of issuing notification under Section 4/17 and thereafter at the stage of issuing notification under Section 6/17, the acquisition of land has to be held to be in colourable exercise of powers. The GNoida did not want to disclose to the State Government that the land will be put to use for constructing house complexes through the builders."

The High Court then considered the question whether the State Government could have invoked the urgency provisions contained in Section 17(1) and (4) of the 1894 Act, extensively referred to the judgments of this Court in Anand Singh v. State of U.P. (2010) 11 SCC 242 and Radhey Shyam v. State of U.P. (2011)

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5 SCC 553 and held:

"The facts in the present case are the same as in the case of Shri Radhey Shyam (supra). The same reasons were given as in the present case for applying Section 17 of the Act, namely that the development authority urgently requires the land for planned development; the development scheme has been duly approved by the State Government; if there is delay in acquisition of land, there is likelihood of encroachment, which will adversely affect the concept of planned industrial development and that numerous leading industrial units of the country who want to invest in the State of UP will establish their industries in other States, and therefore it is extremely urgent and necessary that the land be acquired immediately; the written and oral objections invited from the farmers will take unprecedented long time. The disposal thereof will hamper planned development of the area.

The observations of the Supreme Court are equally attracted in this case, namely, that there was no plausible reason to accept the tailor made justification for approving the impugned action, which resulted in depriving the land owners constitutional right to property, even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Section 17 (1) and 17 (4); the objective of industrial development needs lot of deliberation and planning keeping in view various scientific and technical parameters and environmental concerns; the private entrepreneurs who are desirous of making investment in the State take their own time in setting their industrial units.

In the present case we further find that apart from mechanically applying Section 17 of the Act on the facts and circumstances which were not approved in Radhey Shyam's case, the entire action of acquiring the land was in colourable exercise of powers. The

GNOIDA was fully aware and was planning to use the land in village Shahberi and neighbouring villages for multistory housing complexes to be developed by the builders on relaxed conditions. The sequence of dates and events given in the preceding paragraphs establish that on one hand, a request was made for acquiring the land for public purpose for planned industrial development, on the other hand a few days before the proposals were put up before State

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Government for issuing notification under Section 6 (1) applying Section 17 (1) and (4) without informing the State Government the GNOIDA was preparing and held Board's meeting for converting the land use for residential purposes to lease of the land to builders for housing complexes for earning profits. The land is proposed to be acquired on the rates of about Rs. 850/- per square meters, and to be given within a month to the builders at Rs. 10,000/- per square meters, and that too on payment of 5% of the price, on allotment."

Shri Mukul Rohatgi, learned senior counsel appearing for the Authority produced the Development Plan and argued that even though the High Court may be justified in nullifying the decision of the State Government to invoke the urgency provisions and to dispense with the application of Section 5A, there was no warrant for quashing the acquisition proceedings as a whole and the State Government should have been allowed to proceed from the stage of Section 4 notification as was done by the High Court while deciding CMWP No.48204/2009 - M/s. R.P. Electronics and others v. State of U.P. and others and batch and CMWP No.20156/2009 - Smt. Rajni and others v. State of U.P. and others and batch, which were filed questioning the acquisition of 72.0912 hectares land in village Surajpur and 170.098 hectares land in village Gulistanpur. Shri Rohtagi further submitted that the High Court committed grave error by quashing the entire acquisition ignoring that large number of tenure holders had accepted compensation and had not challenged the acquisition.

Shri P.P. Rao, learned senior counsel appearing for M/s. Supertech Ltd. referred to order dated 27.10.2009 passed in CMWP

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No.37512/2009 - Amit Kumar and others v. State of U.P. and others and batch and argued that in view of the finding recorded

in that order that there were no pleadings with regard to lack of good faith, malafides, irregularity and vagueness in regard to the acquisition, the High Court was not justified in quashing the notification issued under Section 4(1).

Shri Rao submitted that in view of Section 3(f) of the 1894 Act, the acquisition of land for planned industrial development has to be treated as an acquisition for a public purpose and the High Court committed grave error in holding that the acquisition of the respondents' land was an act of colourable exercise of power by the State Government. Learned senior counsel then argued that the allotment of land to the builders for construction of multi-storeyed complexes cannot lead to inference that acquisition was vitiated due to malafides because land use specified in the Development Plan was changed after inviting objections/suggestions from the public and, in any case, before pronouncing upon the legality of the acquisition, the High Court was duty bound to give proper notice and effective opportunity of hearing to the beneficiaries.

Shri Ranjit Kumar, learned senior counsel referred to paragraph 23 of the impugned judgment to show that 114 out of 211 landowners had voluntarily accepted the compensation and argued that the High Court should have quashed the acquisition only qua those who had not accepted the compensation and had challenged the notifications issued under Sections 4(1) and 6(1)

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read with Section 17(1) and (4). The learned senior counsel relied upon order dated 30.5.2011 passed in CMWP No.20156/2009 - Smt. Rajni and others v. State of U.P. and others and batch in support of his argument that quashing of the acquisition should have been restricted to the tenure holders and those who had purchased before 10.6.2009 and had not accepted the compensation.

Shri Dushyant Dave, learned senior counsel submitted that 19% of the total area covered by the notification issued under

the 1976 Act is earmarked for residential purpose and the acquired land was allotted to the builders so as to enable them to construct multi-storeyed complexes, which would reduce pressure on the capital of the country. Shri Dave submitted

that illegal plotting and mushroom growth of unauthorised colonies in the vicinity of Greater Noida had prompted State Government to invoke the urgency provisions and this exercise cannot be faulted on any count.

Shri P.S. Patwalia, learned senior counsel representing M/s. Amrapali Smart City Pvt. Ltd. and Shri Pallav Shishodia, learned senior counsel representing M/s. Mahagun India Pvt. Ltd. argued that the impugned order is liable to be set aside because the allottees were not given opportunity of hearing. Shri Shishodia pointed out that on the applications made by some of the writ petitioners, the High Court had passed orders for impleadment of 3 builders as parties but, the writ petitions were decided without ensuring service of notice upon the

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impleaded parties. Learned senior counsel emphasized that if opportunity of hearing had been given, the beneficiaries of allotment could have demonstrated that many of the writ petitioners did not have the locus to file writ petitions because they had purchased the land after publication of the notification issued under Section 4(1). Shri Shishodia finally submitted that this litigation represents a tussle between those engaged in developing unauthorized colonies and the organized colonizers who want to construct multi-storeyed buildings in a planned manner and make available flats to the eligible persons and the High Court should have refused to exercise jurisdiction under Article 226 of the Constitution at the instance of those responsible for unplanned development of the area.

Learned senior counsel appearing for the builders laid considerable emphasis on the fact that after getting land, their clients had invited applications for allotment of flats etc., from the prospective buyers and accepted part of the price and

prayed that while deciding these petitions, the Court should ensure that the innocent investors may not suffer on account of restoration of land to the tenure holders.

Shri L.N. Rao, learned senior counsel representing the State of Uttar Pradesh extensively referred to the provisions contained in the 1976 Act and the Regulations and argued that planned development of an industrial area envisages earmarking of land for different purposes including residential and the impugned acquisition should not have been faulted by the High

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Court merely because use of the acquired land was changed from industrial to residential. Learned senior counsel produced satellite images of the area of village Shahberi for the period between 2000 and 2008 to show that after issue of notification under Section 2(d) of the 1976 Act, massive plotting of the agricultural land has been done in an unauthorised manner and argued that if the impugned order is not set aside, the concept of planned development of Greater Noida will be seriously jeopardized. Learned senior counsel then submitted that in the absence of proper pleadings, the High Court should not have declared that the acquisition of land was a result of colourable exercise of power by the State Government.

Shri V.P. Choudhary, learned senior counsel appearing for some of the respondents pointed out that there are total 211 tenure holders in village Shahberi of which 108 have small holdings and 103 have large holdings and argued that the High Court did not commit any error by entertaining the writ petitions because most of the respondents were either original tenure holders or were those who had purchased small pieces of land before 10.6.2009. Learned senior counsel further argued that the State Government and the Authority had misused the provisions of the 1894 Act to benefit the builders sacrificing the interest of the farmers and the High Court rightly annulled the entire acquisition by declaring it to be a case of

colourable exercise of power.

Learned counsel pointed out that

while the landowners were offered compensation at the rate of

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Rs.800/- per square yard, the land was allotted to the builders at the rate of more than Rs.1100/- per square yard and, in turn, they made huge profits by selling the to be constructed flats etc. Shri Choudhary also referred to the civil miscellaneous application filed in Civil Writ Petition No.6108 of 2010-Sanjay Sharma and others v. State of U.P. to show that after depriving the farmers of their only source of livelihood, the Authority transferred the land to the builders on payment of 5% premium with liberty to pay the balance amount in 20 installments spread over a period of 10 years.

Shri P.S. Narasimha, learned senior counsel appearing for some other respondents submitted that there was lack of bonafide on the part of the State and the Authority right from the beginning and in the guise of acquiring land for a public purpose, namely, planned industrial development they wanted to favour the chosen builders to enable them to earn profits running into hundreds of crores. Shri Narasimha emphasized that the concept of public purpose enshrined in the 1894 Act has direct nexus with the doctrine of public trust and land acquired under the 1894 Act cannot be used for subserving a private purpose. Learned counsel relied upon the judgments of this Court in M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 and Fomento Resorts and Hotels Ltd. v. Minguel Martins (2009) 3 SCC 571 and submitted that the Court should extend the doctrine of public trust in matters involving the acquisition of land and nullify every such acquisition, which is meant to advance the private

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interest. Shri Narsimha also relied upon the judgment of the Constitution Bench in Padma Sundara Rao v. State of T.N. (2002) 3 SCC 533 and argued that the High Court did not commit any

error by quashing the notification because the State Government cannot now rely upon the notification issued on 10.6.2009 for issuing fresh notification under Section 6(1) ignoring the prohibition contained in second proviso to Section 6(1) of the 1894 Act.

We have considered the respective submissions and carefully scrutinised the records including the documents and papers produced by the learned counsel for the parties during the course of hearing.

At the outset, we deem it proper to observe that none of the senior counsel appearing for the petitioners assailed the finding recorded by the High Court that the decision of the State Government to invoke the urgency provisions contained in Section 17(1) and to dispense with the application of Section 5A was vitiated due to arbitrary exercise of power and non application of mind. Of course, Shri L.N. Rao and Shri Dushyant A. Dave, learned senior counsel did suggest that Section 17(1) and (4) was invoked to check mushroom growth of unauthorised colonies in the area around Greater Noida Phase I, but in our view, this did not provide a valid justification to invoke Section 17(1) and to dispense with the application of Section 5A and the High Court rightly nullified this exercise by relying upon the judgments of this Court in Anand Singh's case and Radhy

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Shyam's case. We may add that unauthorised plotting of agricultural land or large scale illegal constructions could not have been possible without active or tacit connivance of the functionaries and officers of the State and/or its agencies/instrumentalities. If the Authority wanted to prevent unauthorised colonization of agricultural land or illegal constructions, then nothing prevented it from taking action under Section 9 of the 1976 Act. No explanation has been given by the State Government and the Authority as to why appropriate measures were not taken to prevent unauthorised colonization of

land in Shahberi and elsewhere.

The inefficiency of the State

apparatus to take action in accordance with law cannot be used as a tool to justify denial of opportunity of hearing to the landowners and other interested persons in terms of Section 5A of the 1894 Act.

The reason which seems to have heavily weighed with the functionaries of the State to invoke Section 17(1) and (4) was the perceived delay which may have been caused in the acquisition of land if opportunity of hearing was afforded to the landowners and other interested persons. However, as held in Radhy Shyam's case, compliance of the rules of natural justice is a small price which the State should always be prepared to pay before it can deprive any person of his property.

We shall now deal with the argument of the learned counsel for the builders that the impugned order is vitiated due to violation of the rules of natural justice because the High Court

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disposed of the writ petitions without ensuring impleadment of all the persons to whom the land was allotted by the Authority by inviting bids and giving them reasonable opportunity of being heard.

In our view, there is no substance in the complaint of the builders. The writ petitioners had questioned the acquisition of land mainly on the grounds of arbitrary exercise of power and non-application of mind by the State Government and denial of opportunity of hearing to the landowners. The High Court entertained the writ petitions and directed the parties to maintain status quo. In CMWP No. 500/2010 - Devendra Kumar and others v. State of U.P. and others, the stay order was passed on 7.1.2010 in the presence of the counsel representing writ petitioners, the State of U.P. and the Authority. Thereafter, similar orders were passed in other writ petitions. It has neither been pleaded before this Court nor Shri Mukul Rohtagi, learned senior counsel argued that the functionaries and the officers of the Authority were not aware of the pending

litigation and the orders of status quo passed by the High Court. Therefore, the exercise undertaken by the Authority to devise schemes for allotment of land to large group housing/builders residential plots in the first week of January 2010 and thereafter allot plots measuring 60,000 to 4,00,000 square yards to the builders by inviting bids from those, who could offer reserve price of 60 crores to 400 crores was nothing but a brazen attempt to overreach the process of the Court. The

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beneficiaries of such blatant violation of the orders of status quo passed by the High Court cannot make a complaint that they were not given opportunity of hearing.

Although, Shri Pallav Shishodia, learned senior counsel appearing for M/s. Mahagun India Pvt. Ltd. claimed that the land allotted to his client was not covered by the order of status quo passed by the High Court, but this is of little significance. The officers of the Authority were very much aware of the fact that the High Court has already entertained the challenge to the notifications issued under Section 4(1) read with Section 17(1) and (4) and Section 6(1) read with Section 17(1) but no effort was made by them and the counsel representing the Authority to bring to the notice of the High Court the facts relating to allotment of large chunks of land to the builders.

It is difficult, if not impossible to believe that the builders were not aware of the pending litigation despite the fact that they had successfully manipulated the change of land use and modification of the Development Plan in active connivance with the functionaries of the Authority and the State Government. Note dated 22.10.2009 recorded by the Industrial Development Department shows that the concerned officers were in know of the pending writ petitions and with a view to make infructuous the stay order which was likely to be passed by the High Court, the process of issuing notification under Section

designed attempt was made by the functionaries and officers of the State Government and the Authority, who had connived with the builders to frustrate the right of the tenure holders and other interested persons to seek remedy before an appropriate judicial forum against unlawful deprivation of their legal and constitutional rights.

For the reasons stated above, we hold that the grievance made by the builders that they were not given opportunity of hearing is misconceived. In any case, their complaint of violation of audi alteram partem stands redressed because they have been given sufficient opportunity of hearing by this Court.

There is another reason for our disinclination to entertain the grievance of the builders. Although, the builders appear to have engineered the acquisition of land in question, they could neither defend and justify the invoking of urgency provisions nor contest the writ petitioners' plea that the provisions of the 1894 Act had been abused and misused for the acquisition of land in the name of planned industrial development in the district. The 1894 Act does not envisage any role of the private persons in the acquisition of land except when the acquisition is made under Chapter VII of the 1894 Act. Therefore, they cannot step into the shoes of the State functionaries and offer justification for the acquisition of a particular parcel of land.

The next issue which merits consideration is whether the High Court was justified in recording a finding that the acquisition impugned in the writ petitions was a colourable exercise of power by the State Government. It is not in dispute that after various villages were declared as part of Greater Noida Industrial Development Area, the State Government had resorted to large scale acquisition for the purpose of planned industrial development. However, the pleadings filed before the

High Court show that major portion of the acquired land has neither been developed nor used for the purpose for which it was acquired. This is evident from the averments contained in paragraph 25 (as contained in the copy of the writ petition filed before this Court) of CMWP No.500 of 2010 - Devendra Kumar and 17 others v. State of U.P. and others, which are reproduced below:

"25. That it is also pertinent to point out over here that the respondent-authority i.e. Greater Noida Industrial Development Authority Noida Authority has come into existence in the year 1991 and thereafter had acquired the huge chunk of land for the purpose of industrial development, out which, to the best knowledge and information of the petitioners even about 60% land has neither been developed for the aforesaid purpose nor has been used or allotted to any industry for developing the same and is lying vacant till date. The petitioners had tried to get the detail information in respect thereof and have approached the authority under the provisions of Right to Information Act, 2005 and filed an application dated 7.12.2009. Photostat copy of the application dated 7.12.2009 filed by the petitioner under Right to Information Act is annexed herewith and marked as Annexure no. 24 to this writ petition."

The above reproduced averments were controverted in paragraph 17 of the reply filed on behalf of respondent No.3 by Shri G.P. Srivastava, Land Consultant, in the following words:

"17. That the contents of para 25 and 26 of the writ
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petition are not admitted hence specifically denied. The petitioner by application dated 7.12.2009 under Right to Information Act has made query about the Village Barak. The land use of Village Bisrak is residential. Moreover, to give reply to the application the time limit is 35 days. The Authority is developing the land which is acquired by the notifications under section 4 and 6 and is transferring given lease according to the Section 7 of U.P. Act no. 6 of 1976. Moreover, to develop land, the basic facilities are to be made, which is being provided under section 2(a), Section 6 and Section 7 of U.P. Act no. 6 of 1976. All the developments on the acquired land are being made according to the drafted Master Plan 2021 of Land Acquisition Act."

Shri Nalin Kumar Awasthi, A.D.D.(L.A.), Greater Noida, Gautam Budh Nagar filed another reply on behalf of respondent Nos.2 and 3 in the writ petition in reply to paragraph 25 of the writ petition. Shri Awasthi gave the following reply:

"13. That contents of paragraph nos. 25 and 26 of the writ petition are not related to the answering respondent."

The above extracted pleadings show that while the State Government avoided giving any reply to the specific averments made by the writ petitioners on the issue of non utilisation of the acquired land for achieving the public purpose specified in the notifications issued under Section 4, the Authority gave evasive reply and did not indicate as to how much land has been used for achieving the purpose of acquisition. It is, thus, clear that many hundred hectares acquired land has not been used for planned industrial development. In this scenario, it is not possible to understand as to why the State Government and the Authority resorted to further acquisition of land for the same purpose and that too by invoking the urgency provision and then

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allot more than 90 hectares of the acquired land to the builders so as to enable them to earn huge profits by constructing multi-storeyed complexes.

The lack of bonafides on the part of the State Government and the Authority is evinced from the following facts:

(i) Section 17(1) and (4) was invoked without any tangible emergency which could justify the exercise of power under Section 17(1) and warrant exclusion of the inquiry envisaged under Section 5A.

(ii) On 22.10.2009, the file was forwarded to the Law Department for its opinion but on the same day, another note was prepared and got approved for facilitating issuance of notification under Section 6(1) read with Section 17(1) so that the aggrieved persons may not be able to get interim relief from the High Court in the pending writ petitions.

(iii) Without even waiting for the issue of notification under Section 6(1), the Authority initiated the process for change of land use and modification of the Development Plan and finalized the same within a short span of 7 days and that too without complying with the mandate of clause 6 of

the Regulations which envisages publication of notice by two of the prescribed modes. Even notice dated 20.11.2009 was got published in a small box of the newspaper "Dainik Jagran" so that the affected persons may not be able to protest against the proposed change of land use and modification of the Development Plan.

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(iv) Though not required by law, the file was sent to the Government to approve the decision for modification of the Development Plan. However, without waiting for the Government's approval, the Authority proceeded to devise the builders' scheme, issued advertisements and allotted large chunks of land measuring 60,000 square yards to 4,00,000 square yards by inviting bids.

One could appreciate that the Authority had proposed change of land use and modification of the Development Plan after it found that no one had come forward to avail the offer of allotment of land for setting up industries or major chunk of land could not be used for industrial purpose despite sincere efforts made in that regard. But, the facts brought on record unmistakably show that the whole exercise of acquisition was designed to serve the interest of the builders and the veil of public purpose was used to mislead the people in believing that land was being acquired for a public purpose i.e. planned industrial development. This is the reason why even before the issue of notification under Section 6(1), the process for change of land use was initiated and completed with unusual haste and without waiting for the Government's approval to the modification of the Development Plan, the Authority offered and allotted the acquired land to the builders for construction of multi-storeyed complexes. This was nothing but a colourable exercise of power by the State Government under the 1894 Act and in our considered view, the High Court did not commit any error by recording a conclusion to that effect. In this context, it will be

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useful to notice the observations made in State of Punjab v. Gurdial Singh (1980) 2 SCC 471. In that case, while pronouncing upon the correctness of the order passed by the Punjab and Haryana High Court which had quashed the acquisition of the respondents' land on the ground of malafide exercise of power, this Court observed:

"Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions -- is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust -- that we are accountable for its exercise -- that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

(emphasis supplied)

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The argument of the learned senior counsel that there was no pleading on the issue of colourable exercise of power merits rejection because in a number of writ petitions, the petitioners had made specific averments to this effect. For the sake of reference, paragraphs 7 and 8 of Writ Petition No.17939 of 2010-Sajid Hussain and 7 others v. State of U.P. (as contained in the copy of the writ petition filed before this Court) are extracted below:

"7. That under the impugned notification under section 4 & 6 of the Land Acquisition Act the purpose for acquiring the land has been shown to be Plan Industrial Development in District Gautam Budh Nagar but this is not correct. From the own action and conduct of respondents public purpose of Plan Industrial Development has been shown in the disputed notifications in colourable exercise of power. In fact, the respondent No.3 is transferring these plots to builders for constructing residential flats. This stands proved from the fact that though acquisition proceedings have yet not culminated to its logical end and the land has not vested in State government or the Greater Noida, the respondent No.3 has published a scheme of allotment of Group Housing/Builders Residential Plots Scheme BRS-01/2010(1) Plot Size Above 60,000/- sq mtrs. The scheme was opening on 22.1.2010 and is closing on 16.2.2010. The tenders were invited to be submitted between 10 am to 12 noon on 16.2.2010 and the technical qualification bids were to be opened on 3 pm on 16.10.2010 itself. The terms and conditions for allotment of group housing plot attached with the scheme show that the petitioner land which falls under GH-03 & GH-04 shown at Sl. No.15 & 16 and reserve price has been shown to the 10,000/- per sq. mtrs. In Dainik Jagran dated 24.2.2010 the name of successful bidders have been shown to be AIMS Golf Ltd. and Amrapali Builders on Land situate in village Shahberi and in Dainik Jagran dated 8.3.2010 further auction has been fixed for 23.3.2010 and must have been taken place by now. True copy of the scheme of allotment and the news items published Dainik Jagran dated 24.2.2010 & 8.3.2010 area being filed herewith and marked as ANNEXURE-8,

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ANNEXURE-9 & ANNEXURE-10 & ANNEXURE-11 to this Writ Petition.

8. That in the manner a fraud is being committed and played upon the poor land holders whose land has been acquired forever and the respondent no.3 making huge profits running into Crores & Crores whereas they claim to be working on no profit no loss basis."

Theoretically, Shri L.N. Rao, learned senior counsel for the State is right in saying that the change of land use from industrial to residential cannot be faulted per se because in terms of Section 6(1) read with Section 6(2)(b), the Authority is required to demarcate and develop sites for industrial, commercial and residential purposes and the Development Plan itself shows various existing and proposed land uses including for residential purpose but on a deeper examination, we are unable to accept his submission. Section 6(2) of the 1976 Act does provide for the acquisition of land in the industrial

development area by agreement or under the 1894 Act; preparation of a plan for the development of the industrial development area; demarcation and development of sites for industrial, commercial and residential purposes according to the plan and also for allocation and transfer of plots of land by way of sale or lease or otherwise for industrial, commercial or residential purposes and the Regulations do lay down detailed procedure for framing and amendment of the Development Plan but the scheme of the 1976 Act and the Regulations do not empower the Authority to manipulate the acquisition of land for a private purpose which could well be achieved by invoking the provisions of Chapter VII

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of the 1894 Act. What the Authority had done in these cases is to initiate the proposal for the acquisition of land for planned industrial development of an area of which land use is distinctly shown in the Development Plan as industrial but the real object of the entire exercise was to make available land to the builders by ensuring acquisition otherwise than by agreement so that they may not have to pay higher price to the landowners and/or their transferees.

The submission of the learned senior counsel Shri P.P. Rao that in view of the order passed in CMWP No.37512 of 2009-Amit Kumar and others v. State of U.P. and others, the High Court should not have entertained the challenge to notification issued under Section 4(1) does not commend acceptance because while dismissing the writ petitions as premature, the High Court had given liberty to the petitioners to raise all the grounds which were taken in the writ petition or the grounds which may become available after issue of notification under Section 6(1). Therefore, the absence of specific pleadings which could justify the conclusion that the acquisition of land was a colourable exercise of power by the State Government did not operate as a bar to the raising of such plea in the writ petitions filed after issue of notification under Section 6(1) read with Section

17(1).

We do not find any substance in the argument of the learned counsel for the petitioners that quashing of the acquisition proceedings should have been confined to those who had not

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accepted the amount of compensation. Once the High Court came to the conclusion that the acquisition of land was vitiated due to want of good faith and the provisions of the 1894 Act had been invoked for a private purpose, there could not have been any justification for partially sustaining the acquisition on the ground that some of the landowners or their transferees had accepted compensation by entering into an agreement with the Authority. The situation in which the people belonging to this class are placed in the matter of acquisition of their land leave little choice to them but to make compromises and try to salvage whatever they can. Therefore, even though some persons may not have resisted the acquisition and may have accepted the compensation by entering into agreements, it is not possible to find any fault in the approach adopted by the High Court.

The submission of the learned counsel that the State Government should have been allowed to proceed with the acquisition from the stage of Section 4(1) notification cannot be accepted for two reasons. Firstly, the High Court has found that the acquisition impugned in the writ petitions was a colourable exercise of power by the State Government. Secondly, in view of the judgment of the Constitution Bench in Padma Sundara Rao v. State of T.N. (supra), the State Government cannot now rely upon notification dated 10.6.2009 for the purpose of issuing fresh notification under Section 6(1).

Before concluding, we consider it necessary to reiterate that the acquisition of land is a serious matter and before

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initiating the proceedings under the 1894 Act and other similar legislations, the concerned Government must seriously ponder over the consequences of depriving the tenure holder of his

property. It must be remembered that the land is just like mother of the people living in the rural areas of the country.

It is the only source of sustenance and livelihood for the landowner and his family. If the land is acquired, not only the

present but the future generations of the landowner are deprived of their livelihood and the only social security.

They are made

landless and are forced to live in slums in the urban areas

because there is no mechanism for ensuring alternative source of

livelihood to them. Mindless acquisition of fertile and

cultivable land may also lead to serious food crisis in the

country.

In the result, the special leave petitions are dismissed.

The Greater Noida Development Authority is saddled with cost of Rs.10 lakhs for undertaking an exercise of allotment of land to

the builders in complete violation of the purpose for which the land was sought to be acquired and even before approval by the

State Government for the change of land use.

The amount of cost

shall be deposited in the Supreme Court Legal Services Committee within a period of three months from today.

We are not unmindful of the plight of large number of persons, who have made investment by booking flats etc., but,

at the same time, it is impossible to ignore that the landowners and their transferees have been deprived of their property and

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the only source of livelihood in a most arbitrary and malafide manner without following the procedure established by law. It

will be grave injustice to the people belonging to the latter category if the acquisition impugned before the High Court is

sustained only with a view to save the investment made by those who are aspiring to acquire some property from the builders.

However, it is made clear that those who have paid money to the builders for booking flats etc., shall be entitled to get back

the amount along with interest at an appropriate rate and if the builders refuse to repay the amount, then they shall be free to

avail appropriate legal remedy.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master