Judgment reserved on 09.01.2026
Judgment pronounced on 30 .04.2026
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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 402 of 2014

Kamal Chand Jain S/o Shri Manik Chand Jain, aged about 57 years R/o 5, South Avenue, Choubey Colony, Raipur, CG, Chhattisgarh

... Petitioner

versus

1. State Of Chhattisgarh Through The Secretary, Department of Urban Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh

2. Commissioner, Raipur Division and Secretary, Department of Revenue, Government of Chhattisgarh Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh

3. Collector (Revenue) Raipur, District : Raipur, Chhattisgarh

4. Sub Divisional Officer-Cum-Land Acquisition Officer, Arang-Abhanpur, Head Quarter District Office, District : Raipur, Chhattisgarh

5. Naya Raipur Development Authority, Rajdhani Parisar, Sector-19, Naya Raipur, through Its Chief Executive Officer, Naya Raipur, Chhattisgarh

... Respondents

For Petitioners	:	Shri Ashish Shrivastava Sr. Advocate, Shri Udit Khatri, Shri Rohishek Verma, Shri Rahul Ambast, Ms. Shotabdi Bagchi, Shri Ashutosh Shrivastava and Shri Ishaan Singh Rathore, Advocates
For Respondents/State For R-5	:	Ms. Shailja Shukla, Dy. GA Shri Pravin Das, Advocate

(Hon'ble Shri Justice Sachin Singh Rajput)

C A V Order

First the petitioner had filed the Writ Petition on 19.02.2014 challenging the letter/order dated 13.12.2013 (Annexure P-1) rejecting his representation and refusing to release his land from the acquisition proceedings, for quashing/setting aside the entire land acquisition proceedings initiated in pursuance of notification dated 09.08.2011 (Annexure P-2), as also to quash the notification dated 14.08.2012 (Annexure P-3). Subsequently, by filing amended petition on 14.12.2023 under the order of this Court dated 06.12.2023, the petitioner also challenged the award dated 25.11.2013 and 03.07.2014 (Annexures P-12 and P-13 respectively).

2. By this amended petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs:-

> "10.1 It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records pertaining to issuance of impugned order of transfer of the petitioner for its kind perusal.
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> 10.2 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting aside the impugned letter dated 13.12.2013 (Annexure P/1) rejecting the representation of the petitioner and further refusing to release the land of the petitioner from the land acquisition proceedings for NRDA projects in so far as petitioner's land bearing Khasra No.105 & 388 area admeasuring 1.12 & 1.42 hectares, PH 74/13, situated at Village Chhatauna, in Raipur District is concerned, by declaring the same to be illegal and inoperative in law.
>
> 10.3 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting aside the entire land acquisition proceedings pursuant to issuance of impugned Notification dated 09.08.2011 (Annexure P/2) and Notification dated 14-08-2012 (Annexure P/3) in so far as petitioner's land bearing Khasra No.105, 388 area admeasuring 1.12 & 1.42 hectares, PH 74/13, situated at Village Chhatauna, in Raipur District is concerned, by declaring the same to be illegal and inoperative in law.
>
> 10.4 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ commanding the respondents not to acquire the land of the petitioner's bearing Khasra No. 105 & 388 area admeasuring 1.12 & 1.42 hectares, PH 74/13 situated at Village

Chhatauna, in Raipur District for the purpose of NRDA projects and refraining and forbearing them from interfering with peaceful cultivation of the land in question.

10.5 Any other relief/reliefs, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition, may also please be granted to the petitioner.

10.6 This Hon'ble Court may kindly be pleased to issue appropriate writ quashing and setting aside the impugned awards dated 25.11.2013 (Annexure P/12) and 03/07/2014 (Annexure P/13) issued by the respondent No.4 being arbitrary, illegal and inoperative in law".

3. The facts involved in the case are culled out in brevity as hereunder:-

3.1 That the petitioner herein is the owner, title-holder and in cultivating possession of the land bearing Khasra No. 105 area 1.12 Hectare and Khasra No.388 area 1.42 Hectare situated at P.H.No.73/14, Revenue Circle Mandir Hasaud, Tahsil Arang, District Raipur (Chhattisgarh). The petitioner has been in peaceful cultivating possession of the said land for last more than 20 years. Moreover, plantation over the said land was being carried out for last more than 15 years and by now many of the trees have grown up to more than fifteen feet of height.

3.2 That, respondent No.5, Naya Raipur Development Authority (for short "NRDA") issued letter dated 14.03.2011 to Respondent Nos. 3 and 4 for acquiring various lands including the land of the petitioner particularized above in order to develop various projects in and around the Capital city Raipur, under the provisions of Section 4 (1) read with section 17 (1) of the Land Acquisition Act, 1894 (for short the "Act of 1894") invoking the urgency clause to avoid issuance of notice and giving opportunity of hearing to the landowners u/s 5A of the Act of 1894.

3.3 That the Collector sent its proposal dated 29.07.2011 to the Commissioner/Designated Secretary, Department of Revenue, Government of Chhattisgarh, Raipur for necessary approval/permission, which has been duly granted vide order dated 30.07.2011 (Annexure P-6). Notification dated 09.08.2011 invoking the urgency clause was issued and published in Chhattisgarh Rajpatra on 26.08 2011 for acquisition of land under the provisions of Section 4 (1) read with Section 17 (1) of the

Act of 1894 followed by issuance of declaration under Section 6 of the Act of 1894 vide notification dated 14.08.2012 (Annexure P-3) which was published in Chhattisgarh Rajpatra on 24.08.2012 requiring the aforesaid land of the petitioner to be acquired for public purpose.

3.4 That, having received the said documents, the petitioner made a representation to the Chief Executive Officer, NRDA, Raipur on 29.11.2012 (Annexure P-7) not to make acquisition of his land referred to above as it was not suitable for the project sought to be undertaken. Further stand of the petitioner is that if acquisition of the said land was that much essential, he would provide some other piece of land in the same area. Since the petitioner did not receive any communication from the NRDA, he made another representation dated 20.11.2013 (Annexure P-8) stating that the aforesaid land sought to be acquired by NRDA may be allowed to remain as it is for the reason that such acquisition would be in violation of the development rules and regulation of NRDA itself.

3.5 That when the representations submitted by the petitioner did not fetch any response from the aforesaid authorities, he applied for supply of certain documents with respect to the entire land acquisition proceedings to Respondent No.4 on 08.01.2014 (Annexure P-9) under the Right to Information Act, 2005 (hereinafter referred to as “RTI Act, 2005”). However, in a most arbitrary and illegal manner, respondent No. 4 has denied such information vide memo dated 15/16.01.2014 (Annexure P-10) on the ground that the entire land acquisition proceedings had already been referred to the Divisional Commissioner (the respondent No.2) for approval of award. Petitioner made yet another representation to the concerned authorities on 22.01.2014 (Annexure P-11) reiterating his request for cancelling/excluding his land from the acquisition proceedings, however, the same did not evoke any response. Hence this petition.

4. Learned Senior counsel for the petitioner makes the following submissions in support of his case:-

4.1 The impugned letter dated 13.12.2013 issued by respondent No.5/NRDA rejecting the representation of the petitioner and further his request for releasing the aforesaid land from the acquisition proceedings

initiated by the State Government and its officers pursuant to the impugned Notification dated 09-08-2011 and dated 14-08-2012 is not only bad, illegal and arbitrary in nature but in serious violation of principles of natural justice, Section 5A and Section 17 of the Act of 1894.

4.2 As per the requirement of Section 17 of the Act of 1894, in case of urgency, whenever the appropriate Government so desires, the Collector may on the expiration of fifteen days from the publication of the notice mentioned in Section 9 (1) take possession of any land needed for public purpose. However, as regards the case in hand he submits that respondent No.5/ NRDA at the first instance on its own has proposed for invoking urgency clause without there being any instructions/direction by the appropriate Government in this regard to the concerned Collector, and therefore the entire land acquisition proceedings excluding application of Section 5A of the Act of 1894 and invoking the urgency clause under Section 17 of the Act of 1894 is tainted with colourable exercise of power with *mala fide* intention and oblique motive.

4.3 This apart, it is submitted that the notifications dated 09.08.2011 and 14.08.2012 are in gross violation of Articles 14, 19 and 300A of the Constitution of India inasmuch as the fact that the petitioner has been denied the opportunity of hearing in the land acquisition proceedings as no notice of hearing was served on the petitioner before initiation of such land acquisition proceedings in respect of petitioner's land i.e. bearing Khasra No.105, area 1.12 Hectare and Khasra No.388 area 1.42 Hectare P.H. No.73/14 situated at village Chhatauna district Raipur though the petitioner had been in peaceful cultivating possession thereof.

4.4 It is submitted that the provision of Section 17 of the Act of 1894 has been invoked by the respondents to acquire the land of the petitioner ignoring the fact that he is in peaceful cultivating possession of the same for last more than 20 years and has developed a farm house thereon by growing plants including the fruit trees, and in these circumstances the acquisition of the land in question to be carried out by the respondent No.5/NRDA would adversely affect the constitutional rights of the petitioner.

4.5 It is submitted that the action of respondent No.5/NRDA apart from being in serious violation of section 5A and 17 of the Act of 1894 and

Articles 14, 19 and 300A of the Constitution of India, is also against the spirit of the judicial pronouncement of the Supreme Court in the matter of **Bharat Sevak Samaj Vs. Lt. Governor**, reported in **(2012) 12 SCC 675** as the State Government and its officers have completely failed to lead any evidence to establish that the task of development of New Rajdhani at Naya Raipur under NRDA project was being executed on emergency basis and that for the said public purpose an opportunity of hearing was given to the petitioner.

4.6 It is submitted that the respondents/State as well as the respondent No.5/NRDA have fallen in serious legal error in invoking urgency clause contained in Section 17 (1) and thereby dispensing with compliance of Section 5A of the Act of 1894. According to the Sr. counsel for the petitioner, the action of the respondents/State and also the NRDA/respondent No. 5 in mechanically invoking the urgency clause enshrined in Section 17 (1) of the Act of 1894 without realizing the fact that such action would result in deprivation of petitioner of his own land, was fraught with grave consequences adversely impinging upon constitutional protection envisaged under Article 300A of the Constitution of India.

4.7 It is submitted that the development of NRDA project was not so urgent that respondent No.5/NRDA could not have waited for a few more months for complying with the requirement of Section 5A of the Act of 1894. He submits that it is well settled principle of law laid down by the Supreme Court of India in the matter of **Lakshmanlal Vs. State of Rajasthan**, reported in **(2013) 3 SCC 764** that unless circumstances warrant immediate possession, there cannot be any justification in dispensing with an enquiry under Section 5A and further that the elimination of enquiry under Section 5A must only be in deserving and in cases of real urgency. The action of the respondent No.5/NRDA is also argued to be in violation of the decision of the Supreme Court in the matter of **Ram Dhari Jindal Memorial Trust Vs. Union of India**, reported in **(2012) 1 SCC 370** where it has been held that in the cases involving invocation of urgency clause, it has first to form an opinion that the land for public purpose was urgently needed, and that urgency was

such that it necessitated dispensation of enquiry under Section 5A of the Act of 1894.

4.8 According to Sr. counsel for the petitioner, invocation of urgency power for public purpose like planned development of city or development of residential scheme is *prima facie* unsustainable in the eye of law. According to him, invocation of urgency power for public purpose as residential scheme cannot be invoked as a rule but has to be by way of exception, and that the burden lies on Government to prove that use of urgency power was justified, and dispensation of enquiry was an inevitable requirement. It is submitted that mere mention of phraseology “urgency clause” by the respondents in this case in the notification would not suffice. It is submitted that the notification under Section 4 as well as Section 17 of the Act of 1894 invoking urgency clause with regard to land acquisition proceedings for NRDA projects was issued on 09.08.2011 but even after sufficient long period having rolled by, the land acquisition proceedings have not been completed. Meaning thereby, the issuance of notice under Section 4 and exercise of special power for invoking urgency clause under Section 17 was in colourable exercise of the power tainted with oblique motives and *mala fide* intention. It is submitted that in fact, there was no urgency for the respondents/State as well as respondent No.5 NRDA for dispensing with providing an opportunity of hearing and making an enquiry with regard to objection under Section 5A of the Act of 1894, therefore, the State Government as well as the respondent No.5 have miserably failed to show that power of urgency and dispensation of enquiry was a valid exercise.

4.9 Relying upon the decision of the Supreme Court in the matter of **Darshan Lal Nagpal Vs. Government NCT of Delhi** reported in **(2012) 2 SCC 327** counsel for the petitioner submits that long time gap with regard to proposal for acquisition of land and further issuing notification and establishment of project is unsustainable in the eye of law with regard to invocation of urgency clause under Section 17 and dispensing with enquiry under Section 5A of the Act of 1894. He submits that the respondents have also failed to show any tangible reason for invocation

of urgency clause under Section 17 and dispensing with enquiry under Section 5A of the Act of 1894.

4.10 It is further submitted that as per New Raipur Development Plan 2031 published by respondent No.5/NRDA under its 18th Chapter which deals with “Development Code” and its sub-head 18.9 “Urban Design Control”, Notes Point Serial No.2, which states that “Already sanctioned Building Plans and/or layout Plans in NRDA planning area by the competent authority as per law shall be allowed to remain, and that further development would be within the framework of the given development code”. Thus, since the aforesaid urban design control is applicable to the petitioner's land as it is being in NRDA planning area and satisfies the condition parameters, as stated above, and since the said land has been sanctioned by the competent authority as per the law, therefore, deserves to be allowed by NRDA to remain as it is and further to be excluded from NRDA project acquisition plan.

4.11 Sr. counsel for the petitioner submits that impugned award dated 25.11.2013 and 03.07.2014 passed by the SDO-cum-Land Acquisition Officer is further not only illegal and arbitrary in nature but in serious violation of the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (for short the “Act of 2013”) but also in violation of the law laid down by the Five Judges Bench of Hon'ble Supreme Court in the matter of **Indore Development Authority Vs. Manoharlal and Ors.,** reported in **(2020) 8 SCC 129**, and as such, deserves to be quashed.

4.12 It is further submitted that consequential awards passed by the SDO-cum-Land Acquisition Officer is impermissible in law as two awards were passed for the same land acquisition proceedings. It is submitted that the Respondent No.5/NRDA brought on record the award dated 25.11.2013 along with its reply which was passed under the old Act. It is submitted that the petitioner herein had obtained certified copy of the award dated 03.07.2014. It is submitted that both the awards are passed for the same land and same proceedings and the latter one being dated 03.07.2014 does not even mention about the former award passed in the same proceedings.

4.13 It is submitted by the Sr. counsel for the petitioner that the authorities have acted with *mala fide* intention as two awards were passed for the same land acquisition proceedings and interestingly award passed on 03.07.2014 under the new act does not even mention about the earlier award dated 25.11.2013 passed under the old Act.

4.14 It is submitted that no compensation has been paid nor the possession of the acquired land has been taken by the respondents.

4.15 It is submitted that the initial notification under Section 4(1) read with Section 17(1) of the Act of 1894 was issued on 09.08.2011 whereas the declaration under Section 6 of the Act of 1894 was issued on 14.08.2012 i.e. after expiry of the period of more than one year, which shows that there was no urgency for acquisition of the land mentioned above.

4.16 In support of the arguments advanced, learned Sr. counsel for the petitioner placed reliance on the decisions of the Supreme Court in the matter of **Noida Industrial Development Authority v. Ravindra Kumar and others** reported in **(2022) 13 SCC 468**, in the matter of **Darshan Lal Nagpal** (supra), in the matter of **Ram Dhari Jindal Memorial Trust** (supra), in the matter of **Garg Woolen Pvt. Ltd. vs State of U.P.** rep orted in (2012) 11 SCC 784, in the matter of **Bharat Sevak Samaj** (supra), in the matter of **Radhe Shyam (Dead) through Lrs and others v. State of UP and others** reported in **(2011) 5 SCC 553**, in the matter of **Om Prakash v. State of UP** reported in **(1998) 6 SCC 1**, in the matter of **State of UP v. Rajeev Gupta** reported in **(1994) 5 SCC 686**, in the matter of **Indore Development Authority** (supra), in the matter of **Aligarh Development Authority v. Megh Singh and others** reported in **(2016) 12 SCC 504,** in the matter of **Vijay Lakra and another v. State of Haryana** reported in **(2016) 12 SCC 487** and in the matter of **Lakshmanlal** (supra).

5. On the other hand, learned counsel appearing for the respondents/State makes the following submissions:-

5.1 The submissions made by the petitioner are without any sum and substance and the petition is liable to be dismissed. It is submitted that for the purpose of establishment of New Capital City of the State of Chhattisgarh, various lands including that of the petitioner have been

acquired. State counsel submits that the land in question in the present petition falls within the Layer I of the Project and that is why it was desirable that the project has to be completed on an emergent basis therefore the urgency clause was invoked and notification for doing the needful was issued. It is further submitted that the Naya Raipur Development Plan 2031 is a Development Plan only and such scheme has been formulated for the purpose of development of the area. It is submitted by the State counsel that though the sub-head 18.9 of Urban Design & Control of New Raipur Development Plan 2031 provides that "Serial No. 2 already sanctioned building plans and/or layout plans in NRDA Planning Area by the competent authority as per the law shall be allowed to remain", this provision is applicable only in a case when the building, plan or the layout plan has been approved by the competent authority. However, In the present case it is the stand of the petitioner himself that on the subject land there is no building rather he has raised a Farm House and plantation over the subject land. It is submitted that the petitioner has not filed any document to show that any building plan or layout was approved by the competent authority, and therefore, the rejection of the application of the petitioner made to respondent no. 5 was justified. State counsel further submits that petition is not maintainable in view of the fact that the award in the case has already been passed on 25.11.2013 whereas the instant petition has been filed on 18.02.2014 i.e. after passing of the award and the petitioner has not explained the delay in filing the petition. It is thus submitted that in view of the fact that the award has already been passed and there is an inordinate delay to challenge the Land Acquisition Proceedings, the petition is liable to be dismissed.

5.2. In the return filed by the State, it has been vehemently denied that while conducting the land acquisition proceedings the answering respondents had taken any arbitrary or illegal decision. On the contrary, the proceedings have been initiated as per legal parameters and that the invocation of the Urgency Clause was made due to the fact that the land was to be acquired for the purpose of establishment of New Raipur/the Capital City and that the subject land has fallen within the Layer-1.

5.3 It is submitted that the land in question was acquired by the answering respondents for the purpose of establishment of Capital City

(New Raipur) and as the land in question and other lands which were notified fell within the Layer 1 and it was found that the acquisition of these lands was emergent, concurrence was recorded by the appropriate government to invoke the Urgency Clause, and thereafter the Notification U/s 4(1) of the Act of 1894 was issued.

5.4 It is submitted that surrender of some land by the petitioner to the NRDA/respondent No.5 does not give him a right of claiming exclusion of his land from the Project as the said surrender was made under the Scheme of NRDA after receiving appropriate compensation.

5.5 It is submitted that under the Naya Raipur Development Plan 2031, Chapter 18, sub-head 18.9 which deals with Urban Design & Control, certain notes are appended. Note no. 2 is reproduced as under:-

> “2. Already sanctioned building plans and/or layout plans in the NRDA Planning Area by the competent authority as per law shall be allowed to remain. Further development would be within the frame work of the given development code"

It is thus submitted that the aforesaid note itself provides that the sanctioned building plans or the layouts approved by the competent authority can be allowed to remain as per law but in this case the petitioner has not filed even a single document to show that he was having any sanctioned building plans or layout from any competent authority. On the contrary, he himself had made an averment that on the subject land he had developed a Farm House and heavy plantation, which is not a sanctioned building plan or layout. Thus the so-called exemption as prayed by the petitioner harping on sub-head 18.9 of Naya Raipur Development Plan 2031 is not available to him.

5.6 It is submitted that the award in this case was already passed on 25.11.2013 and that the petitioner had received an information from respondent No. 4 to the effect that the entire proceedings have been referred to the Divisional Commissioner, which itself shows that the petitioner was having the knowledge that the award in the instant case was already passed.

5.7 It is further submitted that the respondent No. 5 has already deposited the compensation amount and after that the answering respondents are proceeding with taking possession of the land. It is

further submitted that once the acquisition proceedings are initiated, the land cannot be released or excluded from the acquisition proceedings.

5.8 It is submitted that the appropriate government after going through the entire records gave its concurrence for invoking the Urgency Clause, and therefore the action of the answering respondent is not arbitrary in nature. It is further submitted that since Urgency Clause is invoked, the submission of the petitioner that right of a citizen guaranteed under Articles 14, 19 and 300A of the Constitution of India is violated, is wholly misconceived. It is submitted that whenever a development is made, certain difficulties may arise to some persons but only on the basis of hardship to one person the Society at large cannot be placed at a disadvantageous position.

5.9 It is submitted that rejection of the representation of the petitioner as made to the respondent No. 5 is wholly justified as he did not make out any specific reason for exclusion of his land. However, the State counsel submits that once a decision is taken for acquisition of certain land and the same is notified U/s 4 (1) of the Act of 1894, the subject land cannot be excluded from the acquisition proceedings. It is further submitted that as the subject land falls within the Layer-1 of the Project, urgency clause was invoked and as such the action of the answering respondents cannot be termed as unjustified. It is further submitted that as per Layer-I the Project was to be constructed within a stipulated period, it led to the invocation of Section 17 (1) of the Act of 1894. It is reiterated by the State counsel that as the appropriate government had formed its opinion that the land was urgently required to be acquired, it necessitated the dispensation of the enquiry U/s 5(A) of the Act of 1894. State counsel therefore submits that the submission of the Sr. counsel that the action of the respondents is in colourable exercise of power and driven by oblique motive, is without any substance and liable to be brushed aside, with dismissal of the petition.

5.10 As regards contention of the petitioner with respect to passing of two awards, it is submitted by the counsel for the respondents/State that after the award being passed on 25.11.2013 it was sent for approval to the Commissioner and as the approval could not be granted and in the meanwhile the Act of 2013 came into force which necessitated passing of

the subsequent award dated 03.07.2014 recalculating the compensation, and being all this there is no illegality in the two awards being passed.

5.11 Further, as regards the possession aspect of the matter, it is submitted on behalf of the respondents/State that after passing of the award, the possession of the subject land has been handed over to respondent No.5 on 16.06.2015 vide document of Annexure R-2. It is further submitted by the State counsel that since the condition prescribed under Section 24 of the Act of 2013 has been fully taken care of, the acquisition proceedings cannot be said to have lapsed.

5.12 In support of her submissions, reliance is placed on the decision of the Supreme Court in the matter of **Kali Charan and others v. State of UP and others** reported in **2024 SCC Online SC 3472** and in the matter of **Indore Development Authority Vs. Manoharlal and Ors.** reported in **(2020) 8 SCC 129.**

6. While adopting the submission of the State Counsel,learned counsel for respondent No.5/NRDA makes the following submissions:-

6.1 That the land bearing Khasra No. 105 and 388 area 1.12 and 1.42 hectares respectively situated at village Chhatauna were required to be acquired under the NRDA Project in Layer-1 Scheme, which however the petitioner wanted to have excluded from the acquisition proceedings for the reasons not tenable looking to the public purpose involved in such acquisition. It is submitted that vide the impugned order the respondent No. 5/NRDA has informed the petitioner that the land bearing Khasra No. 105 is to be allotted to one Mahanadi Educational Society on certain terms and conditions, process for which had also begun by the appropriate Government. It is further submitted that as the public purpose of ensuring better education facilities is involved behind acquisition of the aforesaid lands including that of the petitioner, the request of the petitioner for setting-aside the entire acquisition proceedings is not justifiable as the plea taken by the petitioner is not supported by any substantive material. It is submitted that the award was already passed on 25.11.2013, notification under Act of 1894 has been made, proceedings have been finalized and pursuant to invocation of urgency clause the process of taking the possession of the land acquired was

underway, and being all this, the instant petition is rendered without any substance and thus liable for dismissal.

6.2 It is submitted by the counsel for respondent No.5/NRDA that as the lands referred to above including that of the petitioner were required for being acquired urgently looking to the purpose involved, the proceedings were initiated in accordance with the provisions of Section 17 of the Act of 1894.

6.3 That the land acquisition proceedings were carried out on behalf of the answering respondent for Naya Raipur Development Projects and therefore owing to the integral location of lands referred to above including that of the petitioner a notification was published u/s 4 and section 17 of the Act of 1894 invoking the urgency clause as specified under law. He submits that the application made by the petitioner to the respondent No. 5 seeking exemption of his land is absolutely baseless and no document to substantiate his claim for exclusion of his land from such acquisition proceedings has been produced. He further submits that respondent No. 5 after due consideration of the requirement of the project to be installed and also keeping in mind the location of the petitioner's land, has rejected his request for exclusion of the land, which according to the answering respondent is just and proper and cannot be interfered with, in this petition.

6.4 It is thus submitted on behalf of respondent No. 5/NRDA that the action of the respondent No.5 is well within the permissible limit of the Constitution of India and is not violative of any of its postulates, and being so the petition needs dismissal.

7. Heard counsel for the parties and perused the documents on record.

8. From the recapitulation of fact in a chronological manner it gets crystallized that Chief Executive Officer, NRDA wrote a letter dated 14.03.2011 to the Collector (Land Acquisition Branch) District Raipur and also to the Sub Divisional Officer (Revenue) – cum – Land Acquisition Officer, Arang, Abhanpur, District Raipur, CG requesting for initiating the land acquisition proceedings in respect of various lands pertaining to total 52 different khasra numbers, including those of the petitioner. Petitioner’s land however pertains to Khasra Nos. 105 and 388 area being 1.12 and 1.42 hectare respectively. This acquisition, as is evident from the letter

dated 14.03.2011 was for the development of New Capital at Raipur, for which the necessary approval from the Central Government and the State Government is already stated to be granted. Proposal of the Collector was forwarded to the Commissioner/*ex officio* Secretary, Revenue Department on 29.07.2011. Thereafter, on 30.07.2011 Commissioner/*ex officio* Secretary treating the matter to be of extreme urgency and keeping in view the notification No. 354 dated 3.12.2009 of the Revenue and Disaster Management Department, granted approval for acquisition of the land as proposed by the Collector, and accordingly notification dated 09.08.2011 was issued under Section 4(1) read with 17(1) of the Act of 1894 invoking the urgency clause for acquisition of the land of the petitioner. Subsequently, another notification dated 14.08.2012 was also issued under Section 6 of the Act of 1894 declaring the land of the petitioner bearing Khasra Nos. 105 and 388 required to be acquired for a public purpose which was published in Gazette dated 24.08.2012. After this declaration, the petitioner made a representation to the Chief Executive Officer of NRDA on 29.11.2012 requesting for exemption of his land from acquisition proceedings as the subject land was lawfully owned by him and that he was in peaceful cultivating possession thereof for last more than 20 years. The petitioner's representation also states that the said land was being used by him for Farm House even prior to existence of Catchment Area Development Authority**,** and that he has also developed a dense plantation over the said piece of land and most of the trees have gone beyond 15 ft of height. All this is stated to have been made with the prior approval of the Concerned Gram Panchayat. The petitioner has also asserted in the representation that he had voluntarily tendered around 9 acres of land situated at village Chhatouna for NRDA's Cargo Hub Project. Citing all these reasons, the petitioner has stated in the representation that the land sought to be acquired by the NRDA is not suitable for installing any project because if the NRDA moves forward with such implementation, the number of grown up trees are likely to be uprooted causing an irreversible damage to the environment. Since this representation did not evoke any response from the NRDA, the petitioner made another representation on 20.11.2013 emphasizing the sanctioned status of existing building plans as protected under the NRDA Development Plan

2031 and reasserting his claim for exemption. In this representation, it was thus requested that the aforesaid pieces of land may be excluded from its acquisition plan proposed to be carried out by the NRDA. On 25.11.2013 the Land Acquisition Officer/Sub Divisional Officer, Arang (Abhanpur) stating the proceedings undertaken by it in detail, passed an award under the Act of 1894 regarding acquisition of the subject land. In the said award it is stipulated that the compensation with regard to house, trees or any other structure existing on the subject land shall be paid separately. This award also states that according to the guidelines obtained from Sub Registrar, Arang for the year 2011-12 the market rate of non-irrigated land on the date of publication of notification under Section 4(1) and 17(1) was 17,00,000/- per hectare, whereas the market rate of the land situate by the main road is Rs. 53,00,000/- per hectare. As per the provisions of Section 23(1) of the Act of 1894, the interest at the rate of 12% was also awarded from the date of notification till the award being made under Section 4(1) and 17(1) of the Act of 1894. The award, in addition to the market value of the land, also prescribes that thirty per cent of the award amount was also granted under the provisions of 23(2) of the Act of 1894. Since the advance possession of the subject land was not taken by the NRDA before the award being passed, as per the award, no interest under section 34 of the Act of 1894 was awarded. Eventually, the award of Rs. 06,13,43,040/- came to be passed. Since the award has been passed within two years from the date of notification under Section 6 of the Act of 1894, an incentive of 10% was also awarded which led the total compensation to Rs. 06,74,77,344/-. Out of the total compensation determined, the petitioner was awarded Rs. 1,01,04,120/- i.e (4455360 + 5648760). The material available on record further goes to show that on 13.12.2013 a letter (Annexure P-1) was issued by the NRDA rejecting the request of the petitioner for exclusion of his land from acquisition. Thereafter, on 08.01.2014 the petitioner filed an application under the RTI Act, 2005 (Annexure P-9) before the SDO/Land Acquisition Officer seeking copies of the documents pertaining to the land acquisition proceedings, however, by order dated 15.01.2014 (Annexure P-10) the concerned authority refused to supply the same on the ground that the proceedings were referred to the Divisional Commissioner for approval. Subsequently,

on 22.01.2014, the petitioner made another representation (Annexure P-11) for exclusion of his land from acquisition proceedings to the Divisional Commissioner. Eventually, on 03.07.2014 the second award (Annexure P-13) came to be passed by the SDO/Land Acquisition Officer for the same piece of land under the Act of 2013.

9. Having thus traversed the factual background of the case in a concise and composite manner, this Court now undertakes to deal with the issues involved, in a chronological order.

10. The first question which this Court wishes to proceed with is the legality and validity of invocation of urgency clause as per Section 17(1) of the Act of 1894.

11. It is not in dispute that the petitioner herein is the owner, title-holder and in cultivating possession of the subject land bearing Khasra No. 105 area 1.12 hectare and Khasra No.388 area 1.42 hectare falling Raipur district of Chhattisgarh. His peaceful possession over the same for last more than 20 years is also not in dispute. On 14.03.2011 NRDA wrote a letter (Annexure P-5) to the State authorities, to be precise to Respondent Nos. 3 and 4 herein to acquire the land of the petitioner among others for establishing various projects in and around the Capital City of Raipur under the provisions of Section 4 (1) read with section 17 (1) of the the Act of 1894. The Collector sent its proposal dated 29.07.2011 to the Commissioner/Designated Secretary, Department of Revenue, Government of Chhattisgarh, Raipur for necessary approval/permission, which was granted vide order dated 30.07.2011. Notification dated 09.08.2011 (Annexure P-2) invoking the urgency clause was issued and published in Chhattisgarh Rajpatra on 26.08 2011 for acquisition of the subject land under the provisions of Section 4 (1) read with Section 17 (1) of the Act of 1894 followed by issuance of declaration under Section 6 of the Act of 1894 vide notification dated 14.08.2012 (Annexure P-3) published in Chhattisgarh Rajpatra on 24.08.2012. The said declaration says that the subject land was to be acquired for a public purpose. Petitioner then made a representation to the Chief Executive Officer, NRDA, Raipur on 29.11.2012 (Annexure P-7) seeking exclusion of his land from acquisition followed by another one dated 20.11.2013 (Annexure P-8). One of the reasons assigned by the petitioner seeking exclusion was that he had already offered another 09

acres of land in the same area. These representations however did not evoke any response and this non-responsive attitude of the NRDA drove the petitioner to apply under document of Annexure P-9 for supply of certain documents with respect to the entire land acquisition proceedings to Respondent No.4 on 08.01.2014 under RTI Act, 2005 but those documents were not made available to him on the ground that entire land acquisition proceedings were already been referred to the Divisional Commissioner (the respondent No.2) for approval of award. However, when no award in respect of the said land was made for a considerable period of time, petitioner made yet another representation (Annexure P-11) to the concerned authorities on 22.01.2014, but the same also did not evoke any response. Thus it is apparent that ever since the petitioner came to know in the year 2011 that the proceedings regarding acquisition of the subject land under Section 17(1) of the Act of 1894 were to be initiated, he moved three representations to the authorities concerned seeking exclusion thereof but they all remained un-responded to. Even his request under the RTI Act, 2005 for supply of certain documents did not yield the desired result on the ground that the matter was already sent to the Commissioner, Raipur for approval of the award. Of course, from the perusal of the record it is manifest that the acquisition of the land by NRDA was for development of Capital City at Raipur and the same can be treated to be a public purpose within the meaning of Section 4 of the Act of 1894 but that by itself does not justify the exercise of the power by the government under Section 17(1) and/or 17(4). Meaning thereby, the State has not been in a position to demonstrate that it was the dire urgency which became an impelling factor to move ahead with the acquisition proceedings in hot haste. The State in this case thus appears to have taken away this valuable right of the petitioner enshrined in Section 5A of the Act of 1894 by invocation of the urgency of clause under provided under Section 17 thereof in a mechanical manner without application of mind and without properly justifying the actual urgency to it. It has been held by the Supreme Court in catena of decisions that once the State seeks to invoke the urgency clause under Section 17 of the Act of 1894, burden lies on it to establish the actual urgency for the project sought to be installed at Raipur. Furthermore, the documents on record including the approval accorded by the

Commissioner do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5A of the Act of 1894 which represents two facets of the rule of hearing i.e. the right of the land owner to file objection against the proposed acquisition of the land and that of being heard in the inquiry required to be conducted by the Collector. In the cases involving invocation of urgency power under Sections 17 for the public purpose like development of the New Capital City at Raipur as is the position in the present case, or for the “development of residential area” or the “residential scheme”, the initial presumption in favour of the State does not arise and the burden lies on it to prove that the invocation of urgency clause was justified necessitating the evasion of inquiry under Section 5-A of the Act of 1894. Here in the present case, the respondents appear to have miserably failed to show to the satisfaction of the Court that power or urgency and dispensation of enquiry under Section 5A has been exercised with optimum justification. It is worthwhile to mention here that power of urgency by the State under Section 17 for a public purpose for like in the present case, cannot be invoked as a rule but has to be made by way of exception. So in the present case also no material has been brought on record to show any justification on the part of the State in dispensing with the enquiry under Section 5A of the Act of 1894. The respondents have also failed to demonstrate that the planned development of the Capital City at Raipur was of such an extreme urgency that it could not wait for some more time within which inquiry under Section 5A could have been undertaken. There is no doubt that acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition of public purposes within the meaning of Section 4 of the Act of 1894 but that by itself does not justify the exercise of power by the Government under Sections 17. Such a pell-mell approach in acquiring the private property for the purpose purportedly pre-planned development of Capital City at Raipur invoking the urgency provision contained in Section 17 of the Act of 1894 for the reason that such a hurried invocation of urgency power renders the rule of *audi alteram partem* embodied in Section 5A thereof a nugatory one. Invocation of urgency provisions by the State in this case, keeping in mind the object which it wanted to achieve and looking to the material

produced by it, seems to be not only *ex facie* illegal but wholly arbitrary and unjustified. No material much less the clinching one has been produced in this case either by the State or the NRDA that the task of establishment of New Capital City at Raipur an emergent one that there was no time to seek objection from the affected party and ensure their participation in the inquiry under Section 5A of the Act of 1894. The Commissioner, Raipur Division who sanctioned the invocation of urgency provisions was duty- bound to keep in mind that the acquisition of one's land is a serious matter and except in the cases of real urgency no person can be deprived of his property without being afforded an opportunity to file objection under Section 5A of the Act of 1894. Section 5A represents the statutory embodiment of the rule of *audi alteram partem* and unless there are compelling reasons, the State cannot invoke the urgency provision contained in Section 17(1) and dispense with the application of Section 5A of the Act of 1894. The record also shows that the initial notification invoking urgency clause published in Gazette dated 26.08.2011 for acquisition of land under the provisions of Section 4(1) read with Section 17(1) of the Act of 1894 was issued on 09.08.2011, but the notification under Section 6 of the Act of 1894 was issued on 14.08.2012 which was published in the Gazette on 24.08.2012. Meaning thereby, the Section 6 notification was issued after more than a year of the issuance of notification under Section 4(1) read with Section 17(1) of the Act of 1894, which establishes that there was no need to invoke the urgency clause.

12. Dealing with the situation where the provisions of urgency power enshrined under Section 17 of the Act of 1894 are to be resorted to, it has been held by the Supreme Court in the matter of ***Darshan Lal Nagpal (supra)*** as under:-

> 29. In the light of the above, it is to be seen whether there was any justification for invoking the urgency provisions contained in Section 17 (1) and (4) of the Act for the acquisition of the appellants' land. The Division Bench of the High Court accepted the explanation given by the respondents by observing that sub-station in East Delhi is needed to evacuate and utilize the power generated from 1500 MW gas based plant at Bawana. While

doing so the Bench completely overlooked that there was long time gap of more than five years between initiation of the proposal for establishment of the sub-station and the issue of notification under Section 4 (1) read with Section 17 (1) and (4) of the Act. The High Court also failed to notice that the Government of NCT of Delhi had not produced any material to justify its decision to dispense with the application of Section 5A of the Act. The documents produced by the parties including the notings recorded in file bearing No. F.S(11)/08/L&B/LA and the approval accorded by the Lieutenant Governor do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5A which represents two facets of the rule of hearing that is the right of the land owner to file objection against the proposed acquisition of land and of being heard in the inquiry required to be conducted by the Collector.

30. The scope of the rule of hearing, i.e., audi alteram partem was highlighted by the three-Judge Bench in Sayeedur Rehman v. State of Bihar (1973) 3 SCC 333 in the following words:

> "11. ... This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.

31. In Maneka Gandhi v. Union of India (1978) 1 SCC 248 Bhagwati, J. speaking for himself and Untwalia and Fazal Ali, JJ. observed:

> "14. ... The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law `lifeless, absurd, stultifying, self- defeating or plainly contrary to

> the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that `natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances'. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

13. Dealing with the invocation of same urgency clause it has been held by the Supreme Court in the matter of **Ram Dhari Jindal Memorial Trust (supra)** as under:-

> "19. Where the government invokes urgency power under Section 17(1) and (4) for the public purpose like 'planned development of city' or 'development of residential area' or 'Residential Scheme', the initial presumption in favour of the government does not arise and the burden lies on the government to prove that the use of power was justified and dispensation of enquiry was necessary. In the present case, the respondents have miserably failed to show to the satisfaction of

the Court that power of urgency and dispensation of enquiry under Section 5A has been exercised with justification. The action of the Lt. Governor, Delhi, in the facts of the case whereby he directed that the provisions of Section 5A shall not apply, if allowed to stand, it would amount to depriving a person of his property without authority of law.

20. The power of urgency by the Government under Section 17 for a public purpose like Residential Scheme cannot be invoked as a rule but has to be by way of exception. As noted above, no material is available on record that justifies dispensation of enquiry under Section 5A of the Act. The High Court was clearly wrong in holding that there was sufficient urgency in invoking the provisions of Section 17 of the Act."

14. Dealing with the situations where in the acquisition proceedings of a private land invoking the provisions of Section 17 of the Act of 1894 it has been held by the Supreme Court in the matter of **Garg Woolen Pvt. Ltd.** (supra) as under:-

10. The question whether the urgency clause embodied in Section 17 can be invoked for the acquisition of land for planned industrial development was recently considered in *Radhy Shyam* v. *State of U.P.* [(2011) 5 SCC 553 : (2011) 3 SCC (Civ) 1] In that case, the Government of Uttar Pradesh had acquired 205.0288 ha land of Village Makaura, Pargana Dankaur, Tehsil and District Gautam Budh Nagar for planned industrial development of the district. Radhy Shyam and others challenged the acquisition on the ground that there was no justification to invoke the urgency provisions and to dispense with the application of Section 5-A because planned industrial development of the district was not something which could not wait for few months' time within which inquiry under Section 5-A could have been held. Their writ petition was dismissed by the High Court by observing that the averments contained therein were not sufficient to call upon the respondents to place before the Court material to justify the exercise of power under Sections 17(1) and 17(4) of the Act.

11. This Court examined the scheme of the Act, referred to various judicial precedents including the judgments in *Narayan Govind Gavate* v. *State of Maharashtra* [(1977) 1 SCC 133 : 1977 SCC (Cri) 49], *Munshi Singh* v. *Union of India* [(1973) 2 SCC 337], *State of Punjab* v. *Gurdial Singh* [(1980) 2 SCC 471], *Union of India* v. *Mukesh Hans* [(2004) 8 SCC 14], *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai* [(2005) 7 SCC

627] and *Anand Singh* v. *State of U.P.* [(2010) 11 SCC 242 : (2010) 4 SCC (Civ) 423] and laid down the following propositions: (*Radhy Shyam case* [(2011) 5 SCC 553 : (2011) 3 SCC (Civ) 1], SCC pp. 602-03, para 77)

> (i) to (vii) … … ...
>
> (*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 Sections 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 Sections 5-A(1) and (2) is not at all warranted in such matters."

15. In the matter of **Bharat Sevak Samaj** (supra) it has been held by the Supreme Court as under:-

> **"11.** In our view, the decision of the Lieutenant Governor, Delhi to invoke the urgency provisions was ex facie illegal apart from being wholly arbitrary and unjustified. It was neither the pleaded case of Respondents 1 and 2 before the High Court nor was any material produced to show that the task of developing the Mehrauli Heritage Zone under planned development of Delhi was being executed on an emergency basis. It was also not the pleaded case of Respondents 1 and 2 that the public purpose specified in the Notification dated 6-7-2004 would have been defeated if the appellant was given an opportunity to file objections under Section 5-A(1) and its representative was given an opportunity of personal hearing in terms of Section 5-A(2). Therefore, there was no justification, legal or otherwise, for invoking Section 17(1) of the Act. The Lieutenant Governor, Delhi who sanctioned the invoking of urgency provisions was duty-bound to keep in mind that the acquisition of one's land is a serious matter and, except in the cases of real urgency, no person can be deprived of his property without being afforded an opportunity to file objections under Section 5-A(1) and without the sanction of law and without complying with the basics of natural justice. Section 5-A represents the statutory

> embodiment of the rule of audi alteram partem and unless there are compelling reasons, the State cannot invoke the urgency provision contained in Section 17(1) and dispense with the application of Section 5-A.
>
> 30. In conclusion, we hold that Respondents 1 and 2 were not at all justified in invoking Section 17(1) read with Section 17(4) and dispensing with the application of Section 5-A for the acquisition of the appellant's land. It is needless to say that development of Mehrauli Heritage Zone under planned development of Delhi was not so urgent that it could not wait for the few months' time likely to be consumed in giving opportunity to the appellant to file objections under Section 5-A(1) and holding of inquiry under Section 5-A(2). Unfortunately, the High Court dismissed the writ petition without examining the main ground on which the appellant had challenged the acquisition proceedings. Therefore, the impugned order [*Bharat Sewak Samaj* v. *Lt. Governor*, ILR (2009) 1 Del 207 : (2008) 155 DLT 453] is legally unsustainable."

16. Thus as regards the acquisition of the subject land of the petitioner by invoking the urgency clause incorporated in Section 17 of the Act of 1894 this Court is of the opinion that the respondents/State have not been able to substantiate the ingredients required to be attracted for this purpose. Further, the pace at which the respondents have moved with the proceedings of acquisition starting from issuing the initial notification dated 09.08.2011 under Section 4 read with Section 17(1) of the Act of 1894, then issuing the declaration under Section 6 thereof on 14.08.2012 involving the period of more than one year in between, and then the time taken in passing the awards dated 25.11.2013 under the Act of 1894 followed by the other award dated 03.07.2014 passed under the Act of 2013 which comes to be the period of more than two years, clearly speaks that the invocation of urgency clause under Section 17 of the Act of 1894 is against the intent of the legislature behind such enactment, and also in contravention of the decisions of the supreme Court referred to above. That apart, since the project sought to be developed by the respondents on the subject land was for the development of new Capital City at Raipur, it cannot be said that the respondents could not have waited for some more time before passing the award, and thereby providing an opportunity of hearing after inviting objection from the

petitioner irrespective of the fact that such acquisition was for a public purpose as is provided under Section 5-A of the Act of 1894.

17. The legal position holding the ground in this regard is that in the matter of compulsory acquisition of the land, the authorities are required to pay the compensation to the land owner, and there is no question of the land owner “coming and getting”, rather the law requires the acquisitioning authority to “go and give” the same. Dealing with this issue in the matter of **Aligarh Development Authority** (supra) it has been held by the Supreme court as under:-

> “7. In that view of the matter, it is not necessary to go into various other aspects. Having regard to the factual matrix of the residential colony having been set up, which fact is not controverted also, it cannot be said that there was an urgency for the acquisition. Therefore, the approach made by the High Court is not correct. However, the stand of the Authority that it had deposited 80% of the compensation with the land acquisition officers and hence it was for the owner to collect the money, cannot be appreciated. That is a matter between the Requisitioning Authority and the Acquisitioning Authority. There is no question of `come and get' the compensation while compulsorily acquiring the land; the approach required under law is `go and give'. In this case, no award has been passed and the land value has not been given to the owner. The impugned order is hence set aside. The appellant and the Acquisitioning Authority are directed to complete the acquisition proceedings by passing an award under the provisions of the 2013 Act. This shall be done within a period of six months and needless also to say that the entire compensation due to respondent No.1 would be calculated in terms of the 2013 Act and the same shall either be deposited with the Land Acquisition Collector or disbursed to the respondent No.1 within one month thereafter. “

18. Further, in the matter of **Vijay Latka** (supra) it has been held by the Supreme court as under:-

> “4. Under Section 24(2) of the 2013 Act, where an Award under Section 11 of the 1894 Act has been passed and in case compensation has not been paid to the land owner or deposited before the Court in terms of the requirements under the 1894 Act, the acquisition proceedings get lapsed. In case compensation has not been paid, the land acquisition

proceedings in respect of that acquisition will stand lapsed, as if there is no acquisition.

5. The contention of the learned counsel appearing for the respondents is that whoever approached the Haryana Urban Development Authority or the competent authority has been paid compensation and since the appellants failed to approach the quarters concerned for the compensation, they cannot be granted any relief. We find this contention difficult to appreciate. When a land is compulsorily acquired, it is for the Requisitioning Authority to make the payment and does not require the land owner to come and receive the payment.

6. As and when land is taken over by way of acquisition, the land owner has to be compensated with the amount of compensation duly determined under the Act. In case there is any dispute as to who is to be paid the amount, the same is to be deposited in Court in terms of Section 31 of the 1894 Act. In this case before us, the stand of the Requisitioning Authority, namely, Haryana Development Authority is that the money is ready with them and it is for the land owner to come and receive the payment. This stand is not permissible under the law. It is for the authorities concerned to pay the money and take the land and in case there is any dispute as to whom the money should be paid, then the same has to be deposited in Court.

7. As admittedly no compensation has been paid to the appellants in terms of the above mentioned Award passed in the year 2005, the appellants are entitled to succeed. Accordingly, the appeal is allowed.

8. The proceedings for acquisition of land of the appellants and covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and leading to the Award referred to above stand set aside as having been lapsed."

19. This issue lately came before the Constitution Bench of the Supreme Court in the matter of **Indore Development Authority** (supra) where it has been held as under:-

"365. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v.

Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether 'or' has to be read as 'nor' or as 'and' was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1 Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

366.2 In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

366.3 The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4 The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

366.5 In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

366.6 The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

366.7 The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

366.8 The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9 Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

20. If a conspectus of the sequence of events taken recourse to by the respondents in respect of acquisition of the land of the petitioner is undertaken, it transpires that having come to know about the initiation of acquisition proceedings by way of notification dated 09.08.2011 published in Chhattisgarh Gazette dated 26.08.2011, and also the

notification dated 14.08.2012 (Annexure P-3) issued under Section 6 of the Act of 1894 published in Chhattisgarh Gazette dated 24.08.2012, in relation to his land bearing Khasra No. 105 area 1.12 hectare and Khasra No. 388 area 1.42 hectare, he made a representation to respondent No.5 for releasing the same from the acquisition proceedings, but it came to be rejected (in fact “filed” as mentioned in the order dated 13.12.2013 (Annexure P-1) itself. The documents on record go to show that in pursuance of the Naya Raipur project, respondent/authorities included the subject land in the Development Plan, 2031 and initiated the acquisition proceedings under Section 4 invoking the urgency clause provided under Section 17(1) of the Act of 1894. The declaration to the effect that the land required to be acquired was for public purpose was made on 14.08.2012 subjected to gazette notification on 24.08.2012. The petitioner made representations on 29.11.2012 (Annexure P-7). However, when no communication was received thereto from respondent No.5, he made another representation on 20.11.2013 (Annexure P-8). Thereafter, instead of making any response to the said representation, the respondent No.5 issued the impugned letter dated 13.12.2013 (Annexure P-1) refusing the release of the petitioner’s land from acquisition proceedings, but without reflecting any reference of his representation. Yet again on 22.01.2014 the petitioner made a representation (Annexure P-11) reiterating his request for releasing and excluding his land from the acquisition proceedings. The same also did not evoke any response from the concerned respondent. Petitioner also made an application on 08.01.2014 (Annexure P-9) under the Right to Information Act, 2005 but it was intimated to him vide letter dated 16.01.2014 (Annexure P-10) that as the matter was sent to the Commissioner, Raipur Division for approval of the award, the desired information may be supplied only after the case being received back. Meanwhile, since the acquisition proceedings culminated in the consequential award dated 25.11.2013 (Annexure P-12) which came to be passed under the Act of 1894, so as to challenge the same the petitioner applied for its certified copy, but to his utter surprise he was supplied the certified copy of the award dated 03.07.2014 (Annexure P-13) passed under the Act of 2013 for the same land acquisition proceedings.

21. Admittedly, the task for which the land of the petitioner has been acquired is shown to be for development of New Capital at Naya Raipur under the NRDA Project. However, not even a single document has been placed on record by the respondents to spell out as to whether the said task involved the urgency of such a magnitude that it was not possible for them to wait for a few more months to hear the objections of the petitioner or the persons interested in the land to be so acquired so as to comply with the requirement of Section 5A of the Act of 1894 as is provided under Section 5A of the Act of 1894. While deciding this issue in the matter of *Lakshmanial Vs. State of Rajasthan (supra)* it has clearly been mandated by the Supreme Court that unless circumstances warrant immediate possession, there cannot be any justification in dispensing with any enquiry under Section 5A of the Act of 1894. The Supreme Court has further added that elimination of enquiry under Section 5A must only be in deserving and in cases of real urgency. In the matter of *Ram Dhari Jindal Memorial Trust Vs. Union of India (supra) also* the Supreme Court has clarified that in the cases involving invocation of urgency clause, the acquiring authority has first to form an opinion that the land for public purpose was urgently needed, and that urgency was such that it necessitated dispensation of enquiry under Section 5A of the Act of 1894. From the documents on record it is manifest that the petitioner had been in enjoying peaceful possession of the subject land for over two decades and had also developed a Farm House and grown plants over a large chunk. In other words, the subject land had been a support system for the petitioner for years together, and therefore if its acquisition is needed in public interest, it is expected to be done as per the procedure prescribed under the relevant legislation by paying the befitting compensation within the shortest possible time-frame. Sudden invocation of urgency power for public purpose as residential scheme of the schemes of allied nature cannot be undertaken as a rule but has to be by way of exception, and that the burden lies on Government to prove that use of urgency power was justified, and dispensation of enquiry was an inevitable requirement. The urgency behind such acquisition must be real and genuine and mere mention of phraseology “urgency clause” by the acquisition authority as has been tried in this case would not serve the purpose. Thus looking to the nature of development proposed to be

undertaken by the NRDA/respondent No.5 and the pace and manner in which it moved forward to achieve the object, Section 17 of the Act of 1894 does not legally seem to be invocable as in fact there was no urgency for either of the respondents impelling for dispensing with legal requirement of providing an opportunity of hearing and making an enquiry with regard to objection under Section 5A of the Act of 1894. This Court has thus no sense of incertitude to form an opinion that the State Government as well as the NRDA have deplorably failed to demonstrate that power of urgency and dispensation of enquiry was a valid exercise.

22. Further, the immediacy of the object of development of New Capital at Raipur sought to be achieved by the respondents also gets withered out from the fact that though the order impugned dated 13.12.2013 was the off shoot of the notifications dated 09.08.2011 and 14.08.2012 yet there occurred a yawning gap between these points of time, the first of issuing the notification and the second and last being the rejection of the representation by the impugned letter/order. This roll-by of the long period itself indicates that there was every occasion for the respondents to hear the objections of the petitioner and other parties interest in the subject land before passing of the order (Annexure P-1) which eventually climaxed in the awards subsequently put to assail by way of amendment vide Annexures P-12 and P-13. In *Darshan Lal Nagpal v. Government of NCT of Delhi* (supra) it has been held by the Supreme Court that long time gap in finalizing the proposal for acquisition of the land and further issuing notification and establishment of the project is unsustainable in the eye of law with regard to invocation of urgency clause under Section 17 and thus dispensing with the enquiry under Section 5A of the Act of 1894.

23. It is a settled provision of law that Section 5A of the Act of 1894 gives a valuable right to the land owners or the persons interested in the subject land, and dispensation with the said right requires a real and genuine urgency, and not just the convenience of the acquiring authorities. Of course, the notifications published by the authority concerned depicts the invocation of urgency provisions, but unfortunately it is in letter alone and not in spirit. The law clearly mandates that mere

recital of urgency in the notification is not conclusive and the Courts are required to examine the records and the timeline fixed for carrying out the project undertaken. If the facts of the case are taken into consideration, it unambiguously transpires that the first notification for acquisition of the land was issued on 09.08.2011 for the New Raipur Development Plan 2031. Since very beginning the petitioner started representing the authorities concerned for releasing his land from the acquisition proceedings, but one of his representation came to be rejected whereas the other two did not evoke any response from the authorities. The plan to be executed palpably appears to be a long term and a well thought of one, and no component of immediacy, urgency or emergency is discernible in this case driving the authorities to adopt a short circuit approach in the matter. It deserves a mention that a planned development, residential schemes, master plans and future city expansion do not constitute urgency at the cost of deprivation of the land owners who are in peaceful and cultivating possession of the land sought to be acquired. Here in this case also no tangible reason has been spelled out by the respondents/authorities as to what impelled them to take recourse to such invocation of urgency clause depriving the petitioner and the people interested in the subject land they are deeply rooted to mentally and sentimentally of their valuable right of being heard in accordance with Section 5A of the Act of 1894.

24. The next point for consideration is whether in the present fact situation the acquisition proceedings initiated in pursuance of the notification issued under Section 4(1) read with Section 17(1) of the Act of 1894 culminating in the award dated 25.11.2013 and 03.07.2014 would lapse on account of not taking possession of the subject land by respondent No. 5/NRDA and non payment of full compensation to the petitioner. From the record it is apparent that till passing of the awards the possession of the subject land was not taken over by the respondents. Though from the awards it appears that certain amount was deposited by the NRDA by way of cheques dated 30.04.2011 and 10.04.2014, there is nothing to show that where it was deposited and how much was deposited in the account of the petitioner as the acquisition proceedings pertain to the land comprising of total 52 Khasras

belonging to different land owners. It thus remains unestablished that the petitioner has received full compensation for the land so acquired even after passing of the award. How and when the compensation in such cases has to be paid, has been determined in the case of *Aligarh Development Authority v. Megh Singh* (supra) where it has been held that in the cases involving compulsory acquisition of the land, the authorities are required to pay the compensation to the land owner, and there is no question of the land owner "coming and getting", rather the law requires the acquisitioning authority to "go and give" the same. This issue has further been clarified in the case of *Vijay Latka and another v. State of Haryana* (supra) where the Supreme Court has held that the say of the acquiring authority that the money is ready with it and it is for the land owner to come and receive the payment, is not permissible under the law, rather it is for the authorities concerned to pay the money and take the land. In case of any dispute as to whom the money should be paid, the Supreme Court has mandated the same to be deposited in Court. The Supreme Court in the said matter has further held when the land is compulsorily acquired, it is for the requisitioning authority to make the payment and the land owner should not be made to come and receive the payment.

25. This Court has gone through the decisions sought to be relied upon by the State counsel validating the acquisition of the land of the petitioner, but keeping in mind the fact that an enormous project was to be undertaken such as construction of Yamuna Expressway, the judicial approval of invocation of urgency clause as contained in Section 17 of the Act of 1894 therein cannot be stretched to this case where the development of New Capital at Raipur was proposed to be carried out. Being this, the decisions cited by the State counsel being distinguishable on facts are not applicable to the case in hand.

26. Another argument of learned counsel for the State is with regard to delay and laches. This Court is not impressed by this argument. The petitioner from the very beginning was cautious for protecting his property. He made representations and application under RTI Act, 2005 to obtain necessary documents. Even otherwise, after a lapse of more

than 10 years. This Court is not inclined to deny relief to the petitioner on the ground of delay and latches particularly when this Court finds that there is no inordinate delay in this petition.

27. The State by filing additional return has filed a document as Annexure R-2 possession certificate to show that possession of the land has been handed over to respondent No.5/NRDA on 16.06.2015. This document contains the signature of Additional Tahsildar, Arang, District Raipur and officer of respondent No.5/NRDA. It does not contain any signature of the petitioner. This certificate along with the lands of the petitioner shows that possession of other lands have also been taken. It appears that it is merely a paper document to show that the possession has been taken. It also does not contain any signature of any person in whose presence actual physical possession of the lands mentioned in the certificate was taken. Thus by this document, this Court is unable to hold that actual physical possession of the petitioner's land has been taken by the respondents. No other document has been placed by the respondents to show this fact. Even otherwise this document shows that the possession of the lands of the petitioner was taken in the year 2016. Before, that this writ petition was already filed in the year 2014 itself. Thus, this Court is not inclined to accept this document.

33. The summation derived from the aforesaid factual backdrop and strengthened by the judicial pronouncements referred to, according to the considered opinion of this Court is that the order (Annexure P-1), awards (Annexure P-12 and P-13) are not sustainable in law. Accordingly, they are hereby set aside in respect of the petitioner. However, the State is at liberty to proceed against the petitioner in accordance with law for acquisition of lands of petitioner if so desire. The writ petition is allowed as indicated above. No order as to cost.

Sd/-

(**Sachin Singh Rajput)**
Judge

Jyotishi/Madhurima/Ashish