



2026:AHC-LKO:14561-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT – C No. - 2000170 of 2015

Mata Baksh SinghPetitioners(s)

Versus

State of U.P. throughRespondents(s)
Secy Nagar Vikas
Department and 3
Others

Counsel for Petitioners(s) : Anish Srivastava Lall, Anand
Shanker Asthana, Anuj Kudesia,
Manish Chaudhary, Vikas Kumar
Agrawal
Counsel for Respondent(s) : C.S.C., Amarendra Kumar Bajpai,
Dharmendra Kumar Dixit, Ghaus
Beg

with

WRIT – C No. - 6261 of 2022

Mata Baksh SinghPetitioners(s)

Versus

State of U.P. throughRespondents(s)
Secy Nagar Vikas
Department and 3
Others

Counsel for Petitioners(s) : Shreya Chaudhary, Anand Shanker
Asthana, Anuj Kudesia, Rinku
Kumar Verma
Counsel for Respondent(s) : C.S.C., Dharmendra Kumar Dixit,
Ghaus Beg

with
WRIT – C No. - 3283 of 2024

Mata Baksh Singh

.....Petitioners(s)

Versus

State of U.P. through
Secy Nagar Vikas
Department and 3
Others

.....Respondents(s)

Counsel for Petitioners(s)	: Anuj Kudesia, Anand Shanker Asthana, Vikas Kumar Agrawal
Counsel for Respondent(s)	: C.S.C., Apoorva Tewari, Dharmendra Kumar Dixit, Ghaus Beg, Saharsh Srivastava.

Court No.-16**AFR**

Reserved on: 09.12.2025
Delivered on : 24.02.2026

HON'BLE MRS. SANGEETA CHANDRA, J.
HON'BLE BRIJ RAJ SINGH, J.

[delivered by Hon'ble Mrs. Sangeeta Chandra, J.]

1. This is a bunch of three petitions filed by petitioner Mata Baksh Singh, which relate to the acquisition proceedings initiated by the State Government with respect to 08.08.2016 ha of land situated in three villages, Ratapur, Baraepur, and Akhtiyarpur in District Raebareli. The State of U.P. and the Raebareli Development Authority are the respondents in two of such Writ Petitions, and in the third Writ Petition that has been filed in 2024, the auction purchaser

of the land in question has been arrayed as respondent no. 5 (hereinafter referred to as “the private respondent”).

2. For the purposes of clear exposition and consideration, the judgment has been divided into the following sections-

A.	Submissions of the Counsel for the Petitioner
B.	Submissions of the respondent State of Uttar Pradesh
C.	Submissions of the Counsel for the Raibareli Development Authority
D.	Submissions of the Counsel for the Private Respondent
E.	Points for Consideration
F.	Analysis
G.	Conclusion

Submissions of the Counsel for the Petitioner

3. Sri Vishwajeet Singh, learned Senior Counsel, assisted by Sri Anand Shankar Asthana, presented the case on behalf of the petitioner and advanced his submissions as follows:

- (i) The petitioner had purchased a plot admeasuring 204 sq. m. (2200 sq. ft.) out of khasra no.201/1, situated in village Akhtiyarpur on the Lucknow–Allahabad Highway, Tehsil Sadar, District Raebareli, through a registered sale deed on 09.04.2002, and applied for mutation, which was also done in his name. The stamp duty was inadvertently calculated at

residential rates, although the property in question was commercial in nature as it was situated adjoining the Lucknow–Allahabad Highway, and a Suit No. 5111 of 2002 was instituted against the petitioner, which was decided on 31.05.2004, imposing a fine as well as stamp duty to the tune of Rs. 11,006/-, which was deposited by the petitioner in the office of the Tehsildar on 15.10.2004. Consequently, the said plot stood registered as commercial property in favour of the petitioner.

- (ii) Subsequently, a Notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 was issued on 05.04.2006 for developing a residential colony by the Raebareli Development Authority in the name of Yatayat Nagar. A Notification under Section 6/17 was issued on 25.07.2007. Since, Section 17 was invoked, the Section 5-A enquiry was dispensed with, and the first opportunity to file objections came to be given to the petitioner only when notice under Section 9 was issued by the S.L.A.O.
- (iii) The petitioner raised an objection before the Special Land Acquisition Officer saying that his land was commercial and compensation be paid to him at commercial rates. An inspection was done on 23.09.2008 and a report filed on 06.10.2008. The S.L.A.O., Raebareli, however, rejected such objections and calculated compensation at residential circle rate and offered Rs.75,371/- through Award dated 30.05.2009. The petitioner did not accept the compensation but filed a Reference application for enhancement under Section 18 of the Act, 1894. The Raebareli Development Authority deposited compensation in the Treasury as revenue deposit on 08.02.2011. The petitioner remained in possession of the land of khasra no. 201/1 and also filed a Suit Regular Suit No.36 of

2015 for injunction against the Raebareli Development Authority, in which a Commission was called for by the Civil Judge. The site was inspected and a Commission Report was submitted on 04.04.2015, indicating the possession of the petitioner over the said land.

- (iv) Subsequently, the petitioner filed Writ Petition No. 170 (Land Acquisition) of 2015 challenging the notifications issued under Sections 4/17 and 6/17 of the Land Acquisition Act, 1894. Such writ petition was renumbered as Writ-C No. 2000170 of 2015 seeking quashing of the acquisition notifications and the Award, relying on **Pune Municipal Corporation v. Harakchand Misirimal Solanki AIR 2014 SC 982** wherein it was held that under Section 24(2) of the Land Acquisition Act of 2013, acquisition lapses if possession is not taken and compensation is not paid for more than five years prior to commencement of the new Act. Government Orders dated 28.02.2014 and 24.03.2014 had directed authorities to act in accordance with the said judgment and the petitioner relying upon them asserted that compensation was neither offered nor paid and relied on Khatauni dated 24.03.2015 showing his continued ownership.
- (v) During pendency, the petitioner also filed Writ-C No. 6261 of 2022 seeking release of his unutilized land in khasra no. 201/1. He alleged discriminatory treatment, as similarly situated landholders were restored possession and permitted constructions, contrary to the principle of equality laid down in **State of Karnataka v. Karnataka State Patel Sangha (2007) 4 SCC 207**.
- (vi) In Writ-C No. 6261 of 2022, the petitioner asserted that his land remained unutilized for more than five years after acquisition and was therefore liable to be released under

Section 17 of the U.P. Urban Planning and Development Act, 1973. By order dated 13.09.2022, this Court directed the counsel for the respondent to obtain instructions on whether the land of the petitioner had been utilized under the scheme. However, instead of answering this specific query, the Raebareli Development Authority filed a counter-affidavit on 03.09.2023, nearly one year later, without disclosing that the land had already been auctioned in favour of respondent no. 5.

- (vii) The petitioner further alleges that the auction was conducted clandestinely. His land, earlier marked as "D-1", was later shown as commercial Plot C-1A, in the auction notice and that it formed part of Ekta Vihar Colony. The plot area was wrongly shown as 175 sq. m. instead of 204 sq. m. After learning that possession of the entire 204 sq. m. had been handed over pursuant to the auction, the petitioner lodged a complaint, following which an allegedly incorrect report dated 19.09.2023 was submitted by the Raebareli Development Authority to the State Government. Consequently, Writ-C No. 9486 of 2023 was filed and disposed of on 02.11.2023 with liberty to submit a fresh representation. The petitioner thereafter filed a representation on 10.11.2023 seeking release of land under Sections 48 of the Land Acquisition Act, 1894 and 17 of the U.P. Urban Planning and Development Act, 1973, which was rejected on 20.02.2024, leading to the present writ petition.
- (viii) That the rejection of the representation of the petitioner rests on an erroneous interpretation of Section 17 of the U.P. Urban Planning and Development Act, 1973. The provision itself contemplates acquisition for development purposes under the Land Acquisition Act, 1894, and its proviso grants a substantive right of restoration where the acquired land remains unutilized for five years. The petitioner asserts that he

continued in lawful possession of the land until June 2023, having earlier let it out for a licensed liquor vend and thereafter retaining possession even after the tenancy ended. Despite this, the Development Authority allegedly dispossessed him and proceeded to auction the land without paying compensation. It is submitted that such prolonged deprivation of property, forcing a 73-year-old landholder to litigate for nearly two decades, is arbitrary and unconstitutional. Reliance is placed on **Tukaram Kana Joshi & Ors. vs. M.I.D.C. & Ors. (2013) 1 SCC 565** and **Sukh Dutt Ratra and Anr. vs. State of Himachal Pradesh and Ors., (2022) 7 SCC 505** to contend that the State cannot divest citizen of his property without authority of law and just compensation, consistent with Articles 14 and 300-A of the Constitution.

- (ix) That the State Government invoked the urgency clause under Section 17 of the Land Acquisition Act, 1894 without proper application of mind to the statutory prerequisites. Although, the satisfaction regarding urgency is subjective, it must be founded on relevant material showing a genuine need for immediate possession. In cases of planned urban development or residential schemes, no presumption operates in favour of the State, and the burden lies on the Government to justify both the urgency and the dispensation of the enquiry under Section 5A. The Hon'ble Supreme Court has repeatedly held that recourse to Section 17 is an exception and cannot be adopted as a routine measure. While the power exercised under Section 17 is administrative and ordinarily commands deference, it remains open to judicial review where the opinion is based on extraneous or irrelevant considerations or reflects non-application of mind. Strong reliance is placed on **Radhy Shyam(D)Thr. Lrs & Ors vs State Of U.P.& Orr, Greater**

Noida Industrial Development Authority vs. Devendra Kumar and ors (2011) 12 SCC 375, **Laxmi Devi versus State of Bihar and others, reported in 2015 (10) SCC 241 (para 13–20); Ram Dhari Jindal Trust v. Union of India & Others reported in 2012 (11) SCC 370 (para 15, 17 to 21); Anand Singh v. State of U.P. & Others, reported in 2010 (11) SCC 242 (para 41 to 51)**, to contend that the impugned invocation of urgency is legally unsustainable.

- (x) That Section 17(3-A) of the Land Acquisition Act, 1894, mandates that at least eighty percent of the estimated compensation must be tendered and paid before taking possession, failing which the vesting of the land does not become absolute. In **Delhi Airtech Services Pvt. Ltd. v. State of U.P. (2022 SCC OnLine SC 1408)**, the Hon'ble Supreme Court reiterated that the urgency clause cannot be invoked as a mere formality and emphasised that the protective safeguards under Section 17(3-A) must be complied with strictly; non-payment of the required compensation would render the acquisition invalid and possession unlawful. In the present case, neither tender nor payment of the requisite compensation was made to the petitioner, and therefore, the possession taken is illegal. Consequently, the protection against lapse under Section 11-A cannot be invoked by the State.
- (xi) That the auction conducted by the Raebareli Development Authority was illegal and arbitrary. The disputed land was earmarked for future planning in the 2016 layout plan, yet was selectively carved out and auctioned without proper publicity or compliance with relevant Government Orders. Such auction, allegedly resulting in inadequate consideration, is liable to be set aside as per **K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple, reported in 2022 (5) SCC 710**

and allied precedents. Additionally, reliance is placed on Section 17 of the U.P. Urban Planning and Development Act, 1973, contending that since the land remained unutilized for over five years, the petitioner was entitled to seek restoration, which was wrongly denied.

- (xii) The learned Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in **Lucknow Development Authority v. Gopal Das (Deceased), (2019) 8 SCC 172**, wherein it was held that the applicability of the proviso to Section 17(1) of the Act of 1973 depends upon whether the acquired land was actually developed after completion of acquisition proceedings. The Court clarified that where no development or utilization of the land takes place within five years from the date of acquisition, the tenure holder becomes entitled to restoration of the land on payment of statutory charges, in accordance with law.
- (xiii) In view of the aforesaid facts and the settled legal position, it has been submitted that the impugned acquisition, forcible deprivation of possession in 2023, and subsequent auction of the land of the petitioner suffer from arbitrariness, illegality, and non-compliance with mandatory statutory safeguards. The prolonged non-utilization of the land, non-payment of compensation, unlawful invocation of urgency, and denial of the statutory right of restoration clearly vitiate the action of the respondents. It has therefore been prayed that the writ petition be allowed.

Submissions of the respondent State of Uttar Pradesh

4. The State Respondents has been represented by Sri Manish Mishra, Additional Chief Standing Counsel and it has been stated as follows-

- (i) That the petitioner repeatedly approached this Court belatedly, despite the Award dated 30.05.2009 and possession having been taken. The petitioner earlier sought only enhancement of compensation by filing a Section 18 reference and never challenged the acquisition on merits. Statutory notices were duly issued, objections were considered, surveys conducted, and possession taken in 2009. As the petitioner did not accept compensation, the awarded amount was deposited in the Treasury under Section 31 of the 1894 Act. Subsequent writ petitions were successive and misconceived.
- (ii) That the acquisition proceedings strictly complied with the 1894 Act. Notifications under Sections 4/17 and 6/17 were issued within the statutory period and were valid in law. Actual possession was taken by preparing a panchnama and handing over land to the Development Authority, which is sufficient for large tracts as held in **Banda Development Authority versus Moti Lal Agarwal and others, (2011) 5 SCC 394**. Section 17(3A) was neither applicable nor available, being prospective in nature. Compensation was duly offered after declaration of the Award. The petitioner, having accepted the acquisition by filing a Section 18 reference, raised belated and untenable challenges.
- (iii) That the second writ petition, filed after more than six years of the first, was barred as it arose from the same cause of action, namely the acquisition proceedings, and attracted the bar under Order II Rule 2 CPC, as explained in **Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Ltd., 2025 SCC OnLine SC 82**. The petitioner could not raise new grounds which were available earlier, including violation of Section 17(3A), based on

Laxmi Devi v. State of Bihar, (2015) 10 SCC 241, or Delhi Airtech Services Pvt. Ltd. v. State of U.P., 2022 SCC OnLine SC 1408. No pleading of prejudice was made, except inadequacy of compensation, which is irrelevant at the Section 5-A stage. Possession was taken on 30.05.2009, and the land vested absolutely in the State under Section 16, as held in **Indore Development Authority v. Manoharlal, (2020) 8 SCC 129.**

- (iv) That once possession of acquired land is taken, power under Section 48 of the Land Acquisition Act, 1894 cannot be exercised, as held in **Visakhapatnam Urban Development Authority v. S.S. Naidu (2016) 13 SCC 180.** In the present case, acquisition stood completed on 30.05.2009, with declaration of the Award and taking of possession, followed by vesting of land in the State free from encumbrances. Reliance was placed on **State of M.P. v. V.P. Sharma, AIR 1966 SC 1593; Dedicated Freight Corridor Corporation v. Subodh Singh (2011) 11 SCC 100; and Government of A.P. v. Syed Akbar (2005) 1 SCC 558.** Section 17 of the U.P. Urban Planning and Development Act, 1973 was inapplicable as the land formed part of the approved development plan. The petitioner's representation was belated, and successive writ petitions were barred by delay, acquiescence, and Order II Rule 2 CPC, particularly after filing a Section 18 Reference.
- (v) In view of the undisputed fact that the Award was declared on 30.05.2009, possession of the land was taken, and the land vested absolutely in the State under Section 16 of the Land Acquisition Act, 1894, the petitioner is not entitled to any relief from this Court. Compensation was duly offered and, upon refusal, deposited in the Treasury in accordance

with law. The acquisition proceedings attained finality, and the petitioner himself accepted the same by seeking enhancement under Section 18. Subsequent challenges are barred by delay, acquiescence, and Order II Rule 2 CPC. The land having been utilized under an approved development plan, no case for interference under Article 226 is made out. In view of the foregoing submissions, the writ petitions are liable to be dismissed.

Submissions of the Counsel for the Raebareli Development Authority

5. Learned Senior Counsel Sri Asit Chaturvedi assisted by Sri Dharmendra Kumar Dixit appearing for the Raebareli Development Authority, while opposing the writ petition, submitted that—

- a. That after declaration of Award on 30.05.2009, possession was taken of the land in question. Compensation of Rs.75,371/- was offered to the petitioner on 26.06.2009, but on his refusal to take the same, it was deposited in the District Treasury on 08.02.2011. Land was acquired for the purpose of a residential colony and it has been utilized. 8.816 hectares of land was acquired for construction of Yatayat Nagar Residential Colony. Under Section 14 of the U.P. Urban Planning and Development Act, 1973, a development plan was finalized on 11.11.2009, which was revised on 26.07.2016. Land admeasuring 1185 m², which includes 175.11 m² of land of the petitioner, has been reserved for future planning. It was later numbered as C-1A Commercial Plot and approved for auction by the Vice-Chairman, Raebareli Development Authority, on 30.05.2003. Since the utilization of the acquired land has been completed, it cannot be released in favour of the

petitioner. It was also stated in the counter-affidavit that the judgments cited by the petitioner are inapplicable to the facts of the case. Issues settled by the Award dated 30.05.2009 cannot be reopened. The Reference made by petitioner under Section 18 is pending solely for enhancement of compensation. The Raebareli Development Authority has deposited Rs. 3,35,62,147/- as compensation for the entire scheme and its name was duly recorded in revenue records on 26.12.2015 for plot no. 201/1 also.

- (ii) That Possession of the land was duly taken by the Raebareli Development Authority after payment of compensation; hence, the Act of 2013 is inapplicable in view of **Indore Development Authority v. Manoharlal (2020) 8 SCC 129**. All land acquired under the notifications dated 05.04.2006 and 25.07.2007 and Award dated 30.05.2009 is with the Authority. No original owner, including the petitioner, remains in possession or raised construction. Relevant possession documents were duly filed.
- (iii) The acquired land forms part of a duly approved development scheme. An area of 8.816 hectares was acquired for construction of the Yatayat Nagar Residential Colony. The development plan was finalized on 11.11.2009 and subsequently revised on 26.07.2016. The land admeasuring 1185 square metres, including 175.11 square metres claimed by the petitioner, was reserved for future planning and later designated as Commercial Plot No. C-1A, which was approved for auction by the competent authority on 30.05.2023. It was emphasized that once possession is taken and the land is incorporated into an approved development plan, it is deemed to have been utilized in law. Physical construction is not a *sine*

qua non for utilization, as consistently held by judicial precedents.

- (iv) The argument regarding Appellate Authority of Section 48 of the Land Acquisition Act, 1894 is wholly misconceived. The power to withdraw from acquisition under Section 48 can be exercised only prior to taking possession. In the present case, possession was taken on 30.05.2009, rendering any subsequent request for release or reconveyance legally impermissible. The representation made by the petitioner under Section 48 in the year 2023, after the land had already been auctioned and allotted, was therefore untenable and devoid of any legal foundation.
- (v) The provisions of the Act of 2013 are inapplicable, as both the Award and possession preceded its enforcement. In view of the Constitution Bench judgment in Indore Development Authority v. Manoharlal, acquisition does not lapse once possession has been taken and compensation has been paid or deposited in accordance with law. The contention regarding alleged non-compliance with Section 17(3-A) is also liable to be rejected, as the Award was passed well within the period prescribed under Section 11-A, and no prejudice was either pleaded or has been established. The petitioner, having sought enhancement of compensation by filing a Section 18 Reference, accepted the acquisition and is estopped from assailing it on merits after a prolonged delay.
- (vi) The writ petition is barred by delay, laches, acquiescence, and abuse of process. The petitioner has raised successive challenges arising from the same cause of action, which have already attained finality. The auction proceedings were conducted strictly in accordance with law, culminating in execution of a registered sale deed, delivery of possession, and

commencement of construction by the allottee, who has altered his position irreversibly. Any interference at this belated stage would unsettle concluded transactions and prejudice third-party rights. Accordingly, no ground for interference under Article 226 of the Constitution is made out, and the writ petition deserves to be dismissed.

Contentions of the Counsel for the Private Respondent

6. Sri Apoorva Tiwari, learned counsel for the private respondents, vehemently advanced his submissions by drawing strength from the relevant statutory provisions and placed reliance upon several judicial authorities, as follows:

- (i) Writ-C No. 3283 of 2024 was filed by Petitioner challenging the order dated 24.02.2024 whereby release of land bearing Khasra Plot No. 201/1, Akhtiyarpur was refused, and also seeking quashing of the auction of the carved-out Plot No. C-1-A, Ekta Vihar, Raebareli, its allotment to the private respondent, and consequential reliefs restraining change of nature, construction, or creation of third-party rights. During pendency, the sale deed was executed on 20.03.2024, possession delivered on 22.03.2024, and the building plan sanctioned on 28.03.2024, pursuant to which construction commenced. By interim order dated 10.07.2024, construction was stayed. The private respondent's SLP was disposed of by the Hon'ble Supreme Court on 01.04.2025 with a request to decide the matter within three months.
- (ii) Petitioner's reliance on **Delhi Airtech Services (P) Ltd. (supra)** to contend that possession was illegal due to non-compliance with Section 17(3-A) is misconceived. The Act of 1894 separately provides for taking possession and vesting. As

clarified in **Delhi Airtech Services, (supra)** non-compliance with Section 17(3-A) mandates that an Award must be made within two years from the Section 6 declaration, failing which the acquisition lapses under Section 11-A. In the present case, the Section 6/17 declaration was issued on 25.07.2007 and the Award was delivered on 30.05.2009, well within the statutory period.

- (iii) The challenge of the petitioner founded on Section 48 of the Act of 1894 is misconceived. It is well settled by the Supreme Court in **Mahadeo (dead) Through L.R.s and others v. State of U.P. and others, (2013) 4 SCC 524**, that once possession of acquired land is taken, it vests absolutely in the State free from all encumbrances and cannot be reconveyed merely on the ground of alleged non-utilisation. Section 48 does not confer any vested or enforceable right upon a landowner, but only enables the State, in its discretion, to withdraw from acquisition prior to taking possession, as reiterated in **Babu v. State of U.P. & others, reported in 2008 SCC OnLine All 2513**. In the present case, the petitioner approached the State under Section 48 only on 10.11.2023, long after the land had been auctioned and allotted in July 2023.
- (iv) In **Shanti Sports Club v. Union of India, (2009) 15 SCC 705**, the Hon'ble Supreme Court has categorically held in paragraph 70 that the burden of establishing discrimination in matters arising under Section 48 of the Land Acquisition Act, 1894 squarely lies upon the person alleging it. The petitioner was therefore required to place on record cogent and concrete material demonstrating complete parity with other landowners whose land had allegedly been released from acquisition. In the absence of any such particulars or supporting evidence, the

plea of discrimination is wholly unsustainable and liable to be rejected.

- (v) The petitioner invoked Section 17 of the U.P. Urban Planning and Development Act, 1973 for the first time in his representation dated 10.11.2023, simultaneously with Section 48 of the Land Acquisition Act, 1894. Both provisions operate in distinct and mutually exclusive fields: Section 48 of the Land Acquisition Act, 1894 applies prior to taking possession, whereas Section 17 of the Act of 1973 contemplates restoration of unutilized land upon payment of development charges, acquisition cost, and interest. Such mutually inconsistent pleas are impermissible. As held in **Heera Singh v. State of U.P. & Others, Writ-C No. 12112 of 2022, decided on 11.05.2022**, Section 17 does not result in automatic lapse of acquisition; land is deemed utilized once a development plan under Section 14 is approved. In the present case, possession was taken on 30.05.2009, the development plan was approved on 11.11.2009, and the land had already been allotted to respondent no. 5 prior to the petitioner's representation. Hence, recourse to Section 17 was legally untenable.
- (vi) It has been argued that in **Shyoraj Singh and another v. State of U.P. and Others, 2021 SCC OnLine Allahabad 873**, and in **Tejal Uppal v. State of U.P. & others, Writ-C No. 526 of 2022** decided on 25.01.2022, this Court has held that handing over of possession of the acquired land by the State Government to the Development Authority is sufficient for the land to be treated as utilized. The Development Authority, in its counter affidavit filed in Writ-C No. 6261 of 2022, has categorically stated that the land stood utilized once the development plan under Section 14 of the Act of 1973 had been approved on 11.11.2009. Any acquired land can be said to

be utilized when its possession has been taken over by the State Government, when the development plan is approved by the Development Authority, and when the said land is allotted to a third person by the Development Authority.

- (vii) The objections raised by the petitioner are legally untenable and hit by settled principles of delay, acquiescence, and lack of locus. The land stood vested in the State upon taking possession and declaration of the Award, and all subsequent rights of the petitioner stood extinguished. The auction process was undertaken after due publicity and in accordance with statutory norms, culminating in execution of a registered sale deed and delivery of possession to the private respondent, who has altered his position by commencing construction. The petitioner, not being an intending bidder and having no subsisting right in the land, cannot question the auction proceedings. Any interference at this stage would unsettle concluded transactions and cause grave prejudice to third-party rights. The challenge to the acquisition and allied proceedings has been raised after an inordinate and unexplained delay, despite the petitioner having availed the remedy of Reference under Section 18. Such belated and successive challenges, founded on grounds already settled by authoritative pronouncements, are liable to be rejected on the ground of laches alone.
- (viii) It was further emphasized that invocation of urgency under Section 17 of the Land Acquisition Act is based on the subjective satisfaction of the State Government. Such satisfaction can be judicially reviewed only on limited grounds, namely: absence of public purpose, mala fides, or non-application of mind. None of these grounds have been pleaded or substantiated by the petitioner.

- (ix) Learned counsel for the private respondent in **Delhi Airtech Services Pvt. Ltd. (supra)** highlighted that the normal acquisition process begins with a Section 4 notification, followed by compliance with Section 5A, declaration under Section 6, and confirmation of public purpose. Compensation and possession are then determined under Sections 9, 11, and 16. Section 11A, introduced in 1984, ensures that if the award is not passed within two years, the acquisition lapses. Paragraph 19 clarifies that prior cases, including **Satendra Prasad Jain versus State of U.P., 1993 (4) SCC 369** and **Laxmi Devi v. State of Bihar, (2015) 10 SCC 241**, involved attempts by authorities to exploit procedural lapses, which the Court rejected, reinforcing that the protections under Sections 16 and 17(3A) safeguard landowners' rights.
- (x) Reliance was placed on **Ghulam Mustafa versus State of Maharashtra, 1976 (1) SCC 800** to contend that once an Award is made and possession is taken under Section 16, the land vests absolutely in the State and cannot be restored to the erstwhile owner. Reference was also made to **Urban Improvement Trust v. Vidya Devi & ors, 2024 SCC OnLine SC 3725**, wherein it was held that writ petitions assailing land acquisition proceedings are liable to be dismissed on the ground of delay and laches, particularly when the acquisition is for public housing and development schemes.
- (xi) Lastly, he submitted that the writ petition is wholly devoid of merit and is liable to be dismissed. The acquisition proceedings have attained finality long back with declaration of the Award and taking of possession, resulting in absolute vesting of the land in the State free from all encumbrances. The petitioner has repeatedly invoked mutually inconsistent remedies after an inordinate and unexplained delay, despite having availed

statutory remedies for compensation. There is no enforceable legal right of the petitioner shown to have been infringed. The petition therefore deserves to be dismissed.

Reply on Behalf of the Petitioner to Contentions of the Respondents

7. The reply on behalf of the petitioner to the contentions raised by the respondents is as under-

- (i) In reply to the above submissions by the respondents, learned Senior Counsel for the petitioner candidly submits that the original challenge to the acquisition proceedings was based exclusively on the ground that compensation had neither been paid nor possession taken, and therefore the acquisition had lapsed under Section 24(2) of the Act of 2013. In light of the law subsequently settled by a Larger Bench of the Hon'ble Supreme Court, this ground has since become untenable.
- (ii) That Writ-C No. 6261 of 2022 was instituted on 08.09.2022, wherein the petitioner sought a writ of mandamus directing release of land bearing Khasra No. 201/1, village Akhtiyarpur, on the ground of its non-utilisation under Section 17 of the U.P. Urban Planning and Development Act, 1973, and also prayed for a declaration that the acquisition proceedings stood vitiated. It was submitted that prior thereto the petitioner had made a representation dated 06.08.2022 to the District Magistrate and the Raebareli Development Authority, which was forwarded to the State Government. The said representation asserted that the land had remained unutilised even after thirteen years from the date of Award and taking over of possession.
- (iii) That, as per the counter affidavit in Writ-C No. 3283 of 2024, Plot C-1A was not listed for auction on 15.07.2023, nor were circle rates provided by the Sub-Registrar on 26.12.2022. The

plot remained un-utilised and reserved for future planning when the Court passed the interim order on 13.09.2022.

- (iv) That the Raebareli Development Authority maliciously singled out 204 sq.m. of the petitioner from a 1185 sq. m. area, renumbered it as Plot C-1A on 30.05.2023, and auctioned 173 sq. m. to defeat the petitioner's claim. The auction notice dated 01.06.2023 misidentified the property as in Ekta Vihar, not Akhtiyarpur, and applied a "non-agricultural" circle rate instead of the correct commercial rate, ignoring its location adjacent to commercial establishments and the National Highway. The reserve price was arbitrarily fixed, undervaluing the land. The auction also violated the Government Order dated 20.06.2001, as the notice was published only once in insufficiently circulated newspapers, instead of twice in one national and one State-level newspaper, rendering the auction procedurally flawed.
- (v) The petitioner relied on **Attavur Rahman Kamal v. State of Andhra Pradesh, Writ Petition No. 7482 of 2023**, decided on 19.06.2023 to stress the importance of proper publication of auction notices, noting that newspaper publication must be meaningful and not perfunctory. Learned Senior Counsel further contended that under Section 17(3-A) of the Act of 1894, 80% of estimated compensation must be tendered before possession, which was violated in the petitioner's case. Although the Award and possession were recorded on paper on 30.05.2009 and 06.06.2009, compensation was only tendered to the petitioner on 26.06.2009 and deposited on 08.02.2011. This violation, per **Delhi Airtech Services, (Supra)** renders the possession and vesting of land in the respondents legally defective.

- (vi) That the RaeBareli Development Authority violated Section 17(3-A) of the Act of 1894, as 80% of the estimated compensation was deposited only after possession, which was taken on 30.05.2009, with compensation tendered to the petitioner on 26.06.2009 and deposited on 08.02.2011.
- (vii) The doctrine of *lis pendens* was also invoked, as the petitioner had filed Writ-C No. 6261 of 2022 after making representation on 06.08.2022 regarding release of unutilised land, binding subsequent purchasers under **Shingara Singh v. Daljit Singh, reported in 2024 SCCOnLine SC 2823**. Relying upon the judgment rendered by the Hon'ble Supreme Court in **Cuddalore Powergen Corporation Limited versus Chemplast Cuddalore Vinyls Limited and another, reported in 2025 SCC OnLine SC 82**, and paragraphs 36, 37, 38, 39, 41, 45 and 47 of the same, it has been submitted that the Hon'ble Supreme Court has itself held that when there is a separate cause of action for each petition, then bar under Order II Rule 2 C.P.C. is not applicable. Reference was also made to **Urban Improvement Trust v. Vidya Devi & ors, 2024 SCC OnLine SC 3725**, establishing that no limitation bars the Court from exercising constitutional jurisdiction to ensure substantial justice, irrespective of procedural delays.
- (viii) That further the doctrine of *lis pendens*, as reiterated in **Usha Sinha versus Dina Ram and others, (2008) 7 SCC 144** and **Sanjay Verma versus Manik Roy and others, 2006 (13) SCC 608**, binds a transferee *pendente lite* to the outcome of the litigation, irrespective of notice or bona fides, as it is founded on public policy to prevent frustration of judicial proceedings. The Hon'ble Supreme Court has further held that compulsory acquisition without strict compliance with statutory safeguards, particularly payment of 80% compensation under Section

17(3A) of the Land Acquisition Act, 1894, renders possession illegal (**Delhi Airtech Services, (supra)**). Even delay cannot defeat challenges where there is a continuing cause of action or grave procedural illegality, as delay and *laches* are matters of discretion, not rigid rules as held in, **Sukh Dutt Ratra and another versus State of Himachal Pradesh and others, 2022 (7) SCC 508** and **Ramchandra Shankar Deodhar & Others versus State of Maharashtra & Others, 1974 (1) SCC 317**).

- (ix) That several procedural anomalies have occurred. Section 17(3-A) of the Act of 1894 was not complied with, as possession was taken on 30.05.2009 before tendering compensation. The Section 5-A enquiry was dispensed with under the urgency clause of Section 17, despite no real urgency, as the acquisition process began in 2004 and notifications were issued in 2006–2007. The land remained unutilised, with development plans in 2009 and 2016, reserving 1185 m² for future planning. Reliance on **Hamid Ali Khan v. State of U.P. (Supra)** emphasized that dispensing with Section 5-A violates the valuable right of the landowner. The claim of respondents that possession followed Section 16 confirms that invocation of Section 17 was unnecessary and arbitrary, violating due procedure and Article 300-A of the Constitution.
- (x) He relied upon the judgment of **Gian Chand & Brothers v. Rattan Lal AIR 2013 SC 1078** to contend that every allegation of fact in the petition must be specifically denied in the written statement, failing which such averments shall be deemed to be admitted. Reliance has also been placed on **Sanjay Sharma v. Kotak Mahindra Bank Ltd., 2025(3)ALD19** wherein the Hon'ble Supreme Court held that under Section 54 of the Transfer of Property Act, ownership of immovable property valued above ₹100 is transferred only

through a registered instrument, and mere payment of consideration or delivery of possession does not complete or validate the transfer in absence of registration.

- (xi) That publication of an auction notice through newspapers cannot be treated as an empty or ritualistic formality. Its object is to meaningfully inform the public at large, attract genuine participation, and ensure fair competition so as to secure maximum revenue for the public authority. In matters involving State largesse, especially public auctions, fairness, transparency, and adequate publicity are mandatory. Absence of wide and effective publication vitiates the auction, as held in **Attavur Rahman Kamal v. State of Andhra Pradesh, Writ Petition No. 7482 of 2023** and **State of Madhya Pradesh and another versus Shri Ram Ragubir Prasad Agarwal, (1979) 4 SCC 686** which clarified that “publication” means making information known to the public generally.
- (xii) Recent decisions, including **Urban Improvement Trust v. Vidya Devi & ors, 2024 SCC OnLine SC 3725** and **D.B. Basnett (D) through Legal Representatives vs. Collector, East District, Gangtok, Sikkim & Another, 2020 (4) SCC 572**, reaffirm that the right to property under Article 300-A is a constitutional right, and expropriatory Statutes must be strictly construed. Courts may intervene despite delay where procedural anomalies are glaring and dispossession is without due process.

Points for Consideration

8. With reference to the above rival factual and legal contentions urged on behalf of the parties, the points that would arise for consideration are as follows:

- (i) Whether the invocation of the urgency clause under Section 17 of the Land Acquisition Act, 1894, and the consequent

dispensation of enquiry under Section 5-A, was justified in the facts and circumstances of the case?

- (ii) Whether reservation of land for “future planning” amounts to utilization within the meaning of the said provision?
- (iii) Whether the auction and subsequent transfer in favour of the private respondent are hit by the doctrine of *lis pendens*, and if so, to what extent such transfer is subject to the outcome of the present proceedings?
- (iv) Whether, in the facts of the case, the impugned actions of the respondents result in deprivation of property otherwise than by authority of law, infringing Article 300-A of the Constitution?
- (v) Whether the original landowner, whose land remained unutilized for a prolonged period, whose compensation was not received, and who retained possession till June 2023, is entitled to seek reversion of the land or challenge its hurried transfer/auction in favor of a third party, and whether the actions of the respondents are arbitrary, illegal, and tainted with malice in law, and violative of Articles 14 and 300-A of the Constitution?

Analysis

9. Before proceeding to analyze the submissions of the parties, a brief reference to the relevant provisions of the Land Acquisition Act, 1894 would be necessary. The normal procedure for acquisition of land under the Land Acquisition Act, 1894 can broadly be divided into two parts. In the first part, comprising Sections 4, 5-A and 6, the process commences with the issuance of a preliminary notification under Section 4 when it appears to the appropriate Government that land is needed or is likely to be needed for a public purpose. Such notification is published in

the Official Gazette and public notice of its substance is given in the locality concerned. Thereafter, under Section 5-A, any person interested in the land may, within thirty days from the publication of the notification, file objections in writing before the Collector, who is required to grant an opportunity of hearing and submit a report with recommendations to the Government. Upon consideration of such report, if the Government is satisfied that the land is required for a public purpose, it makes a declaration under Section 6, which is published in the Official Gazette and constitutes conclusive evidence of such requirement.

10. The second part, consisting of Sections 7, 9, 11 and 16, deals with the steps following the declaration. After the declaration under Section 6, the Government issues directions to the Collector under Section 7 to take steps for acquisition of the land. The Collector then issues notices under Section 9 to persons interested, calling upon them to submit their claims for compensation. Upon conducting an enquiry, the Collector makes an Award under Section 11 determining the area of the land, the compensation payable and its apportionment among the interested persons. Thereafter, under Section 16, upon making the Award, the Collector may take possession of the land, and once possession is taken, the land vests absolutely in the Government free from all encumbrances.

11. Section 17 of the 1894 Act gives special powers to the State government in the cases of urgency and emergency. To the extent it is relevant, Section 17 reads as under:

Section 17. Special powers in case of urgency. --In cases of urgency, whenever the State 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 waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the State Government free from all encumbrances.

xxx

2. xxx

3. xxx

3(A). Before taking possession of any land under sub-section (1) or sub-section(2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested (sic therein and) entitled thereto, and

(b) pay it to them, unless prevented by someone or more of the contingencies mentioned in Section 31, sub-section (2),

and where the Collector is so prevented, the provisions of Section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

3(B). The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

4. In the case of any land to which in the opinion of the State Government the provisions of Sub-sections (1) or Sub-section (2) are applicable the State Government may direct that the provisions of Section 5-A 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 order Under Sub-section (1) of Section

12. Section 17 of the Act provides a special and exceptional procedure for acquisition in cases of urgency, and operates as a departure from the normal process prescribed under Sections 4, 5-A, and 6. Under sub-section (1), where the appropriate Government is satisfied that the situation demands urgent action, it may direct the Collector to take possession of the land after the expiry of fifteen days from the publication of notice under Section 9(1), even though no award has been made. Upon such possession being taken, the land vests absolutely in the Government, free from all encumbrances.

13. Sub-section (4) of Section 17 contemplates cases of extreme urgency and empowers the appropriate Government to dispense with the enquiry under Section 5-A, which otherwise confers a valuable right

of objection upon the landowner. If such a direction is issued, a declaration under Section 6 may be made at any time after publication of the notification under Section 4(1), without waiting for the completion of the Section 5-A enquiry. Being an exception to the ordinary rule, this power must be invoked sparingly and only in genuine cases of urgency.

14. The condition precedent for invoking Section 17(1) is the existence of real and genuine urgency. The appropriate Government must be satisfied that possession of the land is urgently required and that any delay would frustrate the very purpose of acquisition. Likewise, before exercising power under Section 17(4) to dispense with the enquiry under Section 5-A, the Government must form a clear opinion that the case is one of extreme urgency. The urgency must be of such a nature that even the minimum statutory period of thirty days for filing objections, along with the reasonable time required for enquiry under Section 5-A, cannot be afforded without defeating the public purpose.

15. Section 17(4) has the effect of depriving a landowner of a valuable statutory right to object and to be heard. Therefore, the power to dispense with Section 5-A cannot be exercised lightly or in a routine manner.

16. On a careful examination of Section 17 of the Land Acquisition Act, 1894, it is evident that the said provision incorporates the urgency clause and vests extraordinary powers in the State to take possession of

the land even prior to the making of an award and to dispense with the enquiry contemplated under Section 5-A of the Land Acquisition Act,1894. Such power being exceptional in nature and having the effect of depriving the landholder of the valuable and substantive right of objection, its scope is necessarily narrow and circumscribed. The invocation of Section 17, therefore, cannot be justified as a matter of course or administrative expediency and is required to be strictly construed and sparingly exercised.

17. It further stipulates that the existence of a real, immediate, and compelling urgency is a condition precedent for the invocation of Section 17 of the Land Acquisition Act. The urgency contemplated by the statute must be of such a nature that even the minimal time required for holding an enquiry under Section 5-A would defeat or frustrate the public purpose sought to be achieved. Mere administrative exigency or convenience, howsoever pressing, does not meet the statutory threshold of urgency envisaged under Section 17. Moreover, the satisfaction of the appropriate Government must be based on objective material and due application of mind. A mechanical recital of urgency in the notification, without supporting reasons or contemporaneous record, is bad in law. Non-application of mind vitiates the invocation of Section 17.

18. In **Dora Phalauli v. State of Punjab (AIR 1979 SC 1594)**, the Hon'ble Supreme Court held that the right to file objections under

Section 5-A should not be interfered with in a casual or cavalier manner.

Similarly, in **State of Punjab v. Gurdial Singh (AIR 1980 SC 319)**, the Court observed:

“...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 Articles 14 (and 19), burke an enquiry under Section 17 of the Act....”

19. It has been the consistent view of the Apex Court and this Court that since the invocation of Section 17 results in denial of hearing and exclusion of the principle of natural justice, *audi alteram partem*, its exercise is subject to strict judicial scrutiny. Such extraordinary power can be justified only in cases of real, immediate, and compelling urgency. The action of the State must satisfy the constitutional requirements of fairness, non-arbitrariness, and reasonableness under Article 14 and must also conform to the protection against unlawful deprivation of property under Article 300-A of the Constitution. Any mechanical, routine, or unjustified invocation of Section 17 vitiates the entire acquisition proceedings.

20. A three Judge Bench of the Hon'ble Supreme Court in **Narayan Narayan Govind Gavate v. State of Maharashtra AIR 1977 SC 183** has elaborately considered the ambit and scope of Section 17 of the Act and held as under:

“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.”

21. In *Dev Sharan and Ors. v. State of U.P. and Ors.*, (2011)4SCC769, the Hon’ble Supreme Court observed that the extraordinary power under Section 17 to dispense with the valuable right of objection under Section 5-A can be exercised only in cases of real urgency and not as a matter of routine, and such action must conform to constitutional safeguards, which is quoted below-

“14. In connection with land acquisition proceeding whenever the provision of Section 17 and its various Sub-sections including Section 17(4) are used in the name of taking urgent or emergent action and the right of hearing of the land holder under Section 5A is dispensed with, the Court is called upon to consider a few fundamentals in the exercise of such powers.

15. Admittedly, the Land Acquisition Act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some

property, other rights become illusory. This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

16. The concept of public purpose cannot remain static for all time to come. The concept, even though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one. It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre- Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles.

17. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

18. Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

*While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires. In this context we reiterate the principle laid down by this Court in **Authorised Officer, Thanjavur and Anr. v. S. Naganatha Ayyar and Ors.** (1979) 3 SCC 466, wherein this Court held:*

"...It is true that Judges are constitutional invigilators and statutory interpreters; but they are also responsive and responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire,

as some assume, but an activist catalyst in the constitutional scheme.”

19. *In other words public purpose must be viewed through the prism of Constitutional values as stated above.*

20. *The aforesaid principles in our jurisprudence compel this Court to construe any expropriatory legislation like the Land Acquisition Act very strictly.*

21. *The judicial pronouncements on this aspect are numerous, only a few of them may be noted here.*

22. *In **DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors.** (2003) 5 SCC 622, this Court construed the statute on Town Planning Law and held "Expropriatory statute, as is well known, must be strictly construed." (See para 41 page 635).*

23. *The same principle has been reiterated subsequently by a three-Judge Bench of this Court in **State of Maharashtra and Anr. v. B.E. Billimoria and Ors.** (2003) 7 SCC 336 in the context of ceiling law. (See para 22 at page 347 of the report).*

24. *These principles again found support in the decision of this Court in **Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd. and Ors.** (2007) 8 SCC 705, wherein this Court construed the status of a person's right to property after deletion of Article 19(1)(f) from Part III. By referring to various international covenants, namely, the Declaration of Human and Civic Rights, this Court held that even though right to property has ceased to be a fundamental right but it would however be given an express recognition as a legal right and also as a human right.*

25. *While discussing the ambit and extent of property right, this Court reiterated that expropriatory legislation must be given strict construction. (See para 53 to 57 at pages 731 to 732 of the report)*

26. *In the background of the aforesaid discussion, this Court proceeds to examine the scope of a person's right under Section 5A of the Act.*

27. *Initially, Section 5A was not there in the Land Acquisition Act, 1894 but the same was inserted long ago by the Land Acquisition (Amendment) Act, 1923 vide Section 3 of Act 38 of 1923.*

28. *The history behind insertion of Section 5A, in the Act of 1894 seems to be the basis of a decision of the Division Bench of Calcutta High Court in **J.E.D. Ezra v. The Secretary of State for India and Ors.** 7 C.W.N. 249. In that case, the properties of Ezra were sought to be acquired under the pre amended provision of the Act for expansion of the offices of the Bank of Bengal. In challenging the said acquisition, it was argued that the person whose property is going to be taken away should be allowed a hearing on the principles of natural justice. However the judges found that there was no such provision in the Act. (see p. 269)*

29. *In order to remedy this shortcoming in the Act of 1894, an amendment by way of incorporation of Section 5A was introduced on 11th July, 1923. The Statement of Objects and Reasons for the said Amendment is as follows:*

The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under Section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under Section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government. (Gazette of India, Pt. V, dated 14th July, 1923, page 260)

30. *The said amendment was assented to by the Governor General on 5th August, 1923 and came into force on 1st January, 1924.*

Relying upon earlier pronouncements in **Nandeshwar Prasad and Ors Vs. U. P. Government and Others AIR 1964 SC 1217; Munshi Singh and Ors. v. Union of India (1973) 2 SCC 337; Hindustan Petroleum Corporation Limited v. Darius Shahpur Chennai and Ors. (2005) 7 SCC 627** and quoting **Essco Fabs (supra), (2009) 2 SCC 377**; The Court observed as follows:-

41. Whereas Sub-section (1) of Section 17 deals with cases of "urgency", Sub-section (2) of the said section covers cases of "sudden change in the channel of any navigable river or other unforeseen emergency". But even in such cases i.e. cases of "urgency" or "unforeseen emergency", enquiry contemplated by Section 5A cannot ipso facto be dispensed with which is clear from Sub-section (4) of Section 17 of the Act.

The Court further observed in Para 35 onwards:

35. This Court, therefore, held that once a case is covered under Sub-section (1) or (2) of Section 17, Sub-section (4) of Section 17 would not necessarily apply.

54. In our opinion, therefore, the contention of learned Counsel for the Respondent authorities is not well founded and cannot be upheld that once a case is covered by sub-sections (1) or (2) of Section 17 of the Act, Sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections under Section 5A of the Act. Acceptance of such contention or upholding of this argument will make sub-section (4) of Section 17 totally otiose, redundant and nugatory.

36. *This Court also held that in view of the ratio in **Union of India***

v. Mukesh Hans (2004) 8 SCC 14, Sub-section (4) of Section 17 cannot be pressed into service by officers who are negligent and lethargic in initiating acquisition proceedings.

37. The question is whether in the admitted facts of this case, invoking the urgency clause under Section 17(4) is justified. In the writ petition before the High Court, the Petitioners have given the details of the land holding, and it has also been stated that the entire holding of Petitioners 2, 5, 7, 9, 10, 11 and 13 have been acquired, and as a result of such acquisition, the Petitioners have become landless. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's letter dated 4th of June, 2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of the suitable site for construction was held on 27th June, 2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2nd of July, 2008. This was in turn forwarded to the State Government by the Director on 22nd of July, 2008. After due consideration of the forwarded proposal and documents, the State Government issued the Section 4 notification, along with Section 17 notification on 21st of August, 2008. These notifications were published in local newspapers on 24th of September, 2008. Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the landowners, along with 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Section 6 declaration was sent to the Director, Land Acquisition on 19th of June, 2009. The Director in turn forwarded all these to the State Government on 17th July, 2009, and the State Government finally issued the Section 6 declaration on 10th of August, 2009. This declaration was published in the local dailies on 17th of August, 2009.

38. Thus the time which elapsed between publication of Section

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

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

40. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section 17. If so advised, Government can initiate acquisition proceeding by following the provision of Section 5A of the Act and in accordance with law.

41. For the reasons aforesaid, we hold that the State Government was not justified, in the facts of this case, to invoke the emergency provision of Section 17(4) of the Act. The valuable right of the Appellants under Section 5A of the Act cannot be flattened and steam-rolled on the 'ipse dixit' of the executive authority. The impugned notifications under Sections 4 and 6 of the Act in so far as they relate to the Appellants' land are quashed. The possession of the Appellants in respect of their land cannot be interfered with except in accordance with law.”

(emphasis supplied by us)

22. In Union of India v. Kishan Lal Arneja AIR2004SC3582,

Hon'ble Supreme Court has observed as under:

“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 landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the enquiry 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 landowners 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.”

(emphasis supplied by us)

23. From the above judgments, the law is clear that the power to dispense with the enquiry under Section 5-A of the Land Acquisition Act is an extraordinary and exceptional power. The right under Section 5-A is a valuable statutory right available to the landowner, and its exclusion cannot be resorted to as a matter of routine or administrative convenience. The State Government may invoke Sections 17(1) and 17(4) only when there exists real, genuine, and demonstrable urgency of such a nature that even the brief enquiry contemplated under Section 5-A cannot be tolerated. The satisfaction regarding urgency must be based on relevant material and must reflect due application of mind. In short, the dispensing of enquiry under Section 5A of the Act is not a normal procedure but is resorted to only in exceptional circumstances where strong reasons exist for the same.

23. In **Union of India (UOI) and Ors. v. Shiv Raj and Ors.**, (2010) 11 SCC 242, the Hon’ble Supreme Court emphatically reiterated the scope, object and significance of Section 5-A of the Land Acquisition

Act, 1894 in the context of the principles of natural justice and the valuable right of objection conferred upon landowners, which are as under-

“8. The rules of natural justice have been ingrained in the scheme of Section 5A of the Act 1894 with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land.

Section 5A(2) of the Act 1894, which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued Under Section 4(1) of the Act 1894 or that there are other valid reasons for not acquiring the same. Thus, Section 5A of the Act 1894 embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.

On the consideration of the said objection, the Collector is required to make a report. The State Government is then required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made Under Section 6(1) of the Act 1894.

9. Therefore, Section 5A of the Act 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public

purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

10. Thus, the limited right given to an owner/person interested Under Section 5A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed Under Section 17(4) of the Act, 1894.”

25. The Apex Court in **Anand Singh and Ors. Vs. State of Uttar Pradesh and Ors. (2010) 11 SCC 242** has dealt with the scope, extent and ambit of the power of the State Government under Section 17(1) and (4) of the 1894 Act and the legal position has been culled out as follows:

“43. The exceptional and extraordinary power of doing away with an enquiry Under Section 5-A in a case where possession of the land is required urgently or in an 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 5-A. 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 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry Under Section 5-A.

44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite 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 the 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 5-A 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 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely

delay in completion of enquiry Under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising 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 5-A 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 5-A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. Narayan Govind Gavate (1977) 1 SCC 133 and Pista Devi (1986) 4 SCC 251. In Om Prakash (1998) 6 SCC 1 this Court held that the decision in Pista Devi (1986) 4 SCC 251 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 (1977) 1 SCC 133.”

(emphasis supplied by us)

26. In the case of **Radhy Shyam (Dead) through L.Rs. and Ors. v. State of U.P. and Ors.**, the Hon’ble Apex Court summarized the legal position governing the exercise of power under Section 17 of the Land Acquisition Act, particularly with regard to dispensing with the enquiry under Section 5-A, and laid down guiding principles for judicial review of such action.

“53. 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 ap-

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 expropriators 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, 5A 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 5A. 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 5A, the con-

cerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5A 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 5A 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 5A 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 5A(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."

27. Recently, in **Hatam Singh and Others v. State of U.P. Thru Secy. Housing (WRIT–C No. 4986 of 2005), decided on 17 October 2025** along with 32 connected petitions, this Court, after a detailed survey of binding precedents of the Hon’ble Supreme Court and this Court, observed that Section 5-A of the Land Acquisition Act, 1894 embodies a substantive safeguard for landowners. It further held that recourse to Section 17 to dispense with such enquiry is permissible only in cases of real urgency, founded on cogent material and a conscious application of mind by the competent authority.

Issue No. (I)

28. We now proceed to consider the first issue that arises for determination, namely, whether the invocation of the urgency clause under Section 17 of the Land Acquisition Act, 1894 and the consequent dispensation of the enquiry contemplated under Section 5-A were justified in the facts and circumstances of the present case. This issue goes to the very root of the matter and requires determination at the threshold. It is now well settled that the right of objection under Section 5-A of the Land Acquisition Act, 1894 is not an empty formality but a valuable and substantive right available to a landholder prior to the compulsory acquisition of his property. The enquiry contemplated under Section 5-A constitutes the sole and effective opportunity afforded to the affected person to raise objections with regard to the public purpose, suitability, and necessity of the proposed acquisition. Dispensation of

such enquiry by resorting to the urgency clause under Section 17 can be sustained only in exceptional circumstances where the urgency is real, immediate, and compelling. Any routine, casual, or mechanical exercise of this extraordinary power undermines the statutory safeguard embodied in Section 5-A and is liable to be interdicted by the constitutional courts.

29. Keeping the above principles in mind discussed in preceding paragraphs, it is to be considered whether there was any justification for applying the urgency clause and for dispensing with the requirements of Section 5-A of the Act. As per the record produced on behalf of the State Government, which was produced before this Court, the Chairman, Raebareli Development Authority and the Special Land Acquisition Officer, Sanyukta Sangathan, Raebareli, jointly signed a request, which is being quoted verbatim hereinbelow in its entirety: –

“धारा 17 लागू करने हेतु औचित्य

रायबरेली विकास प्राधिकरण की आवासीय योजना के निर्माण हेतु भूमि की तुरंत आवश्यकता है क्योंकि भूमि उपलब्ध होने में विलंब होने से निर्माण कार्य की पूर्ति में देरी होगी, जिससे आवासीय योजना के निर्माण में विलंब होगा और प्रदेश के विकास में रुकावट पड़ेगी। अतः धारा 17(1) के अनुसार भू-अर्जन की कार्यवाही आवश्यक है ताकि शीघ्रतिशीघ्र भूमि उपलब्ध कराई जा सके।”

30. On a careful examination of the reasons recorded for invoking Section 17(1), it becomes evident that no real, immediate or exceptional urgency has been demonstrated. The only ground assigned is that delay

in making the land available would consequently delay construction of a residential scheme and affect development in the region. Such reasoning merely reflects administrative convenience and apprehension of project delay, which are routine features in almost every development activity. These grounds are vague and general in nature and do not disclose any extraordinary or emergent circumstance warranting dispensation of the statutory safeguard under Section 5-A. There is no material to show that even the short period required to conduct an enquiry under Section 5-A would frustrate or defeat the declared public purpose. In the absence of any special, unforeseen or compelling situation, the satisfaction recorded under Section 17 appears mechanical and not based on objective considerations. Therefore, the reasons given do not satisfy the strict legal requirements for properly invoking the urgency clause under Section 17 of the Act.

31. Moreover, such invocation of the urgency clause is clearly contrary to the settled legal principles consistently laid down by authoritative judicial pronouncements noticed in several preceding paragraphs. The Apex Courts have repeatedly held that the power under Section 17 is extraordinary in nature and must be exercised with great caution and only in cases of genuine and compelling urgency. It cannot be invoked on the basis of routine administrative delay, convenience, or anticipated project timelines. The law is well settled that the valuable right of objection under Section 5-A cannot be taken away lightly or in a

mechanical manner. Any satisfaction recorded without concrete, objective and exceptional circumstances stands vitiated in law.

32. Upon an anxious and careful consideration of the statutory scheme of the Land Acquisition Act, 1894 and the authoritative pronouncements noticed in several preceding paragraphs, this Court has no hesitation in holding that the mandatory pre-condition of real, immediate and compelling urgency for invoking Section 17 of the Act has not been satisfied in the present case. The reasons relied upon by the State disclose nothing beyond administrative convenience and apprehended delay in execution of the project, which are wholly insufficient in law to justify dispensation of the valuable right of objection under Section 5-A.

33. The material on record does not demonstrate any circumstance of such pressing urgency as would render even the minimal enquiry contemplated under Section 5-A impracticable or frustrative of the public purpose. The statutory threshold for exercise of the extraordinary power under Section 17, therefore, remains unsatisfied, in clear violation of the settled principles of law consistently laid down by the Hon'ble Supreme Court as well as by this Court discussed in preceding paragraphs. Consequently, **Point No. (i)** is answered in favour of the petitioner and against the respondents. The invocation of the urgency clause under Section 17, together with the dispensation of the enquiry under Section 5-A, is held to be arbitrary, unconstitutional and unsustainable in law.

Point No. (ii)

34. We now proceed to consider Point No.(ii) as framed by us. The expression “utilization” occurring in the relevant statutory provision necessarily connotes actual use of the land for the purpose for which it has been acquired, and not a mere proposal, intention, or reservation for an uncertain future. Reservation of land for “future planning” by its very nature, is contingent and indeterminate and does not result in any present or tangible use of the land.

35. Mere earmarking of land or its retention for a prospective future project, in the absence of any concrete steps towards development or implementation, cannot, in law, be regarded as utilisation. Any contrary interpretation would defeat the very object of the provision, which mandates that land acquired for a specified public purpose be put to effective and timely use.

36. In our considered view, the law does not permit the State to keep acquired land for an unlimited period on the vague ground of “future planning”. The land must be put to real and actual use. Its utilisation must be genuine and visible, not merely on paper or based on uncertain future possibilities. Simply reserving the land without carrying out any development or using it for the stated public purpose does not fulfill the legal requirement of utilisation. ‘Utilisation’ must be real, substantive and demonstrable, and not illusory.

37. It must be borne in mind that the Land Acquisition Act, 1894 was framed in a different era. In the present Constitutional framework, every statutory power has to be exercised in accordance with the Constitution of India, the Supreme law of the land, and in keeping with the principles of a welfare State. The rule of law, which is a foundational feature of our constitutional framework and finds expression in Article 14 of the Constitution of India, requires that all State action to be fair, transparent, reasonable and free from arbitrariness. It ensures that power is exercised within defined legal limits and for the purpose for which it is conferred. In a constitutional democracy governed by the rule of law, the State cannot act on vague assumptions or indefinite plans while dealing with valuable property rights of citizens. Retention of acquired land for years together without any concrete development or utilisation defeats the very purpose for which the power of acquisition is granted. Such inaction not only weakens the statutory intent but also violates the constitutional guarantee against arbitrary State action.

Accordingly, this Court holds that reservation of land for “future planning” in the absence of actual development or use, does not amount to utilisation within the meaning of the said provision. Point No. (ii) is, therefore, answered in the negative.

Point No. (iii)

36. Point No. (iii) concerns the applicability of the doctrine of *lis pendens*, as embodied in Section 52 of the Transfer of Property Act, 1882, to the auction and subsequent transfer of the subject land in favour of the private respondent during the pendency of the present proceedings. The doctrine of *lis pendens*, embodied in Section 52 of the Transfer of Property Act, 1882, is founded on public policy and mandates that during the pendency of any litigation in which rights to immovable property are directly and substantially in issue, the property cannot be transferred so as to prejudice the rights of any party to the *lis*. The principle is not based on notice or bona fides of the transferee, but on the necessity to preserve the subject matter of the litigation until its final adjudication. In the present case, it is undisputed that at the time when the auction was conducted and the subsequent transfer was made in favour of the private respondent, writ proceedings concerning the very same land, particularly with respect to its utilisation, release, and legality of acquisition were already pending before this Court. The subject land thus formed an integral part of the *lis*. A transfer *pendente lite* is not void ab initio; however, it does not confer any independent or superior right upon the transferee. The transferee merely steps into the shoes of the transferor and takes the property subject to the final outcome of the pending proceedings. Accordingly, this Court holds that any rights claimed by the private respondent shall abide by and be governed by the final decision rendered by this Court.

39. It is also clear that such auction was done in a clandestine manner. The petitioner's land was shown marked as "D-1" at the time of depositing compensation. It was thereafter shown as commercial Plot C-1A on 30.05.2023. The auction notice dated 01.06.2023 states that commercial Plot C-1A situated in Ekta Vihar was proposed to be auctioned but the auction notice dated 01.06.2023 only stated that "*the Raebareli Development Authority's Ekta Vihar, Jawahar Vihar, Indira Nagar, in front of Supermarket, Raebareli Development Authority Complex consisting of vacant commercial shops, office space and commercial plots would be allotted by way of auction on 30th/31st of every month. Auction information shall be notified later.*" The auction was held on 07.07.2023 just after one publication of this notice without separately notifying auction information later.

40. Disputed land was kept for future planning in the layout plan of Ekta Vihar Colony prepared in 2016 by Raebareli Development Authority itself. Picking up the said land and marking it as C-1A and auctioning it alone out of 1185 sq. m. kept aside for future planning cannot be justified under any circumstances and is liable to be set aside. Not only was the auction notice not published in one national daily and one other daily having statewide circulation, such notice was not published twice as is required under the relevant Government Order. Without adequate publicity in well-known newspapers, people willing to offer more money for commercial plot adjacent to Lucknow–Allahabad

Highway were prevented from participating in the auction. The Hon'ble Supreme Court in the case of *K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple*, reported in **2022 (5) SCC 710**, has been pleased to hold that a sale pursuant to a public auction can also be set aside in an eventuality where it is found, on the basis of material on record, that the property has been sold away at a throwaway price and/or on a wholly inadequate consideration because of fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding of such public auction. The Hon'ble Supreme Court in *Ram and Shyam Company v. State of Haryana and others*, 1985 (3) SCC 267 (para 12); *Kolkata Municipal Corporation & another v. Bimal Kumar Shah & others* (para 30 and 31); *State of Punjab & Others v. Mehar Din*, 2022 (5) SCC 648 (para 25); *Lakshmanasami Gounder v. Commissioner of Income Tax, Selvamani & others*, 1992 (1) SCC 91 (para 4 and 5) has held that very low price for the property in question can be set aside by the Court.

41. It is evident from paragraph 23 of the counter affidavit of the Raebareli Development Authority in Writ C No. 3283 of 2024, the Raebareli Development Authority through its letter dated 15.07.2022 (Annexure-23) had requested the Sub-Registrar, Raebareli, for providing circle rates of properties mentioned in the enclosure to the said letter, which were proposed to be put to auction. Plot No.C-1A was not mentioned in such enclosure. The Sub-Registrar replied to the Raebareli

Development Authority on 26.12.2022 (Annexure-25), enclosing the rates of properties as requested by the Raebareli Development Authority. A perusal of C.A.-23 and C.A.-24 shows that Plot C-1A was not mentioned either in the list of properties proposed to be auctioned by the Raebareli Development Authority on 15.07.2022 or in the list of properties whose rates were given by the Sub-Registrar, Raebareli, by his letter dated 26.12.2022. It makes it clear that the petitioner's plot was still unutilised and was not proposed for any auction and was admittedly reserved for future planning at the time when this Court passed the interim order on 13.09.2022.

42. The property in question was marked and sold as commercial by the Raebareli Development Authority. However, the rate of commercial property was not taken as the reserve price. Rate of non residential property was taken arbitrarily. At the time when the property in question was auctioned, the circle rate list effective from 01.11.2022 had become operative. The shops which the Raebareli Development Authority proposed to auction had a reserve price of Rs.1,05,000 per sq. m. The portion of land belonging to the petitioner proposed to be auctioned was 173.11 sq. m. As such, its reserve price ought to have been fixed at more than Rs.1.80 crore, because under Clause 4(kha) of the circle rate list effective from 01.11.2022, if a property is adjacent to a property being commercially used, 30% of the value as per Circle Rate is to be added in the circle rate for valuation, and if the property is adjacent to a National

Highway 20% of its value must be added for its valuation, which was admittedly not done by the Raebareli Development Authority. It has been informed to the Court that the property in question is situated right next to Bajaj Agency /Shakti Agencies on Lucknow–Allahabad Highway.

43. Not only was the reserve price arbitrarily fixed by the Raebareli Development Authority, it never followed the procedure for auction as provided in the Government Order dated 20.06.2001 (C.A.-11), which provides guidelines for how auction is to be conducted. In Clause 5 of the same, it has been provided that auction notice has to be published in one national and one State-level newspaper, and such publication is to be at least twice in each newspaper. It is evident from the counter affidavit filed by the Raebareli Development Authority that the auction notice was published in “Lucknow Mail” and “Aaj” newspapers only once. “Lucknow Mail” is not a newspaper which can be said to be widely circulated in the State of U.P., and “Aaj” newspaper could not be said to be a national daily, at the time when notice was published in such newspapers in the State of U.P. much less at national level. It was also not published twice in each of such newspapers as is evident from the counter affidavit filed by the Raebareli Development Authority.

44. With regard to the argument raised regarding the auction conducted by the Raebareli Development Authority and that respondent no. 5 was a *bona fide* auction purchaser; the circle-rate list circulated for District Raebareli with effect from 01.11.2022 has general instructions

given on page-1 and paragraph-4 thereof. Evaluation of non-agricultural plots which are adjoining a commercial/industrial property shall be done in such a manner that 30% of its value will be added to its nominal value determined on the basis of the circle-rate list. The plot of the petitioner was situated next to a commercial establishment/ Bajaj Shakti Agency. Similarly, in Clause 21-A of the Circle Rate list, it has been provided that value of any non-agricultural land which is adjoining a national highway/State Highway/District Road or any other main road may be determined after adding 20% of its normal value to it. It is not disputed that the land of the petitioner is adjoining the national highway, i.e., Allahabad–Lucknow National Highway. Praroop–3 relates to non-agricultural or commercial land in urban and semi-urban areas. Undoubtedly subject land in Ekta Vihar Colony is situated adjacent to the Lucknow–Allahabad National Highway.

45. In case the R.D.A. had sought valuation of Commercial Plot C-1A from the office of the Sub-Registrar, Raebareli indicating it to be situated in Ekta Vihar Colony, then its reserved price would have been fixed at much higher value.

46. In the counter-affidavit of Raebareli Development Authority, page 49, paragraph 23, mention has been made of the land in question actually being sold as commercial. If 30% of its value for being situated adjacent to commercial premises had been added and also 20% of its value had been added because it was situated adjoining the national highway, then

the reserve price of the plot in question would have been more than Rs.2 Crores, however, it was sold off for only Rs.67 lakhs to the private respondent for extraneous considerations.

47. In *State of Madhya Pradesh and another versus Shri Ram Ragubir Prasad Agarwal*, (1979) 4 SCC 686, the Hon'ble Supreme Court has held that, "*contextually speaking, we are satisfied that publication means more than mere communication to concerned officials or departments. To publish a news item is to make known to people in general; and advising of the public or making known of something to the public for a purpose_ . In our view, the purpose of Section 3 animates the meaning of the expression 'published.' 'Publication' is an act of publishing anything, offering it to public notice, or rendering it accessible to public scrutiny – _and advising of the public; making known of something to them for a purpose_ .*"

48. In *ICICI Bank and another versus Municipal Corporation of Greater Bombay and others*, (2005) 6 SCC 404, the Hon'ble Supreme Court had held that "*an advertisement is a matter that draws attention of the public or a segment of the public to a product, service, person, organisation, line of conduct in a manner calculated to promote or oppose, directly or indirectly, that product, service, person, organisation, or line of conduct intended to promote sale or use of product or range of products.*"

49. A perusal of such notice dated 01.06.2023 itself shows that the Raebareli Development Authority, in its table published along with the auction notice, had shown the plot of the petitioner as admeasuring 175 sq. metres instead of its actual area of 204 sq. metres.

50. The petitioner approached this Court in Writ Petition No. 9486 of 2023 which was disposed of on 02.11.2023. Consequent to such order, the petitioner filed a representation to the State Government on 10.11.2023, praying for exemption of his land from acquisition under the provisions of Section 48 of the Land Acquisition Act, 1894, and release of unutilized land under Section 17 of the U.P. Urban Planning and Development Act, 1973. The State Government, by its order dated 20.02.2024, rejected the representation of the petitioner, against which the petitioner has filed Writ-C No.3283 of 2024. The petitioner has also challenged the auction proceedings and the consequent allotment made on 24.07.2023 in favour of the private respondent.

51. It is not in dispute that the petitioner remained in possession of the land until the month of June 2023, when the Raebareli Development Authority forcibly evicted him from his land and delivered its possession to respondent no. 5. Until 2018, the petitioner had leased the said plot, and it was in tenancy of persons who were running a liquor vend on it, as is evident from the rent agreement between the parties from 2013 up to 2017, a copy of which has been filed as annexure to the petition. The liquor vend was running on the commercial plot of the

petitioner, and he was in continuous possession until June 2023, even after the tenants vacated his plot.

52. A perusal of the auction notice dated 01.06.2023 also reveals that proper identification of the khasra no. 201/1 in village Akhtiyarpur was not mentioned. Instead, it was stated that Plot C-1A was situated in Ekta Vihar Colony. The circle rate which was used for determining the reserve price was also much less, and the criteria used was “non-agricultural” instead of “commercial”.

53. The Hon’ble Supreme Court in the aforesaid judgments had relied upon the definition of advertisement given in Black's Law Dictionary, Law and Commercial Dictionary, Collins Dictionary of the English Language, and the Chambers Dictionary, and observed that an advertisement is an information intended for potential customers and not only a display of the name of the company, unless the same happens to be a trademark or trade name.

54. In view of the aforesaid judgments, publication in newspaper should not be an empty formality. Its purpose is to make publicly known all relevant information and to attract the attention of public/individuals concerned to such information for the purposes for which such publication is made. In the context of a public auction, the purpose of publication is to make the public aware that on a particular date, the public auction is to take place and to enable them to participate, giving sufficient time to fulfill the requisite formalities as provided under the

terms of the publication. The question is not who could have participated or could not have participated, in spite of a reasonable period's notice through publication in the newspapers, but certainly, if wide publicity was given by newspaper publication, giving sufficient time, it could have fetched more persons to participate. Such possibility cannot be ruled out. It is a public auction and revenue to the Development Authority being involved, the requirement is for adopting a fair and transparent procedure. State largesse can be granted only by following that procedure. The Auction notice in the instant case was published indicating the 30th or 31st of each month as dates for holding public auction. However, auction was held on 7th of July, 2023.

55. In view of the aforesaid facts and settled legal position discussed above, it is evident that the entire auction process undertaken by the Raebareli Development Authority was arbitrary, non-transparent and contrary to the mandatory Government Orders and statutory provisions. The disputed land, originally reserved for future planning, was selectively converted into Commercial Plot C-1A and auctioned without proper publication, correct valuation, or adherence to the prescribed procedure. The reserve price was arbitrarily and erroneously fixed without applying the correct commercial circle rates and mandatory additions, in clear disregard of the applicable circle rate enhancements, and without complying with the requirement of proper publication in widely circulated newspapers as prescribed under the relevant

Government Order, thereby resulting in the property being sold at a grossly inadequate and undervalued price. Such material irregularities, coupled with deviation from notified auction dates, vitiate the process. The impugned auction and consequential allotment therefore deserves to be quashed in the interest of fairness, transparency, and protection of public revenue. Therefore, **point No. (iii)** is decided in favour of the petitioner. The Court finds that the auction proceedings conducted by the Raebareli Development Authority suffered from material irregularities and procedural violations.

Point No. (iv)

56. We now proceed to consider **Point No. (iv)**. Article 300-A of the Constitution provides that no person shall be deprived of property except by authority of law. The expression “authority of law” requires that the State strictly follow the procedure prescribed under the statute, and that the power of acquisition be exercised fairly, legally, and in accordance with all mandatory provisions. Dispensing with the right of objection under Section 5-A casually or without genuine urgency is neither fair nor lawful, and mechanical or arbitrary exercise of power cannot satisfy constitutional requirements.

57. In *Om Prakash & Anr. v. State of U.P. & Ors.*, 1998 (6) SCC 1, the Hon’ble Supreme Court held that mere planned development of a city or town does not automatically justify invoking Section 17(4) of the Act. The possibility of encroachment or future need for land is not

a sufficient reason to dispense with the enquiry under Section 5-A. The Court emphasized that, in the absence of any material to demonstrate genuine urgency, Section 17(4) cannot be invoked to bypass the rights of landowners under Section 5-A.

58. In the present case, the respondents have deprived the petitioner of property without proper authority of law. The reasons recorded do not show any real urgency as noticed in preceding paragraphs and the statutory procedure, including the Section 5-A enquiry, has not been followed. Resort to Section 17(4) to waive this right, without legitimate or legally sustainable grounds, is therefore arbitrary, unconstitutional, and legally unsustainable.

59. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order.

60. In **Jilubhai Nanbhai Khachar vs. State of Gujarat, 1995 Supp (1) SCC 596** the Hon'ble Supreme Court authoritatively explained the scope of Article 300-A and held that though the right to property is no longer a fundamental right, it remains a constitutional right. A person can be deprived of property only by authority of a valid law, and such law must prescribe a just, fair and reasonable procedure. The Court clarified that the State cannot take property by executive action or in an arbitrary manner; deprivation must strictly conform to statutory provisions. Any action not supported by valid law or taken in violation of

prescribed procedure would be unconstitutional and liable to be struck down. The Hon'ble Supreme Court stated the law in the following terms:

"34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain'."

It was further observed:

"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in

every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

61. By inserting Sub-section (3-A) in section 17 of the Act, it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, only if 80% of the compensation is offered and paid, the vesting would become absolute, and in such event, the consequence of lapsing in respect of absolutely vested land cannot occur, and as such, in that circumstance alone Section 11-A will not be

applicable. In the present case, the mandatory requirement of the provision under Sub-section (3-A) of Section 17 was never fulfilled.

62. The power under Section 17 of the Act of 1973 could have been exercised by the competent authority for restoring back the land to the petitioner, as it was not utilized till June 2023, in spite of having been acquired and taken possession of on paper by the Raebareli Development Authority in June, 2009. Section 17 of the Act is designed to impose an obligation on the State Government to acquire any land for the Authority in terms of the provisions of the Act of 1894. However, the same carves out a *proviso* that even if after expiry of five years from the date of such acquisition, the land has not been utilized, then the tenure holder can apply to the State Government for restoration of their land and on a satisfaction to that effect, the restoration can be allowed provided the tenure holders deposit the charges that were incurred in connection with the acquisition together with interest at the rate of 12%. There are two sub-sections in Section 17 of the Act of 1973. The first gives a discretion to the Government that if land is required for the purpose of planned development for an Urban Development Authority, then the State Government can take action in this regard by resorting to the Land Acquisition Act, 1894. The *proviso* clearly stipulates that if after expiry of a period of five years from the date of such acquisition, the land has not been utilized for the purpose for which it was acquired, then the State Government shall order restoration of land to the tenure

holder on payment of charges which were incurred during the process of acquisition alongwith inherent as aforesaid.

63. The possession is ordinarily taken in land acquisition proceedings under Section 16 of the Land Acquisition Act after the Award has been made under Section 11, and not prior to it. Only thereafter vesting is complete. However, when urgency clause under Section 17 is invoked, then Section 16 does not come into the picture. Under Section 17(3-A), 80% of the estimated compensation should be tendered to the land loser before possession is taken, and admittedly, as per the counter affidavit dated 21.08.2024 of the opposite party nos. 1, 2, and 3 in Writ-C No. 6261 of 2022, the Award was declared on 30.05.2009 and possession on paper was taken on 30.05.2009 and on 06.06.2009. Compensation was tendered to all land losers only on 20.06.2009 after possession was taken. Also, only by letter dated 26.06.2009 compensation was offered to the petitioner, and by Revenue Deposit Form No. 175, in the case of the petitioner, the amount was deposited in the Treasury on 08.02.2011. It is evident that Section 17(3-A) of the Act of 1894 was violated by the respondents.

64. Also, it is evident from a perusal of the Government Order dated 09.12.1996, only the pre-deposit condition before issuance of Notification under Section 4 and Section 6 was relaxed and not the pre-condition of payment to the land loser prior to taking possession under Section 17. That deposit of 70% of estimated compensation was not

made at the time when Section 6/17 declaration was made is evident from the letter dated 18.10.2006 of the District Magistrate, Raebareli, to the Director, Land Acquisition, which states that the Raebareli Development Authority had requested that it would deposit the 70% compensation at the time of taking possession, after receipt of money from HUDCO. HUDCO loan was sanctioned to the Raebareli Development Authority only on 24.08.2006, which meant that till 18.10.2006, the Raebareli Development Authority had not received any money from HUDCO. Admittedly, 80% of the estimated compensation for the land was deposited in the Treasury after Section 4/17 declaration was made on 05.04.2006. and it was tendered to the land losers after taking possession, and therefore the strict conditions as laid down under Section 17(3-A) of the Act were not complied with, and possession was taken illegally. Therefore, the land never vested in the State.

65. In the instant case, there were several procedural anomalies. There was non-compliance of Section 17(3-A) of the Act of 1894. Illegal possession was taken on paper by the R.D.A. on 30.05.2009. Compensation was offered later on. The enquiry under Section 5-A was dispensed with by invoking the urgency provision of Section 17 of the Act of 1894, whereas no urgency existed, as is evident from the conduct of the Raebareli Development Authority which had initially proposed acquisition of land for Yatayat Nagar in 2004. The Notification under Section 4 read with Section 17 was issued in 2006, the Notification

under Section 6 read with Section 17 was issued in 2007, and the Award was declared in 2009. Possession was taken in 2009, but the land remained unutilised. One development plan was made on 11.11.2009. It was amended on 26.07.2016, but 1185 m² of land in which the petitioner's land was included was reserved for future planning.

66. Regarding the argument made by counsel for the R.D.A. that the Award was passed within the stipulated period of two years from the date of Section 6 declaration, and possession being taken only thereafter, it is evident therefrom that the acquisition proceedings had followed the procedure as laid down under the Act of 1894 and such possession shall be understood to have been taken under Section 16 of the Act, is an argument which proves the petitioner's point that the urgency clause under Section 17, which dispensed with the enquiry under Section 5-A, had been invoked unnecessarily and arbitrarily. The respondents had not followed due procedure in depriving the petitioner of his property, thereby violating Article 300-A of the Constitution.

67. The Hon'ble Supreme Court in *Delhi Airtech Services Private Limited and another versus State of U.P. and another*, 2022 SCC OnLine SC 1408, had held that "even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the prerequisite condition for payment of 80% before taking possession is not complied with. In such circumstances, by legal fiction, it loses its character as an acquisition under Section 17, and since the

absolute vesting does not take place, it will lapse if the further process is not complied with and the award is not passed within two years from the date of declaration of Award. Therefore, even though Section 11A is applicable to the cases of acquisition initiated under Section 17 (1) of the Land Acquisition Act, 1894, the consequence of it will not affect the case where the land has absolutely vested on compliance of subsection 3A to Section 17 of the Act and 80% of the estimated compensation is tendered and paid.”

(emphasis supplied by us)

68. The Hon’ble Supreme Court in ***Lucknow Development Authority & another v. Gopal Das (Deceased) & others***, reported in 2019 (8) SCC 172, has been pleased to hold that the applicability of Section 17(1) proviso of the Act of 1973 would depend on whether the development of the land proposed to be released had indeed been carried out or not immediately after completion of acquisition proceedings. This clearly reflects that if no development work towards utilization of the said land is carried out within five years of the date of acquisition, the tenure holder would be entitled for restoration of his land and payment of usual charges as stipulated in law.

69. In the case of ***Tukaram Kana Joshi & others through Power of Attorney Holders and Others vs. Maharashtra Industrial Development Corporation and Others***, reported in 2013 (1) SCC 353, the Hon’ble Supreme Court observed that the State, especially the welfare State,

which is governed by the Rule of Law, cannot arrogate to itself a status beyond that as provided by the Constitution. The question of condonation of delay, moreover, is one of discretion and has to be decided on the basis of the facts of the case at hand, as they may vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are, and when and how the delay arose. Ultimately, it would be a matter within the discretion of the Court, and such discretion must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of a party's defence must be tried upon principles substantially equitable.

70. The Hon'ble Supreme Court has held in State of *Karnataka & Another vs. Karnataka State Patel Sangh & Others*, 2007 (4) SCC 207, that when two different lands have been acquired under the same acquisition proceedings for the same purpose, then the concerned authorities cannot discriminate between them and proceed against one but not the other. Lands adjacent to the land of the petitioner, which were acquired in the same acquisition proceedings for construction of Yatayat Nagar, are still in possession of the original owners. They have permanent constructions thereon, but it is only the petitioner who was threatened with eviction by the respondents.

71. In *Delhi Airtech Services Private Limited and another versus State of U.P. and another*, 2022 SCC OnLine SC 1408, the Larger Bench of the Hon'ble Supreme Court was considering an Appeal which

had been decided by a two-Judges Bench on 18.08.2011 with divergent opinions. One of the Judges, after consideration of the matter, arrived at the conclusion that taking over possession of the land without complying with the requirement under Section 17(3A) of the Act of 1894 was clearly illegal and in violation of the statutory provision, which automatically violated the constitutional guarantee under Article 300A of the Constitution. On the other hand, Justice Swatantra Kumar came to the conclusion that Section 11A of the Act had no application to acquisition under Section 17 of the Act of 1894. He held that default in complying with Section 17(3A) of the Act does not invalidate or vitiate the entire acquisition proceedings. The Hon'ble Judge, while deciding so, had however believed that 80% of the estimated value in terms of sub-section (3A) of Section 17 had been paid to the land loser, and in that context had held that the interest provided in terms of Section 34 will be payable.

72. Due to divergence of opinion between the Learned Judges, the Chief Justice placed the matter before a Larger Bench to resolve the conflict. No specific question had been framed and referred for decision to the three-Member Bench. Hence, the Bench heard the matter on factual aspects involved in the case *de novo* so as to determine the legal aspects which touched upon the same.

73. Justice A.K. Ganguly had found *Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369*, to be rendered *per incuriam*. Justice Swatantra

Kumar had relied on it and held that compliance with Section 17(3A) of the Act is not mandatory. The Supreme Court has referred to the questions which arose for its consideration in paragraph 8 as: –

(a) Is the requirement to tender payment of 80% of the estimated compensation as contemplated under subsection(3A) to Section 17 of Act, 1894, mandatory to ensure absolute vesting of the notified land.

(b) Whether the requirement to pass the award within the time frame contemplated under Section 11A applicable to the acquisition notified under Section 17 of Act, 1894.

74. The Larger Bench considered the language of Section 11A of the Act and Section 17 and then observed in paragraphs 12, 13, 14, 15, 16 & 17 as follows:–

“12. ... The question however is as to whether the rigour of Section 11A of Act, 1894 will apply when the appropriate Government exercises its special power in cases of urgency, which does not contemplate the same procedure as in the normal acquisition process noted above.... under Section 17 of Act, 1894, possession is permitted to be taken even before the award is passed. Though such power was absolute earlier, sub-section (3A) was inserted by Act 68 of 1984, w.e.f 24.09.1984 whereby the pre-condition imposed before taking possession is that 80% of the estimated compensation is to be tendered and paid to the persons interested in the land. The tendered amount should be paid unless prevented by one or more of the contingencies mentioned in Section 31(2) of Act, 1894. It would necessarily mean that Section 31 will come into play and the 80% of the estimated compensation amount, though no award is passed, will have to be tendered and

paid to the persons interested. If tendered, but not able to pay due to valid reasons, it is to be deposited in Court. The word employed in sub-section (3A) of Section 17 of the Act, 1894 is "shall" and it is to be tendered and paid "before taking possession". Hence it cannot be understood as providing any discretion to the acquiring authority. In fact, the last sentence of sub-section (1) of Section 17 uses the word "thereupon" with respect to vesting. This word "thereupon" is correlated to taking possession and payment in terms of sub-section (3A) is a sine qua non for taking possession. Therefore (1) payment of 80% (2) taking over possession thereafter and (3) vesting of land in the government take place in a sequence. Absent anyone of these in the sequence, the emergency provision fails. It is a pre-requisite condition to acquire and take possession of the land since such acquisition is permitted by exempting the requirement of the procedure under Section 5A and possession is permitted to be taken prior to an award being passed under Section 11 of Act, 1894.

13. That apart, sub-section (4) to Section 17 of Act, 1894 provides the discretion to the appropriate Government to waive the application of the provisions of Section 5A and make the declaration under Section 6 in respect of the land at any time after the initial publication of the notification under Section 4 of Act, 1894. This makes it clear that even in a case where the appropriate Government exercises its power to invoke the special power in case of urgency, all other procedure contemplated under the Act except the requirement under Section 5A of Act, 1894 is to be complied. Therefore, after issue of the initial notification under Section 4 read with Section 17(1) and on taking possession after issue of notice under Section 9, the declaration under Section 6 of Act, 1894 is to be made so as to complete the process of acquisition, which indicates that the objection to acquisition of

land shall alone stand muted and not the right to compensation which is to be paid in strict compliance of the requirement in that regard.

15. However, on a careful composite perusal of all the provisions noted above, it is evident that the requirement to tender and pay 80% of the estimated compensation before taking possession assumes significance so as to carve out an exception for non-applicability of 'lapsing' as contemplated under Section 11A of Act, 1894. This is so, since the terms "vesting absolutely" and "lapsing" cannot co-exist and cannot go hand in hand. Post amendment w.e.f 24.09.1984, two elements have been inserted in Section 17 for the land to vest absolutely in the Government for public purpose even before the award is passed. One, is that possession should be taken. The other is, by inserting sub-section (3A) it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, 80% of the estimated compensation, on payment of which only if tendered and paid, the vesting would become absolute and in such event the consequence of lapsing in respect of absolutely vested land cannot occur and as such, in that circumstance alone Section 11A though applicable will not take effect. The right of the land loser would be to enforce passing of award which will include the balance 20% of compensation even if it is beyond two years and get adequately compensated in terms of Section 23 and 34 of Act, 1894 for the delay if any.

16. But it is a different matter altogether, when Section 17(1) is invoked but the requirement thereunder which is a pre-requisite condition is not complied. As noted, sub-section (3A) has been inserted w.e.f. 24.09.1984, whereunder it is made mandatory to tender and pay 80% of the estimated compensation before taking possession. Therefore, even if possession is taken, such possession

cannot be considered as legal so as to vest the land absolutely if the pre-requisite condition for payment of 80% before taking possession is not complied.

17. Therefore, we are of the considered view that Section 11A though applicable to the cases of acquisition initiated under Section 17(1) of Act, 1894 the consequence of it will not affect the case where the land has absolutely vested on compliance of sub-section (3A) to Section 17 of Act, 1894 and 80% of estimated compensation is tendered and paid. Hence, when there is a challenge by the land loser, each case will have to be considered on its own merits to determine whether the pre-requisite condition to tender and pay as contemplated under sub-section (3A) is made before possession is taken. If in the case concerned the mandatory prerequisite is not complied, such acquisition will lose its character as being under Section 17”

(emphasis supplied by us)

75. The Hon’ble Supreme Court categorically held that even where possession is purportedly taken under Section 17, such possession cannot be regarded as lawful so as to result in absolute vesting of the land in the State if the mandatory precondition of payment of 80% of the estimated compensation under Section 17(3A) has not been complied with. The Court observed that in the absence of such payment prior to dispossession, the acquisition loses its character under Section 17 by legal fiction, and since absolute vesting does not take place, the proceedings would lapse if the award is not made within the stipulated period. Therefore, if 80% of the estimated compensation is not paid to the landowner before taking possession, as mandatorily required under

Section 17(3A), such possession must be treated as illegal and not in accordance with law. In such circumstances, vesting cannot be said to be absolute or inalienable.

76. The Hon'ble Supreme Court in *Anil Kumar Gupta Vs. State of Bihar & others*, (2012) 12 SCC 443, where the Supreme Court observed that a person who is deprived of his land can challenge the acquisition proceedings at various stages. He can question the Notification issued under Section 4 of the Land Acquisition Act on the ground of violation of the mandate contained therein, like publication of the Notification in the Official Gazette and/or two newspapers, including the one in the regional language, failure of the Collector to cause public notice of the substance of the Notification to be given at convenient places in the locality. He can challenge the declaration issued under Section 6(1) of the Land Acquisition Act on the ground of non-compliance with Section 5A(i) and/or (ii) or violation of the first proviso to Section 6(1). In a given case, the landowner can also challenge the notice issued under Section 9 of the Land Acquisition Act and the Award passed under Section 11 of the Land Acquisition Act on the ground that he had not been heard, that the acquisition proceedings are a nullity. He can also challenge the Award if it is not made within the period prescribed under Section 11A of the Act. The vesting of land in the Government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure. The invoking of the urgency

clause contained in Section 17 can be questioned on the ground that there was no real urgency.

77. Till the date of filing of the Writ Petitions no. 170 of 2015 and 6261 of 2022, no construction whatsoever had commenced under the proposed residential scheme, nor was there any material to indicate that such construction was likely to begin in the near future. Even the allotment process had not been initiated. These undisputed facts clearly belie the claim of urgency. The invocation of the urgency clause, in the absence of any immediate or compelling necessity, demonstrates non-application of mind and lack of sufficient cause. The power under the urgency provisions, being extraordinary in nature and resulting in deprivation of the valuable right under Section 5-A, could not have been exercised in a routine or mechanical manner.

78. It must be borne in mind that the expression “subjective satisfaction” does not confer an unfettered or absolute discretion upon the acquiring authority. Even though the formation of opinion rests with the authority, such opinion must be based on objective facts and relevant material. The power under the urgency clause is exceptional in nature and, therefore, its exercise must reflect due application of mind to the necessity of dispensing with the enquiry under Section 5-A. If the record fails to disclose any material justifying immediate action, or if the circumstances do not demonstrate real urgency, the invocation of such power would be open to judicial scrutiny and liable to be set aside.

Further, the authority must apply its mind to the material. This is apart from the requirement that action must not be *mala fide*. Undoubtedly, the purpose must be a public purpose. But merely because the purpose of the acquisition is found to be a public purpose, the duty of the authority does not end. He must be satisfied that there is real urgency, such that the invaluable right saved to a person to ventilate his grievances against the Act is not unjustifiably extinguished. Section 5A of the Land Acquisition Act guarantees a right to the person interested in the property which is the only statutory safeguard against compulsory acquisition of property. The power under Section 17(4) is discretionary. Being a discretion, it must be exercised with due care. It is true that if there is material, however meagre it may be, and the authority has, without being guided by extraneous considerations, applied its mind and taken the decision, then a hands-off approach is warranted. The authorities must remain alive and alert to the precious right created in favour of the citizens, which is not meant to be an empty ritual.

79. A recent judgment of the Apex Court in **Yerikala Sunkalamma and Ors. vs. State of A. P., Department of Revenue and Ors. 2025 SCC Online SC 630**, observed-

"Article 300-A provides that no person shall be deprived of his property save by authority of law. This Article has been inserted by the Constitution (44th Amendment) Act, 1978. Prior to this amendment, the right to property was guaranteed by Article 31. While Clause (1) of that Article has been shifted from Part III to Article 300-

A, Clause (2) of that Article, which dealt with compulsory acquisition of property, has been repealed. Sub-clause (f) of Clause (1) of Article 19, which guaranteed the right to acquire and hold property, has also been omitted by the same 44th Amendment Act, 1978. The result of these changes, in short, is that the right to hold property has ceased to be a fundamental right under the Constitution and it has been left to the Legislature to deprive a person by the authority of law.

125. Article 300-A provides that the property of a person can be deprived by authority of law. The phrase "save by authority of law" came before the Court for interpretation. This Court in the case of Wazir Chand v. State of H.P., reported in (1954) 1 SCC 787 held that under the Constitution, the Executive cannot deprive a person of his property of any kind without specific legal authority which can be established in Court of law, however laudable the motive behind such deprivation may be. In the same decision, this Court also held that in case of dispossession of property except under the authority of law, the owner may obtain restoration of possession by a proceeding for mandamus against the governmental authorities. Further, this Court in Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh reported in (1982) 1 SCC 39 held that the phrase "by authority of law" means by or under a law made by the competent Legislature. The same position is reiterated by this Court in the case of Jilubhai Nanbhai Khachar v. State of Gujarat reported in 1995 Supp. (1) SCC 596 wherein it has been observed that "Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or tak-

ing possession Under Article 300-A. In other words, if there is no law, there is no deprivation.”

80. In the light of the settled legal position and the authoritative pronouncements of the Hon’ble Supreme Court referred to in the preceding paragraphs, it is clear that deprivation of property must be strictly in accordance with a validly enacted law and scrupulous compliance with the procedure prescribed thereunder. In the present case, the respondents have admittedly failed to comply with the mandatory requirement under Section 17(3-A) of the Land Acquisition Act, 1894, which mandates tender and payment of 80% of the estimated compensation prior to taking possession. Such non-compliance strikes at the root of the acquisition proceedings, vitiates the very act of taking possession, and renders the alleged vesting legally untenable.

Moreover, the invocation of the urgency clause dispensing with the enquiry under Section 5-A, in the absence of any real, immediate, or compelling urgency, demonstrates non-application of mind and amounts to a colourable exercise of statutory power. The cumulative effect of these procedural and substantive lapses results in deprivation of the petitioner’s property otherwise than by authority of law, in clear contravention of Article 300-A of the Constitution. Accordingly, **Point No. (iv)** is answered in favour of the petitioner and against the respondents.

Point no. (v)

81. Now we proceed to deal with last point i.e., Point No. (v), namely, whether the original landowner, whose acquired land remained unutilized for a prolonged period, who did not receive compensation in accordance with law, and who continued to retain possession till June 2023, is entitled to seek reversion of the land or to challenge the hurried transfer/auction in favour of a third party; and further, whether the impugned actions of the respondents are arbitrary, illegal, tainted with malice in law, and violative of Articles 14 and 300-A of the Constitution of India.

82. The petitioner had, prior to the auction, submitted a representation dated 06.08.2022 seeking release/restoration of the land on the ground of prolonged non-utilization. The existence of such representation has not been specifically controverted by the respondents. On the contrary, it was only during the pendency of the writ proceedings, and pursuant to interim directions of this Court on 13.09.2022 to find out whether land had been utilized, that the subject land was for the first time carved out and marked as Plot C-1A on 30.05.2023 and hurriedly put to auction on 01.06.2023.

83. Further, the material on record discloses that although possession was shown to have been taken in 2009 by invoking the urgency provisions, the mandatory requirement under Section 17(3-A) of the Land Acquisition Act, 1894, namely tender of 80% of the estimated compensation prior to taking possession, was not complied with. The

compensation was admittedly offered on 26.06.2009 and deposited in the treasury only on 08.02.2011. In **Delhi Airtech Services Private Limited and another v. State of U.P. and another (2022 SCC OnLine SC 1408)**, the Hon'ble Supreme Court held that the urgency provisions under Section 17 of the Land Acquisition Act, 1894 can be invoked only upon strict compliance with statutory safeguards, particularly the requirement of tendering 80% of the estimated compensation prior to taking possession under Section 17(3-A). In the present case, possession was taken in 2009 by invoking the urgency provisions, but the mandatory requirement of Section 17(3-A) was not complied with, and the compensation was deposited only in 2011. The non-compliance with the statutory safeguard strikes at the legality of taking possession and casts serious doubt on the completeness of vesting in favour of the State. This non-compliance, coupled with prolonged non-utilisation of the land and its selective alienation during the pendency of the writ petition, indicates that the acquisition cannot be said to have been carried out for a genuine public purpose and raises a substantial question under Article 300-A of the Constitution of India. In view of the law laid down by the Supreme Court in **Delhi Airtech Services Pvt. Ltd. (Supra)** and allied decisions, such non-compliance strikes at the legality of the taking over of possession and renders the completeness of vesting open to serious doubt.

84. As much emphasis has been placed on the proviso to Section 17 of the U.P. Urban Planning and Development Act, 1973, it is necessary to examine the provision in the light of the rival submissions of the parties. The object of the *proviso* is to prevent indefinite retention of land acquired for public purpose without its utilization. Although, the provision does not provide for automatic lapse merely by the passage of time, the *proviso* confers a substantive right upon the ousted landholder to apply for restoration after five years of non-utilisation. The right so conferred is not an empty formality but a substantive safeguard intended to ensure that land acquired for a declared public purpose is not retained indefinitely without being put to meaningful and bonafide use. The discretion vested in the State Government is not unfettered and must be exercised in a fair, reasonable and non-arbitrary manner, consistent with the constitutional mandate enshrined under Articles 14 and 300-A of the Constitution of India. Where land remains unutilised for a prolonged period and the Authority fails to utilise it for the declared purpose, the right of the landholder to seek restoration cannot be defeated by mere procedural delay or inaction.

85. This Court, by its order dated 13.09.2022 passed in Writ-C No. 6261 of 2022, had specifically directed the respondents to seek instructions as to whether the land of the petitioner had been utilised or not. A perusal of the counter affidavits filed by opposite party nos. 1, 2 and 3 shows that there is no specific denial of the pleading of the

Petitioner that a representation dated 06.08.2022 had been submitted seeking release of his land on the ground of prolonged non-utilisation. Even in paragraph 21 of the counter affidavit filed by the Raebareli Development Authority on 26.08.2024, the factum of such representation has not been denied, instead, the Authority has merely stated that a Reference for enhancement of compensation preferred by the petitioner was pending before the Land Acquisition Tribunal. In view of the settled principle that if there is no specific denial, then such averment is deemed to have been admitted by the Respondent as held by the Apex Court in the case of **Asha vs. Pt. B.D. Sharma University of Health Sciences and Ors. MANU/SC/0542/2012**, and it cannot be accepted that the petitioner had not invoked his remedy under Section 17 of the U.P. Urban Planning and Development Act, 1973.

86. It is also evident from perusal of records available that when this Court passed the interim order dated 13.09.2022, the respondents were fully aware that a writ petition seeking release of the alleged unutilised land had been instituted on 08.09.2022 and was pending consideration. The Development Authority was, therefore, under a clear obligation to place before the Court the true and complete factual position regarding the utilisation of the land as it existed on that date. However, the Raebareli Development Authority filed its counter affidavit only on 26.08.2024, wherein it was disclosed that although the development plan of Ekta Vihar dated 11.11.2009 was amended on 26.07.2016, the

petitioner's land formed part of 1185 sq. m. shown as "reserved for future planning" and had not been put to any actual or effective use for a considerable period thereafter.

87. The record further shows that out of the said 1185 sq. m. of land reserved for future planning, only 173.11 sq. m., corresponding to the land of the petitioner, was carved out, numbered as Plot C-1A, and approved by the Vice-Chairman of the Raebareli Development Authority on 30.05.2023. The remaining land continued to remain reserved for future planning. Significantly, an auction notice in respect of Plot C-1A was issued the very next day, i.e. on 01.06.2023. Thus, the land was treated as utilised for the first time only on 30.05.2023, more than fourteen years after the Award and during the pendency of the writ proceedings.

88. What reflects from these circumstances is that the timing and manner in which the petitioner's land alone was carved out and immediately put to auction lends credence to the contention of the petitioner that such action was undertaken with a view to defeat his pending claim for release of unutilised land and to render the writ petition infructuous. Such belated steps, initiated only after the filing of the writ petition and in the absence of any satisfactory explanation for the prolonged non-utilisation, cannot be regarded as bona fide utilisation for the declared public purpose and are, therefore, open to judicial scrutiny. The concept of a welfare State, as explained by the Hon'ble

Supreme Court in *Lala Ram v. Union of India* ((2015) 5 SCC 813), is that the State bears a positive and affirmative obligation to protect and promote the economic and social well-being of its citizens, guided by the principle of securing the greatest good of the greatest number. The Court emphasised that public welfare must remain the central commitment of all State action, and that the Directive Principles embodied in Articles 38 and 39 of the Constitution mandate the State to strive for equitable distribution of resources, meaningful livelihood, and dignified living conditions, particularly for the poor, the weak, and other vulnerable sections of society. The true test of a welfare State, as held therein, lies in whether its actions advance the happiness and well-being of the people, and not merely in formal or technical compliance with the law. Further, in *People's Union for Democratic Rights v. Union of India* ((1982) 3 SCC 235), the Apex Court cautioned that the Rule of Law cannot be reduced to an instrument for protecting vested interests or perpetuating existing inequities. The Court observed that legal protection must not be confined to a privileged few, and that the law cannot be permitted to be "prostituted" to legitimise the exploitation of the weak and powerless under the guise of enforcing civil or political rights. Read together, these decisions reaffirm that State action, particularly when it affects constitutional guarantees and fundamental rights, must be just, humane, and welfare-oriented, and cannot be sustained where it results

in arbitrariness, exclusion, or injustice to those whom the Constitution seeks to protect most.

89. The expression “public purpose” under the law of land acquisition is wide, however, it is not unlimited and is always subject to judicial scrutiny. Deprivation of property under Article 300-A of the Constitution of India is permissible only when the acquisition is supported by a genuine and subsisting public purpose and when the statutory provisions are complied with in a fair and reasonable manner. Mere reservation of land for “future planning,” without actual utilization or demonstrable steps towards execution of the declared purpose for a prolonged period, cannot by itself satisfy the requirement of public purpose.

90. The reliance placed by the respondents on the decisions in *Indore Development Authority v. Manoharlal and others* 2020 SCC OnLine SC 316, *Shyoraj Singh and another v. State of U.P. and others* (2022) 1 All LJ 546), *Heera Singh v. State of U.P. and others* (2023 (1) UPLBEC 604), and *Banda Development Authority v. Moti Lal Agarwal and others* ((2011) 5 SCC 394) does not advance their case, as the facts, statutory context, and issues considered in those decisions are materially different from those arising in the present matter.

91. The Constitution Bench judgment of the Hon’ble Supreme Court in the case of *Indore Development Authority v. Manoharlal and others*, 2020 SCC OnLine SC 316 pertains to the interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013, and the concept of deemed lapse of acquisition proceedings. The facts and legal issues in the present case are totally different. The present petition does not involve the 2013 Act or any question of deemed lapse. It concerns prolonged non-utilisation of the acquired land, continued possession by the petitioner, failure of the Authority to utilise the land for the declared public purpose, and the sudden alienation/auction of the same during the pendency of writ proceedings. Therefore, the principles laid down in *Indore Development Authority (Supra)* are not attracted to the facts of this case.

92. We have also gone through the judgment of *Shyoraj Singh (Supra)* and find that the facts and issues involved therein are clearly distinguishable from the facts and issues of the present case. The said decision was rendered in a different factual and statutory context and does not deal with a situation where the acquired land remained unutilised for a prolonged period and was sought to be dealt with only after initiation of judicial proceedings. In the referred case, petitioners had no continuing possession or any credible claim of prolonged non-utilisation. Whereas in the present case, the land remained unutilised for an extended period, and the original owner in continued physical possession. The respondents also failed to utilise the land for the declared purpose and instead, after long delay, created and numbered the plot only to auction it immediately, thereby defeating the petitioner's

pending claim. Therefore, *Shyoraj Singh (Supra)* is clearly distinguishable. Further, the Court in *Shyoraj Singh (Supra)* had also found that possession had been lawfully taken and the land had been utilised for the declared public purpose, or that the statutory requirements governing acquisition stood substantially complied with. In those cases, there was no prolonged and unexplained non-utilisation of the acquired land, no continuation of physical possession with the original landholder for years after the award, and no belated steps taken to alienate the land during the pendency of judicial proceedings, as is evident in the present case.

93. In *Heera Singh (Supra)* the Court held that mere delay in project implementation does not amount to non-utilisation when the land was in the possession of the Authority and earmarked for Tech Zone-2. However, in the present case, the land remained unutilised for a prolonged period, and the petitioner continued in actual possession. The Authority's failure to utilise the land and sudden auction after filing the writ petition demonstrates arbitrariness, making the petitioner's claim valid.

94. The decision of *Banda Development Authority v. Moti Lal Agarwal (Supra)* also turned on its own facts, where the Hon'ble Hon'ble Supreme Court upheld the acquisition upon finding that possession had been duly taken and the land had vested absolutely in the Development Authority, followed by utilisation in furtherance of the

planned development scheme. The said decision does not deal with a situation where land remains unused for over a decade, continues to remain in the physical possession of the landowner, and is thereafter selectively carved out and auctioned while a challenge to non-utilisation is pending before the Court. Further, the reliance placed by respondent State on *Visakhapatnam Urban Development Authority v. S.S. Naidu*, (2016) 13 SCC 180; *State of M.P. v. V.P. Sharma*, AIR 1966 SC 1593; *Dedicated Freight Corridor Corporation v. Subodh Singh*, (2011) 11 SCC 100; and *Government of A.P. v. Syed Akbar*, (2005) 1 SCC 558 is not tenable in the present case, as the said judgments were rendered in distinct factual and statutory contexts and do not deal with prolonged non-utilization of the acquired land, non-payment of compensation, or the statutory right of restoration under Section 17 of the U.P. Urban Planning and Development Act, 1973, which are central to the present case.

95. So far as the submission of learned counsel for the private respondent that the application of the petitioner under Section 48 of the Land Acquisition Act, 1894 is not maintainable is concerned, the same has to be examined in the light of the judgments relied upon and the factual matrix of the present case. A reliance has been placed on *Mahadeo (Dead) Through L.R.s and others v. State of U.P. and others*, (2013) 4 SCC 524 and *Babu v. State of U.P.*, 2008(5) ADJ 171. The Hon'ble Supreme Court in said decisions held that once land is lawfully

acquired under the Land Acquisition Act, 1894 and mandatory requirements are complied with, including taking possession, the land vests absolutely in the State free from all encumbrances. Even if any part of the acquired land remains unutilised, neither Section 48 nor any executive decision permits reconveyance or release of such land to the erstwhile owners. Section 48 applies only before possession is taken. Internal resolutions or proposals of a development authority cannot compel the State to withdraw from a validly completed acquisition.

96. However, the said principle applies only where acquisition is validly completed, compensation is paid, and possession lawfully vests in the State. In the present case, neither compensation was paid in accordance with Section 17(3-A) of the Act of 1894, nor was possession lawfully taken. On the contrary, the land admittedly remained in the physical possession of the petitioner till June 2023 and the acquisition was never implemented in accordance with the statutory mandate or utilised for the declared public purpose. The application of the petitioner under Section 48, filed on 10.11.2023, was necessitated after an illegal and clandestine auction conducted in July 2023 during the pendency of Writ proceedings. Section 48 cannot be used as a shield to deny restoration where vesting itself is incomplete, possession is unlawful, and the land has remained unutilised for years. The belated auction reflects malice in law and misuse of statutory power. In the absence of lawful vesting and utilisation, the refusal to restore or withdraw from acquisition is arbitrary

and violative of Articles 14 and 300-A of the Constitution, besides being contrary to the scheme of Section 17 of the U.P. Urban Planning and Development Act, 1973. In *Babu v. State of U.P.*, 2008(5) ADJ 171, this Court held that Section 48 confers only a discretionary liberty on the State and no enforceable right on landowners, a principle applicable only where acquisition is validly completed with payment of compensation and lawful taking of possession. In the present case, compensation was never paid in accordance with Section 17(3-A) of the Act of 1894 and possession admittedly remained with the petitioner till June 2023. The land was never utilised for the declared public purpose, and a belated auction was conducted during pendency of proceedings. Section 48 cannot be used to protect unlawful vesting. The impugned action is arbitrary, tainted by malice in law, and violative of Articles 14 and 300-A, besides being contrary to Section 17 of the U.P. Urban Planning and Development Act, 1973.

97. The present case raises distinct and substantial issues relating to prolonged non-utilisation of the acquired land, its continued physical possession with the petitioner, and the belated and selective carving out and auction of only the petitioner's land during the pendency of the writ proceedings. No material has been placed on record to demonstrate that the land was utilised for the stated public purpose for several years after acquisition. The subsequent action of auctioning the land cannot be construed as bona fide utilisation in furtherance of the original scheme, nor

does it disclose any immediate necessity connected with the declared public purpose. In view of the materially different factual foundation and legal issues involved, the aforesaid decisions do not govern the controversy in the present case, which is required to be examined independently in the light of the applicable statutory and constitutional principles.

98. Further, when land acquired for a public purpose remains unused for a long time and is later selectively alienated, the action can no longer be said to serve the declared public purpose and becomes arbitrary deprivation. The doctrine of eminent domain allows acquisition only for a predominantly public purpose, and not for transfer to third parties under the guise of planning or development. Such selective alienation, especially after prolonged non-utilisation, indicates misuse of statutory powers and defeats the object of acquisition. Even where compensation has been paid, deprivation of property in such circumstances does not meet the requirements of Article 300-A of the Constitution. Therefore, the action is liable to strict judicial scrutiny and cannot be sustained merely because a formal procedure has been followed.

99. It is well settled that where the State invokes the urgency clause under Section 17 of the Land Acquisition Act, 1894, it assumes a higher burden to demonstrate strict adherence to statutory safeguards, particularly those enacted for the protection of landowners. Section 17(3-A) is not a mere procedural formality but a substantive safeguard

intended to balance the extraordinary power of dispossession without enquiry. Any infraction thereof strikes at the root of the acquisition process and weakens the claim of the State of lawful vesting. It is also well settled that the urgency clause under Section 17 of the Land Acquisition Act, 1894, being an exception to the normal procedure, must be strictly construed and can be invoked only in cases of real emergency. The Hon'ble Supreme Court in *Radhy Shyam (D) Thr. Lrs. & Ors. v. State of U.P. & Ors.*, Air Online 2011 SC 429 and *Greater Noida Industrial Development Authority v. Devendra Kumar & Ors.* (2011) 12 SCC 375, has held that the power under Section 17 cannot be used as a device for acquiring land for ordinary development projects. Similarly, in *Laxmi Devi v. State of Bihar* 2015 (10) SCC 241, *Ram Dhari Jindal Trust v. Union of India* 2012 (11) SCC 370), and *Anand Singh v. State of U.P.* 2010 (11) SCC 242, the Court emphasised that the urgency clause is not a mere procedural formality but a substantive safeguard intended to protect landowners from arbitrary dispossession, and any violation thereof vitiates the acquisition.

100. In these circumstances, the prolonged non-utilisation of the acquired land, coupled with its continued possession by the original owner, casts serious doubt on the bona fides of the Authority. The State holds acquired land in a fiduciary capacity and must utilise it for the declared public purpose. Selective auction of only the land of the petitioner, without any rational basis, is arbitrary and violative of Article 14. Moreover,

the initiation of auction proceedings only after the writ petition was filed, during its pendency, suggests an attempt to frustrate the litigation and cannot be sustained.

101. At this juncture, it must be borne in mind that justice is the foundational virtue by which a society, court, or tribunal ensures that every individual receives what is lawfully due to him, rather than being subjected to injury or injustice. Justice is not merely the absence of wrong, but the positive act of rendering what is right, fair, and equitable to one who has suffered a legal injury. The Constitution of India, in its Preamble, accords a position of primacy to justice - social, economic, and political - thereby making it the cornerstone of our constitutional framework. It is evident that without the assurance of justice, the other cherished ideals of liberty, equality, and fraternity would be rendered hollow and illusory.

102. Judicial review seeks to ensure fairness, legality, and accountability in State action. It is a Constitutional mechanism through which courts examine the actions of the legislature and the executive to ensure that they act lawfully, fairly, and within the limits of their authority. Under the Constitution of India, the power of judicial review flows primarily from Articles 13, 32, 226, and 136, which empower Constitutional Courts to scrutinize legislative enactments and administrative decisions to determine whether they violate fundamental rights, exceed jurisdiction, or suffer from arbitrariness, thereby ensuring

that all State action conforms to constitutional mandates and the rule of law.

103. In view of the above discussion, this Court holds that the original landowner, whose land remained unutilised for a prolonged period, whose compensation was not tendered in compliance with Section 17(3-A) of the Land Acquisition Act, 1894, and who continued in physical possession till June 2023, is entitled to seek reversion/restoration of the land and to challenge its hurried transfer/auction in favour of a third party. The mandatory statutory safeguard having not been complied with, lawful vesting did not take place. The belated carving out and auction of only the petitioner's land during pendency of the writ proceedings, without demonstrable public purpose or bona fide utilisation, reflects arbitrariness and malice in law. Such action offends Article 14 and results in deprivation of property otherwise than by authority of law, contrary to Article 300-A of the Constitution of India. Accordingly, Point No. (v) is answered in the affirmative, in favour of the petitioner and against the respondents.

Conclusion

104. In view of the foregoing discussion and the findings recorded on Points (i) to (v), this Court is of the considered opinion that the acquisition proceedings and the subsequent actions of the respondents, insofar as they relate to the land of the petitioner, cannot be sustained in law. The representation was wrongly rejected by the Respondent No.1

without due consideration. The urgency clause under Section 17 of the Land Acquisition Act, 1894 was invoked without any real or demonstrable urgency, and the valuable right of objection under Section 5-A was dispensed with mechanically and arbitrarily. The mandatory requirement under Section 17(3-A) to tender and pay 80% of the estimated compensation before taking possession was not complied with, and possession taken without this statutory precondition cannot vest lawful ownership in the State. The land remained un-utilised for several years, contradicting the claim of urgency and casting serious doubt on the bonafides of the acquisition. Moreover, the hurried carving out and auction of Plot C-1A during the pendency of the writ petition was arbitrary, non-transparent, and not in furtherance of the declared public purpose.

Accordingly, the Writ Petition is allowed insofar as it relates to the land of the petitioner. The order dated 20.02.2024 rejecting the representation of the petitioner is hereby set aside. The impugned auction proceedings and the consequential allotment, insofar as they pertain to the land of the petitioner, are hereby quashed. The respondents are directed to restore possession of the land to the petitioner.

However, in terms of the proviso to Section 17 of the U.P. Urban Planning and Development Act, 1973, and having regard to the equities of the case, the petitioner shall deposit with the competent Authority the acquisition charges together with interest at the rate of 12% per annum, as contemplated under the said provision, within such reasonable period

as may be prescribed by the Authority. Upon such deposit, the land in question shall stand restored to the petitioner, free from all encumbrances created pursuant to the impugned auction proceedings. It is further provided that the amount deposited by respondent no. 5 shall be refunded to him along with interest at the rate of 7% per annum or the prevailing bank rate, whichever is higher, within a period of three months from the date of this order.

105. The Writ Petitions are *allowed* to the aforesaid extent. No order as to costs.

(Brij Raj Singh, J.) (Mrs. Sangeeta Chandra, J.)

This Judgement pronounced under Chapter VII Rule 1(2) of the Allahabad High Court Rules, 1952.

(Brij Raj Singh, J.)

February 24, 2026
Darpan/Rahul