Reserved on 01.03.2012.
Delivered on 13.04.2012.

Case :- WRIT - C No. - 32270 of 2010

Petitioner :- Awadhesh Pratap Singh And Others
Respondent :- State Of U.P. & Others
Petitioner Counsel :- Sheshadri Trivedi,Satish Trivedi
Respondent Counsel :- C. S. C.,H.P.Dubey,H.R.Mishra,Yashwant

WITH
Case :- WRIT - C No. - 1236 of 2011

Petitioner :- Anwarul Haq And Others
Respondent :- State Of U.P. Thru' Secry., Home And Others
Petitioner Counsel :- Sheshadri Trivedi
Respondent Counsel :- C.S.C.,H.P. Dube,S.N. Verma

WITH
Case :- WRIT - C No. - 3689 of 2010

Petitioner :- Anand Prakash & Anr.
Respondent :- State Of U.P. & Others
Petitioner Counsel :- Shachindra Mishra
Respondent Counsel :- C.S.C.,H.P. Dubey,Yashwant Verma

WITH
Case :- WRIT - C No. - 20772 of 2008

Petitioner :- Raj Bahadur Patel And Others
Respondent :- State Of U.P. & Others
Petitioner Counsel :- Vishnu Gupta
Respondent Counsel :- C.S.C.,H.P. Dube

WITH
Case :- WRIT - C No. - 62708 of 2008

Petitioner :- Ram Deo And Others
Respondent :- State Of U.P. And Others
Petitioner Counsel :- Shamimul Hasnain
Respondent Counsel :- C.S.C.,H.P. Dube

WITH
Case :- WRIT - C No. - 3691 of 2010

Petitioner :- Satyanarayan & Ors.
Respondent :- State Of U.P. & Others
Petitioner Counsel :- Shachindra Mishra
Respondent Counsel :- C.S.C.,H.P. Dubey,Yashwant Verma

WITH

Case :- WRIT - C No. - 14716 of 2010

Petitioner :- Ramjas & Anr.
Respondent :- State Of U.P. Thru. Secr. Ministry Of Energy & Ors.
Petitioner Counsel :- Sachindra Mishra,Ravi Kant
Respondent Counsel :- C.S.C.,H.P. Dubey,Pankaj Kr. Shukla

WITH
Case :- WRIT - C No. - 28176 of 2010

Petitioner :- Jagdish Prasad
Respondent :- State Of U.P. And Others
Petitioner Counsel :- Shachindra Mishra,A. Tripathi,Amresh Tripathi
Respondent Counsel :- C.S.C.,H.P. Dube,Yashwant Varma

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Hon'ble Ashok Bhushan,J.
Hon'ble Mrs. Sunita Agarwal,J.

(Delivered by Hon'ble Ashok Bhushan, J.)

These eight writ petitions have been filed by the farmers of Tahsil Bara and Tahsil Karchana of district Allahabad challenging acquisition of their agricultural land for establishment of two thermal power plants; one at Tahsil Bara and one at Tahsil Karchana.

Writ petition No. 32270 of 2010 Awadhesh Pratap Vs. State of U.P. and Writ Petition No.1236 of 2011 relate to land acquisition for establishment of thermal power plant at Tahsil Bara, and other six writ petitions being writ petition No. 3689 of 2010 Anand Prakash and another Vs. State of U.P. and five other writ petitions relate to land acquisition pertaining to establishment of thermal power plant at Tahsil Karchana. In writ petition No. 32270 of 2010, Awadhesh Pratap Vs. State of U.P., counter affidavit, supplementary counter affidavit, rejoinder affidavit and supplementary rejoinder affidavit have been exchanged between the parties which is being treated as the leading writ petition. With regard to writ petitions relating to Tahsil Karchana, the reference of pleadings and facts in writ petition No. 3689 of 2010, Anand Prakash Vs. State of U.P. are sufficient to decide the writ petition relating to Tahsil Karchana.

The methodology and procedure adopted for undertaking proceedings of land acquisition for establishment of thermal power plants at Tahsils Bara and Karchana are almost similar hence, for appreciating the issues giving rise to all these writ petitions, it is sufficient to note the pleadings of writ petition of Awadhesh Pratap Singh, which is being treated as leading writ petition.

Recognising that electricity is an essential requirement, a basic human need and essential tool for socio economic development for the country, major legislative changes were brought by Parliament culminating into the enactment of Electricity Act, 2003. The Electricity Act, 2003 was enacted to consolidate the laws relating to generation, transmission, distribution,trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto. The Government of India even prior to enactment of 2003 Act has initiated power policy during the year 1991-92 for setting up power plant capacity of 1000 megawatt or more . The Government of India Ministry of Power issued a Government Order dated 10.11.1995 stating that public sector does not have adequate resources for putting up required incremental capacity and it was primarily for this reason that private power policy was introduced in order to attract domestic and foreign investment after the enactment of Electricity Act, 2003. National Electricity policy was issued by order dated 12.2.2005. A resolution dated 19.1.2005 had also been passed by the Government of India containing guidelines for determination of Tariff by bidding process for procurement of power by distribution licensee. The State of U.P. also after the enactment of Electricity Act, 2003 have framed Power Policy 2003. In the Power Policy 2003 issued by the State of U.P. it was stated that Power Sector needs

significant investment to meet the requirement of all the three areas of generation, transmission and distribution. The State also emphasised in its policy that although the State of U.P. will endeavour to create additional capacity through State owned capabilities but the substantial investments have to be brought in by private sector as well. The Power Policy also contained a stipulation that required land would be acquired for the project and transferred at the acquisition price.

Prior to enactment of Electricity Act, 2003, the electricity industry in India was controlled by two Statutes namely; Indian Electricity Act, 1910 and Electricity Supply Act, 1948. The two statutes primarily dealt with and controlled all functioning of the State Electricity Board. The U.P. Electricity Reforms Act, 1999 envisaged constitution of Electricity Regulatory Commission, the incorporation of U.P. Power Corporation Ltd. and transferred all properties and assets of U.P. State Electricity Board to U.P. Power Corporation Ltd. U.P. as well as fixation of tariff for licensee by the Commission. Under U.P. Electricity Reforms Transfer Scheme 2000 undertakings forming part of thermal generation stood transferred and vested in U.P. Rajya Vidyut Utpadan Nigam Ltd. Distribution functions of U.P. Power Corporation Ltd. was transferred and vested in four distribution companies.

Now the brief facts of leading writ petition being writ petition No. 32270 of 2010 need to be noted for appreciating the issues which have come up for consideration in these writ petitions pertaining to land acquisition proceedings.

In Writ Petition No.32270/2010, Awadhesh Pratap Singh & Ors. Vs. State of U.P. & Ors, counter affidavit has been filed by the State, Uttar Pradesh Power Corporation Ltd, M/s Prayag Raj Power Corporation Company and Jai Prakash Associates to which rejoinder affidavits have also been filed. Supplementary Affidavit, supplementary counter affidavit and supplementary rejoinder affidavit have also been filed. The facts which emerge from the pleadings in the writ petition are: The UPPCL

Ltd. the respondent no.5 in accordance with the abovementioned power policy got incorporated a Shell Company namely: Prayag Raj Power Generation Company Ltd (hereinafter referred to as the "PPGCL") which was incorporated on 12/2/2007 as a subsidiary company of the UPPCL.

The Managing Director of the UPPCL, issued an office order dated 14/2/2007, stating that for establishment of 3 Pit Head Power Projects in the State of U.P. in accordance with the mega power projects policy, Government of India three Shell companies namely: M/s Sangam Power Generation Company Ltd, M/s PPGCL and M/s Sonbhadra Power Generation Company Ltd have been constituted. Land for the power project to be established by the aforesaid companies is to be acquired with the help of private investors on the basis of competitive biddings. The Managing Director, UPPCL authorised one Shri Rakesh Trivedi, Executive Engineer, Electricity Transmission Division, Allahabad to sign all papers, resolutions and the proposals regarding land acquisition. On 20/2/2007, a proposal was submitted for acquisition of land in five Villages of Tehsil Bara through Rakesh Trivedi, Executive Engineer. A letter dated 31/5/2007, was sent by one Prashant Mehrotra, Executive Engineer, UPPCL, Lucknow sending bank drafts amounting to Rs. 9.95 crores as required by the Collector, as ten percent of estimated compensation and 10 percent for acquisition charges.

A meeting was held under the Chairmanship of Divisional Commissioner, Allahabad regarding approval of the land of Bhoomi Upyog Parishad on 02/6/2007. In the said meeting, reference of letter dated 01/6/2007 of the Managing Director, UPPCL requesting for land was referred to as well as the guidelines issued by the State Government vide its letter dated 13/11/2006. The Committee, found the land suitable for construction of Thermal Power Station. The Collector, Allahabad vide his letter dated 04/6/2007, forwarded the proposal of land acquisition to the Director, Land Acquisition, Board of Revenue U.P. Lucknow for issuance of notification under Section 4/17 of the Act, 1894. The Director, Land Acquisition, Board of Revenue, U.P. vide his letter dated 13/7/2007

send the proposal to the State Government, Secretary of Energy for issuance of notification under Section 4(1)/17 of the Act, 1894. On 27/7/2007, notification under Section 4 invoking Section 4(1)/ 17 (1) and 17 (4) was published in the Gazettee proposing acquisition of land measuring 831.772 hectares of Villages Bewra, Berooi, Jorvat, Khansemara and Kapari of Tehsil Bara. Notification under Section 4 of the Act, was published in two newspapers. Declaration under Section 6 was published in the Gazettee on 04/2/2008. Notice under Section 9 of the Act, was issued for taking possession of the land on 27/28-2-2008. A Committee constituted for determination of compensation on 12/3/2008, recommended payment of compensation for the Village Kapari at the rate of Rs. 2.5 lacs per bigha and at the rate of Rs.1 lakh for other four villages which was approved by the Divisional Commissioner on 20/3/2008. The farmers of other four villages also demanded compensation at the rate of Rs.2.5 lakhs per bigha as that of Village Kapari and started agitation. A review meeting of the Committee for determination of compensation was held on 16/4/2008 chaired by Commissioner which recommended enhancement of compensation from Rs. 1 lacs to 1.25 lacs per bigha with regard to other four villages. It was further decided to give enhanced compensation also to those farmers who had already entered into the agreement. A notice was given by the Special Land Acquisition Officer that 80% of compensation as required under Section 17 (3A) of the Act, 1894 shall be distributed in the villages on 24/4/2008. Several villagers appeared and accepted the compensation and entered into the agreement. On 24/4/2008, compensation to villagers of Villages:Jorawat, Berooi, Khansemara and Kapari (263.851 hectares) was determined and possession taken. Possession was taken of the land of Village Bewra on 09/5/2008. Again on 04/8/2008, possession of the left out land belonging to Khansemara and Bewra was taken.

PPGCL, the special purpose vehicle, filed a petition before the Uttar Pradesh Electricity Regulatory Commission for approval of RFQ (Request for Qualification) and other related documents for selecting a developer on the basis of competitive tariff. In August, 2008, PPGCL, on

behalf of five distribution companies of the State of U.P. (Distribution Licencees) issued RFQ documents for selection of developer for setting up 3x 660 MW Domestic Coal Based Generation Plant. The U.P. Regulatory Commission issued notices for considering the RFQ and RPF documents submitted by the PPGCL. Request for qualification of documents of nine bidders was accepted which was published in the Times of India on 29/9/2008, including the respondent no.7. The U.P. Electricity Regulatory Commission approved the RFQ and RPF documents with certain modifications. Three bidders namely: Reliance Power, Lanco and Jai Prakash Associates submitted request for proposal. The respondent no.7 was selected as successful bidder at the levelised tariff of Rs. 3.02. A Letter of Intent was issued by the respondent no.6 on 02/3/2009 to the respondent no.7 informing that he has been selected as a successful bidder. On 23/7/2009, a share purchase agreement was made between:

(I) UPPCL
(II) PPGCL
(III) Jail Prakash Power Ventures Ltd and;
(IV) Jai Prakash Associates Ltd.

By an agreement, UPPCL agreed to sell 100% shares of the PPGCL to the affiliate of the respondent no.7 on acquisition prices of Rs.1431898235/- towards purchase of shell shares and taking over all assets and liabilities of the companies. A Writ Petition no. 50789/2009, Vishambhar Singh & Ors Vs. State of U.P. & Ors, was filed in this Court challenging the notifications dated 27/7/2007 and 04/2/2008. In the writ petition, it was also pleaded that the Collector was insisting to accept 80% of compensation without any protest, to which the petitioners were not agreeable. The said writ petition was ultimately disposed of on 01/12/2009. In the above writ petition, son of petitioner no.4, Anwarul Haq was also one of the petitioner. On 01/12/2009, following order was passed by the Division Bench:

> *"The writ petition is accordingly disposed of with direction that in case the petitioners are eligible and recorded land owners, and have right to receive compensation, the District Magistrate shall offer 80% of the estimated compensation before taking possession of the land. The petitioners may, if they are so advised, accept the compensation under protest and thereafter wait for an award under Section 11 (1) of the Act and may also make a reference for enhancement. If, however, they agree to accept the compensation as settled under Section 11 (2) of the Act read with Rules of 1997, they will enter into an agreement and complete the formalities required under the Rules of 1997, to receive the compensation without any further right of enhancement at the rate, worked out in the subsequent meeting dated 16.4.2008. There shall be no order as to costs.."*

After the judgment dated 01/12/2009, Vishambhar Singh & Ors, have also filed contempt application in which notices were also issued and the said contempt application is said to be pending.

Some of the present petitioners, along with other farmers submitted a representation before the Collector on 28/1/2010 to be paid 80% of the compensation with protest. By conveyance deed dated 23/2/2010, UPPCL conveyed 725.788 hectares of land on consideration of Rs. 464356980/- to PPGCL. The Special Land Acquisition Officer declared award under Section 11 (1) on 16/3/2010.

Petitioners' being dissatisfied have filed the present writ petition praying for following reliefs:

i) a writ, order or direction in the nature of certiorari quashing Notification under section 4(1) of the Act dated 27/7/2007 bearing No.1907/24-P-3-2007-5(P)/07.

ii) a writ, order or direction in the nature of certiorari quashing the notification under section 6(1)/17 of the Act (contained as annexure no.2 to the writ petition).

iii) a writ, order or direction in the nature of certiorari quashing the award under section 11 (1) of the Act dated 16.3.2010.

iv) a writ, order or direction in the nature of mandamus directing the respondents not to proceed further in pursuance of the deed of conveyance dated 23.2.2010.

v) a suitable writ order or direction directing the respondents to produce the entire record of the proceedings before this Hon'ble Court.

vi) Any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the present case.

vii) Award cost of this petition to be paid to the petitioners."

Supplementary affidavit has also been filed by the petitioners bringing on record a subsequent notification dated 14/10/2011, issued under Section 4 of the Land Acquisition Act proposing to acquire 32.7059 hectares of land of Village Jorvat, Kapari, Berooi, Matarwar, Khansemra and Bewra for public purpose namely: for construction of Railway Line and for supplying coal to Thermal Power Station. The notification further stated that the land is required for the purposes of construction of railway line and for the Thermal Power Station which is under construction by the PPGCL. Inquiry under Section 5A having not been dispensed with, petitioners claim to have filed objection before the Collector.

Another writ petition which relate to thermal Power Plant of Tehsil Bara Writ Petition No.1236/2011, Anwarul Haq & Anr Vs. State of U.P., by which writ petition, the petitioners have challenged the notification dated 21/10/2008, issued under Section 4 read with Section 17(1) and 17 (4) proposing to acquire 26354 hectares of land of Village Bewra, Berooi and Kapari for public purpose namely; for Construction of Thermal Power Station by UPPCL. Declaration under Section 6 of the Act was issued on 10/8/2009. Petitioners have prayed for quashing the aforesaid notification. Award has also been declared on 20/8/2010 and the

possession of land was claimed to be taken on 29/5/2010.

Writ Petition No.3689/2010, Anand Prasad & Ors Vs. State of U.P. & Ors, and other five writ petitions relate to land acquisition proceedings of Tehsil Karchana. For deciding all the writ petitions relating to land acquisition Tehsil Karchana, it is sufficient to refer to the facts and pleadings in Writ Petition No.3689/2010 which are as follows;UPPCL as per Power Policy of 2003, of the State of U.P. and power policy of the Government of India as noted above, got incorporated a subsidiary company namely:A special purpose vehicle namely: Sangam Power Generation Company Ltd was incorporated on 13/2/2007. A proposal dated 20/8/2007, signed by Shri Rakesh Trivedi, Executive Engineer was submitted for acquisition of land in villages Bhitar, Kachra, Kachri, Garwa Kala, Khai and Devri Kala.

In response to the proposal dated 20/8/2007, the Collector vide his letter dated 22/8/2007, required to deposit 10% of the estimated compensation and 10% of the acquisition charges. Advance of Rs. 2,04,50,000/- was demanded.

Sangam Power Generation Company Ltd through its Chief Engineer, vide its letter dated 24/8/2007, deposited the amount of Rs. 2,04,50,000/- by two demand drafts which was received on 25/8/2007, by the Collector. On 19/10/2007, Director Land Acquisition, Board of Revenue forwarded the proposal to the State Government for issuing notification under Section 4(1)/17 of the Act, 1894.

Notification under Section 4(1) read with Section 17(1) and 17 (4) was published on 23/11/2007 in the Gazettee. Notification was also published in two daily newspapers namely 'Amar Ujala' and 'Amrit Prabhat'. The Sangam Power Generation Company Ltd through its Chief Engineer sent to the District Magistrate an amount of Rs. 17,97,33,007.00/- towards 80% compensation as required for issuance of Section 6 notification vide its letter dated 19/12/2007. A letter dated

19/12/2007, was sent by the Sangam Power Generation Company Ltd to the Collector, Allahabad forwarding a draft of Rs.17,97,33,007.00/- for issuance of notification under Section 6 of the Act. Notification under Section 6 of the Act, 1894 dated 03/3/2008 was published in the Gazettee declaring that the land mentioned in the schedule is needed for public purpose namely: For construction of Thermal Power Station in Tehsil Karchana. Notice under Section 9 of the Act was issued asking the tenure holders to appear on 19/4/2008.

Sangam Power Generation Company Ltd., submitted a petition before the U.P. Electricity Regulatory Commission for approving the RFQ and RFP for setting up of Thermal Power Plant at Karchana through competitive bidding process. The U.P. Electricity Regulatory Commission after issuing public notice approved the project as well as the documents with certain modifications on 26/11/2008 and 16/12/2008, and possession of land is claimed to have been taken by the respondents of the acquired land. 14 bidders were found eligible for submitting request for proposal. Approved request for proposal was issued to four bidders and after analysing the bid forms M/s J.P. Associates was selected as developer. A letter dated 28/2/2009, was issued by the State Government to the UPPCL that Jai Prakash Associates Ltd has been selected as developer on levelised tariff of Rs. 2.97 per unit. The Sangam Power Generation Company also issued Letter of Intent to the petitioners on 28/2/2009. On 23/7/2009, a share purchase agreement between UPPCL, SGPCL, JPUL and Jai Prakash Associates was also entered into. Deed of conveyance for 273.44 hectares was signed on 23/2/2010 between the UPPCL and SGPCL. Again another deed of conveyance was signed on 05/8/2010 for 239.473 hectares of land. The farmers started agitation against the acquisition of land. Award under Section 11(1) of the Act, 1894 was declared on 16/3/2010. The District Administration interacted with the agitators and the Additional District Magistrate, Allahabad wrote a note on 09/12/2010, that till all the demands of farmers are not decided, Company shall not carry on its work on the subject. Agitation of farmers continued by submitting representations to

the Government and other authorities. On 21/1/2011 violent agitations were made with regard to which police also detained certain agitators and took action. The District Magistrate, issued a letter on 21/1/2011 giving certain assurances to Punarwas Kisan Salyan Sahayta Samiti, Karchana. Assurance was given that after giving compensation at the rate of Rs. 570 per square meter, project work shall start. It was also stated that the persons taken in the police custody shall be released and no case shall be registered against them. It appears that F.I.R's were were lodged on 16/2/2011. Petitioners had filed the Writ Petition On 22/1/2010, praying for following reliefs:

> *"(i) Issue an appropriate writ, order or direction thereby quashing the Notification bearing no.3084/24-P-3-2007-35 (p)/2007 dt.23.11.2007 U/s 4 of the Land Acquisition Act (Annexure 1) and the consequent proceedings arising thereform;*
>
> *(ii) Issue an appropriate writ, order or direction thereby quashing the Notification bearing no.417/24-p-3-2008-35 (P)/2007 dt. 03.03.2008 U/s 6 of the Land Acquisition Act (Annexure 2) and the consequent proceedings arising thereform;*
>
> *(iii) Issue any other or further writ, ororder or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;*
>
> *(iv) Award the costs of the petition to the petitioner."*

Writ Petition No.20772/2008, Raj Bahadur Patel & Ors Vs. State of U.P. & Ors.

This writ petition has been filed by seven petitioners belonging to village Bhitar, Kechara, Kachary, Garhwa Kala and Deory Kala challenging the notification dated 23/11/2007, issued under Section 4 read with Sections 17 (1) and 17 (4) as well as the declaration issued under Section 6 of the Act, 1894 dated 03/3/2008,which notifications have been challenged in the leading writ petition of Anand Prakash. Facts in the writ petition of Anand Prakash's case having already been noted in detail, it is sufficient to decide this writ petition also.

Writ Petition No.14716/2010, Ramjas & Anr. Vs. State of U.P. & ors.

This writ petition has been filed by two petitioners of Village Kachari challenging the notification dated 23/11/2007 issued under Section 4 read with Sections 17 (1) and 17 (4) as well as the declaration issued under Section 6 of the Act, 1894 dated 03/3/2008.

Writ Petition No.28176/2010, Jagdish Prasad. Vs. State of U.P. & ors.

This writ petition has been filed by only one petitioner belonging to Village Kapari in which he has prayed for a direction to give compensation of land, total area 0.7960 hectare.

Writ Petition No.3691/2010, Satya Narain & Ors. Vs. State of U.P. & Ors.

This writ petition has been filed by ten petitioners belonging to Village Bhitar, Kechara, Kachary, Garva Kala and Deory Kala challenging the notification dated 23/11/2007, issued under Section 4 read with Sections 17 (1) and 17 (4) as well as the declaration issued under Section 6 of the Act, 1894 dated 03/3/2008.

Writ Petition No.62708/2008, Ram Deo & Ors. Vs. State of U.P. & ors.

This writ petition has been filed by ten petitioners belonging to Village Kachri Beerpur Khai, praying for quashing the notification dated 23/11/2007, published in the newspaper 'Amar Ujala' on 15/12/2007 issued under Section 4 read with Sections 17 (1) and 17 (4) as well as the declaration issued under Section 6 of the Act, 1894 dated 03/3/2008, published in the newspaper 'Amar Ujala' on 20/3/2008.

Learned Chief Standing Counsel has submitted the original records of the State Government pertaining to land acquisition proceedings in question both relating to land acquisition in Tahsil Bara and Tahsil

Karchana for perusal of the court.

We have heard Sri Shashi Nandan, learned Senior Advocate and Sheshadri Trivedi for the petitioner in writ petition No. 32270 of 2010, Sri T.P. Singh, learned Senior Advocate assisted by Sri Shailendra Misra for the petitioner in writ petition No. 3689 of 2010, Sri R.N. Trivedi, learned Senior Advocate and Sri M.C. Chaturvedi, learned Chief Standing Counsel have appeared on behalf of the State respondents. Sri H.R. Misra assisted by Sri H.P. Dube has appeared for the U.P. Power Corporation and Sri Yashwant Verma has appeared for the subsidiary company and private respondent Jai Prakash Associates.

We have considered the submissions of learned counsel for the parties and have perused the record. We have also gone through the original records produced by learned Chief Standing Counsel of the State pertaining to land acquisition proceedings in question.

The submissions of learned counsel appearing for the petitioners in all the writ petitions pertaining to land acquisition of Tahsil Bara and Tahsil Karchana are almost similar.

Sri Shashi Nandan and Sri Sheshadri Trivedi appearing for the petitioner in writ petition No. 32270 of 2007 raised following submissions:

1. Proceedings for acquisition of land for construction of thermal power station at Tahsil Bara and Tahsil Karchana have been initiated for the benefit of Prayag Raj Power Generation Company Ltd. which company was incorporated on 12.2.2007 much before initiation of proposal for land acquisition by U.P. Power Corporation Ltd., the fact that acquisition of land has been made for company stood proved by subsequent acts including share purchase agreement dated 23.7.2009 between U.P. Power Corporation Ltd, Prayag Raj Power Generation Company Ltd, Jay Pee Power Ventures Ltd and J.P. Associates Ltd. and deed of

conveyance dated 23.2.2010 by which U.P. Power Corporation Ltd., has conveyed 725.788 hectares of land in favour of Prayag Raj Power General Company Ltd. and 100% share of Prayag Raj Power Generation Company having been purchased by M/s J.P. Associates, the private company, the intention and object for entire acquisition proceedings is explicit i.e. the entire proceeding was undertaken to acquire the land for the private company. The acquisition of land being acquisition of land for a company, the procedure as required by Part VII of the Land Acquisition Act, 1894 ought to have been followed which having not been followed in the acquisition in question, the entire acquisition proceedings deserve to be set aside.

2. The proceedings for acquisition of land being for a company, the acquisition could neither have been termed as acquisition for "public purpose" nor the acquisition could have been undertaken by the State in accordance with Part II of the Land Acquisition Act. The entire gamut of fact and ultimate transfer of land to a private company reveals that acquisition has been undertaken to serve the private purpose.

3. The entire proceeding for acquisition of land initiated by the State by issuance of notification under section 4 dated 27.7.2007 was colourable exercise of power by the State and a fraudulent exercise hence,the entire proceedings deserve to be quashed and set aside.

4. The acquisition being undertaken for industrial purpose, it was not such an urgent proceeding so as to invoke provision of Section 17(1) and Section 17(4) of the Land Acquisition Act. According to details which have been brought on record by the respondents, the construction of thermal power plant was to take several years hence, it was not a case where inquiry under section 5-A could have been dispensed with. The State Government without

application of its mind and without there being relevant materials on record has invoked its power under section 17(1) 17 (4). The State Government did not apply its mind to the relevant facts which was necessary to be considered before invoking the power under section 17(4).

5. In conducting the land acquisition proceedings there has been violation of procedure prescribed. No proper notice was given under section 9 of the Act.

6. The petitioners were not paid compensation before taking possession inspite of the order of this Court dated 1.12.2009 passed in writ petition No. 50789 of 2009 Vishambhar Singh and others Vs. State of U.P. And others, 80% estimated compensation was not given. The amount of compensation given to the petitioners of Village Bewra and Khan Semra are not adequate.

Sri T.P. Singh, learned Senior Advocate in support of the writ petition No. 3689 of 2010 and other writ petitions relating to Tahsil Karchana also adopted the above submissions and further submitted that compensation which was offered to the villagers of Tahsil Karchna was not adequate and the same was agitated by the farmers on which an agreement was arrived by District Magistrate, Allahabad where he in writing had accepted the nine demands raised by the farmers; one of which was that compensation shall be paid at the rate of 570/- per square meter. The respondents are estopped from backing out the promise of making payment of compensation at the enhanced rate and accepting other demands as was accepted by the District Magistrate in writing on 21.1.2011, which agreement has been brought on record as Annexure SA-11 to the supplementary affidavit filed in writ petition No. 3689 of 2010. It is further submitted that according to the guidelines of the Government of India dated 19.1.2005 bidding process was to be undertaken for selecting the developers, which formalities were required to be completed in several months. Referring to the guidelines dated

19.1.2005, he submits that annexure-1 to the said guidelines indicates that entire bid process has to be completed in 510 days hence, there was no occasion to dispense with the inquiry under section 5A. He further submits that the Government of India has already issued the guidelines on 19.1.2005 and proceedings for acquisition of land for thermal power station could be started after two years. There is complete take over of the company by J.P. Associates and complete transfer of all properties of Sangam Power Generation Company, which is nothing but a camouflage to give colour to the acquisition as part II acquisition whereas it ought to have been undertaken under part VII of the Act. It is further submitted that project at Tahsil Karchna has not even started. The petitioners are still in possession and cultivating their land and have not received any compensation.

Sri R.N. Trivedi, learned Senior Advocate, refuting the submissions of learned Counsel for the petitioners as noted above, submitted that there is no error in land acquisition proceedings and all the writ petitions deserve to be dismissed.

Sri Trivedi submitted that electricity is now an acknowledged necessity for human development. He submits that right to electricity has now become a fundamental right which has to be read under Article 21 of the Constitution of India. He submits that Central Government had framed Electricity Policy under the Electricity Act, 2003, which emphasises on privatisation of electricity. He submits that under the Electricity Policy, the State has to acquire the land and provide it for establishment of power plants. The developers were to be selected after floating global tenders on the basis of competitive bids. Competitive bids for a revised Tariff is in the interest of consumers which have to receive electricity on an uniform rate. It is submitted that the policy contemplated special purpose vehicle for carrying out all necessary steps. Refuting the submission of learned Counsel for the petitioners that acquisition is for a company hence, part VII of the Act ought to have been resorted, it is submitted that the present is an acquisition under the

scheme of the Government and is fully covered by public purpose as defined under section 3(f) of the Act. Relying on Section 3(f) (iii), it is contended that under Scheme framed by the Government, land for planned development from public fund can be acquired which can be subsequently disposed of. He submits that in the present case, the land was identified by the U.P. Power Corporation Ltd., which submitted the proposal for acquisition of land and the company never identified the land or submitted any proposal. The fund for payment of compensation was provided by the U.P. Power Corporation and its wholly subsidiary companies, which was a public fund. It is submitted that according to power purchase agreement, the selected bidder is under obligation to provide 90% electricity to the distribution companies hence, the acquisition cannot be said for a company rather it was acquisition for public purpose. Bid documents were approved by U.P. Electricity Regulatory Commission under statutory provisions after adopting a fair and transparent procedure. The selected bidder was not even in existence when the request for qualification was issued. The policy of the Government of India dated 19.1.2005 is referable to sections 61 and 62 of the Electricity Act, 2003. The electricity policy of the Government of India as well as the State of U.P. does not contravene any of the proceedings of the Land Acquisition Act, 1894. The coal linkage and water linkage to the J.P. Associates have already been granted. It is further submitted that acquisition in question is a public purpose acquisition within the meaning of section 3(f) of the Act. Generation of electricity in the State of U.P. where electricity generation is much below the required demand, is an urgent necessity and mere fact that the project is to be implemented ultimately by private company does not detract the acquisition in question from public purpose acquisition. He submits that notification dated 27.7.2007 clearly mentions that land acquisition is for construction of thermal power station at Tahsil Bara. It is further submitted that in the bottom of the notification in Hindi version, it has been clearly mentioned that acquisition is for construction of thermal power station through U.P. Power Corporation Ltd., whereas in English version construction of thermal power station only mentioned. In

event of conflict between Hindi and English version, the Hindi version shall prevail, Hindi being official language in the State of U.P. It is further submitted that fund for land acquisition has been provided by U.P. Power Corporation Ltd. and its wholly subsidiaries companies. The fund is pubic revenue and the acquisition is thus public purpose acquisition. The fund having not been provided by a private company, the acquisition is not acquisition for a company. The selected bidder being not in picture at the time when Section 4 or Section 6 notification was issued, the acquisition in question cannot be said to be for respondent no. 7 and it was a public purpose acquisition.

The allegations pertaining to colourable exercise of power has also no leg to stand. The State Government undertook the proceedings of land acquisition on the request made by U.P. Power Corporation Ltd. for establishment of thermal power plant in accordance with the policy of the Central Government and the State Government. All steps towards selection of bidder has been undertaken according to the policy. Neither there are sufficient allegation of fraud or colourable exercise of power nor there are materials to support any such allegations. The acquisition is not for the exclusive benefit of the company rather the acquisition is for the benefit of public. No agreement under section 41 was ever executed.

Refuting the submissions of learned Counsel for the petitioners that sections 17(1) and 17(4) have wrongly been invoked, it is contended that construction of thermal power plant was an urgent need looking to dire necessity of electricity to meet the demand in the state of U.P. The Electricity Act, 2003 as well as the Central Electricity policy have already emphasised on inviting private participation to establish power plant and the project was to be implemented in the time bound programme hence, it was a fit case for invoking the provisions of Sections 17(1) and 17(4). The project being a time bound project was not a normal project of acquisition for residential or industrial purpose hence, is different from those cases where it was held that for residential and industrial purpose sections 17(1) and 17(4) should not normally be invoked. No error has

been committed by the State in invoking provisions of section 17(1) and 17(4) of the Act.

Declaration under section 6 was issued on 4.2.2008 and the possession was also taken in April-May, 2008, whereas the writ petition challenging the acquisition has been filed in May, 2010, and majority of land holders have already taken compensation. The present is a case which does not require any interference with the land acquisition proceedings. It is submitted that out of 992 land holders including the petitioners, 919 have accepted compensation. The award having already been made prior to filing of the writ petition, the petitioners are not entitled for any relief pertaining to the land acquisition.

Sri H.R. Misra and Sri H.P. Dubey appearing for the U.P. Power Corporation have adopted the submissions made by learned Senior Advocate on behalf of the State.

Sri Yashwant Verma, learned counsel appearing for the respondent no. 7 also adopted the submissions of Sri R. N. Trivedi, learned Senior Advocate. It has been further submitted that respondents no. 6 and 7 has been selected as successful bidder after going through the transparent procedure. It is submitted that respondent no. 7 was not in picture at the time of acquisition of land. He submits that the respondent no. 7 has come into picture subsequent to completion of acquisition and vesting of the land in the State. It is submitted that the respondent no. 7 after issue of letter of intent has entered into various agreement. It is submitted that share purchase agreement and deed of conveyance have been executed much before filing of the writ petition. The respondent no. 7 has incurred huge expenditure of more than 1400 crores towards the project. Construction at the project site having started and various contracts for project having been issued and heavy expenditure incurred, the petitioners cannot be permitted to challenge the impugned acquisition and the writ petition deserves to be dismissed. The entire process of selecting the bidder was made with public notice and

participation of all interested parties.

Learned counsel for the parties have referred to and relied various judgements of the apex Court and this Court which would be hereinafter referred to while considering the submissions in details.

From the pleadings of the parties and submissions of learned Counsel for the parties as noted above, following are the issues which arise for consideration in these writ petitions:

1. Whether acquisition in question is a public purpose acquisition or is an acquisition for a company ?

2. Whether acquisition in question is covered by the definition of public purpose acquisition within the meaning of Section 3(f) (iii) or is covered by exclusionary clause which excludes acquisition of land for companies.

3. Whether the compensation to be awarded consequent to the acquisition has been paid out of public revenue?

4. Whether the land acquisition proceedings were carried out by the State in colourable exercise of powers?

5. Whether invocation of section 17(1) and Section 17(4) while issuing notification under section 4 dated 27.7.2007 by the State is invalid?

6. Whether there was sufficient material for forming subjective satisfaction by the State in exercise of its power under sections 17(1) and 17(4) and as to whether the State has applied its mind on the relevant materials before invoking sections 17(1) and 17(4)?

7. Whether the petitioners are entitled for the relief of quashing the notifications despite they having challenged the land acquisition proceedings more than two years after issuance of declaration under section 6?

8. Whether the relief to the petitioners can be denied in view of subsequent developments taken towards implementing the project of thermal power station in which huge expenditure have been undertaken including steps towards development of land, construction of plant and machinery?

9. Whether the acquisition has lapsed as per section 11-A of the Land acquisition Act?

10. To what reliefs, the petitioners are entitled?

The first three issues as noticed above being interrelated are being considered together. The preamble of the Land Acquisition Act, 1894 states "*An Act to amend the law for the acquisition of land needed for public purposes and for Companies*" The word "public purpose" has been defined in Section 3 (f). Public purpose as defined in section 3(f) is an inclusive definition. Various sub-clauses are only enumerative and not exhaustive as to what would fall within the definition of public purpose. Public purpose would mean a purpose, which is beneficial to the community at large as opposed to a particular interest of individuals. As notice above, the Land Acquisition Act, 1894 was enacted to amend the law for the acquisition of land needed for public purposes and companies. The provisions of Land Acquisition Act, 1894 were substantially amended by U.P.Act No. 68 of 1984. The amendments were made in section 6, 3,17 and other sections of the Act which shall hereinafter be shortly noticed. Under the Act Part II relates to public purpose acquisition, Part VII relates to acquisition of land for companies. The procedure and manner of acquisition both the acquisition for the "companies" or for "public purpose" have to be found out from the scheme as delineated by

the Act. The amendments which were brought by Act No. 68 of 1984 were undertaken on the basis of recommendations of Law Commission, the Land Acquisition Review Committee as well as proposals from State Governments, institutions and individuals. It is useful to note the object and purpose of the 1984 amendments which are as follows:

> *"**Prefatory Note-** Statement of Objects and Reasons.- With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardships to the affected parties and renders unrealistic the scale of compensation offered to them."*

It is also useful to note amendments brought in sections 3(f),4,6,17,39. Following is the tabular chart of unamended and amended provisions of the above sections:

Before 1984 Amendment	**After 1984 amendment**
3 (f) the expression "public purpose" includes the provision of village-sites in districts in which the appropriate Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision; and	3 (f) the expression "public purpose" includes- (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites; (ii) the provision of land for town or rural planning; (iii) the provision of land for

Before 1984 Amendment	After 1984 amendment
	planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; (iv) the provision of land for a corporation owned or controlled by the State; (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State; (vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;

Before 1984 Amendment	**After 1984 amendment**
	(viii) the provision of any premises or building for locating a public office, (**but does not include acquisition of land for companies**);
4 (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.	4 (1) Whenever it appears to the appropriate Government the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice , being hereinafter referred to as the date of the publication of the notification).
6. Declaration that land is required for a public purpose. - (1) Subject to the provision of Part VII of this Act, [when the [appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2)], that any particular land is needed for public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (I) irrespective of whether one report or different reports has or have	6. Declaration that land is required for a public purpose. - (1) Subject to the provision of Part VII of this Act, [appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (I) irrespective of whether one report or different reports has or have been made

Before 1984 Amendment	**After 1984 amendment**
been made (wherever required) under section 5A, sub-section (2)]; [Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), shall be made after the expiry of three years from the date of such publication ; Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. (2) [Every declaration] shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and , where a plan shall have been made of the land, the place where such plan may be inspected. (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose of for a Company, as the case may be; and after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.	(wherever required) under section 5A, sub-section (2); Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification; or (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:
17. Special powers in cases of urgency. – (1) In cases of urgency, whenever the [appropriate Government], so directs, the Collector, though no such award	17. Special powers in case of urgency. – (1) In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award

Before 1984 Amendment	After 1984 amendment
has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon [vest absolutely in the [Government], free from all encumbrances. (2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in the sub-section (1) and with the previous sanction of the [appropriate Government], enter upon and take possession of such land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances: (3) In every case under either of the preceding sub-section the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding	has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1). [take possession of any waste or arable land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

Before 1984 Amendment	**After 1984 amendment**
compensation for the land under the provisions herein contained. [(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1)].	
39. Previous consent of appropriate Government and execution of agreement necessary.- The provisions of sections 6 to 37 (both inclusive) and sections shall not be put in force in order to acquire land for any company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned.	39. Previous consent of appropriate Government and execution of agreement necessary. - The provisions of sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive)] shall not be put in force in order to acquire land for any company under this Part, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

As noticed above, section 4 prior to its amendment by 1984 Amendment Act, only mentioned public purpose. The acquisition thus were contemplated only for public purpose whether to serve the public purpose as mentioned in Section 3(f) or to serve purpose of the company. Apex Court in 1993(4) SCC 255 **Shyam Nandan Prasad Vs. State of Bihar** had laid down that acquisition of land for company is also in substance for pubic purpose. Following was laid down in paragraph 21:

> *"21. Now here the distinction is made between a public purpose and a purpose for the company. The acquisition of land for a company is in substance for a public purpose as all those activities mentioned in Section 40 such as constructing dwelling houses and*

> *providing amenities for the benefits of workmen employed by it and construction of some work for public utility etc. serve the public purpose. The acquisition for the company and the purpose for it, can well be investigated under Section 5-A or Section 40, necessarily after the notification under Section 4. Reference may usefully be made to Babu Barkya Thakur v. State of Bombay (now Maharashtra), AIR 1960 SC 1203. It was the conceded case before the High Court that there could be no acquisition for the respondent-Society without provisions of Sec. 40 of the Act being involved and complied with. In Babu Barkya's case supra too, this Court has taken the view that as provided in Section 39, the machinery of the Land Acquisition Act beginning with Section 6 and ending with Sec. 37 shall not be put into operation unless two conditions precedent are fulfilled, namely, (i) the previous consent of the appropriate Government has been obtained and (ii) an agreement in terms of Section 41 has been executed by the Company. Such consent could be given if it was satisfied on the report of the enquiry envisaged by Section 5-A(2) or enquiry held under Section 40 itself that the purpose of the acquisition is for purposes as envisaged in Section 40. In this state of law, the plea set up on behalf of the appellants that when their Society could not be treated either as a private or a Government company, was no company at all so as to remain bound to comply with Chapter VII of the Act, is of no substance. The Society as a company is bound to satisfy the requirements of Section 40 before taking aid of Sections 6 to 37 of the Act to promote its needed acquisition."*

Thus, section 4 before amendment used only expression "for any public purpose" whereas in section 6 both the expressions "for public purpose" or "for company" were used. The amendments made by 1984 Amendment Act clearly separated the acquisition "for public purpose" and acquisition "for company" from the stage of issuance of notification under Section 4 itself. For acquisition for a company compliance of part VII as well as compliance of Land Acquisition (Companies) Rules, 1963 was made necessary. The purpose of inquiry under the Land Acquisition Rules, 1963 and part VII has to be examined. The State having itself undertaken numerous welfare activities, acquisitions for public purpose by State are increasing day by day. The land which is available specially

the agricultural land is limited, more strict inquiry and rigorous procedure has been envisaged and contemplated by 1984 Amendment. At this juncture, it is necessary to refer to Rules 4 and 5 of the Land Acquisition (Companies) Rules, 1963. Various requirements of Rule 4 indicate that normally the request of the company for acquisition is not to be accepted unless it has made best endeavour to find out the land made all reasonable efforts to get such lands by negotiation on payment of reasonable price. The area of land proposed to be acquired is not excessive and if the land proposed to be acquired is a good agricultural land , no alternative suitable site is to be found. The inquiry under Rule 4 is envisaged with the object that no agricultural land be acquired if any suitable site can be found. The obligation to find suitable site has been placed on the Government which shall obtain a report from the Collector on the above mentioned issues.

Another noticeable change which has been brought by 1984 amendment is the amendment in section 17. In unamended Section 17 in cases of urgency whenever the appropriate Government so directs, the Collector could have taken possession of any land needed for public purpose or for a company. After amendment, in Section 17, the words "or for a Company" have been deleted. Thus, for an acquisition for a company, Section 17 is no more available. The Legislative intent is that for acquisition for company urgency clause is not to be invoked. The Legislature thus, does not treat the acquisition for a company as an urgent acquisition. The statement of objects and reasons give clear Legislative intendment for interpreting the amendments brought in section 3(f), 4, 6 and 17. The amendments in section 39 also re-enforces the Legislative intendment that in an acquisition for a company section 17 is not available. Earlier Section 39 provided that provisions of sections 6 to 37 shall not be put in force in order to acquire the land for any company unless the previous consent of the appropriate Government is obtained and an agreement is executed. Section 17 was included in section 39. Thus, before amendment section 17 was permissible to be used after previous consent of the Government is obtained and an

agreement is executed but, deletion of section 17 from section 39 makes the intention clear that Section 17 is not available for acquisition for a company.

After the 1984 Amendment, the Legislative scheme is clear that acquisition for a company can only be made in accordance with part VII and according to the statutory scheme acquisition for companies is not to be treated acquisition for public purpose since section 4 as amended by 1984 Act separately refers to public purpose acquisition and acquisition for companies. Section 3(f) as amended by 1984 act provides as follows:

> *"3 (f) "public purpose" includes- (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;*
>
> *(ii) the provision of land for town or rural planning;*
>
> *(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;*
>
> *(iv) the provision of land for a corporation owned or controlled by the State;*
>
> *(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;*
>
> *(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;*

> *(vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;*
>
> *(viii) the provision of any premises or building for locating a public office,*
>
> *but does not include acquisition of land for Companies;"*

The submission which has been pressed by learned Counsel for the petitioner is that since section 3(f) as amended by 1984 Act contains an exclusionary clause which excludes acquisition of land for companies from the definition of public purpose, any acquisition for company has to go out of definition of public purpose as defined under section 3(f).

Sri R.N. Trivedi, learned Senior Advocate appearing for the State has placed reliance on Section 3(f) (iii) to contend that acquisition under challenge is acquisition under a scheme and policy of the Government and acquisition is not for a company. A perusal of Section 3(f)(iii) specifically includes the provisions of land for planned development of land from public fund in pursuance of any scheme or policy of Government. It is useful to refer to the scheme or policy which is being claimed in the present case under which the land is sought to be acquired as per case of the State. As noted above, Electricity Act 2003 was enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity. It is useful to refer to statement and objects of 2003 Act, which clearly spelt out policy of encouraging private sector participation in generation, transmission and distribution. Followings were statement of objects and reasons:

> *"3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act,*

> *1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commissions Act, 1998 in a new self contained comprehensive legislation arose. Accordingly it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalised after extensive discussions and consultations with the States and all other stakeholders and experts."*

The State of U.P. in its affidavit has referred to power Policy 2003 of State of U.P. The Power Policy 2003 noticed the grim state of power sector in U.P. It mentions that households electrification level in State of U.P. are 32% as against the national level of 56% and the situation is far worse in the rural areas where the household electrification level is 20%. Paragraph 3.2.1 pertains to New Capacity Addition, which provides as follows:

> " ***3.2.1 NEW CAPACITY ADDITION***
>
> *The objective of GOUP is to break this vicious cycle at several levels. The sector needs significant investments to meet the requirements in all the three areas of generation, transmission and distribution. Considering the state of finances of GOUP and the various state owned power utilities, though the GOUP will endeavor to create additional capacity through state owned utilities, it is evident that substantial investment has to brought in by the private sector as well."*

Under section 3 of the Electricity Act 2003, the Central Government had also notified the National Electricity Policy. The Central Electricity Policy also has emphasised on private sector participation in

paragraph 5.8, which is to the following effect:

> ***"5.8 FINANCING POWER SECTOR PROGRAMMES INCLUDING PRIVATE SECTOR PARTICIPATION***
>
> *5.8.1 To meet the objective of rapid economic growth and "power for all" including household electrification, it is estimated that an investment of the order of Rs.9,00,000 crores at 2002-03 price level would be required to finance generation, transmission, sub-transmission, distribution and rural electrification projects. Power being most crucial infrastructure, public sector investments, both at the Central Government and State Governments, will have to be stepped up. Considering the magnitude of the expansion of the sector required, a sizeable part of the investments will also need to be brought in from the private sector. The Act creates a conducive environment for investments in all segments of the industry, both for public sector and private sector, by removing barrier to entry in different segments. Section 63 of the Act provides for participation of suppliers on competitive basis in different segments which will further encourage private sector investment. Public service obligations like increasing access to electricity to rural households and small and marginal farmers have highest priority over public finances."*

One of the main objectives of the Central Government Electricity Policy was supply of reliable and quality power to specified standard in an efficient manner and at reasonable rates. The policy aimed competitive tariff rate in providing electricity to the consumers at reasonable rates. The Government of India vide its resolution dated 19.1.2005 issued guidelines for determination of Tariff by bidding process for procurement of power by distribution licensees. The guidelines provide for preparation for inviting bids in accordance with the guidelines and with the approval of appropriate Regulatory Commission. The policy also contemplated the transfer of project site to the successful bidder. Paragraphs 2.1,3.1 (i), 3.2 of the Resolution dated 19.1.2005 being relevant, are quoted below:

> " ***2. Scope of the Guidelines***

2.1. These guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for procurement of electricity by distribution licensees (Procurer) for:

(a) long-term procurement of electricity for a period of 7 years and above;

(b) Medium term procurement for a period of upto 7 years but exceeding 1 year.

Explanation: For the purpose of these Guidelines, the term 'Procurer(s)' shall mean, as the context may require, the distribution licensee(s), or the authorised representative of the licensee(s) or a Special Purpose Vehicle (SPV) constituted for the purpose of carrying out the bidding process. SPV shall be a company established under the Indian Companies Act 1956, authorized by the distribution licensee(s) to perform all tasks for carrying out the bidding process in accordance with these Guidelines. The distribution licensee(s) may also entrust initial project preparation activities (proposed to be undertaken before completion of the bid process) to the SPV. The SPV may be transferred to the successful bidder selected pursuant to the bid process.

3.1. To expedite the bid process, the following conditions shall be met by the procurer:

(i) The bid documentation shall be prepared in accordance with these guidelines and the approval of the appropriate Regulatory Commission shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. In such cases, an intimation shall be sent by the procurer to the appropriate Regulatory Commission about initiation of the bidding process.

3.2 In order to ensure timely commencement of supply of electricity being procured and to convince the bidders about the irrevocable intention of the procurer, it is necessary that various project preparatory activities are completed in time. For long-term procurement for projects for which pre-identified sites are to be utilized (Case 2), the following project preparatory activities should be completed by the procurer, or authorized representative of the procurer, simultaneously with bid process adhering to the milestones as indicated below:"

The present is a case where U.P. Power Corporation submitted application for acquisition of land for the purpose of establishment of

thermal power plants. Copy of the proceeding of the Committee headed by the Divisional Commissioner for considering the suitability of land as per proposal of the U.P. Power Corporation has been brought on record as Annexure-C.A.-12 to the counter affidavit of the State, which noticed the application by the U.P. Power Corporation dated 1.6.2007 for acquisition of land in Tahsil Bara is in accordance with the policy of Government of India of ultra power project as per guidelines of the State of U.P. dated 13.11.2006. Thus, the request for acquisition of land was in accordance with the scheme and power policy of the State of U.P. As well as the Government of India.

The submission which has been pressed by learned Counsel for the petitioner is that due to exclusionary clause which is contained in the end of section 3(f) to the effect ***" it does not include acquisition of land for companies"*** shall exclude acquisition of land which is for a company even if land is to be acquired under some scheme or policy. Per contra, the submissions of learned counsel for the State is that exclusionary clause shall be applicable only when the acquisition is for the benefit of the company and when it is a public purpose acquisition, the exclusionary clause shall not be applicable. Sri Trivedi submits that section 3(f) (iii) is in two parts, the main part provides for acquisition of land for planned development from public fund in pursuance of any scheme or policy of the Government and the second part contemplates subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development. The scheme as delineated by section 3(f) (iii) indicates the concept of subsequent disposal, which comes into picture after completion of the acquisition. Thus, if acquisition is for companies, the exclusionary clauses shall be clearly applicable. For example if a company makes an application for acquisition of land for carrying out its project, the exclusionary clause shall be applicable but when the land is acquired by the State under a scheme or policy and thereafter it is disposed of subsequently, whether subsequent disposal in favour of a company is prohibited, is a question to be answered. The concept of subsequent

disposal contained in section 3(f) (iii) is with object of *"securing further development as planned"*. When further development as planned can be carried out by lease, assignment or outright sale whether although an individual or a partnership firm or a consortium can come forward for carrying out the project and company is prohibited by virtue of exclusionary clause needs to be answered. What is excluded by exclusionary clause in section 3(f) (iii) is *"acquisition of land for companies"* Thus, if the acquisition is made for a company, the exclusionary clause shall come into play but if the acquisition is not for a company but for the Government or Corporation owned or controlled by the State, the exclusionary clause may not come into play. In the present case, acquisition proceedings were undertaken after identification of the land by U.P. Power Corporation and submission of the application by U.P. Power Corporation dated 1.6.2007, which is a Corporation owned or controlled by the State within the meaning of section 3(cc) of the Act. But we hasten to add that in appropriate cases, the Court can go behind the fact as they appear on the face of it to find out as to whether in reality the acquisition is for a company and a façade of acquisition under scheme or policy has been projected and to found out what is the real purpose of acquisition by lifting the veil in a case where ostensible purpose of the acquisition is an acquisition for company and only a pretence or colour of acquisition under a scheme has been made, the same can be termed as colourable exercise of power and invalidated. Reverting to the facts of the present case, it is to be noted that after issuance of declaration under section 6 and after taking possession of the land on 24.4.2007/2.5.2007, an advertisement was issued by the Prayag Raj Power Generation Company as a special purpose vehicle for global invitation for request for qualification in the month of August 2010. The bids were invited from a single entity or multi entity or a consortium. The Global Invitation for Request for Qualification which has been filed as Annexure-8 to the counter affidavit of respondent no. 7 defines the bidders as follows:

"***The Bidder:*** *The bidder may be a single entity or a*

multi entity consortium, coming together to implement the project. Consortium as whole must have necessary technical and financial expertise to execute large projects of this size. The members shall be jointly and severally responsible. The qualifying requirements are as under."

Thus, the bidder who was invited to submit Request For Qualification could have been a consortium of individual, a partnership or a company. Thus, it cannot be said that the disposal of land was to be made to a company and the acquisition was for company only. The subsequent disposal as contemplated under section 3(f) (iii) is an enabling power given to the State for carrying out further development. No such restriction can be read in the said enabling power as to mean that in subsequent disposal for carrying out development a company is prohibited although as stated above, the company is excluded for acquisition under first part of section 3(f) (iii). As noted above, the guidelines issued by the Government of India for determination of Tariff by bidding process contemplated a whole procedure for selecting the developer for setting up power generation plant. The bid document pertaining to request for qualification and request for proposal were required to be approved by the U.P. Electricity Regulatory Commission after public notice. From the materials on the record including the orders passed by U.P. Electricity Regulatory Commission, the request for qualification and request for proposal as submitted by Prayag Raj Power generation Company were approved by U.P. Electricity Regulatory Commission after public notice and after hearing several interested parties. Thus, a transparent process for inviting bids and finalising bid was adopted and it cannot be accepted that whole proceeding was engineered in a manner so as to transfer the land to respondent no. 7. On the date when section 4 notification was issued or declaration under section 6 was issued, the respondent no. 7 i.e. selected bidder was not even in picture since the bid was submitted by respondent no. 7 after advertisement was issued calling upon interested parties on 8.8.2008 for submitting request for qualification.

Section 3(f) (iii) has to be interpreted in a manner to give full effect to economic development and optimum utilisation of resources available. A restrictive interpretation shall lead to incapacitating economic development. Purposive interpretation has to be given so as the object and purpose of the provision be carried out as per the judgment of the apex Court in 1991 (3) SCC 67 **Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by LRS & others.** Paragraphs 17 and 23 being relevant are quoted below:

> *"**17**. I am in respectful agreement with the conclusion arrived at by the High Court. It cannot be disputed that a contract which has a tendency to injure public interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. It is contrary to the concept of public policy to contend that it is immutable, since it must vary with the varying needs of the society. What those needs are would depend upon the consensus value-judgments of the enlightened section of the society. These values may sometimes get incorporated in the legislation, but sometimes they may not. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.*
>
> ***23.** In the face of the concurrent findings with which we agree, I have no doubt in our mind that the contract relating to the payment of the amount is not*

> *severable from the agreement to promote the cause of Sajjid Yar Jung by wielding the influence the plaintiff had. Every agreement of which the object or consideration is unlawful is void. The consideration or object of an agreement is unlawful when the court regards it as opposed to public policy. If anything is done against the public law or public policy that would be illegal in as much as the interest of the public would suffer in case a contract against public policy is permitted to stand. Public policy is a principle of judicial interpretation founded on the current needs of the community. The law relating to public policy cannot remain immutable. It must change with passage of time. A bargain whereby one party is to assist another in recovering property and is to share in the proceeds of the action and such assistance is by using the influence with the administration, irrespective of the fact that the persons intended to be influenced are not amenable to such influence is against protection and promotion of public welfare. It is opposed to public policy. In this view, we would hold that the plaintiff cannot enforce the agreement to recover the amount from the respondents."*

When there is an acquisition for a company, the application for land acquisition is submitted by the company after identifying the land and the entire compensation is to be paid from the funds of the company. An agreement under section 41 is required to be entered by the company with the Government. In an acquisition for company the benefits are predominantly for the company. Coming to funds which were utilised for payment of compensation in the present case, the materials have been brought on record to indicate that funds were provided by the U.P. Power Corporation and its subsidiary companies. The State in its counter affidavit has filed a letter dated 21.5.2007 of Executive Engineer U.P. Power Corporation by which bank daft of Rs. 9.95 crores were submitted to the Collector Allahabad towards deposit of 10% of the estimated compensation and 10% of acquisition expenses. The funds which were provided by the U.P. Power Corporation are funds out of public revenue. Section 6(1) second proviso as well as Explanation 2 are relevant in this context. Section 6(1) is quoted below:

*"**6. Declaration that land is required for a public purpose. -** (1) Subject to the provision of Part VII of this Act, appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (I) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2);*

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues."

The fund which were provided by U.P. Power Corporation are the funds paid out of public revenue as per explanation 2 of Section 6.

At this juncture, it is relevant to notice the judgment of the apex Court reported in (2003) 10 SCC 626 **Pratibha Nema and others Vs. State of M.P. And others**, where the apex Court has laid down that real point of distinction between public purpose acquisition and the acquisition for company is a source of funds to cover the cost of acquisition. Paragraphs 21 and 22 of the judgements are quoted below:

> "***21***. *'Company' is defined to mean by Section 3(e) as (i) a Company within the meaning of Section 3 of the Companies Act other than Government Company, (ii) a Society registered under the Societies Registration Act other than a Co-operative Society referred to in clause (cc) and (iii) a Co-operative Society governed by the law relating to the Co-operative Societies in force in any State other than a Co-operative Society referred in Clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in Section 38-A is also deemed to be a Company for the purposes of Part VII. In order to acquire land for a Company as defined above, the previous consent of the appropriate Government is the first requirement and secondly the execution of agreement by the Company conforming to the requirements of Section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate Government unless it is satisfied that (1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provision of amenities connected therewith; (2) that the acquisition is needed for construction of some building or work for a Company which is engaged or about to engage itself in any industry or work which is for a public purpose; and (3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by Section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of acquisition is borne by and paid to the Government by the Company concerned. Thus, it is seen that even in a case of acquisition for a Company, public purpose is not eschewed. It follows, therefore, that the existence*

or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Court in Srinivasa Co-operative House Building Society Limited v. Madam G. Sastry at paragraph 12:

"...In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds..."

The legal position has been neatly and succinctly stated by Wanchoo, J. speaking for the Constitution Bench in R.L. Arora v. State of Uttar Pradesh . This is what has been said:

"Therefore, though the words 'public purpose' in Sections 4 & 6 have the same meaning, they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company under Section 6. In one case, the notification under Section 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is for a company, the compensation would be paid wholly by the company. Though, therefore, this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be

> *primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in Pandit Jhandu Lal v. State of Punjab ..... It is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply."*
>
> ***22.*** *Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the deceive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position."*

From the facts as noticed above and the observations made above, the following factors emerge from pleadings of the parties and submissions of learned counsel for the parties.

The application for acquisition for land in question was submitted by U.P. Power Corporation on 1.6.2007. The land which was sought to be acquired was identified by the U.P. Power Corporation. The proceedings for acquisition of land were initiated under the Power Policy of the State of U.P. as well as Mega Power Policy and National Power Policy of the

Central Government. The entire compensation and expenses of acquisition were paid by U.P. Power Corporation and its subsidiary companies namely; Prayagraj Power Corporation. Thus, the funds for compensation were provided out of public revenue within the meaning of Explanation 2 of Section 6 (1) of the Act. The respondent no. 7 who has been selected as developer on the basis of competitive bid was not in picture at the time of issuance of notification under section 4 and declaration under section 6 as well as taking possession of the land by the State. No agreement under section 41 of the Act were entered by the State with any company.

According to power purchase agreement dated 21.11.2008 executed between five DISCOMS and Prayagraj Power Generation Company Ltd. for a period of 25 years, 90% power generated by the plant at Bara is to be provided exclusively to DISCOMS. The aforesaid features clearly proves that the acquisition in the present case was acquisition for public purpose and was not an acquisition for companies.

Learned Counsel for the petitioners has also attacked the acquisition on the ground of colurable exercise of power. In order to establish the allegation of colourable exercise of power, it must be proved that the power was exercised fraudulently and intendment was for an improper purpose to achieve an object other than what is claimed to be achieved. What is colourable exercise of power has been explained by **Krishna Iyer J. in The State of Punjab Vs. Gurdial Singh and others (1980) 2 SC**C 471. Following was laid down in paragraph 9:

> *"9. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - 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 fulfillment 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."*

There is no foundation or any supporting material on record to support the contention of the learned Counsel for the petitioners that the acquisition proceedings undertaken by the State were in colourable exercise of power.

The apex Court had occasion to consider public purpose acquisition and acquisition for company and relevant test to determine as to when the acquisition is for public purpose and when acquisition is for company in several cases. The judgment of the Constitution Bench in AIR 1963 S.C. 151 **Smt. Somawanti & others Vs. The State of Punjab & others** was a case, where Section 4 notification was issued by the Government of Punjab for acquisition on public expenses for public purpose namely; for setting up a factory for manufacturing various ranges of refrigerators, compressors and ancillary equipments. The acquisition was challenged. It was contended that acquisition in question was merely for the benefit of a company and the action of the Government was only a colourable exercise by it. It was contended that before making a declaration under Sub-section (1) of Section 6, the Government ought to have taken a decision that it will contribute towards the acquisition. The Government decided to contribute Rs. 100/- only. Financial sanction of Rs. 100/- was accorded by the Finance Department on September 29, 1961 that too after filing of the writ petition in the apex Court. Rejecting the submission that infusion of fund

was a colourable exercise of power following was laid down in paragraph 43**:**

> *" 43. It is no doubt true that the financial sanction for the contribution of Rs. 100 as part of the expenses for acquisition was accorded by the Finance Department on September 29, 1961. No doubt also that a day prior to the according of sanction this petition had been admitted by this Court and a stay order issued. But from these two circumstances, it would not be reasonable to draw the inference that the declaration made by the Government was a colourable exercise of its power. The provisions of sub-sec. (1) of S. 6, however, do not require that the notification made thereunder must set out the fact that the Government had decided to pay a part of the expenses of acquisition or even to state the extent to which the Government is prepared to make a part contribution to the cost of acquisition."*

The apex Court had occasion to consider the issue which has arisen for consideration in the present case in **Pratibha Nema and others Vs. State of M.P. And others** (supra). In Pratibha Nema's case section 4 notification was issued for the public purpose namely "establishment of Diamond park". In paragraph 1 of the judgment, the apex Court noticed the facts and contention urged in paragraphs 6 and 9. Section 3 (f) (I) acquisition in part II and part VII were noticed. Paragraphs 1,6 and 9 are quoted below:

> *" 1.....The said extent of land was notified for acquisition under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'Act') for the alleged public purpose of 'establishment of diamond park'. This parcel of land together with an extent of 44.8 hectares of Government land was meant to be placed at the disposal of the Industries Department and/or Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd. (hereinafter referred to as 'the Nigam') for the purpose of allotting the same to various industrial units - the foremost among them being the 9th respondent-company, for setting up diamond cutting and polishing units with modern technology. The proposal in this regard emanated from the General Manager of District Industries Centre, on the initiative taken by the 9th*

Respondent. After the land was located by a joint inspection committee of officials, the Government of Madhya Pradesh (Commerce and Industries Department) had given sanction 'in principle' for the acquisition.

6. In order to appreciate the contentions set out above in proper perspective, it would be appropriate to advert to certain basic provisions of the Act and recapitulate the well settled principles relating to public purpose and acquisition of land under Part II and Part VII of the Act. Section 4(1) which occurs in Part II of the Act contemplates a notification to be published in the official gazette etc., whenever it appears to the appropriate Government that land in any locality is needed for any public purpose or for a company. Thereupon, various steps enumerated in sub-section (2) could be undertaken by the authorized officer. There is an inclusive definition of 'public purpose' in clause (f) of Section 3. This clause was inserted by Central Act 68 of 1984. Many instances of public purpose specified therein would have perhaps been embraced within the fold of public purpose as generally understood. May be, by way of abundant caution or to give quietus to legal controversies, the inclusive definition has been added. One thing which deserves particular notice is the rider at the end of clause (f) by which the acquisition of land for Companies is excluded from the purview of the expression 'public purpose'. However, notwithstanding this dichotomy, speaking from the point of view of public purpose, the provisions of Part II and Part VII are not mutually exclusive as elaborated later.

***9.** We may now advert to Section 6. It provides for a declaration to be made by the Government or its duly authorized officer that a particular land is needed for a public purpose or for a company when the Government is satisfied after considering the report if any made under Section 5-A(2). It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act which bears the chapter heading 'Acquisition of Land for Companies'. Thus, Section 6 reiterates the apparent distinction between acquisition for a public purpose and acquisition for a company. There is an important and crucial proviso to Section 6 which has a bearing on the question whether the acquisition is for a public purpose or for a Company. The second proviso lays down that "no such*

> *declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, wholly or partly, out of public revenues or some fund controlled or managed by local authority". Explanation 2 then makes it clear that where the compensation to be awarded is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues. Thus, a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is sine qua non for making a declaration to the effect that a particular land is needed for a public purpose. Even if the public purpose is behind the acquisition for a company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a Corporation owned or controlled by the State. However, it was laid down in Somavanti's case that the notification under Section 6(1) need not explicitly set out the fact that the Government had decided to pay a part of the expenses of the acquisition or even to state that the Government is prepared to make a part of contribution to the cost of acquisition....."*

We have already quoted paragraphs 20 and 21 of the judgment of Pratibha Nema's case laying down that real point of distinction between an acquisition under Part II and part VII is source of fund to cover the cost of acquisition. In Pratibha Nema's case argument was made that amount was paid by the company which was to be allotted land in the diamond park which was utilised towards payment of part of interim compensation hence, the acquisition could not have to be held to be public purpose acquisition. The apex Court repelled the contentions and laid down following in paragraph 25:

> *" **25.** It seems to be fairly clear, as contended by the learned counsel for the appellant, that the amount paid by the Company was utilized towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7.6.1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even go to the extent of inferring that in all probability, the*

> *Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of MOU on a rough and ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment interim compensation. Even then, it does not in any support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, may be on a rough and ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti that matters."*

In Pratibha Nema's case the apex Court also noticed that the acquisition was under "Industrial Policy and Action Plan 1994" of the State Government hence, the acquisition was held to be public purpose acquisition under part II. It is relevant to quote paragraphs 31 and 33 which are as follows:

> *"31. On a deep consideration of the respective contentions in the light of the documents and events relied upon and the settled principles adverted to supra, we have no doubt in our mind that the acquisition was thought of with the earnest objective to achieve industrial growth of the State in public interest. Quite apart from the view taken by this Court that acquisition in order to enable a Company in private sector to set up an industry could promote public purpose, we have enough material in the instant case to conclude that the proposed acquisition will serve larger public purpose. It is fairly clear that the State's goal to bring into existence a huge industrial complex housing a good number of diamond cutting and polishing units has led to the present acquisition. Such industrial complex is compendiously termed as `diamond park'. The State Government and its agencies including the nigam acted within the framework of the `Industrial Policy and Action Plan,*

1994' in taking the decision to develop diamond park complex. Para 2.22 of the Industrial Policy specifically states that "the diamond park will be developed in the State for industries based on diamond cutting". Mineral based industries have been brought within the scope of `thrust sector'. Export oriented units will be specially encouraged, according to the policy. The policy further states that the Nigam will work as a nodal agency for the development of large and medium industries in the State and will play the role of a coordinator for the development of industrial infrastructure in growth sectors in partnership with the private sector and Industrialists' associations. The reference to Industrial Policy is found in the resolution passed at the meeting of Nigam on 23.11.1995 and the letter of the General Manager, District Industries center while forwarding the proposal for acquisition to the District Collector, Indore. The District Collector while seeking the approval of the Commissioner stressed that prestigious exporters from india as well as other foreign countries were likely to establish their units in the diamond park which would generate good deal of foreign exchange and create employment potential. The State Government by its communication dated 18.1.1996 accorded sanction in principle for acquiring the private land measuring 73 hectares in Rangwasa village `for industrial purpose' in order to set up a diamond park. Thus, the considerations of industrial policy and development weighed prominently with all the concerned authorities while processing the proposals. It is clear from the stand taken by the Nigam in the counter-affidavit and the enquiry report of the Land Acquisition Collector that AKI Ltd. and Rosy Blue of Antwerp are not the only entrepreneurs who would get the land in the proposed diamond park area. In the report of the Land Acquisition Officer, it is specifically mentioned that the land is proposed to be allotted to 12 industrial units after being satisfied about their capacity and bona fides. Our attention has been drawn by the learned Advocate-General to the lay out plan in which 12 plots covering an area of 57 hectares are laid out. The remaining area is earmarked for green belt, housing, common facilities and other amenities. Even the MOU entered into between the Nigam and the two Companies do not give us a different picture. It is specifically stated therein that the Commerce and industries Department will handover the land to Nigam for the development of diamond park and the Nigam in its turn will allot the land required for setting up the units for cutting and polishing diamonds on leasehold

basis to the two Companies as well as other Companies. The site has been selected by a team of Government officials after visiting various places. The fact that AKI Ltd., also requested for allotment of suitable land near Indore and ultimately the land close to Indore was selected, does not necessarily mean that the official team was acting at dictates of the said Company. Having regard to the strategic location and importance of Indore city, the choice of site near Indore cannot be said to be vitiated by any extraneous considerations. Entering into MOU with the tow Companies and thereafter initiating requisite steps for the acquisition of the land does not, in our view, detract from the public purpose character of acquisition. MOU, in ultimate analysis, is in the mutual interest of both the parties and was only directed towards the end of setting up of an industrial complex under the name of `diamond park' which benefits the public at large and incidentally benefits the private entrepreneurs. One cannot view the planning process in the abstract and there should be a realistic approach. Industrial projects and industrial development is possible only when there is initiative, coordination and participation on the part of both the private entrepreneurs as well as the Governmental agencies. The active role and initiative shown by AKI Ltd., cannot give a different colour to the acquisition which otherwise promotes public purpose. The expression `foreign collaboration' used in some of the letters which the learned Advocate-General states, is somewhat inappropriate, does not negative the existence public purpose.

33. We are of the view that none of the factors pointed out by the learned counsel for the appellants make any dent on the orientation towards public purpose nor do they establish that the acquisition was resorted to by the Government to achieve oblique ends. The speed at which the proposal was pursued should be appreciated rather than condemning it, though the over zealousness on the part of authorities concerned to short-circuit the procedure has turned out to be counter- productive. True, the tardy progress of acquisition would have sent wrong signals to the prospective investors, as contended by the learned Advocate-General. However, due attention should have been given to the legal formalities such as holding of enquiry, specification of public purpose in clear terms and giving sufficient indication of State meeting the cost of acquisition wholly or in part. At the same time,

> *we cannot read mala fides in between the lines; in fact, no personal malice or ulterior motives have been attributed to the Chief Minister or to any other official. The material placed before us do not lead to the necessary or even reasonable conclusion that the Government machinery identified itself with the private interests of the Company, forsaking public interest. Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent. Nor the existence or otherwise of public purpose be judged by the lead and initiative taken by the entrepreneurs desirous of setting up the industry and the measure of coordination between them and various state agencies. The fact that despite the unwillingness expressed by AKI Ltd., to go ahead with the project, the Government is still interested in acquisition is yet another pointer that the acquisition was motivated by public purpose."*

The apex Court again had occasion to consider the similar issue in **Sooraram Pratap Reddy Vs. District Collector, Ranga Reddy District Sooraram Pratap Reddy Vs. District Collector, Ranga Reddy District** (2008) 9 SCC 552. In the aforesaid case Government of Andhra Pradesh sought to acquire large chunk of land in the name of public purpose for the purported development of "Financial District and Allied Projects". The acquisition was challenged on the ground that State took action in colourable exercise of power with oblique motive to transfer the land of small farmers to foreign company and few selected persons. It was contended that even if the land of farmers can be acquired for private company, the procedure for acquisition under Part VII ought to have been followed. The contention of the appellants were refuted by the respondents stating that because of the industrial policy of the State a decision was taken to construct "Information Technology Park" and for that purpose the land was sought to be acquired. The writ petition was dismissed by the High Court. The Government of Andhra Pradesh designed Andhra Pradesh APIIC as a Nodal agency for development of Integrated Project. In the said judgment, the apex Court considered the concept of 'public purpose'. Repelling the contention of the appellant, following was laid down by the apex Court in paragraphs 127, 129, 132 and 133.

"***127.*** *We would have indeed considered the contention of the learned counsel for the appellants closely in the light of earlier decisions of this Court. We are, however, of the view that on the facts and in the circumstances of the present case, the Government was right in forming an opinion and 1 reaching a satisfaction as to `public purpose' and in initiating proceedings under Sections 4 and 6 and in invoking Part II of the Act. We, therefore, refrain from undertaking further exercise. In our considered opinion, it is not necessary for us to enter into larger question in view of `fact situation' in the instant case.*

129 . *As already adverted to earlier, the State of Andhra Pradesh in the background of 1 `World Tourism Organization Report' and `Vision 2020 Document' took a policy decision for the development of the City of Hyderabad. For the said purpose, it decided to establish an Integrated Project which would make Hyderabad a major Business-cum-Leisure Tourism Infrastructure Centre for the State. The project is both structurally as well as financially integrated. It is to be implemented through Andhra Pradesh Infrastructure and Investment Corporation (APIIC) which has taken all steps to make Hyderabad a world-class business destination.*

132. *It is clearly established in this case that the Infrastructure Development Project conceived by the State and executed under the auspices of its instrumentality (APIIC) is one covered by the Act. The Joint Venture Mechanism for implementing the policy, executing the project and achieving lawful public purpose for realizing the goal of larger public good would neither destroy the object nor vitiate the exercise of power of public purpose for development of infrastructure. The concept of joint venture to tap resources of private sector for infrastructural development for fulfilment of public purpose has been recognized in foreign countries as also in India in several decisions of this Court.*

133*. The entire amount of compensation is to be paid by State agency (APIIC) which also works as nodal agency for execution of the project. It is primarily for the State to decide whether there exists public purpose or not. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where*

> *such power is exercised mala fide or for collateral purposes or the purported action is de hors the Act, irrational or otherwise unreasonable or the so-called purpose is `no public purpose' at all and fraud on statute is apparent, a writ-court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes `public purpose'.*

The same propositions were also laid down by the apex Court in (2008) 1 SCC 72 **Devinder Singh and others Vs. State of Punjab and** (2009) 5 SCC 242, **Urmila Roy & Ors. Vs. M/s Bengal Peerless Housing Development Company Ltd & Ors.** Much reliance has been placed by learned Counsel for the petitioner on a Division Bench judgment of this Court in **Pooran Vs. State of U.P. And others** 2009 (10) ADJ 679 (in which one of us Ashok Bhushan, J. was one of the member). It is necessary to note the facts and pleadings in Pooran's case to find out as to whether the said judgment supports the petitioners' case in the present case. Reliance Delhi Power Private Limited, a private registered company submitted an application on 19th January, 2004 to the Chief Secretary of the State of U.P. expressing its interest in setting up of Gas Based Thermal Power Station in Tahsil Hapur, District Ghaziabad. On the same day another letter dated 19th January, 2004 was submitted before the Collector by the Reliance Delhi Power Private Limited praying acquisition of 2500 acres of land . The Company also deposited 10% of the acquisition charges and 10% of the estimated compensation. The Collector on 24th January, 2004 forwarded the acquisition proposal to the Director, Land Acquisition, Board of Revenue, Lucknow. The Director after examining the proposal wrote a letter to the Principal Secretary (Energy) for taking steps of issuance of notification under Section 4(1) read with Section 17 of the Act according to the procedure prescribed in Part-VII and VIII of the Act. The Principal Secretary, Niyojan Vibhag submitted a proposal that Reliance Delhi Power Limited being a private company, the proceedings of land acquisition be

taken in accordance of Part VII (Sections 38 to 44B) of the Act, which was approved by the Chief Minister. After getting the approval of the Revenue Department, the notification under Section 4(1)/17 of the Act for acquisition of land for a public purpose, namely for setting up Gas Based Thermal Power Station was issued. Section 17(4) was invoked for dispensing inquiry under Section 5A of the Act. A draft agreement under Section 41 of the Act was submitted by the company, which after the approval by the Hon'ble the Chief Minister, was executed on 19th February, 2004. A letter dated 2nd April, 2004 was written by the Collector, Ghaziabad to the Government, stating that the acquisition proposal was sent to him on the request of the Company, which had also deposited 20% of compensation but the notification issued under Section 4 of the Act by mistake does not mention the name of the Company, which may be examined. In the meantime, the Power Policy was amended on 8th June, 2004 which provided several further benefits to the Company including that the State shall bear 60% of cost of acquisition. The State Support Agreement was executed on 16th June, 2004 incorporating several clauses beneficial to the Company including new concessions and benefits and sharing of the cost to the extent of 60% by the Government. Notification under Section 6 was issued on 25th June, 2004. Writ petition was filed challenging the acquisition. One of the submissions raised was that acquisition was for a company and was not a public purpose acquisition, the procedure prescribed under part VII having not been followed the acquisition deserves to be set aside. It was further contended that acquisition being for a company, section 17 could not have been invoked. Colourable exercise of power by the State Government was pleaded. The Division Bench of this Court vide judgment dated 4.12.2009 allowed the writ petition. The Division Bench after noticing the submissions of learned Counsel for the petitioners held that proceedings for acquisition were taken on the application dated 19.1.2004 submitted by the Company and the acquisition was not initiated by the State under any of its projects or schemes. Noticing the facts of the case and after perusal of the original record, this Court made following observation in paragraphs 57 and 58:

*"**57.** From the pleadings of the parties and examination of the original records, following facts emerged with regard to impugned acquisition proceedings;*

(1)an application dated 19.1.2004 was submitted by Reliance Delhi Power Private Ltd. to the Collector Ghaziabad as well as to the Chief Secretary of the State of U.P. The Collector proceeded to inquire the proposal submitted by the respondent no. 2. The proposal was submitted by the respondent No. 2 with deposit of 10% of the acquisition costs and 10% of the estimated compensation (amount of Rs. 16 Crores). Acquisition proceedings were not initiated pursuant to any decision of the State Government or its any of the Departments.

(2)the land measuring 2500 acres was identified and selected by Reliance Delhi Power Pvt. Ltd. and in the application submitted to the Collector, Ghaziabad, the name of seven villages were mentioned by company. The site was neither selected by the State Government or its any of the Departments or by Collector, Ghaziabad for acquisition.

(3) the Collector Ghaziabad after conducting the necessary inquiry sent the proposal for acquisition to the Director Land Acquisition Directorate Board of Revenue U.P. Lucknow. In the letter dated 24.1.2004 it was stated that the proposal for land acquisition has been received from Reliance Delhi Power Pvt. Ltd. for acquisition of land with regard to 735.45 acres of land of village Kakarma Pargana Dasna, Tahsil Hapur. It was further stated that Reliance Delhi Power Pvt Ltd deposited the required 10% acquisition cost and 10% of estimated compensation in the specified head. The separate letters dated 24.1.2004 were forwarded by the Collector Ghaziabad with regard to seven villages along with plot numbers and area sought to be acquired. A proposed notification under section 4(1) also invoking the urgency provisions of Sub-section (1) of Section 17 and Sub-section (4) of setion 17 was submitted. After receipt of the letter by the Collector, Ghaziabad, Director Land Acquisition examined the proposal and forwarded it by letter dated 28.1.2004 to the Principal Secretary, Energy, State of U.P. Lucknow. Separate letters dated 28.1.2004 were issued for different villages in question. In the letter dated 28.1.2004 it was specifically mentioned that Reliance Delhi Power Private Limited is a private Company hence taking into consideration Land Acquisition

(Companies) Rules, 1963 and Part VII and Part III Sections 38 to 55 of the Land Acquisition Act and after getting the agreement executed, notification under section 4(1)/17 be issued. Collector thus completed the entire proceedings and forwarded the proposal of the company for land acquisition for a company after following parts VII and VIII.

(4)the proposal received from the Director Land Acquisition vide letter dated 28.1.2004 was examined by the Department of Energy Government of U.P. and it was decided to obtain recommendation of Bhumi Upyog Parishad. Bhumi Upyog Parishad submitted a note through Principal Secretary, Niyojan on 31.1.2004 that the Reliance Delhi Power Pvt. Ltd. being a priviate company, keeping into consideration part VII of the Land Acquisition Act as amended according to the provisions of Sections 38 to 44-B proceedings be undertaken after taking approval from the Department of Revenue and Law. The recommendations were duly approved by the Chief Minister on 31.1.2004. The Secretary, Revenue submitted a note that before issuance of section 4(1)/17 notification agreement be executed as required by paragraph 14 of the Land Acquisition Manual and the entire cost of acquisition shall be necessary to be got deposited. Subsequently although it was earlier recommended that notification under section 4(1)/17 be issued after execution of the agreement as required under section 41 but it was decided to issue notification under section 4(1) by invoking Section 17 and agreement be executed thereafter. After publication of the notification under section 4(1)/17 the draft of the agreement as contemplated under section 41 of the Act was approved by Hon'ble the Chief Minister on 19.2.2004 and thereafter it was executed. Under section 41, the entire cost of the acquisition was to be born by the company and the State was not to bear any cost of acquisition.

(5)the land acquisition proceedings were not initiated under any project/scheme submitted by Energy Department or any other Department of the State nor the acquisition in question was to result into any project of the State rather the agreement stipulated transfer of the land in favour of the respondent No. 2.

(6)the decision to bear 60% costs of the acquisition was taken after amendments in power policy was approved on 8.6.2004 and accordingly, the State

support agreement was executed on 16.6.2004.

58. *From the aforesaid, it is fully established that the proceedings for acquisition were taken on an application of respondent no. 2 on 19.1.2004 as acquisition for a company. When the notification was issued under section 4, the acquisition of the land was for the company and the acquisition being not acquisition initiated by the State under any of its own projects or scheme, could not be treated as acquisition for public purpose."*

As noted above in the present case, no application for acquisition was moved by any company. The land was identified by the U.P. Power Corporation and application for acquisition was submitted by the U.P. Power Corporation under Mega Power Project Scheme of the Government of India and Power Policy of the State of U.P. The entire fund for payment of compensation was to be paid out of public revenue i.e. by U.P. Power Corporation and its subsidiary companies. 10% of the estimated compensation and 10% of the acquisition charges were also deposited by the U.P. Power Corporation. The developer was selected by a transparent bid process after approval by the U.P. Electricity Regulatory Commission, which was in accordance with the guidelines of the Government of India dated 19.1.2005 issued under the Electricity Act, 2003. Following are distinguishing features of the present case with the Pooran's case:

Acquisition in Pooran's case	**Acquisition in the present case**
Application dated 19.1.2004 praying for acquisition of land was submitted by Delhi Reliance Power Pvt. Ltd.	Application was submitted by U.P. Power Corporation Ltd on 20.2.2007 before the Collector, Allahabad for acquiring the land for Thermal Power Station.
The application submitted by Delhi Reliance Power Pvt. Ltd. was not under any scheme of the Government.	Application submitted by U.P. Power Corporation Ltd. was in accordance with the Power Policy 2003 and the Mega Power Policy of the Government of India.
The company along with application seeking land acquisition had deposited 20% of the amount i.e.	U.P. Power Corporation Ltd. has deposited 10% estimated compensation and 10% acquisition

10% of the estimated compensation and 10% acquisition charges from its own fund.	charges by bank draft dated 31.5.2007 from its own fund which was public revenue within meaning of section 6.
The agreement under section 41 was executed with Reliance Delhi Power Pvt. Ltd. On 19.2.2004, which did not mention providing of any fund by the State Government and agreement was executed as per section 41 of the Act under Part VII of the Land Acquisition Act.	No Agreement under section 41 was executed.
Director Land Acquisition after considering the proposal of the Collector for acquisition of land had recommended for acquisition in accordance with the procedure prescribed under part VII and VIII as acquisition for company.	District Magistrate as well as Director, Land Acquisition has recommended for acquisition as public purpose acquisition in the present case.
Division Bench in Pooran's case recorded a finding that acquisition proceedings were undertaken by the State Government in colourable exercise of power to undue benefit the private Delhi Reliance Power Company.	The respondent no. 7 the selected bidder was not in picture before submission of his request for qualification in pursuance of global invitation issued by the special purpose vehicle which was an act subsequent to completion of acquisition proceedings.

From the aforesaid, inescapable conclusion is that the Division Bench in Pooran's case held the acquisition as acquisition for company on the basis of the facts which were brought in the said case and the Division Bench found the acquisition to be acquisition for company in view of the fulfilment of various tests to find out the nature of acquisition. From what have been noted above, the case of Pooran thus is clearly distinguishable and in no manner help the petitioners in the present case.

The petitioners in the present case have also relied on the judgment of the apex Court in **Amarnath Ashram Trust Society And Another vs The Governor Of Uttar Pradesh and others** reported in (1998) 1 SCC 591. In the said case Amar Nath Ashram Society was running an educational institution namely; Amar Nath Vidya Ashram. The

respondent no. 5 moved the State Government to acquire the land belonging to private respondent no. 5 in the said case for the purpose of play ground of students of Amar Nath Vidya Ashram. Section 4 notification was issued notifying the acquisition for a public purpose namely; play ground of students of Amar Nath Vidya Ashram. The Government also entered into agreement under section 40(1) on 11.8.1987 and then issued declaration under section 6 mentioning that the report made under sub-rule (4) of Rule 4 of the Land Acquisition (Company) Rules, 1964 was considered by the Government, the Land Acquisition Committee constituted under Rule 3 of the said Rules was also consulted, and the agreement entered between the appellant and the Governor was duly published and the Governor was satisfied that the land was needed for construction of a playground for students of Amar Nath Vidya Ashram (Public School), Mathura by the Amar Nath Ashram Trust, Mathura. This acquisition of land was challenged by the owner by a writ petition filed in the High Court. During the pendency of the said petition, the Government denotified the land from acquisition in exercise of its power under section 48 of the Land Acquisition Act. The appellant had challenged the notification under section 48 issued by the Government. The writ petition filed by the society was dismissed holding that the decision of the State Government to withdraw from the acquisition for the reason that the acquisition having been proclaimed as one for a public purpose, a part of cost of acquisition was required to be borne by the State and since no such provision was made, the acquisition could not have been sustained. The apex Court in the said judgment laid down that if the cost of acquisition is borne either wholly or partly by the Government, the acquisition can be said to be for a public purpose within the meaning of the Act. But if the cost is entirely borne by the company then it is an acquisition for a company under part VII of the Act. Following was observed in paragraphs 6 and 7:

> *6. It is now well established that if the cost of acquisition is borne either wholly or partly by the Government, the acquisition can be said to be for a public purpose within the meaning of the Act. But if the*

cost is entirely borne by the company then it is an acquisition for a company under part VII pf the Act. It was so held by this Court in Pandit Jhandu Lal vs. The State of Punjab (1961 (2) SCR 459). This decision was relied upon by the learned counsel for the State to support his contentions but it is difficult to appreciate how it supports him. it is held in that case it is not correct to say that no acquisition for a company for a public purpose can be made except under part VII of the Act. In that case a part of the cost was to be borne by the Government and, therefore, it was held that it was not necessary to comply with the provisions of part VII of the Act. Admittedly, in the present case the entire cost of acquisition is to be borne by the appellant society and, therefore, it is an acquisitions for a company and not for a public purpose. That is also born out by the notification issued under section 6 of the Act which stated "that the land mentioned in the schedule below is needed for the construction of play-ground for students of Amar Nath Vidya Ashram (public school), Mathura in district Mathura by the Amar Nath Ashram Trust, Mathura" Therefore, simply because in the notification issued under section 4 of the Act it was stated that the land was needed for a public purpose, namely, for a play-ground for students of Amar Nath Vidya Ashram (public school), Mathura, it cannot be said that the acquisition is for a public purpose and not under Chapter VII for the appellant-society in view of subsequent events and the declaration made under Section 6. The learned counsel for the State also relied upon the decision of this Court in Srinivasa Cooperative House Building Society Ltd. Vs. Madam Gurumurthy Sastry (1994 (4) SCC 675), wherein this court has held that though there is "no provision in the Act to say that when a land is required for a company, it may also be for a public purpose. However, the even acquisition for a company, unless utilisation of the land so acquisition for a company, unless utilisation of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had". it was submitted on the basis of this observation that even in case of an acquisition for a company an element of public purpose has to be there and if for that reason it was believed by the Government that it was necessary for it to make substantial contribution from public revenue so as to avoid the charge of colorable exercise of powers, the decision of the Government to withdraw from the acquisition cannot be said to be arbitrary or illegal. The aforesaid observation was made by this Court in the

context of requirement of Section 40 of the Act and they cannot be construed to mean that no land cannot be acquired by the State Government without making substantial contribution towards the cost of acquisition. We cannot read something more in the said observation than what they were intended to convey. The provisions of part VII and particularly the provisions regarding payment of the entire costs of the acquisition would otherwise become redundant.

7. *As the acquisition in this case was for the appellant- society which is running a school, it was an acquisition for a company and as disclosed by the agreement the entire cost of the acquisition was to be borne by the appellant-society. The declaration made under section 6 clearly referred to the inquiry made under rule 4 of the Land Acquisition (Companies) Rules, 1963 and the agreement entered into between the appellant-society and the state. Moreover, it was not pleaded by the State before the High Court that the acquisition in this case was for a public purpose and not under Chapter VII of the Act. Therefore, it is really not open to the counsel for the State to raise a contention which is contrary to the case, pleaded before the High Court, it was stated on behalf of the State that the acquisition was for a registered society and as such it was covered within the meaning of Company as defined by section 3(E)(ii) of the Land Acquisition Act and that the purpose of acquisition was covered under section 40(I)(b) of the Act because acquisition for play-ground of students of a school is a purpose which is likely to prove useful to the public*."

The apex Court however, observed that power under section 48 has to be exercised not in malafide or arbitrary manner. The apex Court quashed the judgment and left it open for the State Government to consider the question of withdrawal from acquisition. Thus, the above case does not support the petitioner's case in any manner.

Learned Counsel for the petitioners had contended relying on Division Bench judgment of this Court in the case of **Nand Lal Jaiswal Vs. Secretary Government of U.P. Energy Department**, 2012 (1) ADJ 227 decided on 10.1.2012 that the Division Bench in the said case has noticed the submission that rate quoted by M/s J.P. Associates with

regard to thermal power station at Bara as 2.97 was not the lowest. In Nand Lal Jaiswal's case the writ petition was filed for quo warranto against one Rajesh Awasthi who was working as Chairman of U.P. Electricity Regulatory Commission. It was contended that Rajesh Awasthi was not qualified and he has also worked as vice President in Jai Prakash Associates for short period. The Division Bench observed that while holding the post of Chairman, the respondent no. 3 might have some interest in favour of two projects. The Division Bench however, did not record any finding regarding the tariff which was fixed but declared the appointment of respondent no. 3 as void. The Division Bench held following in paragraphs 65 and 66:

> *"65- While filing written argument, learned counsel for the petitioner has invited attention to subsequent order passed in favour of J.P. Power Ventures Ltd. but has not filed it with the affidavit. We are not inclined to take into account the facts which are not placed on record. However, on the basis of evidence on record, prima facie, it may not be ruled out that while holding the post of Chairperson, opposite party no. 3 might have some interest in favour of two projects of J.P. Power Ventures Ltd.*
>
> *66- We are not recording any finding but things are clear that tariff fixed with regard to these two projects was on higher side since averment contained in the rejoinder affidavit has not been disputed. The State also admits that the guidelines/rules were relaxed with regard to project of M/s J.P. Power Ventures Ltd."*

It is relevant to note that in the present case, tariff fixed on the basis of competitive bidding i.e. 2.97 per unit is not the subject matter of challenge. The challenge in the writ petition is land acquisition proceedings. As noticed above, the selected bidder was not in picture till completion of the land acquisition proceedings. However, the Division Bench also did not record any finding regarding tariff fixed. Learned Counsel for the respondent also pointed out that against the Division Bench judgment of this Court in Nand Lal Jaiswal (supra), Special Leave to Appeal (Civil) No. 1550 of 2012 was filed by the State of U.P. and the

operation of the judgment has been stated by the apex Court vide its order dated 13.1.2012. In view of the above, the Division Bench judgment in Nand Lal Jaiswal's case does not help the petitioners in the present case.

The State Government while issuing notification under Section 4 of the Act had invoked Sections 17(1) and 17(4) of the Act. It is useful to quote the notification dated 27th July, 2007 which was to the following effect:-

> *"Under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (Act No.1 of 1894) read with the Government of India Ministry of Home Affairs notification no.20/1/55 Judi (1), dated May 14, 1955, the Governor is pleased to notify for general information that the land mentioned in the schedule below is needed for a public purpose, namely; for construction of Thermal Power Station in Tehsil-Bara, District – Allahabad.*
>
> *The Governor, being of the opinion that the provision of sub-section (1) of section 17 of the said Act are applicable to the said land in as much as the said land is urgently required for aforesaid public purpose and that in view of pressing urgency it is as well necessary to eliminate delay likely to be caused by an enquiry under section 5-A of the said Act, the Governor is further pleased to direct under sub-section (4) of section 17 that the provisions of section 5-A of the said Act shall not apply."*

The proposal for acquisition of land of five villages measuring 831.772 hectares was submitted by the U.P. Power Corporation on 19th January, 2007/20th February, 2007 for establishment of a Thermal Power Plant at Bara, district Allahabad. The U.P. Power Corporation again sent a letter dated 1st June, 2007 along with the estimated compensation. The District Committee approved the land identified by the U.P. Power Corporation. The proposal was forwarded by the Collector, Allahabad to the Director, Land Acquisition vide his letter dated 4th June, 2007. The

Director, Land Acquisition, after examining the proposal, forwarded the same to the Secretary (Energy), Government of U.P. vide his letter dated 13th July, 2007. In the letter dated 13th July, 2007, the Director, Land Acquisition has stated that after receipt of challan of deposit of 10% acquisition expenses in the appropriate account head, the notification be issued. The U.P. Power Corporation submitted appropriate challan on 18th July, 2007 on which date the note was put up by the Deputy Secretary. The note was approved by the Energy Minister on 25th July, 2007 and thereafter notification dated 27th July, 2007 was issued.

The submission, which has been advanced by the learned counsel for the petitioners, is that present was not a case for dispensing with the inquiry under Section 5-A of the Act. Learned counsel for the petitioners submitted that in view of the time, which was likely to be taken in completing the project, it was not a case of such urgency that Sections 17(1) and 17(4) of the Act could have been invoked. It is submitted that according to own case of the respondents the Developer to carry out the project, was selected after completing bidding process which itself required sufficient time. It is contended that right of objection under Section 5-A of the Act is a valuable right of land owners which could not have been taken away. It is submitted that there has been no application of mind by the State Government while invoking Section 17(4) of the Act. The completion of project was to take years, hence giving right of objection to the land owners by giving 21 days' notice could not have been denied.

Before we proceed to consider the above issue, the relevant law on the subject is necessary to be looked into. The question of invoking Sections 17(1) and 17(4) of the Act by the Government had come for consideration time and again before the Apex Court and this Court. What is the scope of judicial review on subjective satisfaction of the State Government in invoking Sections 17(1) and 17(4) of the Act has also been clearly laid down by the Apex Court in its various judgments.

Sections 17(1), 17(2) and 17(4) of the Act, which are relevant in the present case, are to the following effect:-

> *"**17. Special powers in case of urgency**. – **(1)** In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.*
>
> ***(2)** Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :*
>
> *Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.*
>
> ***(3)** .....*

> ***(4)*** *In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1).”*

The issue pertaining to invocation of Sections 17(1) and 17(4) of the Act and the scope of judicial review came for consideration before the Apex Court in the case of ***Raja Anand Brahma Shah vs. State of Uttar Pradesh*** reported in A.I.R. 1967 SC 1081. In the aforesaid case notification under Section 4(1) of the Act was issued for acquisition of 409.6 acres of land for limestone quarry. The notification provided that the case being one of urgency, the provisions of sub-section (1) of Section 17 of the Act applied and it was therefore directed that provisions of Section 5A would not apply to the land. The declaration under Section 6 was issued on 12th September, 1950. The possession of the land was taken by the Collector on 19th November, 1950 and the award was made by the Land Acquisition Officer on 7th January, 1952. On 2nd May, 1955 writ petition was filed in the High Court challenging the notifications taking ground that the land was not for public purpose and the acquisition proceedings were consequently without jurisdiction. It was pleaded that the State Government had no jurisdiction to apply the provisions of Section 17(1) of the Act to the land in dispute. The Apex Court in facts of the above case had occasion to consider the opinion of the State Government formed under Section 17(4) which was said to be subjective opinion. Following was laid down by the Apex Court in paragraph 8 of the said judgment:-

> ***“8.*** *It is true that the opinion of the State Government which is a condition for the exercise of the power under s. 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification for the opinion formed by the State Government under S. 17(4). The legal position has been explained by the Judicial*

Committee in King Emperor v. Shibnath Banerjee and by this Court in a recent case-Jaichand Lal Sethia v. State of West Bengal & Ors. But even though the power of the State Government has been formulated under s. 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of Law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is malafide. If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-s. (1) of s. 17 are applicable, the ,Court may legitimately draw an inference that the State Government ,did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the notification of the State Government under S. 17(4) of the Act directing that the provisions of s. 5A shall not apply to the land is ultra vires. The view that we have expressed is borne out by the decision of the Judicial Committee in Estate and Trust Agencies Ltd. v. Singapore Improvement Trust in which a declaration made by the Improvement Trust of Singapore under S. 57 of the Singapore Improvement Ordinance 1927 that the appellants' property was in an insanitary condition and therefore liable to be demolished was challenged. Section 57 of the Ordinance stated as follows:

> *"57. Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary".*

The Judicial Committee set aside the declaration of the Improvement Trust on two grounds; (1) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said Ordinance and therefore the declaration was liable to a challenge if the authority stepped beyond those terms and (2) that the ground on which it was made was other than the one set out in the Ordinance....”

The Apex Court in the said case laid down that opinion of the State Government formed under Section 17(4) can be challenged in court of law if it could be shown – (i) that the State Government never applied

its mind to the matter and (ii) that the action of the State Government is malafide. Further it was observed that Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question in issue. The Apex Court in the aforesaid case relied upon the judgment of High Court of Australia in the cases of ***R. v. Australian Stevedoring Industry Board*** reported in (1952)88 C.L.R. 100 and ***Ross Clunis v. Papadopovllos*** reported in (1958)1 W.L.R. 546. In the said case the relevant regulations empowered the Commissioner to levy fine when the Commissioner "has reasons to believe". It was contended on behalf of the appellant in the aforesaid case that only duty cast upon the Commissioner was to satisfy himself of the facts set out in the Regulation that the test was a subjective one and that the statement as to the satisfaction in his affidavit was a complete answer to the contention of the respondents. The aforesaid contentions were rejected by the Judicial Committee and the observations of the Judicial Committee has been quoted with approval by the Apex Court, which are to the following effect:-

> *"Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts."*

The Apex Court in the case of ***Nandeshwar Prasad vs. U.P. Government and others*** (three Judge Bench) had laid down that it is not necessary that when the Government makes a direction under Section 17(1) of the Act treating to be a case of taking possession urgently, it is not necessary that direction to dispense with the inquiry under Section 5-A of the Act be also issued. Following was laid down in paragraphs 11 and 13 of the said judgment:-

> *"**11.** ..... It will be seen that it is not necessary even where the Government makes a direction under S. 17(1) that it should also make a direction under S. 17(4)....."*

> *"**13.** .... The right to file objection under S. 5-A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that that right can be taken away as if by a side-wind ....."*

The most celebrated case, which is being often quoted and followed in the subsequent judgments of the Apex Court is the three Judge Bench in the case of ***Narayan Govind Gavate vs. State of Maharashtra*** reported in 1977 SC 183. The parameters of judicial review of a decision taken by the State Government to invoke Section 17(4) of the Act was clearly laid down by the Apex Court in the said judgment. It was further laid down in the said case that there has to be application of mind of the authority concerned that urgency is of such nature that even summary inquiry under Section 5-A of the Act is necessary to be dispensed with. Followings were laid down in paragraphs 10, 38, 40, 41 and 42 of the said judgment:-

> *"**10.** It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than Courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which Courts do impose. That test basically is: was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the Courts should not and will not interfere.*

There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a Court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, what was legally imperative for it to consider.

*"**38.** ..... 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 s. 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under s. 5A which has to be considered.*

***40.** In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under section 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under section 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under section 5A of the Act.*

***41.** Again, the uniform and set recital of a formula, like a ritual or mantara, apparently applied mechanically to every case, itself indicated that the mind of the Commissioner concerned was only applied to the question whether the land was waste or arable and whether its acquisition is urgently needed. Nothing beyond that seems to have been considered. The recital itself shows that the mind of the Commissioner was not applied at all to the question whether the urgency is of such a nature as to require elimination of the enquiry under section 5A of the Act. If it was, at least the notifications gave no*

> *inkling of it at all. On the other hand, its literal meaning was that nothing beyond matters stated there were considered.*
>
> ***42.*** *All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquires under section 5A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry under section 5A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under section 5A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under section 5A of the Act....."*

In the case of ***State of Punjab and another vs. Gurdial Singh and others*** reported in (1980)2 SCC 471, Justice V.R. Krishna Iyer while considering the invocation of Section 17(4) of the Act has made following celebrated observations in paragraph 16:-

> ""***16.*** *The fourth point about the use of emergency power is well taken. Without referring to supportive case-law it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Arts. 14 (and 19), burke an enquiry under Sec. 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."*

Justice Krishna Ayer further observed , "... *At times, natural justice is the natural enemy of intolerant authority*..."

The law on the subject was again reiterated by a three Judge Bench of the Apex Court in the case of ***Union of India vs. Mukesh Hans*** reported in 2004(8) SCC 14. The Apex Court in the said case held that invocation of Section 17(4) of the Act is not automatic or mechanical after invocation of Section 17(1) of the Act. It was further held that there has to be independent application of mind so as to insist invocation of Section 17(4) of the Act. Following were laid down in paragraphs 32, 33 and 34 of the said judgment:-

> "***32.*** *A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency under Section 17 (1) or unforeseen emergency under Section 17 (2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17 (1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that*

in and every case when there is an urgency contemplated under Section 17 (1) and unforeseen emergency contemplated under Section 17 (2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated under Section 17 (1) and (2) of the Act.

33. *An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Section 17(1) and (2), the dispensation of enquiry under Section 5A becomes automatic and the same can be done by a composite order meaning thereby that there no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5A. We are unable to agree with the above argument because sub- section (4) of Section 17 itself indicates that the "government may direct that provisions of Section 5A shall not apply" which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub- section (1) or unforeseen emergency under sub-section (2) of Section 17 the Government will ipso facto have to direct the dispensation of inquiry.*

34. *A careful reading of the above judgment shows that this Court in the said case of Nandeshwar Prasad's case (supra) has also held that there should an application of mind to the facts of the case with special reference to this concession of 5A inquiry under the Act."*

In the case of ***Union of India and others vs. Krishan Lal Arneja*** reported in 2004(8) SCC 453, same propositions were laid down

by the Apex Court on invocation of Section 17(4) of the Act in paragraph 16, which is as under:-

> *"**16.** Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immoveable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."*

The Apex Court in the case of ***Anand Singh vs. State of U.P.***

and others reported in (2010)11 SCC 242, relying on earlier three Judge Bench judgment in ***Narayan Govind Gavate's*** case (supra) held that scheme for housing development or industrial development barring exceptional cases, does not justify invocation of Section 17(4) of the Act. Followings were laid down in paragraphs 42, 43, 44, 45, 46, 47 and 50 of the said judgment:-

> ""***42****. When the government proceeds for compulsory acquisition of particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time under Section 5A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose etc. Moreover, the right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice.*
>
> ***43.*** *The exceptional and extraordinary power of doing away with an enquiry under Section 5A in a case where possession of the land is required urgently or in unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5A. Exceptional the power, the more circumspect the government must be in its exercise. The government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5A.*
>
> ***44.*** *A repetition of statutory phrase in the notification that the state government is satisfied that the land specified in the notification is urgently*

needed and provision contained in Section 5A shall not apply, though may initially raise a presumption in favour of the government that pre-requisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which power has been exercised. Upon challenge being made to the use of power under Section 17, the government must produce appropriate material before the court that the opinion for dispensing with the enquiry under Section 5A has been formed by the government after due application of mind on the material placed before it.

45. *It is true that power conferred upon the government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary.*

46. *As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry under Section 5A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realizing that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.*

47. *The special provision has been made in Section 17 to eliminate enquiry under Section 5A in deserving and cases of real urgency. The government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5A. We have already noticed few*

decisions of this Court. There is conflict of view in the two decisions of this Court viz.; Narayan Govind Gavate and Pista Devi. In Om Prakash this Court held that decision in Pista Devi must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate.

50. *Use of the power by the government under Section 17 for `planned development of the city' or `the development of residential area' or for `housing' must not be as a rule but by way of an exception. Such exceptional situation may be for the public purpose viz., rehabilitation of natural calamity affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation of persons affected by time bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for immediate possession of the land for carrying out the stated purpose, heavy onus lies on the government to justify exercise of such power."*

Then came the judgment of the Apex Court in the case of ***Radhy Shyam (dead) through Lrs. and others vs. State of U.P. and others*** reported in (2011)5 SCC 553 in which case acquisition was made for planned industrial development. In the said case the Apex Court had held that in cases where acquisition is made by invocation of Section 17(4), the High Court should insist upon filing of counter affidavit by the State and production of relevant records to carefully scrutinise the same before pronouncing the legality of the acquisition. Following was laid down in paragraph 22 of the said judgment:-

*""**22.** In cases where the acquisition is made by invoking Section 4 read with Section 17(1) and/or 17(4), the High Court should insist upon filing of reply affidavit by the respondents and production of the relevant records and carefully scrutinize the same before pronouncing upon legality of the impugned notification/action because a negative result without examining the relevant*

> *records to find out whether the competent authority had formed a bona fide opinion on the issue of invoking the urgency provision and excluding the application of Section 5-A is likely to make the land owner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when land is required to meet really emergent situations like those enumerated in Section 17(2). If the acquisition is intended to benefit private person(s) and the provisions contained in Section 17(1) and/or 17(4) are invoked, then scrutiny of the justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land, the pleadings should be liberally construed and relief should not be denied to the petitioner by applying the technical rules of procedure embodied in the Code of Civil Procedure and other procedural laws."*

As noticed above, in the present case the State has already filed its counter affidavit and had produced the original records pertaining to land acquisition proceedings which shall be referred to hereinafter.

Recently a Full Bench of this Court in which one of us (Justice Ashok Bhushan) was also a member, had occasion to consider land acquisition proceedings in bunch of writ petitions relating to land acquisition for planned industrial development in district Gautam Budh Nagar in the case of ***Gajraj vs. State of U.P. and others*** reported 2011(11) ADJ 1. After referring to several judgments of the Apex Court on the subject, the Full Bench proceeded to examine the pleadings and original records produced before it. The Full Bench after considering the entire facts, circumstances, pleadings and original records, laid down following in paragraphs 321 and 322, which are as under:-

> **"321.** In view of forgoing discussions, we are of the view that exercise of power by the State Government invoking Section 17(4) of the Act dispensing with inquiry under Section 5A of the Act is vitiated due to following reasons as discussed above:-

(i) The original records of the State Government indicate that officers of the State Government did not advert to the issue of dispensation of inquiry under Section 5A of the Act nor gave any recommendation to that effect which further indicate that direction issued by the State Government under Section 17(4) of the Act was made without application of mind;

(ii) In the certificate given by the Collector (In Prapatra-10) only observation made was that it is necessary to take possession immediately to complete the project without delay. However, in his certificate the Collector has not given any reason as to why inquiry under Section 5A of the Act be dispensed with, rather observation in the certificate was that by invoking Section 17 of the Act the right of objection under Section 5A are automatically dispensed with and he is in agreement with dispensation of inquiry. The Collector himself having not applied his mind, who was required to consider all aspects and no reasons/recommendations having been there in the notings of the officers of the State Government as noticed above, there was no material on record to dispense with the inquiry under Section 5A of the Act;

(iii) Even assuming without admitting that reasons given by the GNOIDA in its Note of Justification for issuing notification under Section 4/17 were considered and relied by the State Government for arriving on its subjective satisfaction to dispense with the inquiry under Section 5A, the subjective satisfaction is vitiated since the ground that unless the land is not immediately provided, the land shall be encroached has been held by the Apex Court to be a irrelevant ground in ***Om Prakash's & Radhy Shyam's*** *cases (supra). The subjective satisfaction based on an irrelevant ground is vitiated in law.*

322. As observed above, the notifications issued under Section 4 read with Section 17(1) and 17(4) were identical with all acquisitions and the materials on record before the State Government including the certificates issued by the Collector in Prapatra-10 as well as the Note of Justification submitted by the authorities were in identical term, hence the invocation of Section 17(4) has to be held to be vitiated in all the above cases.

> Considering the dictum of the Apex Court, as noticed above and the facts as noticed above, we hold that invocation of Section 17(4) by the State Government dispensing with the inquiry under Section 5A of the Act while issuing notification under Section 4 is vitiated. The dispensation of inquiry being invalid, all the petitioners were entitled for an opportunity to file objection under Section 5A of the Act.

Learned counsel for the petitioners have placed reliance on a recent judgment of the Apex Court in the case of ***Darshan Lal Nagpal (dead) by Lrs. vs. Government of NCT New Delhi and others*** reported in (2012)2 SCC 327. In the said case notification under Section 4 read with Section 17(1) and 17(4) of the Act was issued on 13.10.2009 and declaration under Section 6 of the Act was issued on 9th November, 2009 for acquisition of land for a public purpose, namely, establishment of electric substation by Delhi Transco Limited. In the above case challenge was made to the notification on the ground that invocation of Section 17(4) of the Act was not justified since there was no such urgency that inquiry under Section 5-A of the Act should have been dispensed with. It was pleaded by the petitioner of that writ petition that four years' time was spent in correspondence between Delhi Transco Limited, State Government and the Delhi Development Authority which proved that there was no such urgency for the establishment of sub station. The writ petition was dismissed by the Division Bench of Delhi High Court against which the owners filed special leave petition. In the above context, the Apex Court has again considered the entire law on the subject. The judgments in ***Anand Singh's*** case (supra) and in ***Radhy Shyam's*** case (supra) were extensively referred to by the Apex Court. Followings were laid down in paragraphs 28, 29, 35 and 36 of the said judgment:-

> "***28.*** *What needs to be emphasized is that although in exercise of the power of eminent domain, the State can acquire the private property for public purpose, it*

must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his Constitutional right of not being deprived of his property without the sanction of law - Article 300A and the legal rights. Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of the Act because that results in depriving the owner of his property without being afforded an opportunity of hearing.

***29**. In the light of the above, it is to be seen whether there was any justification for invoking the urgency provisions contained in Section 17 (1) and (4) of the Act for the acquisition of the appellants' land. The Division Bench of the High Court accepted the explanation given by the respondents by observing that sub-station in East Delhi is needed to evacuate and utilize the power generated from 1500 MW gas based plant at Bawana. While doing so the Bench completely overlooked that there was long time gap of more than five years between initiation of the proposal for establishment of the sub-station and the issue of notification under Section 4 (1) read with Section 17 (1) and (4) of the Act. The High Court also failed to notice that the Government of NCT of Delhi had not produced any material to justify its decision to dispense with the application of Section 5A of the Act. The documents produced by the parties including the notings recorded in file bearing No. F.S(11)/08/L&B/LA and the approval accorded by the Lieutenant Governor do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5A which represents two facets of the rule of hearing that is the right of the land owner to file objection against the proposed acquisition of land and of being heard in the inquiry required to be conducted by the Collector.*

***35.** It is also apposite to mention that no tangible evidence was produced by the respondents before the Court to show that the task of establishing the sub-station at Mandoli was required to be*

accomplished within a fixed schedule and the urgency was such that even few months time, which may have been consumed in the filing of objections by the land owners and other interested persons under Section 5A(1) and holding of inquiry by the Collector under Section 5A(2), would have frustrated the project. It seems that the Bench of the High Court was unduly influenced by the fact that consumption of power in Delhi was increasing everyday and the DTL was making an effort to ensure supply of power to different areas and for that purpose establishment of sub-station at village Mandoli was absolutely imperative. In our view, the High Court was not justified in rejecting the appellants' challenge to the invoking of urgency provisions on the premise that the land was required for implementation of a project which would benefit large section of the society.

36. *It needs no emphasis that majority of the projects undertaken by the State and its agencies / instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated under Section 5A, which would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard."*

From the judgments of the Apex Court, as noticed above, following propositions emerge:-

(i) Compulsory acquisition of property belonging to private individual is a serious matter and has grave repercussion on his constitutional rights of not being deprived of his property without the sanction of law, therefore, the State must exercise this power with great care and circumspection.

(ii) The acquisition of land for residential, commercial, industrial or institutional purpose are acquisition for public purpose but that itself does not justify the exercise of power by the Government under Sections 17(1) and 17(4) of the Act.

(iii) The exercise of power by the Government under Section 17(1) of the Act does not necessarily result in exclusion of Section 5-A of the Act and the State has to independently apply its mind even in case of urgency within the meaning of Section 17(1) of the Act as to whether power under Section 17(4) of the Act is to be invoked or not.

The satisfaction of the State Government for invoking Sections 17(1) and 17(4) of the Act although is subjective but the same can be challenged in a Court of law on any of the following grounds:-

(i) That the State Government never applied its mind to the matter; or

(ii) That the action of the State Government was mala-fide; or

(iii) That there was no ground on which the State Government could have formed such an opinion; or

(iv) That in forming such opinion, it did not apply its mind to the

relevant facts.

Whenever there is a challenge to the exercise of power under Sections 17(1) and 17(4) of the Act, the Government must produce the appropriate materials before the Court that the opinion of dispensing the inquiry under Section 5-A of the Act has been formed after due application of mind and on the relevant materials placed before it. In ***Radhy Shyam's*** case (supra), following was laid down in paragraph 77:-

> "**77.** From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:
>
> *(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd., AIR (1954) SC 119, Chiranjit Lal Chowdhuri v. Union of India AIR (1951) SC 41 and Jilubhai Nanbhai Khachar v. State of Gujarat (1995) Supp. (1) SCC 596.*
>
> *(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana (2003) 5 SCC 622; State of Maharashtra v. B.E. Billimoria (2003) 7 SCC 336 and Dev Sharan v. State of U.P., Civil Appeal No.2334 of 2011 decided on 7.3.2011.*
>
> *(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not*

only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The

use of word "may" in sub- section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition."

Now on the basis of the proposition as noticed above, we proceed to examine the facts, pleadings and materials of the present case. The State has filed its counter affidavit in which it has been stated that the State Government received proposal setting out the compelling reason as to why inquiry under Section 5-A of the Act was liable to be dispensed with and on consideration of the aforesaid materials the opinion was formed. Following was stated in paragraphs 52 and 54 of the counter affidavit:-

*"**52.** That, insofar as, the question of invocation of the provisions of Section 17, are concerned, the State Government received a proposal*

from the District Level, setting out the compelling reasons as to why the provisions of Section 5-A of the Act were liable to be dispensed with. The State Government took into consideration the aforesaid material as well as the imperative and urgent necessity of establishment of new electricity generation facilities while forming its opinion to dispense with the inquiry, contemplated under Section 5-A of the Act, 1894.

54. *That, it is a settled law that as long as there is material before the State Government, which has been duly taken into account, while forming its subject satisfaction on the issue of invocation of Section 17, the purpose of judicial review comes to a close. The judicial review of the subjective satisfaction recorded by the State Government for invoking Section 17 is not the adequacy of material or an objective assessment of reasons that may have enabled the appropriate government to form such opinion."*

As noticed above, learned Chief Standing Counsel had also produced the original records of the State Government containing the proposals and materials which were submitted before the State Government for exercise of power under the Act. We have looked into the original records placed before us, a perusal of which indicate as under:-

The application was submitted by the U.P. Power Corporation for acquisition of 831.772 hectares land before the Collector. The said proposal was forwarded by the Collector, Allahabad to the Director, Land Acquisition, Board of Revenue, U.P., Lucknow vide its letter dated 4th June, 2007. The Director, Land Acquisition by letter on 13th July, 2007 forwarded the proposal received from the U.P. Power Corporation, as recommended by the Collector, to the State Government for consideration. The letter dated 13th July, 2007 of the Director, Land Acquisition has been perused by us in original which contains the entire proposal submitted by the U.P. Power Corporation along with the relevant certificates and Prapatras received from the U.P. Power

Corporation and the Collector. The copy of the form of application submitted by the U.P. Power Corporation Limited is the first document after the Index of the proposal. The application contains a heading "Form of Application for Acquisition of Land for Public Purpose". There are ten columns in the application. Columns 9 and 10, which are relevant in this context, were to the following effect:-

9	Whether possession wanted immediately. If so state reasons.	Possession wanted after acquisition of land.
10	Enclosures	1 Attested copy of Khasra.
		2 Attested copy of Khatuani
		3 A draft notification under section 4 of the Land Acquisition Act, 1894 (1 of 1894) specifying the name of the district, pargana and village and approximate area and the purpose for which the land is required.
		4 Plan of the land proposed for acquisition on the map in the scale 16" to a mile.
		5 Certificate to the effect that administrative sanction to the project for which is to be acquired has been obtained and provisions of funds have been made in the budget.
		6 Detailed list of buildings, wells, bundhis, trees etc.
		5 Certificate by department that the land proposed for acquisition is the minimum required for the purpose
		6

A perusal of the aforesaid application indicates that in reply to column 9 (whether possession wanted immediately, if so state reason), reasons were required to be mentioned, but in the reply only this much was stated that possession wanted after acquisition of the land. Neither the acquiring body gave any reason in the application as was required by Columns nor it clearly mentioned about invocation of Section 17(4) of the Act. In Prapatra No.1 (which document is in Hindi) is nothing but a

proforma of the column which is to be submitted by the acquiring body. In the said proforma columns No.10 and 11 are there which were to the following effect:-

10	क्या कब्जा तुरन्त आवश्यक है, यदि हॉ तो कारण बताये	तुरन्त आवश्यकता है। क्योंकि नये तापीय विद्युत गृह की स्थापना की जानी है।
11	संलग्नक	1 खसरा की प्रमाणित प्रति
		2 खतौनी की प्रमाणित प्रति
		3 मानचित्र संलग्न
		4 समस्त ग्रामों की परिसम्पतियों का विवरण।
		5

There are two other documents which are part of the proposal and necessary to be noticed. There is a certificate dated 3rd June, 2007 signed by the Collector, Allahabad with the heading "भू-अर्जन अधिनियम की धारा 17(1) लागू किये जाने सम्बन्धी प्रमाण पत्र". The said certificate was as follows:-

"भू–अर्जन अधिनियम की धारा–17(1) लागू किये जाने सम्बन्धी प्रमाण–पत्र

अधिशाषी अभियन्ता, विद्युत जानपद पारेषण खण्ड, उ0प्र0 पावर कारपोरेशन लिमिटेड, इलाहाबाद द्वारा नवीन विद्युत गृह की स्थापना हेतु जनपद की तहसील–बारा में प्रस्तुत किये गये 831.772 हेक्टेयर भूमि अर्जन, जो ग्राम–बेवरा, बेरूई, जोरवट, कपारी एवं खान सेमरा में भूमि अर्जित किये जाने के सम्बन्ध में है, पर मेरे द्वारा विचार कर लिया गया है। योजना की स्थापना से प्रश्नगत क्षेत्र का विकास होने के साथ–साथ प्रदेश में विद्युत उत्पादन की क्षमता में वृद्धि होगी। उत्तर प्रदेश पावर कारपोरेशन लिमिटेड द्वारा चयनित किया गया स्थल योजना की स्थापना के लिए उपयुक्त है। अर्जन निकाय के अनुरोध एवं योजना स्थापित होने की प्राथमिकता के दुष्टिगत अधोहस्ताक्षरी द्वारा भू–अर्जन की विज्ञप्ति अन्तर्गत धारा–4 व 6 भू–अर्जन अधिनियम की धारा–17(1) के अधीन निर्गत करने की संस्तुति की जाती है।

ह0 अस्पष्ट

18/9/07

(आशीष कुमार गोयल)
जिला, इलाहाबाद"

The next document which needs to be noticed is Prapatra-10, which was to the following effect:-

"धारा–4(1)/17 के अन्तर्गत भू–अर्जन के प्रस्ताव के लिए धारा–17 लागू किये जाने हेतु

प्रमाण पत्र

शासनादेश संख्या–7–3(1)/90–59 टी0सी0 दिनांकः 121.06.1996 व 129/1–13–2004–7–3(1) 90.95 टी0सी0 रा–13 दिनांक 06.08.04 के अनुसार जनपद–इलाहाबाद के ग्रामों बेवरा, बेरूई, जोरवट, खानसेमरा एवं कपारी में अर्जित की जा रही भूमि 831.772 हेक्टेयर उत्तर प्रदेश पावर कारपोरेशन लिमिटेड विभाग की परियोजना नए विद्युत गृह की स्थापना के धारा 4/6 के प्रस्ताव में स्थल चयन समिति के स्थल निरीक्षण दिनांक 24/10/06 की संलग्न रिपोर्ट (शासन के अर्द्धशासकीय पत्र संख्या–392/4/28/35–भू0उ0प0/88–99 दिनांकः 05.02.93 के अनुसार तैयार) का मैने भली भॉति निरीक्षण किया।

उक्त भूमि के उक्त अधिग्रहण में परियोजना को अविलम्ब पूर्ण किये जाने की आवश्यकता के कारण तात्कालिक प्रभाव से प्रस्तावित भूमि का कब्जा लिया जाना अत्यन्त आवश्यक है। भूमि अध्याप्ति अधिनियम की धारा–17 का प्रयोग किये जाने की दशा में अधिनियम की धारा–5 क उपबन्ध विलुप्त हो जाते हैं और भूमि स्वामियों को सुनवाई का अवसर समाप्त किये जाने के औचित्य से मैं पूर्णतया सहमत हूॅ।

मैं विश्वास दिलाता हूॅ कि धारा 4/6 की अधिसूचना जारी एवं प्रकाशित किये जाने पर प्रत्येक दशा में अर्जन निकाय/विभाग को तात्कालिक रूप से कब्जा दिला दूॅगा।

दिनॉकः.....

हस्ताक्षर
ह0 अस्पष्ट
कलेक्टर/जिलाधिकारी"

The letter dated 13th July, 2007 of the Director, Land Acquisition was received by the State Government and a Note dated 18th July, 2007 was put by the Deputy Secretary (Energy). The Note noticed that proposal has been received for issuing notification under Section 4(1)/17. The Note does not mention any reason or recommendation for invoking Section 17(4) of the Act or any reason for dispensing with the inquiry. The Note further noticed the recommendation of the Director, Land

Acquisition dated 13th July, 2007 to the effect that only after receipt of challan of deposit of 10% acquisition charges in prescribed account head, notification under Section 4(1)/17 of the Act be issued. On 18th July, 2007, the U.P. Power Corporation submitted necessary challan before the State Government evidencing deposit of 10% acquisition charges in correct account head. Thereafter a detail note was submitted on 18th July, 2007 by the Deputy Secretary (Energy). The note refers to various documents which were submitted by the acquiring body in different proformas. The note referred to certificate issued by the Collector for invoking Section 17(1) of the Act as well as Prapatra-10 as noticed above. The note in the end stated that electricity generation in the State of U.P. is less compared to consumption of electricity, hence establishment of power plant is necessary, the acquisition is in public interest. The note further mentioned that file be placed before Hon'ble Energy Minister through Principal Secretary (Energy) for issuance of notification under Section 4(1)/17. On the said note the Hon'ble Minister granted approval on 26th July, 2007 and thereafter notification was issued on 27th July, 2007.

A perusal of the original records, pleadings in the counter affidavit and the materials brought on the record by the State, it is apparent that there was no reason given or material placed by any of the four authorities who were involved in the process. The U.P. Power Corporation, the acquiring body, in its application did not give any reason or make any recommendation for dispensation of inquiry under Section 5-A of the Act or for invoking Section 17(4) of the Act. The acquiring body only mentioned that possession is to be immediately taken since new power generation plant is to be established. The Collector in his certificate given under Section 17(1) of the Act has only recommended for issuance of notification under Section 17(1) of the Act and only reason was that looking to the request of the U.P. Power Corporation and priority of establishing the power plant notification under Section 17(1) of the Act be issued. The Collector, thus recommended issuance of

notification under Section 17(1) of the Act and there was neither any application of mind for invocation of Section 17(4) of the Act nor any recommendation was made for dispensing with the inquiry under Section 5-A of the Act.

Prapatra-10, which has been signed by the Collector, as noted above, mentioned that the land is urgently required to complete the project. The Collector thereafter concluded that in view of invocation of Section 17(1) of the Act, the inquiry under the provisions of Section 5-A of the Act is automatically dispensed with, apart from the above there was no other reason.

Now reverting back to the pleadings of the State in the counter affidavit in paragraphs 52 and 54 as quoted above. The State case was that **proposal was received from District Level setting out compelling reasons as to why the provisions of Section 5-A of the Act were liable to be dispensed with**. The State Government further stated that it took into consideration the aforesaid material as well as the imperative and urgent necessity of establishment of new electricity generation facility, hence opinion was formed for dispensing the inquiry under Section 5-A of the Act. We have gone through the original records including the application submitted by the U.P. Power Corporation for acquisition and relevant certificates given by the Collector, which are part of the original records. What to say of any compelling reason, we do not find any reason either by acquiring body i.e. U.P. Power Corporation or the Collector regarding dispensation of inquiry under Section 5-A of the Act. In fact the U.P. Power Corporation in its application has never even requested for invocation of Section 17(4) of the Act for dispensation of the inquiry, so is the case with the Collector. Only mention was that there is urgency to take possession looking to the establishment of Thermal Power Plant. The Collector after noticing the above, has jumped on the conclusion that in the in the event of invocation of Section 17(1), dispensation of inquiry under Section 5-A of the Act is automatic.

We have already noticed the propositions as laid down by the Apex Court in ***Narayan Govind Gavate's*** case (supra), ***Mukesh Hans'*** Case (supra), ***Anand Singh's*** case (supra) and ***Radhy Shyam's*** case (supra) that there has to be separate application of mind with regard to Sections 17(1) and 17(4) of the Act and on invocation of Section 17(1) of the Act the dispensation of inquiry under Section 5-A of the Act is not automatic. Thus the view of the Collector that on invocation of Section 17(1) of the Act dispensation of inquiry under Section 5-A is automatic is clearly contrary to the law of the land. As noticed above, in the notings of the Deputy Secretary (Energy) dated 13th July, 2007 and 18th July, 2007 which were only two notings of the State Government after receipt of the letter dated 13th July, 2007 did not recommend for dispensation of inquiry under Section 5-A of the Act nor any reason has been referred to in the said notings for dispensation of inquiry.

From the above, it is clear that the State Government has not applied its mind as to whether present was a case for dispensation of inquiry under Section 5-A of the Act nor there was any material or recommendation for dispensation of inquiry under Section 5-A of the Act. Thus dispensation of inquiry by invoking Section 17(4) of the Act is clearly arbitrary and shows non application of mind which decision is clearly erroneous. From the foregoing discussions, we are fully satisfied that invocation of Section 17(4) of the Act by dispensing with the inquiry under Section 5-A was invalid and the State erred in dispensing with the inquiry under Section 5-A of the Act.

Sri R.N. Trivedi, learned Senior Advocate, appearing for the State, contended that project of construction of Thermal Power Plant being a time bound project, invocation of Section 17(4) of the Act was fully justified. He submitted that in the present time when the electricity has become necessity of life, no one can deny that construction of power plant is not and urgent project, hence invocation of Section 17(4) of the

Act cannot be challenged. It is contended that the judgment of the Apex Court in ***Radhy Shyam's*** case (supra) or even in ***Darshan Lal Nagpal's*** case (supra) were not the cases of any time bound project, hence those cases are not applicable in facts of the present case.

The submission of the respondents that for a time bound project invocation of Section 17(4) of the Act cannot be questioned is a too specious argument. Whether in a particular case inquiry under Section 5-A of the Act is to be dispensed with or not depends on each case and no straight jacket formula can be laid down. Even for a time bound project it may not be necessary to dispense with the inquiry under Section 5-A of the Act depends on several factors and the factor of project being time bound is not decisive. To test the submission of the respondents, the facts of the present case are to be recapitulated. According to the policy of the Government of India and the resolution dated 19th January, 2005, the process to select a developer on the basis of competitive bid is to take place after notification under Section 4 of the Act is issued. The State in its counter affidavit has brought on the record the resolution dated 19th January, 2005 as Annexure CA-7. Annexure-1 to the said resolution provides for time table for two stage bid process. The publication of request for acquisition, which is to be taken place after Section 4 notification, is the first step in the bidding process. According to the time table itself power project agreement is to be executed within 270 days from the date of publication of request for acquisition. A note, which is in the end of Annexure-1 to the resolution, is relevant, which is to the following effect:-

> *"Note: It is clarified that if the procurer gives extended time for any of the events in the bidding process, on account of delay in achieving the activities required to be completed before the event, such extension of time shall not in any way be deviation from the these Guidelines. However, if the bidding process is likely to take more than 730 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16."*

Thus from the above time table a minimum 9 months' period is provided for execution of power purchase agreement. The Note contemplates that if bidding process is likely to take more than 730 days, approval of the Appropriate Commission is to be taken. The Government of India itself being cautious has put in the Note that bidding process itself may take more than even two years.

It is further relevant to note that the State itself in its counter affidavit and supplementary counter affidavit has stated that commercial operation date shall be not beyond the 54 months from the date of issuance of letter of intent. Thus a period of four and half years is contemplated for start of commercial operation date which obviously is to take place after completion of bidding process, which is likely to take minimum nine months and maximum several years. It is useful to quote paragraph 18 of the supplementary counter affidavit of the State, which is to the following effect:-

> *"**18.** That the project as conceived by the State Government was itself a time bound project inasmuch as the Bid papers clearly provided that the Commercial Operation Date (COD) for the first unit would under no circumstances exceed 54 months from the date of issuance of the Letter of Intent and the establishment of the second unit would not be later than 64 months from the date of issue of Letter of Intent. The bid papers further provided that the difference in the scheduled COD of the two successive units would not exceed a period of five months."*

In view of the above facts, which have been brought on record by the State itself can it be said that the above project, which is termed as a time bound project, was such that inquiry under Section 5-A of the Act should have been necessarily dispensed with, obviously the answer would be 'no'. According to own case of the respondents, the project was to take at least five years to start and there was no such urgency that

within few weeks or few months something was going to happen which would have frustrated the very project. Thus the above facts clearly support the submission of the petitioners that whole process was not such in which there was any justification for invoking Section 17(4) of the Act by the State of U.P.

One of the submissions of the petitioners is that the acquisition has lapsed in view of Section 11-A of the Act since no award was made within two years from issuance of declaration under Section 6 of the Act. It is stated that notification with regard to Tahsil Bara was issued on 27th July, 2007 whereas declaration under Section 6 was issued on 4th February, 2008 and the award was declared on 10th March, 2010. The question as to whether acquisition was lapsed under Section 11-A of the Act was also one of the questions before the Full Bench in ***Gajraj's*** case (supra). The Full Bench in the said case has considered the above submission. Repelling the submission, the Full Bench laid down following in paragraphs 372 to 376:-

> "**372.** Learned counsel for the petitioners have submitted that after publication of declaration under Section 6 of the Act, in none of the cases award has been made under Section 11 within two years from the date of publication, hence, the entire proceedings for acquisition of the land has lapsed. Section 11 A of the Act is as follows:
>
> > *11A. Period within which an award shall be made. - (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:*
> >
> > *Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 the award shall be made within a period of two years from such commencement.*

373. *Learned counsel for the respondents refuting the submission made by counsel for the petitioners contends that in all the acquisitions under challenge Section 17(1) was invoked and the possession was taken of the land after issue of notice under Section 9 and land has vested in the State under Section 17 sub Section (1) hence Section 11-A has no application.*

374. *Learned counsel for the respondents submitted that Section 11 A applies in the cases where Section 17 has not been invoked and in cases where Section 17 has been invoked, there is no applicability of Section 11-A.*

375. *Learned counsel for the respondents has placed reliance on the judgments of the Apex Court of* ***1993 Volume 4 S.C.C. Page 369 Satendra Prasad Jain Vs. State of U.P. and 2011 Volume 5 S.C.C. 394 Banda Development Authority Vs. Motilal Agarwal****.*

376. *We have considered the submission of the learned counsel for the parties. In* ***Satendra Prasad Jain's*** *case the issue was considered and it was held by the Apex Court that when Section 17 sub Section (1) is applied by reason of urgency, the Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government as laid down in paragraph 15. The said view was reiterated by the Apex Court in* ***Awadh Bihari Yadav and others Vs. State of Bihar and others, 1995, 6 S.C.C. Page 31****. The recent judgment of Banda Development Authority (supra) has also occasion to consider the said issue, relying on the decision of Satendra Prasad Jain. The argument on the basis of Section 11-A was repelled. In the present bunch of cases the State Government has invoked urgency clause under Section 17(1) and possession has been taken in all the cases exercising urgency power. The ratio laid down by Satendra Prasad Jain's case is fully attracted and the submission made by the learned counsel for the petitioners on the basis of Section 11-A can not be accepted."*

In the present case, it is relevant to note that Section 17(1) of the Act was applied and thereafter publication of declaration under Section 6, notification under Section 9 of the Act was issued and the possession was taken on 24th April, 2008/2nd May, 2008. In the counter affidavit filed by the State it was clearly pleaded in paragraph 37 that the possession of acquired land was taken and handed over to the acquiring body on 24th

April, 2008, 1st May, 2008 and 4th August, 2008, which was not denied in the rejoinder affidavit. The judgment of the Full Bench in ***Gajraj's*** case (supra), which in turn has relied on the judgment of the Apex Court in ***Sateyndra Kumar Jain's*** case (supra), has fully answered the issue and the submission of learned counsel for the petitioners in this regard cannot be accepted.

The rest of issues being interrelated, are taken together.

The issue, now to be considered, is as to for what relief petitioners are entitled after it having been found that invocation of Section 17(4) of the Act was not justified.

Learned counsel for the respondents had contended that the petitioners are not entitled for any relief regarding quashing the notifications since they have invoked the jurisdiction of this Court under Article 226 of the Constitution of India with substantial delay i.e. after more than two years from declaration under Section 6 of the Act. It has further been pleaded by the respondents that petitioners were only agitating with regard to quantum of compensation and were pressing for giving higher compensation since had they been aggrieved by the acquisition, they could immediately come to this Court and file the writ petition. It has further been submitted that after taking possession by the acquiring body the bidding process was undertaken in transparent manner with the approval of the U.P. Regulatory Commission and Developers have been selected by letter of intent dated 2nd March, 2009 and the respondents No.7 has entered huge expenditure towards implementation of the project, constructions have been made on the spot, power project agreement and deed of conveyance have been issued, various contracts have been granted by the developers to third parties for carrying on the project. The Government of India has granted coal linkage to project and various other necessary requirements for carrying out the project has been completed, hence it is not a case where

acquisition need to be quashed.

For appreciating the submission of learned counsel for the respondents, it is necessary to have a look on the sequence of events and the pleadings which have been brought on the record.

The declaration under Section 6 of the Act was issued on 4th February, 2008 and possession was taken after Section 9 notice on 24th April, 2008, 2nd May, 2008 and 4th August, 2008. As noted above, in paragraph 37 of the counter affidavit the State has stated about taking of possession, which has not been denied in paragraph 18 of the rejoinder affidavit. Paragraph 37 of the counter affidavit and paragraph 18 of the rejoinder affidavit are quoted below:-

> *"**37.** That the possession of the acquired land has already been taken and then has been handed over to the acquiring body on 24.04.2008, 01.05.2008 and 04.08.2008. True photocopy of possession transfer memo dated 24.04.2008, 01.05.2008 and 04.08.2008, are being annexed herewith and marked as ANNEXURE NO.CA-22 collectively to this affidavit.*

> ***18.** That the contents of paragraph no.36, 37 and 38 of the counter affidavit are false and misleading and hence are denied. In reply thereof it is submitted that a bare perusal of the Annexure 21 to the counter affidavit will demonstrate that except for the petitioner no.1, the rest of the petitioners have accepted the amount under protest and are willing to return the same back if so directed by this Hon'ble Court. So far as the averment that the petitioners have not disclosed the receipt of the amount of the award even in their affidavits filed in the Hon'ble Court on 09.07.2010, suffice is it to say that the respondents are well aware as to the purpose behind filing of the said affidavits. Coming to this question, it is noteworthy that the petitioners were forced to accept the compensation during the summer vacations of this Hon'ble Court and the petitioner no.1 also withdrew from the writ petition*

> *around the same time. Such under hand tactics have been utilized only to subjugate and stifle the petitioners. It is further submitted that the land could not have been acquired by the respondents before complying with the provisions under section 17(3-A) of the Act. Hence, the acquisition proceedings are also vitiated on this count."*

The petitioners after issuance of notification under Sections 4 and 6 of the Act were well aware of the entire proceedings and have started agitation along with other farmers for enhancement of compensation. The rate for compensation which was determined in meeting dated 12th March, 2008 headed by the Divisional Commissioner and with regard to village Kapari Rs.2.5 lacs per bigha was fixed as compensation and for rest of four villages Rs.1 lac per bigha was fixed. The petitioners raised agitation to the said determination which was made on 12th March, 2008 by the compensation determination committee on the basis of which a review meeting was held on 16th April, 2008. The petitioners themselves have pleaded following in paragraphs 11 and 12 of the writ petition:-

> *"**11.** That thereafter, compensation to the tenure holders of the villages of Bewra, Jorwat, and Khan Semra was determined at the rate of Rs. 1 Lac per bigha and for village Kapari, the rate of compensation was determined at the rate of 2.50 lac per bigha which was recommended by the report of Rate of Compensation Determining Committee on 12.3.2008 to which the acceptance of the Commissioner was received on 22.3.2008. It is apparent that the rate of compensation that had been determined was at the rate of 2.50 Lac for village Kapari and 1 Lac per bigha for the rest of the villages and because of the said discrimination petitioners raised their voice and wide stage protests and agitations were held by the petitioners, who were also joint by the tenure holders of the village of Jorwat and Berui. The situation deteriorated to such an extent that petitioners and other tenure holders sat on hunger strikes and because of the high handed attitude of the respondent state, the whole situation become highly explosive. It is relevant to mention at this juncture that a meeting was held on 16.4.2008 presided over by the Commissioner Allahabad and attended by rest*

of the officials and considering the situation as described herein above, a decision in this regard was taken on the same day. A copy of the decision taken in the meeting held on 16.4.2008 is being filed herewith and marked as ***Annexure-3*** *to this writ petition.*

12. *That a bare perusal of the aforesaid records of the meeting dated 16.4.08 would indicates that the dissatisfaction of the petitioners and other tenure holders was considered in the aforesaid meeting but it was also considered that the Managing Director of the U.P. Power Corporation Ltd. Lucknow was insisting upon taking the possession of the land in the month of April, 2008. It is further recorded that the whole land subjected to acquisition proceeding was canal irrigated and well irrigated land and was as such highly fertile and further more large parts of the land was also richly endowed with minerals resources.*

In the aforesaid meeting demand of the petitioners and other tenure holders, for giving them compensation equivalent to that being give to the tenure holder of village Kapari i.e. at the rate of 2.50 Lac per bigha was rejected. However, in order to quell dis-satisfaction of the petitioners a further decision was taken to enhance rate compensation from Rs. 1 Lac to Rs. 1.25 Lac per bigha.

In the meeting dated 16th April, 2008, the rate of compensation was reviewed and the Review Committee headed by Divisional Commissioner enhanced the rate of compensation with regard to other four villages from Rs.1 Lac to Rs. 1.25 Lac. The petitioners belong to villages Bewra and Khan Semra with regard to which villages rate of compensation was enhanced from Rs. 1 Lac to Rs. 1.25 Lac. After notice under Section 9 of the Act was issued, the respondents also initiated process for paying 80% of the estimated compensation as required by Section 17(3A) of the Act. The Collector after the notice under Section 17(3A) was insisting upon the petitioners to accept the entire amount without protest. A writ petition being Writ Petition No.50789 of 2009 (Vishambhar Singh and others vs. State of U.P. and others) was filed in

this Court challenging the notification and raising ground that petitioners be permitted to receive compensation with protest. The writ petition was disposed of on 1st December, 2009 by following order:-

> *"The writ petition is accordingly disposed of with direction that in case the petitioners are eligible and recorded land owners, and have right to receive compensation, the District Magistrate shall offer 80% of the estimated compensation before taking possession of the land. The petitioners may, if they are so advised, accept the compensation under protest and thereafter wait for an award under Section 11(1) of the Act and may also make a reference for enhancement. If, however, they agree to accept the compensation as settled under Section 11(2) of the Act read with Rules of 1997, they will enter into an agreement and complete the formalities required under the Rules of 1997, to receive the compensation without any further right of enhancement at the rate, worked out in the subsequent meeting dated 16.4.2008. There shall be no order as to costs."*

It is to be noted that son of petitioner No.4 (Anwarul Haq) was also one of the writ petitioners in Writ Petition No. 50789 of 2009. After disposal of the writ petition filed by Vishambhar Singh and others on 1st December, 2009, the petitioners of that writ petition submitted representation claiming payment of 80% of the estimated compensation at the rate of Rs.1.25 lac. The representation was submitted by the petitioners of that writ petition and other villagers on 28th January, 2010. Following has been pleaded by the petitioners in paragraph 18 of the writ petition:-

> *"That thereafter, several of the present petitioners preferred representations before the District Magistrate, Allahabad through the Special Land Acquisition Officer, Allahabad bringing on record the fact about the judgment dated 1.12.09 passed by this Hon'ble Court and for payment of compensation in pursuance thereof. The names of the present petitioners in the said representation dated 28.1.2010 finds place at Sl. No.5, 6, 9, 11 but no action till date*

has been taken by the respondents for granting compensation to the petitioners in spite of the above representation. A copy of representation dated 28.1.2010 is being filed herewith and marked as ***Annexure-7*** *to this writ petition."*

From the aforesaid facts it is clear that petitioners were aggrieved by the rate of compensation and they knowing fully well about the entire acquisition proceedings did not choose to challenge the notification. The leading writ petition (Writ Petition No.32270 of 2010 was filed in this Court on 25th May, 2010 i.e. after more than two years from issuance of declaration under Section 6 of the Act. The reason sought to be given in the writ petition is that petitioners were not aware till 30th March, 2010 that Thermal Power Plant is going to be established by Prayagraj Power Generation Company and they were under impression that it was to be established by the U.P. Power Corporation. If the petitioners were aggrieved by the acquisition of their land, the said reason was not relevant for not immediately challenging the acquisition proceedings. After taking possession by the acquiring body, the special purpose vehicle the Prayagraj Power Generation Company initiated bidding process with public notice. The U.P. Electricity Regulatory Commission conducted public hearing with participation of several persons and developer i.e. respondent No.7 was selected by issuing letter of intent on 9th March, 2009. The respondent No.7 has started implementing project after execution of share purchase agreement and deed of conveyance. A supplementary affidavit has been filed by respondent No.7 giving details of developments which have been taken place after it being selected as developer. It is useful to refer to paragraphs 4, 5, 6, 7 and 8 regarding details of the development. Annexure SA-2 to the supplementary affidavit is eleven photographs of the site of the Prayagraj Power Plant, Bara which clearly depict that project is progressive on the site by construction of building, boiler unit, processing plant, batching plant, administrative block, field hostels and labour camps etc. Paragraphs 5 to 8 of the supplementary affidavit of respondents No.6 and 7, are as under:-

*"**5.** That the total project cost is envisaged to be Rs.10,780 crores. The answering respondent further submits that it has already taken loans of Rs.8085 crores. Till date the answering respondent has expended a sum of Rs.1469.53 crores as per the following details given hereinbelow:-*

Serial No.	*Particulars*	*Up to year ended 31.3.2011 (in crores)*	*During April, 2001 to June 2001-07-31 in crores)*	*Cumulative up to 30.6.2011 (in crores)*
1	*BTG Advance/Supply*	*798.31*	*56.76*	*855.07*
2	*Land Freehold and advance*	*63.32*	*8.3*	*71.62*
3	*Interest and finance charges*	*165.49*	*43.07*	*208.55*
4	*Other capital expenditure*	*140.27*	*112.11*	*252.39*
5	*Other advance*	*61.59*	*0.47*	*62.06*
6	*other expenses*	*15.8*	*4.05*	*19.85*
Total		*1244.78*	*224.75*	*1469.53*

***6.** That the answering respondent has achieved the following project milestones as detailed below:-*

- *Detailed topographical survey and establishment of benchmarks and control pillars at site.*
- *Preparation of Detailed Project Report and submission of the same to UPPCL.*
- *EIA clearance for the project obtained from the Ministry of Environment and Forests Government of India on 8.9.2009.*
- *Contracts for Boilers, Turbine and Generators placed upon BHEL on 21.10.2009.*
- *Financial Closure as per the Terms of the Contract achieved on 6.7.2010*
- *Mega Power Project status for 3 x 660 MW granted by the Ministry of Power Government of India on 29.9.2010.*
- *NOC from the U.P. Pollution Control Board obtained*

on 10.3.2011.

7. *That the answering respondent as on 20th February 2010 deposited a sum of Rs.21.80 crores with the U.P. Irrigation Department for shifting of an irrigation canal and work upon the same has since started in November 2010.*

8. *That on site, the camp site office has already been constructed; Major plant, equipment and machinery for execution of civil work have reached the project site, the Boiler foundation work for Units I, II & III has been completed. Concrete work for TG Building, Bunker Bay and Coal Mill is in progress. The excavation work for water reservoir, water channel, chimney and roads etc. are in progress. The above is evident from a perusal of the site photographs which are being annexed hereto and marked as Annexure SA-II to this affidavit."*

One more relevant factor which needs to be noted in this context is that majority of farmers whose land has been acquired, have accepted compensation. It has been stated in the counter affidavit of the State that out of 1099 tenure holders, the land of 129 tenure holders is to be excluded which falls within 200 meters of project for which proceedings were separately initiated and 847 tenure holders have received compensation after executing agreement with the acquiring body. The award has been made on 16th March, 2010 with regard to 77 effected tenure holders only out of whom 65 tenure holders have already received compensation. It has also been stated that petitioners have also received compensation which fact is not denied. Thus the majority of tenure holders have accepted compensation.

The question to be answered is that in facts of the present case whether petitioners are entitled for relief of quashing the notification and return of the land.

The above question has come up for consideration before the Apex Court in several cases, which need to be noticed. The Full Bench of

this Court in ***Gajraj's*** case was faced with the similar issue which has been noticed from paragraphs 422 to 424. In the case of ***Om Prakash and another vs. State of U.P. and others*** reported in (1998)6 SCC 1, the challenge to the acquisition for planned industrial development in district Gautam Budh Nagar was in issue. Section 4 notification was issued invoking Sections 17(1) and 17(4) of the Act. The Apex Court held that invocation of Section 17(4) of the Act was invalid. The Apex Court thereafter proceeded to consider as to for what relief the land owners were entitled. The Apex Court taking into consideration all the development activities which took place after acquisition, refused to grant relief for quashing the notification. The Apex Court also noticed that majority of land owners had not challenged the notification. Following was laid down in paragraph 30 of the judgment:-

> "**30.** *It is also to be kept in view that the impugned notification under Section 6 of the Act was issued for the purpose of planned development of District Ghaziabad through NOIDA and by the said notification, 496 acres of land spread over hundreds of plot numbers have ben acquired. Out of 494.26 acres of land under acquisition, only the present appellants owning about 50 acres, making a grievance about acquisition of their lands have gone to the court. Thus, almost 9/10th of the acquired lands have stood validly acquired under the land acquisition proceedings and only dispute centers round 1/10th of these acquired lands owned by the present appellants. It is a comprehensive project for the further planned development in the district. We are informed by learned senior counsel Shri Mohta for NOIDA, that a lot of construction work has ben done on the undisputed land under acquisition and pipelines and other infrastructure have been put up. That the disputed lands belonging to the appellants may have stray complex of lands sought to be acquired. That if notification under Section 4(1) read with Section 17 (4) is set aside qua these pockets of lands then the entire development activity in the complex will come to a grinding halt and that would not be in the interest of anyone.*
>
> ....
>
> *That we cannot permit upsetting the entire apple*

cart of acquisition of 500 acres only at the behest of 1/10th of land owners whose lands are sought to be acquired. We may also keep in view the further alien fact that all the appellants have filed reference for additional compensation under Section 18 of the Act. Shri Shanti Bhushan, learned senior counsel, was right when he contended that the appellants could not have taken the risk of getting their reference applications time barred during the pendency of these proceedings. Therefore, without prejudice to their contentions in the present proceedings they have filed such references. Be that as it may., that shows that an award is also made and reference are pending. Under these circumstances for enabling the appellants to have their say regarding release of their lands on the ground that they are having abadi and that the State Policy helps them in this connection the appellants can be permitted to have their grievances voiced before the State authorities under Section 48 rather than under Section 5-A of the Act at such a late stage. Consequently, despite our finding in favour of the appellants on Point No. 1, we do not think that this is a fit case to set aside the acquisition proceedings on the plea of the appellants about non-compliance with Section 5-A at this late stage. it is also obvious that if on this point the notifications are quashed for non-compliance of Section 5-A, that would open a pandora's box and those occupants who are uptill now sitting on the fence may also get a hint to file further proceedings on the ground of discriminatory treatment by the State authorities. All these complications are required to be avoided and hence while considering the question of exercise of our discretionary jurisdiction under Article 136 of the Constitution of India, we do not think that this is a fit case for interference in the present proceedings with the impugned notifications. Point No. 3, therefore, is answered in the affirmative against the appellants and in favour of the respondents."

The judgment of the Apex Court in ***Anand Singh's*** case (supra) do support the contention of the respondents. In the aforesaid case, appeals were filed against the judgment of the High Court by which judgment, writ petition filed by the land holders was dismissed. The land was acquired for residential colony by the Gorakhpur Development Authority. One of the submission made before the High Court and the

Apex Court was that the State Government wrongly exercised its power under Section 17(4) in dispensing with the inquiry. The Apex Court after considering all relevant cases has come to the conclusion that the dispensation of inquiry under Section 5A was unsustainable. The Apex Court after taking the view that notification in so far as the dispensation of inquiry under Section 5A, was unsustainable, proceeded to consider as to whether at that distance of time acquisition proceedings may be declared invalid and illegal. The Apex Court noted the submission of the Gorakhpur Development Authrority which had invested huge amount in the Development. The Court did not grant relief to the petitioners for quashing the acquisition/notification. Following was laid down in paragraphs 55 and 56 which are quoted below:-

> *"**55**. In the facts and circumstances of the present case, therefore, the Government has completely failed to justify the dispensation of an enquiry under Section 5A by invoking Section 17(4). For this reason, the impugned notifications to the extent they state that Section 5A shall not apply suffer from legal infirmity. The question, then, arises whether at this distance of time, the acquisition proceedings must be declared invalid and illegal.*
>
> ***56.** In the written submissions of the GDA, it is stated that subsequent to the declaration made under Section 6 of the Act in the month of December, 2004, award has been made and out of the 400 land owners more than 370 have already received compensation. It is also stated that out of the total cost of Rs. 8,85,14,000/- for development of the acquired land, an amount of Rs. 5,28,00,000/- has already been spent by the GDA and more than 60% of work has been completed. It, thus, seems that barring the appellants and few others all other tenure holders/land owners have accepted the `takings' of their land. It is too late in the day to undo what has already been done. We are of the opinion, therefore, that in the peculiar facts and circumstances of the case, the appellants are not entitled to any relief although dispensation of enquiry under Section 5A was not justified."*

In the case of ***Shankara Cooperative Housing Society Ltd. vs. M. Prabhakar and others*** reported in (2011)5 SCC 607, the Apex Court laid down the parameters for granting or refusing relief on the ground when petitioners approached the Court with delay. Following was laid down in paragraph 54:-

> *"**54.** The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:*
>
> *(1) There is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.*
>
> *(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.*
>
> *(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.*
>
> *(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.*
>
> (5) *That representations would not be adequate explanation to take care of the delay."*

The Full Bench of this Court in ***Gajraj's*** case (supra), after noticing the judgment of the Apex Court and the developments which took place subsequent to the notification, concluded in paragraphs 435 and 436 to the following effect:-

> *"**435.** Learned counsel appearing for the Authority as well as the learned counsel appearing for the intervenors have submitted that no land which was covered by any interim order of the High Court was neither allotted nor transferred and in some of the cases possession memo while taking possession mentions that possession was not taken since the land was covered by any interim order of the Court. The fact that most of the petitioners did not invoke the jurisdiction of this Court under Article 226 of the Constitution immediately after declaration under Section 6 of the Act, 1894 or after taking of the possession has also relevance while considering the issue as to what relief the petitioners are entitled in the facts of the present cases.*
>
> ***436.** We, thus conclude that the effect and consequence of third party rights, developments and the constructions made after taking of the possession by the authorities is a relevant factor which shall hereinafter be considered while considering the issue as to what relief the petitioners are entitled.*

As noticed above, the details of the development which took place by the respondent No.7 has been specifically pleaded in the supplementary affidavit filed by respondents No.6 and 7 which relevant pleadings have already been quoted above. The petitioners have replied the averments of the supplementary affidavit of respondent No.6 and 7 by filing supplementary rejoinder affidavit. However, the developments as pleaded by respondents No.6 and 7 have not been denied. In reply to paragraphs 5 to 8 of the supplementary affidavit, following was stated in paragraph 4 of the supplementary rejoinder affidavit dated 23rd August, 2011:-

> *"**4.** That with regard to the contents of*

paragraph 5, 6, 7, 8, 9, 10 and 11 of the affidavit relate to the internal correspondent of the respondents. However, even in the present affidavit the respondents have chosen not to disclose the basis of satisfaction of the State Government for invoking section 17(1) and 17(4) of the Act with regard to the land acquisition proceedings."

It is, thus, clear that the contents regarding development carried out after selecting the developer on the site towards the project and investment of huge amount running in about 1400 crores have not been denied. From the photographs enclosed development on the spot is apparent.

In view of what has been stated above, we are of the view that present is not a case where the the petitioners are entitled for the relief of quashing the notification under Section 4 read with Sections 17(1) and 17(4) of the Act and declaration under Section 6 of the Act. The Thermal Power Project for generation of electricity having gone far ahead, the prayer for quashing the notifications after lapse of more than two years of declaration under Section 6 of the Act, whereas petitioners were well aware of the proceedings from very beginning and were raising their voice against the rate of compensation only, no ground has been made out to quash the notifications. Thus the prayer of the petitioners in Writ Petition No.32270 of 2010 for quashing the notification under Section 4 read with Section 17(1) and 17(4) of the Act cannot be granted and refused.

The compensation having already been accepted by the petitioners, which has not been denied by them in the rejoinder affidavit and the supplementary rejoinder affidavit, the petitioners, if aggrieved with the rate of compensation awarded to them, may take all statutory proceedings in that regard in accordance with law.

Now comes Writ Petition No.1236 of 2011 filed by Anwarul Haq

and Bhairo Deen, who are also petitioners in Writ Petition No.32270 of 2010. In Writ Petition No.1236 of 2011 the petitioners have prayed for quashing the notification under Section 4(1) dated 21st October, 2008 with regard to acquisition of 26.354 hectares land of village Dewra. The said writ petition has been filed by the petitioners on 7th January, 2011. For the same reasons, which have been given while considering the petitioners' claim in Writ Petition No.32270 of 2010 for quashing the notifications, the petitioners are also not entitled for quashing the aforesaid two notifications and the prayer for quashing the notifications is refused in Writ Petition No.1236 of 2011 also.

Now we come to the writ petitions relating to land acquisition proceedings of Tahsil Karchhana, district Allahabad, leading writ petition of which village is Writ Petition No.3689 of 2010. As observed above, similar issues have been raised in this writ petition also as has been raised in writ petition of Awadhesh Pratap Singh and others (Writ Petition No.32270 of 2010).

We have also perused the original records of the State Government pertaining to land acquisition of Tahsil Karchhana. The proposal for acquisition of land of five villages measuring 328.932 hectares was submitted by the U.P. Power Corporation on 20th August, 2007. The proposal submitted by the U.P. Power Corporation contained different proformas as required by Land Acquisition Manual. The Collector has given a certificate dated 18th September, 2007 for invoking Section 17(1) which is part of the proposal. It is useful to quote the certificate given by the Collector under Section 17(1) of the Act dated 18th September, 2007 which is to the following effect:-

"भू–अर्जन अधिनियम की धारा–17(1) लागू किये जाने सम्बन्धी प्रमाण–पत्र

अधिशाषी अभियन्ता, विद्युत जानपद पारेषण खण्ड, उ0प्र0
पावर कारपोरेशन लिमिटेड, इलाहाबाद द्वारा नवीन विद्युत गृह की

स्थापना हेतु जनपद की तहसील–करछना में प्रस्तुत किये गये 329,822 हेक्टेयर भूमि अर्जन जो ग्राम–भिटार, कचरा, कचरी, गढ़वा तालुका खाई, देवरीकला में भूमि अर्जित किये जाने के सम्बन्ध में है, पर मेरे द्वारा विचार कर लिया गया है। योजना की स्थापना से प्रश्नगत क्षेत्र का विकास होने के साथ–साथ प्रदेश में विद्युत उत्पादन की क्षमता में वृद्धि होगी। उत्तर प्रदेश पावर कारपोरेशन लिमिटेड द्वारा चयनित किया गया स्थल योजना की स्थापना के लिए उपयुक्त है। अर्जन निकाय के अनुरोध एवं योजना स्थापित होने की प्राथमिकता के दुष्टिगत अधोहस्ताक्षरी द्व ारा भू–अर्जन की विज्ञप्ति अन्तर्गत धारा–4 व 6 भू–अर्जन अधिनियम की धारा–17(1) के अधीन निर्गत करने की संस्तुति की जाती है।

ह0 अस्पष्ट

18/9/07

(आशीष कुमार गोयल)
जिला, इलाहाबाद"

A certificate being Prapatra-10 was also signed by the Collector, which was part of the proposal, which reads as under:-

"धारा–4(1)/17 के अन्तर्गत भू–अर्जन के प्रस्ताव के लिए धारा–17 लागू किये जाने हेतु

प्रमाण पत्र

शासनादेश संख्या–7–3(1)/90–59 टी0सी0 दिनांकः 121.06.1996 व 129/1–13–2004–7–3(1) 90.95 टी0सी0 रा–13 दिनांक 06.08.04 के अनुसार जनपद–इलाहाबाद के ग्रामों भिटार, कचरा, कचरी गढ़वाकला ता0खाई एवं देवरीकला में अर्जित की जा रही भूमि 328.384 हेक्टेयर उत्तर प्रदेश पावर कारपोरेशन लिमिटेड विभाग की परियोजना नए विद्युत गृह की स्थापना के धारा 4/6 के प्रस्ताव में स्थल निरीक्षण दिनांक 15/7/07 की संलग्न रिपोर्ट (शासन के अर्द्धशासकीय पत्र संख्या–392/4/28/35–भू0उ0प0/88–99 दिनांकः 05.02.1993 के अनुसार तैयार) का मैने भली भॉति निरीक्षण किया।

उक्त भूमि के उक्त अधिग्रहण में परियोजना को अविलम्ब पूर्ण किये जाने की आवश्यकता के कारण तात्कालिक प्रभाव से प्रस्तावित भूमि का कब्जा लिया जाना अत्यन्त आवश्यक है। भूमि अध्याप्ति अधिनियम की धारा–17 का प्रयोग किये जाने की दशा में अधिनियम की धारा–5 क उपबन्ध विलुप्त हो जाते हैं और भूमि स्वामियों को सुनवाई का अवसर समाप्त किये जाने के औचित्य से मैं पूर्णतया सहमत हूॅ।

मैं विश्वास दिलाता हूॅ कि धारा 4/6 की अधिसूचना जारी एवं प्रकाशित किये जाने पर प्रत्येक दशा में अर्जन निकाय/विभाग को तात्कालिक रूप से

कब्जा दिला दूँगा।

दिनॉकः.....

ह0 अस्पष्ट
Executive Engineer
Electy. Civil Trans. Division
U.P.P Trans. Corp. Ltd.
Allahabad."

हस्ताक्षर
ह0 अस्पष्ट
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The Director, Land Acquisition, Board of Revenue, U.P., Lucknow forwarded the proposal by letter dated 19th October, 2007. The Collector sent a letter informing about the transfer of expenses for land acquisition in appropriate account on 5th November, 2011. Thereafter a detailed note was submitted by the Deputy Secretary on 15th November, 2007. In the detailed note mention of Prapatra-10 as quoted above was there and there was also a recommendation that establishment of power plant is necessary and eminent to meet with deficit of power problems in the State. In the note neither any recommendation was made for dispensation of inquiry under Section 5-A of the Act nor any reason was given.

In paragraphs 54 and 56 of the counter affidavit of the State it was stated that the State Government received proposal of District Level setting out compelling reason as to why inquiry under Section 5-A is liable to be dispensed with. A perusal of the original records, as noted above, clearly indicate that in certificates which were issued by the Collector recommendation was made for invoking Section 17(1) of the Act. There was no recommendation by the Collector or the Director, Land Acquisition for invoking Section 17(4) of the Act nor there was any separate application of mind with regard to invocation of Section 17(4) of the Act. The pleadings in the counter affidavit of the State that compelling reasons were given in the proposal received from District Level was incorrect and contrary to the record. What to say about any compelling reason, there was neither any reason at all for invocation of Section 17(4) of the Act nor there was any recommendation for

dispensation of inquiry under Section 5-A of the Act. Thus there was complete non application of mind by the State Government while invoking Section 17(4) of the Act and the invocation of Section 17(4) of the Act was clearly unjustified.

We have already observed that invocation of Section 17(4) of the Act in the notification dated 23rd November, 2007 was invalid for the reasons given above. The question now to be considered is as to whether the petitioners in this writ petition, who have challenged the notification dated 23rd November, 2007 under Section 4 read with Sections 17(1) and 17(4) of the Act and declaration under Section 6 dated 3rd March,2008 are entitled for quashing the notifications or not.

A supplementary affidavit in the aforesaid writ petition has been filed by the petitioners giving various details regarding agitation initiated by the farmers against the acquisition proceedings. The petitioners' case in the writ petition is that they have not accepted the compensation and they are aggrieved by the acquisition. The writ petition of Anand Prasad and others (Writ Petition No.3689 of 2010) was filed on 22nd January, 2010 and in the writ petitions pertaining to Tahsil Karchhana, Jai Prakash Power Ventures Limited has also been selected as developer in pursuance of the competitive bid. The facts, which have come on the record in the writ petitions pertaining to Tahsil Karchhana, indicate that the selected developer could not carry on any project activity on the spot. There has been several round of talks with the administrative authorities and the farmers of Karchhana Tahsil pertaining to land acquisition proceedings and their demands. The petitioners have brought on the record copy of the letter signed by the District Magistrate dated 21st January, 2011 which indicates that District Magistrate has stated in writing that till the demands of the farmers are not met, the developer shall not carry on any development work on the spot. The said letter has been brought on the record as Annexure-11 to the supplementary affidavit. Similar note was written by the Additional District Magistrate, Allahabad dated 9th

December, 2010, which has also been brought on the record as Annexure-7 to the supplementary affidavit. In the counter affidavit and the supplementary counter affidavit there is no material to indicate that project has been implemented on the spot by the developer nor details of any development or activities undertaken for execution of project by the developer has been brought on the record. The respondents, however, have submitted that development could not be carried out due to agitative method adopted by the farmers and they cannot take any benefit out of that.

As noticed above, the Apex Court in several judgments and the Full Bench of this Court in ***Gajraj's*** case (supra), as noticed above, have refused quashing of notifications on the ground of subsequent developments. In the present case, apart from letter of intent issued in favour of respondent No.5, execution of power project agreement and conveyance deed, nothing has been brought on the record to indicate that any development towards project has been undertaken. Thus the cases pertaining to Tahsil Karchhana, are on different footing and the relief for quashing the notifications cannot be denied.

In view of the foregoing discussions, all the writ petitions are decided in following manner:-

(i) Writ Petition No.32270 of 2010 (Awadhesh Pratap Singh and others vs. State of U.P. and others) and Writ Petition No.1236 of 2011 (Anwarul Haq and another vs. State of U.P. and others) are dismissed. However, dismissal of the writ petition shall not preclude the petitioners from seeking their statutory remedy regarding amount of compensation granted to them.

(ii) Writ Petition No.3689 of 2010 (Anand Prakash and another vs. State of U.P. and others) and five other writ petitions

relating to Tahsil Karchhana, district Allahabad are allowed. The notification dated 23rd November, 2007 issued under Section 4 read with Section 17(1) and 17(4) of the Act as well as the declaration under Section 6 of the Act dated 3rd March, 2008 are quashed subject to deposit of compensation, if any, received by the petitioners before respondent No.3.

(iii) It shall be open for the State Government to proceed afresh for acquisition of land relating to relevant villages of Tahsil Karchhana, district Allahabad in accordance with law.

Parties shall bear their own costs.

Let the original records be returned to the learned Chief Standing Counsel.

Date: April 13, 2012.
Rakesh/LA/Sandeep