TIKA RAM & ORS. A

v.

STATE OF U.P. & ORS.

(Civil Appeal Nos. 2650-2652 of 1998)

SEPTEMBER 9, 2009 B

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

Land Acquisition Act, 1894 – ss. 4(1) and 6(2) and s. 17(4) (as amended by Amending Act No. 68 of 1984) – Land Acquisition (Uttar Pradesh Amendment and Validation) Act, C 1991 – Issuance of simultaneous notifications u/ss. 4(1) and 6(2) held to be invalid by Supreme Court – Legislature passing Amendment Act of 1991 validating the notifications and declarations issued between the period from date of 1984 amendment and the judgment of Supreme Court – D Constitutional validity of the validating Act challenged – Upheld by High Court relying on judgments passed by Supreme Court upholding the Validating Act – On appeal, held: The Amending Act is valid and constitutional – Legislature has the power to amend the law validating the E actions declared invalid by a court of law – Such amendment is not an incursion on the judicial power of the court – The provisions of Validating Act is not ultra vires Articles 245, 246 of Constitution – The provisions are also not violative of Articles 14, 19, 21, 39, 48A and 300A of the Constitution for F invidious discrimination – On facts invocation of the the urgency clause was justified – Constitution of India, 1950 – Articles 14, 19, 21, 39, 48A, 300A, 245 and 246.

In a land acquisition proceedings, notifications under Section 4(1) and declaration under Section 6(2) of Land G Acquisition Act were issued simultaneously. The same, were challenged and the High Court held that simultaneous notifications under Sections 4(1) and 6(2) could not be issued, particularly, after the amendment of

A Section 17(4) of the Act, which provision was amended by Amending Act No. 68 of 1984. State of Uttar Pradesh filed Special Leave Petition, where the order passed by the High Court was upheld in *State of Uttar Pradesh v. Radhey Shyam Nigam* 1989 (1) SCC 591. The Court B observed that it was open to the appellants to issue a fresh declaration under Section 6. The State, instead of issuing fresh declaration, brought a Bill before the State Legislature. It was decided to amend the Land Acquisition Act, 1894 in its application to Uttar Pradesh C to provide for validating the proceedings of land acquisition in respect of which the notifications under sub Section (1) of Section 4 and sub Section (4) of Section 17 of the said Act had been published in the Gazette after September 24, 1984 (the date of amendment) but before D January 11, 1989 (the date of judgment of the Supreme Court) and the declaration under Section 6 which had been issued either simultaneously or at any time after the application in the Gazette of the said notification under Section 4(1). This Ordinance later on got the status of an E Act, being Land Acquisition (Uttar Pradesh Amendment and Validation) Act, 1991 (U.P. Act No. V of 1991). The Act, was challenged before High Court, where it was found to be valid, holding that the invalidity of the land acquisition in issuance of Section 4 and Section 6 notifications simultaneously, was cured by this Act, F which was made applicable with retrospective effect; and that the Act was not with an intention to wipe out the judgment of this Court in the case of Radhey Shyam.

Validity of the Validating Act also came to be G challenged before this Court in *Meerut Development Authority v. Satvir Singh and Ors.* 1996 (11) SCC 462. There, it was held that the exercise of the power under Section 4(1) and declaration under Section 6 were not vitiated and the Validating Act was not invalid. This Court also took

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note of the fact that despite enactment of the Amendment Act 68 of 1984, amending Section 17(4), the State needed further amendments and for that reason, the U.P. Amendment Act V of 1991 was passed by giving the retrospective effect from the date of the Amendment Act, 1984. The effect of judgment in case of *Radhey Shyam,* thus, was nullified.

Writ petitions in the instant case were filed challenging generally the land acquired at the instance of Lucknow Development Authority. Besides this, challenge to the provisions of the Act, as also to the provisions of the Validating Act, the Writ Petitioners have challenged the non-compliance of the essential provisions of Section 4 and 6 of the Act. They have also challenged the urgency clause made applicable to the various land acquisitions. On merits, it was suggested that there had been no proper publication in the newspapers or at the convenient places of the locality as required under Section 4(1) and Section 6 of the Act. There had been no preliminary survey as envisaged under Section 3(A) of the Act and no damages were paid to any tenure holder as provided under Section 3(B) of the Act, either before or after passing of the Validating Act. There are various such challenges on merit to the process of acquisition. Relying on the judgments in *Ghaziabad Development Authority v. Jan Kalyan Samiti Sheopuri* 1996 (1) SCC 562; *Ghaziabad Development Authority v. Jan Kalyan Samiti, Sheopuri* 1996 (2) SCC 365 and *Meerut Development Authority* case., the High Court, by the impugned judgment, affirmed the validity again and the High Court further repealed the argument that these judgments were per incurium and hence required reconsideration. High Court also rejected the argument regarding the invalidity of Sections 17(1)(3A) and (4) of the Act. Hence the present appeals.

A **The questions for consideration before this Court were as regards Constitutional Validity of Amendment Act 5/1991; effect of alleged non-payment of 80% compensation u/s. 17 of Land Acquisition Act, 1894; challenge under Article 14 of the Constitution of India;**
B **and issue of urgency and applicability of Section 17 of Land Acquisition Act.**

Dismissing the appeals, the Court

HELD: I. Constitutional Validity of Amendment Act 5/
C **1991:**

1.1. The Legislature had no power to overrule a judgment. However, it has the power to suitably amend the law by use of proper phraseology removing the
D **defects pointed out by the court and by amending the law inconsistent with the law declared by the court so that the defects which were pointed out were never on statute for enforcement of law. Such an exercise of power to amend a statute is not an incursion on the judicial power**
E **of the court but as a statutory exercise on the constituent power to suitably amend the law and to validate the actions which have been declared to be invalid. [Para 30] [953-D-E]**

Meerut Development Authority v. Satbir Singh **1996 (11)**
F **SCC 462 - relied on**

Kashmira Singh vs. State of U.P. **AIR 1987 Allahabad 113 (II/1);** *State of UP. v. Radhey Shyam Nigam* **1989 (1) SCC 591;** *Somwanti and Ors. v. State of Punjab* **1963 (2)**
G **SCR 775;** *Indian Aluminium Co. and Ors. v. State of Kerala and Ors.* **1996 (7) SCC 637;** *Ghaziabad Development Authority v. Jan Kalyan Samiti, Sheopuri* **1996 (2) SCC 365;** *S.R. Bhagwat vs. State of Mysore* **1995 (6) SCC 16;** *ITW Signode India Ltd. v. Collector of Central Excise* **2004 (3)**
H **SCC 48;** *Bakhtawar Trust v. M.D. Narayan and Ors.* **2003 (5)**

SCC 298; *Madan Mohan Pathak v. Union of India* **1978 (2) SCC 50;** *Indira Gandhi v. Raj Narayan* **1975 Supp. SCC 1;** *Virender Singh Hooda vs. State of Haryana* **2004 (12) SCC 588;** *I.N. Saxena v. State of Madhya Pradesh* **1976 (4) SCC 750;** *Janpad Sabha vs. C.P. Syndicate* **1970 (1) SCC 509, referred to.** A B

1.2. It is not correct to say that the Amending Act did not remove the defect. This question was considered and concluded in *Meerut Development Authority's* **case. The same applies to the further question challenging Section 3 of the Amending Act wherein it is provided that the notification would not be invalid on the ground that declaration u/s. 6 of Land Acquisition Act was published on the same day on which the notification u/s. 4 of the principal Act was published or on any other date prior to the date of publication of notification u/s. 4 of the Act. [Para 34] [957-E-G]** C D

1.3. Even a situation, where Section 6 declaration was made prior to the publication of notification u/s. 4, was held to be covered and cured under Section 3 of Amending Act, the validity of which was confirmed by this Court. Added proviso would have to be read along with and in the light of Section 3 of the amending Act which clearly envisages a situation of the declaration under Section 6 being published in the official Gazette on the same date on which notification under Section 4 (1) of the principal Act was published in official Gazette or on any day prior to the date of publication of such notification as defined in Section 4 sub-section (1) of the principal Act. Therefore, what is contemplated in proviso is the "publication" of notification. [Para 36] [958-G-H; 959-A-C] E F G

Somwanti and Ors. v. State of Punjab **1963 (2) SCR 775;** *Mohd. Ali and Ors. v. State of U.P. and Ors.* **1998 (9) SCC 480, relied on** H

A **1.4. The word 'a declaration' in proviso to Section 17(4), as inserted by the Validating Act, would mean published or a notified declaration under Section 6(2) of the Act when it is read in the light of Section 3 which refers to and validates not merely "a declaration", but the**
B **publication thereof in official Gazette. As such there is nothing wrong even if the declaration is prior in time and its notification is simultaneous with the notification under Section 4 of the principal Act. [Para 39] [960-A-C]**

C *Meerut Development Authority* **1996 (11) SCC 462;** *Ghaziabad Development Authority v. Jan Kalyan Samiti, Sheopuri* **1996 (1) SCC 562;** *Ghaziabad Development Authority v. Jan Kalyan Samiti, Sheopuri* **1996 (2) SCC 365, relied on.**

D **1.5. Section 17(4) of the Act as amended by the Validating Act is not** *ultra vires* **of the Articles 245 and 246 of the Constitution, on the ground that it nearly overrules the decision of this Court in** *Radhey Shyam's* **case. The validity of the validating law, depends upon whether the**
E **Legislature possesses the competence which it claims over the subject matter and whether in making the validation, it removes the defect which the courts had found in the existing law. The Amending Act has clearly passed these tests. That question is also closed by**
F *Meerut Development Authority* **case. [Para 40] [960-D-E; 961-C-D]**

Meerut Development Authority **1996 (11) SCC 462, relied on**

G *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* **1969 (2) SCC 283;** *Ujagar Prints and Ors. (II) v. Union of India and Ors.* **1989 (3) SCC 488, distinguished**

Madan Mohan Pathak v. Union of India **1978 (2) SCC**

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50; *Bakhtawar Trust v. M.D. Narayan and Ors.* **2003 (5) SCC 298;** *ITW Signode v. Collector of Central Excise* **2004 (3) SCC 48;** *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* **1969 (2) SCC 283, referred to** A

1.6. It is not correct to say that the Amending Act is ultra vires Article 300A of the Constitution, inasmuch as it deprives the petitioner of higher compensation as may be admissible pursuant to the fresh acquisition proceedings after 1987. For establishing their rights, the appellants would have to establish that the State Government was required, in law, to make a fresh acquisition and could not continue with the old one. There was nothing wrong with the old proceedings which came to be validated by the Amending Act. The Court has also found that the Amending Act was a perfectly valid legislation. In that view, the challenge must fail. [Para 41] [962-B-C, E-F] B C D

State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors. **1983 (2) SCC 33;** *T.R. Kapoor and Ors. v. State of Haryana and Ors.* **1986 Suppl. SCC 584;** *Union of India v. Tushar Rajan Mohanty* **1994 (5) SCC 450, held inapplicable** E

1.7. It is not correct to say that the validity of Section 3 of the Validating Act, providing that a notification would not be invalid on a ground that a declaration under Section 6 of the Act, was published on the same date, on which the notification under Section 4 of the Act was published or any other day prior to the date of publication of the notification under Section 4 of the Act. The relevant date would be that of notification under Section 4 of the Act or the notification of declaration under Section 6 of the Act and not the mere declaration under Section 6 of the Act. [Para 44] [963-C-E] F G

Mohd. Ali and Ors. v. State of U.P. and Ors. **1998 (9) SCC 480;** *Khadim Hussain vs. State of U.P. and Ors.* **1976 (1)** H

A **SCC 843;** *Meerut Development Authority v. Satvir Singh* **1996 (11) SCC 462;** *S.H. Rangappa v. State of Karnataka and Anr.* **2002 (1) SCC 538 - relied on**

Eugenio Misquita and Ors. v. State of Goa and Ors. **1997(8) SCC 47;** *Krishi Utpadan Mandi Samiti v. Makrand Singh and Ors.* **1995(2) SCC 497;** *Mohan Singh and Ors. v. International Airport Authority of India and Ors.* **1997(9) SCC 132;** *S.H. Rangappa v. State of Karnataka and Anr.* **2002(1) SCC 538, distinguished**

C *Sriniwas Ramnath Khatod v. State of Maharashtra and Ors.* **2002 (1) SCC 689, referred to.**

1.8. The schemes of Ghaziabad Development Authority and Meerut Development Authority have already been upheld by this Court in the earlier decisions. The basic objective of the Validating Act was to protect the scheme during the period 1984-89 only and subsequently, there has been no such case of simultaneous notification in the State of Uttar Pradesh for the last two decades, as stated on behalf of the LDA. Even in respect of Ujariyaon Housing Scheme Part-III, the declaration u/s. 6 of the Act is published much after the publication of notification under Section 4 of the Act. Section 17(4) proviso has to be read together with and in the light of Section 3 of the Amending Act and not de hors of each other in view of the statement of objects and reasons of that Act. This Court ironed the creases in the proviso added to Section 17(4) in *Meerut Development Authority* case. In one of the appeals, the land owners have already accepted the compensation, while in another matter, the title of the Housing Society itself has been found to be infirm and not established as per the findings of the High Court. It is obvious that registration of the sale deed in respect of the Society is subsequent to the notification u/s. 4 of the Act and, therefore, inconsequential. The agreements in favour of that Society

do not show that there was any consideration passed. Again, the possession of the land has already been taken, as claimed by the LDA, way back in the year 1985 and the whole township has now come up, persons have built their houses. Thus, the principle of *Stare Decisis* would apply. [Para 47] [967-G-H; 968-A-F]

1.9. A decision ought not to be overruled if to do so would upset the legitimate expectations of people who have entered into contracts or settlements or otherwise regulated their affairs in reliance on the validity of that decision. (the 'legitimate expectations' criterion). A decision concerning questions of construction of statutes or other documents ought not to be overruled except in rare and exceptional cases. (the 'construction' criterion). A decision ought not to be overruled if it would be impracticable for the Lords to foresee the consequence of departing from it (the 'unforeseeable consequences' criterion). In the interest of certainty, a decision ought not to be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step. In the present case, by upsetting the whole acquisition tremendous upheaval is likely to follow. In that view there is no reason for making the reference. [Paras 47 and 48] [969-A-E, G-H; 970-E]

Mishri Lal (Dead) by L.Rs. v. Dhirendra Nath (Dead) by L.Rs. **1999 (4) SCC 11;** *Central Board of Dawoodi Bohra Community v. State of Maharashtra* **2005 (2) SCC 673, relied on.**

II <u>Effect of alleged non-payment of 80% compensation under Section 17 of the Principal Act</u>

2.1. It is not correct to say that the State Government, though it acquired the possession under Section 17 of the Act, did not pay the 80% of compensation, as required

A under Section 17 of the Act and on that account, the whole exercise was bad. This question in the precise form, was not raised before the High Court. These documents were not the part of the High Court record. Since the source, authentication and verification of those
B documents was not clear, these documents were not liable to be considered. [Paras 49 and 50] [970-F-G; 971-C-E]

2.2. It cannot be said that where Section 5-A is dispensed with u/s. 17(4) of the Act, two Sub-Sections,
C i.e., (3) and (3A) of Section 17 would not apply. By this, the attempt is to dissect Sub-Section (4) in two parts, firstly, where Sub-Section (1) and (2) are applicable and secondly, where the enquiry u/s. 5-A is dispensed with. That is not the import of the language. Section 17 has to
D be read in full. It plainly reads that where the possession is taken with the aid of Section 17(2), the compensation must fall in advance as per the provisions of Section 3A. In fact, Section 3A has been brought on the legislature with the sole purpose of providing a compensation for
E the possession taken. That is why 80% of the estimated compensation is to be paid because even thereafter, the award proceedings would go on and the total compensation would be decided upon. The attempt to read that the payment of compensation is not required
F where Section 5-A enquiry is dispensed with, would be doing violence to the language, firstly, of Section 3A and secondly, of Sub-Section (4) itself. The clear legal position is that the dispensation of Section 5-A enquiry is only and only to enable the State Government to take
G possession under Sub-Section (1) and (2) of Section 17. A third category cannot be created so as to avoid the payment of compensation. [Para 50A] [972-A-F]

2.3. If fault is found with the whole acquisition process on account of the non-payment of 80% of the
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compensation, then the further question would be as to whether the estimation of 80% of compensation is correct or not. A further controversy can then be raised by the landlords that what was paid was not 80% and was short of 80% and, therefore, the acquisition should be set at naught. Such extreme interpretation cannot be afforded because indeed u/s. 17 itself, the basic idea of avoiding the enquiry u/s. 5-A is in view of the urgent need on the part of the State Government for the land to be acquired for any eventuality discovered by either Sub-Section (1) or Sub-Section (2) of Section 17 of the Act. [Para 51] [972-G-H, 973-A-B]

2.4. Even if the compensation is not paid or is short of 80%, the acquisition would not suffer. Therefore, even on the question as to whether in view of the admitted capacity to offer, tender and pay the compensation under sub-section (3) and (3A) of Section 17, the notification under Section 17(4) becomes void, there is no necessity of any reference. [Paras 46, 52 and 53] [967-E-F; 973-B-C; 975-B]

Satendra Prasad Jain and Ors. v. State of U.P. and Ors. **1993 (4) SCC 369;** *Pratap and Anr. v. State of Rajasthan and Ors. etc. etc.* **1996 (3) SCC 1;** *P. Chinnanna v. State of A.P.* **1994 (5) SCC 486;** *Awadh Bihari Yadav v. State of Bihar* **1995 (6) SCC 31, relied on**

III. Challenge under Article 14 of the Constitution of India

3.1. It is not correct to say that the provisions of the Amending Act and also the provisions of Land Acquisition Act like Section 17(4) are invalid on the test of Article 14 of the Constitution. Reading paragraph 14 of Meerut Development Authority case, in its correct perspective would repel the argument that the provision is arbitrary in any manner or has the effect of creating impermissible classification. If the petitioners in *Meerut*

A *Development Authority* **case, did not specifically address the Court on the question of Constitutional validity of the Amending Act (as is being claimed by the appellants), it will not be permissible for the petitioners to raise this point which was admittedly not raised either in** *Ghaziabad*
B *Development Authority* **case. or** *Meerut Development Authority* **case, Petitioners would not be permitted to take such a course. There can be no question of Section 17(4) proviso or the provisions of the Amending Act being invalid in any way. The provisions in any manner are not**
C **arbitrary or making impermissible classifications or suggesting invidious discrimination nor can the provisions in the Amending Act can be termed as "arbitrary" providing no guiding principles. [Paras 54, 55 and 56] [975-C-D; 976-F-H; 977-C-D]**

D *State of Orissa v. Gopal Chandrarath* **1995 (6) SCC 243;** *Bhubaneswar Singh and Anr. v. Union of India and Ors.* **1994 (6) SCC 77;** *Comorin Match Industries P. Ltd, v. State of Tamil Nadu* **1996 (4) SCC 281;** *Gouri Shankar Gauri and Ors. v. State of U.P. and Ors.* **1994 (1) SCC 92, relied on.**

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Ghaziabad Development Authority vs. Jan Kalyan Samiti Sheopur **1996 (2) SCC 365;** *Ghaziabad Development Authority vs. Jan Kalyan Samiti Sheopur* **1996 (1) SCC 562;** *MDA v. Satbir Singh* **1996 (11) SCC 462;** *Delhi Cloth and*
F *General Mills Co. Ltd. v. Shambhu Nath Mukherji and Ors.* **AIR 1978 SC 8, referred to**

3.2. The contention that the contents in paragraph 14 of the judgment in *Meerut Development Authority* **case, holding that the provisions of the Amending Act are not**
G **limited to the two dates mentioned and can be applicable even subsequently, results in creation of two classes and the possible discrimination, is not acceptable. It will not be necessary to go into that question as the present appeals pertaining to Ujariyaon Housing Scheme Part-II**

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are relating only to the period between 24.9.1984 and 11.1.1989. Further, even if, as held in Meerut Development Authority case, it applied to the subsequent period, it does not infringe Article 14. [Para 57] [977-E-G; 978-A-B]

3.3. The Validation Act did not confer any discretion on the State Government to apply its provisions to a particular scheme and then issue notifications. It was a one time exercise for validating a particular scheme by amending the Act which has already been found to be valid in *Meerut Development Authority* case. Again Ujariyaon Housing Scheme Part-III did not lapse because of the decision of the Government. Since the award was not made within the time prescribed by Section 11A of the Act, it had the effect of lapsing the notifications. Therefore, the State Government was left with no other way and had to issue a fresh notification. In Ujariyaon Housing Scheme Part-II, the award was made by the Collector within the time and, therefore, those notifications were not affected. [Para 58] [978-E-H; 979-A]

Arnit Das v. State of Bihar **2000 (5) SCC 488;** *State of UP and Anr. v. Synthetics and Chemicals Ltd. and Anr.* **1991 (4) SCC 139;** *Nirmal Jeet Kaur v. State of Madhya Pradesh and Anr.* **2004 (7) SCC 558;** *ICICI Bank and Anr. v. Municipal Corporation of Greater Bombay and Ors.* **2005 (6) SCC 404;** *A.R. Antulay v. R.S. Naik and Ors.* **1988 (2) SCC 602;** *Zee Telefilms Ltd. and Anr. v. Union of India and Ors.* **2005 (4) SCC 649;** *P. Ramachandra Rao v. State of Karnataka* **2002 (4) SCC 578;** *Nand Kishore v. State of Punjab* **1995 (6) SCC 614;** *Isabella Johnson v. M.A. Susai* **1991 (1) SCC 494;** *R.K. Dalmia v. S.R. Tendolkar* **1959 SCR 279, distinguished.**

3.4. Sections 17(1), 17(1A), 17(3A) and 17(4) of the Act and Section 2 of the UP Act No. VIII of 1974, as also the UP Act No. 5 of 1991 are not violative of Articles 14, 19, 21, 39, 48, 48A and 300A for invidious discrimination.

A **There is no classification, much less any impermissible classification and no group has been treated favourably as against another group, refusing equal protection to such group. [Para 60] [980-F-G; 981-C-D]**

B *Lachman Das v. State of Bombay* **AIR 1952 SC 235;** *Charanjit Lal Chowdhury v. Union of India and Ors.* **AIR 1951 SC 41;** *Anwar Ali Sarkar v. State of U.P.* **AIR 1952 SC 75;** *Kathi Ranning Rawat v. State of Saurashtra* **AIR 1952 SC 123;** *State of Punjab v. Gurdial Singh* **AIR 1980 SC 319, distinguished**

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Kedar Nath Bajoria s/o Ramjidas Bajoria v. State of West Bengal **1954 SCR 30;** *R.K. Dalmia v. S.R. Tendolkar* **1959 SCR 279 and** *In re: Special Courts Bills*, **1978 1979 (1) SCC 380, referred to**

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3.5. Discretion upon the application of law and the power under Section 17 of the Act of doing away with Section 5A inquiry has to be exercised in a proper manner. However, there are clear guidelines provided u/ s. 17(1) r/w Section 4 for understanding the concepts of urgency and emergency. In this behalf, the criteria of emergency as provided under Sub-Section (2) of Section 17 is separate and distinct from the criteria of urgency. These two criteria provide clear guidelines and cannot be held as arbitrary. [Para 61] [981-F-H; 982-A]

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Krishi Utpadan Mandi Samiti vs. Makrand Singh and Ors. **1995(2) SCC 497;** *State of U.P. v. Pista Devi* **1986 (4) SCC 251, relied on**

G *Suraj Mall Mohta and Company v. A.V. Visvanatha Sastri and Anr.* **AIR 1954 SC 545, distinguished**

Sarju Prasad Sahu v. State of Uttar Pradesh and Ors. **AIR 1962 ALL 221;** *Ram Sevak v. State of UP Ors.* **AIR 1963 All 24;** *Ishwarlal Girdharlal Joshi etc. v. State of Gujarat and*

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Anr. **AIR 1968 SC 870, referred to.** A

3.6. Merely because the decision of the Government on question of urgency is not justiciable, it does not mean that Section 17(4) of the Act is discriminatory. The High Court has correctly held that Sub-Sections (1), (3A) and (4) of Section 17 of the Act do not suffer from any unconstitutionality on account of the alleged breach of Article 14 of the Constitution of India. Sub-Sections (1) (3A) and (4) of Section 17 of the Act do not suffer, as there is no notice provided in those Sub-Sections before the possession is taken. [Para 62] [983-C-D, F; 984-C] B C

Matajog Dubey v. H.C. Bhari **AIR 1956 SC 44;** *R.K. Dalmia v. S.R. Tendolkar* **1959 SCR 279;** *Ishwarlal Girdharlal Joshi etc. v. State of Gujarat and Anr.* **AIR 1968 SC 870;** *Kraipak v. Union of India* **AIR 1970 SC 150,** *Maneka Gandhi v. Union of India* **AIR 1978 SC 597;** *Olga Tellis v. Bombay Municipal Corporation* **AIR 1986 SC 180;** *Union of India v. Tulsi Ram* **AIR 1985 SC 1416, relied on** D

IV. <u>Issue of urgency and application of Section 17 of the Principal Act</u> E

4. The High Court has correctly come to the conclusion that there was all the justification for invoking the urgency clause and taking the possession for the lands in question. It can not be ignored that this land was urgently needed for housing. Large-scale development and utilization of acquired land after the acquisition is apparent on the face of the record. A number of houses have been constructed, third party interests were created in whose favour the plots were allotted and the High Court has also commented while disposing of the writ petitions that the quashing of the notification at this stage will prejudice the interests of the people for whom the schemes were evolved. While considering as to whether F G H

A **the Government was justified in doing away with the inquiry under Section 5A, it must be noted that there are no allegations of *mala fides* against the authority. In the present case, the High Court has gone into the records and has recorded categorical finding that there was**
B **sufficient material before the State Government and the State Government has objectively considered the issue of urgency. Even before this Court, there were no allegations of mala fides. Therefore, it is not correct to say that there was no urgency to justify dispensation of**
C **Section 5A inquiry by applying the urgency clause. Acquisitions in this case are of 1984-1985 and two decades have passed thereafter. [Paras 63 and 64] [984-D-G; 985-A, B, D, H]**

Kishan Das and Ors. v. State of UP and Ors. **1995 (6)**
D **SCC 240;** *State of U.P. v. Pista Devi* **1986 (4) SCC 251, relied on**

Raja Anand Braha Shah v. State of U.P. **AIR 1967 SC 1081;** *Narayan v. State of Maharashtra* **AIR 1977 SC 183;**
E *Kailashwati v. State of U.P.* **AIR 1978 All 181;** *Deepak Pahwa v. Lt. Governor of Delhi* **AIR 1984 SC 1721, referred to**

V. <u>Other issues on merit</u>

5. This Court will not go into the questions of facts
F **like the non-publication of Sections 4 and 6 notifications. Similar is the question raised about the land belonging to the co-operative society and the release of the same. The High Court judgment is absolutely correct in that behalf. Even if the Government had taken a decision not**
G **to acquire the land belonging to the co-operative society as far as possible, there is nothing wrong if such lands were acquired. What is to be seen is the bona fides of the Government behind the decision to acquire the lands. On that account no fault can be found with the concerned**
H **notifications u/ss. 4 and 6. [Para 65] [986-B-E]**

6. As regards the question of possession, the Court does not propose to go into the question of facts and questions relating to the individual claims. When the whole township is standing, this question goes to the backdrop. In the face of Panchanama, which is on record, the finding of the High Court that the possession was taken on 21.5.1985 is endorsed. [Paras 66 and 67] [986-F, 987-C-D]

7. LDA also found fault with the Sale Deed in favour of Pratap Sahkari Grih Nirman Samiti Ltd.. It was urged that its claim was based on the Sale Agreement, which was executed one day before the publication of Section 4 Notification in the Gazette, i.e., 8.12.1984. It is admitted case that the Sale Deed was registered on 22.1.1986, which is clearly a date beyond the date of Section 4 notification. If any purchases of the land are made after the publication of Section 4(1) notification, landlords in this case would not get any right or entitlement to question the validity of the title of the State based on the acquisition. Obviously, the claim of this Society is on the basis of the Agreement of Sale dated 7.4.1983. The High Court was correct in holding that the Society had purchased the land after the issuance of notification. The policy to give back 25% of the acquired land to the co-operative societies, even if there is one, would not be applicable to the Society in question. Therefore, it is not acceptable that Pratap Sahkari Grih Nirman Samiti Ltd. Should be given back 25% of the land acquired, which is again not possible in view of the township having come up. [Paras 68 and 69] [987-D-H; 988-E-G]

U.P. Jal Nigam v. Kalra Properties Ltd. **1996 (3) SCC 124;** *Star Wire (India) Ltd. v. State of Haryana and Ors.* **1996 (11) SCC 698, relied on**

Case Law Reference:

1989 (1) SCC 591	Referred to.	Paras 9,13,19, 23 and 40
1996 (11) SCC 462	Relied on.	Paras 10,11, 17,19, 25,30, 34,36,39 and 54
1996 (1) SCC 562	Relied on.	Paras 11,17, 19,30 and 39
1996(2) SCC 365	Relied on.	Paras 11, 17, 19, 30 and 39
1976 (1) SCC 843	Relied on.	Para 15
AIR 1952 SC 75	Distinguished	Paras 18 and
25AIR 1980 SC 319	Distinguished	Paras 18 and 60
2003 (6) SCC 186	Referred to.	Para 20
2002 (7) SCC 273	Referred to.	Para 20
2005 (2) SCC 409	Referred to	Para 20
2003 (4) SCC 712	Referred to	Para 20
2002 (3) SCC 533	Referred to	Paras 20 and 21
1992 (2) SCC 494	Referred to	Para 20
1997 (8) SCC 72	Referred to	Para 20
1986 (3) SCC 91	Referred to	Para 20
1990 (1) SCC 277	Referred to	Para 20
AIR 1955 SC 830	Referred to	Para 20
1986 (4) SCC 251	Relied on	Paras 21 and 63

1993 (4) SCC 369	Relied on	Paras 21, 52 and 53	A
2003 (2) SCC 577	Referred to.	Para 21	
2005 (7) SCC 627	Referred to.	Para 21	
2004 (8) SCC 14	Referred to.	Para 21	B
1952 SCR 435	Referred to.	Para 25	
1954 SCR 30	Referred to.	Paras 25 and 60	
1959 SCR 279	Referred to.	Paras 25 and 60	C
	Distinguished	Para 60	
	Relied on.	Para 62	
1979 (1) SCC 380	Referred to.	Para 25	D
1995 (6) SCC 240	Relied on.	Paras 27 and 63	
1974 (2) SCC 501	Referred to.	Para 27	
1998 (6) SCC 1	Referred to.	Para 27	E
1996 (3) SCC 1	Referred to.	Para 27	
AIR 1987 Allahabad 113	Referred to.	Para 29	
1963 (2) SCR 775	Referred to.	Para 30	
	Relied on.	Para 37	F
1996 (7) SCC 637	Referred to.	Para 30	
1995 (6) SCC 16	Referred to.	Para 33,40	
2004(3) SCC 48	Referred to.	Para 33,40	G
2003 (5) SCC 298	Referred to.	Para 33,40	
1978 (2) SCC 50	Referred to.	Para 33,40	
1975 Supp. SCC 1	Referred to.	Para 33,40	H

A	2004(12) SCC 588	Referred to.	Para 33,40
	1976 (4) SCC 750	Referred to.	Para 33,40
	1970 (1) SCC 509	Referred to.	Para 33,40
B	1998 (9) SCC 480	Relied on.	Para 37 and 40
	1969 (2) SCC 283	Referred to.	Para 40
	1989 (3) SCC 488	Distinguished	Para 40
	1983 (2) SCC 33	Held inapplicable	Para 41
C	1986 Suppl. SCC 584	Held inapplicable	Para 41
	1994 (5) SCC 450	Held inapplicable	Para 41,43
	2002 (1) SCC 689	Referred to.	Para 44
D	1997 (8) SCC 47	Distinguished	Para 44
	1995 (2) SCC 497	Distinguished	Para 44'
		Relied on.	Para 61
E	1997 (9) SCC 132	Distinguished	Para 45
	2002(1) SCC 538	Distinguished	Para 45
	1999 (4) SCC 11	Relied on	Para 45
	2005 (2) SCC 673	Relied on.	Para 47
F	1996 (3) SCC 1	Relied on.	Para 53
	1994 (5) SCC 486	Relied on.	Para 53
	1995 (6) SCC 31	Relied on.	Para 53
G	1995 (6) SCC 243	Relied on.	Para 55
	1994 (6) SCC 77	Relied on.	Para 55
	1996 (4) SCC 281	Relied on.	Para 55

H

1994 (1) SCC 92	**Relied on.**	**Para 55**	A
2000 (5) SCC 488	**Distinguished**	**Para 59**	
1991 (4) SCC 139	**Distinguished**	**Para 59**	
2004 (7) SCC 558	**Distinguished**	**Para 59**	B
2005 (6) SCC 404	**Distinguished**	**Para 59**	
1988 (2) SCC 602	**Distinguished**	**Para 59**	
2005 (4) SCC 649	**Distinguished**	**Para 59**	
2002 (4) SCC 578	**Distinguished**	**Para 59**	C
1995 (6) SCC 614	**Distinguished**	**Para 59**	
1991 (1) SCC 494	**Distinguished**	**Para 59**	
AIR 1952 SC 235	**Distinguished**	**Para 60**	D
AIR 1951 SC 41	**Distinguished**	**Para 60**	
AIR 1952 SC 123	**Distinguished**	**Para 60**	
AIR 1962 ALL 221	**Referred to.**	**Para 61**	E
AIR 1963 All 24	**Referred to.**	**Para 61**	
AIR 1968 SC 870	**Relied on.**	**Para 62**	
AIR 1954 SC 545	**Distinguished**	**Para 62**	F
AIR 1956 SC 44	**Relied on.**	**Para 62**	
AIR 1970 SC 150	**Relied on.**	**Para 62**	
AIR 1978 SC 597	**Relied on.**	**Para 62**	
AIR 1986 SC 180	**Relied on.**	**Para 62**	G
AIR 1985 SC 1416	**Relied on.**	**Para 62**	
AIR 1967 SC 1081	**Referred to.**	**Para 64**	

H

A	**AIR 1977 SC 183**	**Referred to.**	**Para 64**
	AIR 1978 All. 181	**Referred to.**	**Para 64**
	AIR 1984 SC 1721	**Referred to.**	**Para 64**
B	**1996 (3) SCC 124**	**Relied on.**	**Para 68**
	1996 (11) SCC 698	**Relied on.**	**Para 68**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2650-2652 of 1998.

C

From the Judgment & Order dated 20.3.1998 of the High Court of Judicature at Allahabad (Lucknow Bench) in Lucknow in Writ Petition No. 2220 (L/A) of 1996, 3020 (L/A) of 1996 and 16 (L/A) of 1996.

D

WITH

C.A. Nos. 3162, 3176, 3415, 3561, 3597, 3923, 3939, 3645, 3691, 5346, 4995-4996 of 1998 & 2116-2118, 2139, 2121, E 2113 of 1999, SLP(C) 23551 of 2009 arising out of CC No. 1540 of 1999.

R.N. Trivedi, Rakesh Kr. Dwivedi, Dinesh Dwivedi, Shail Kumar Dwivedi, D.K. Arora, Addl. A.G., Pramod Agarwal, F Shweta Garg, Ashish Gopal Garg, Qamar Ahmad (NP), Arvind Kumar Shukla, Ashutosh Pathak, N.D. Peter, Irshad Ahmad, Sudhir Kulshreshtha, Navin Prakash, Gaurav Aggarwal, B.K. Prasad, Shakil Ahmed Syed, Abhishek Chaudhary, Manoj Kr. Dwivedi, Vandana Mishra, Manish Kumar, Prateek Dwivedi, G G.V. Rao, Kamlendra Mishra, Manoj Swarup, Lalita Kohli, Charu Singhal (for Manoj Swarup & Co.), Anil Kumar Sangal, Deba Prasad Mohanty, C.D. Singh, Vairagya Vardhan Dubey, Arvind Varma, Malvika Trivedi, T. Mahipal, C.S. Ashri, E.C. Vidya Sagar for the appearing parties.

H

The Judgment of the Court was delivered by A

V.S. SIRPURKAR, J.

Background of Appeals

1. This judgment will dispose of Civil Appeal Nos. 2650-2652 of 1998, 3162 of 1998, 3176 of 1998, 3415 of 1998, 3561 of 1998, 3597 of 1998, 3923 of 1998, 3939 of 1998, 3645 of 1998, 3691 of 1998, 5346 of 1998, 2116-2118 of 1999, 2139 of 1999, 2121 of 1999, 2113 of 1999, 4995-4996 of 1998 and SLP(C) No...(CC) 1540 of 1999. All these appeals and the Special Leave Petition challenge a common judgment passed by Allahabad High Court, disposing of several Writ Petitions. The High Court has granted certificate granting leave to file appeal. These Writ Petitions were filed covering various subjects. Basically, in some of the Writ Petitions, constitutionality of provisions of Sections 17(1), 17(1)(A), 17(3)(A), 17(4) and proviso to Section 17(4) of the Land Acquisition Act (hereinafter referred to as 'the Act' for short) alongwith Section 2 of the U.P. Act No. VIII of 1994 (hereinafter called 'the Validating Act' for short) was challenged, so also constitutionality of Sections 3(A), 3(B), 4, 5, 6, 7 and 8 of the Act was also challenged. In that set of Writ Petitions, basically, the notification issued under Section 4(1) of the Act and the award dated 25.2.1987 were in challenge. B C D E

2. In some other Writ Petitions, besides the challenge to the above mentioned provisions, some other notifications dated 30.12.1995, 25.1.1992, 4.1.1992 and 15.12.1992 under Section 4(1) of the Act, as well as, the declaration under Section 6 of the Act were in challenge. F

3. In some Writ Petitions, the petitioners prayed for a Writ of mandamus, commanding the State of U.P. to frame necessary rules and regulations in respect of Sections 11, 11-A and 17(3)(A) of the Act pertaining to the functioning of the Land Acquisition Officer and also sought for an injunction G H

A restraining the authorities from interfering with the possession of the Writ Petitioners' land and to comply with the provisions under Sections 3(1A), 3(B), 4(2), 5 and 9(1) of the Act. They have also prayed for a disciplinary action against the Station Officer, Police Station Gomti Nagar, Lucknow, U.P.

B

4. These are the three sets of Writ Petitions, which came to be disposed of by the High Court by a common judgment.

5. In one of the Writ Petitions, bearing No. 16(L/A) of 1996 filed by one Ram Bharosey, award dated 25.2.1987 which was C validated in pursuance of Section 2 of the Validating Act, was in challenge.

6. In still another set of Writ Petitions, Pratap Housing Cooperative Society and some industries prayed for exempting D their land from the land acquisition proceedings. In these Writ Petitions, the Writ Petitioners had contended that they had purchased their land from tenure holders for Cooperative Societies for providing land to their members and construction of the houses. The Writ Petitioners contended that some being industries were manufacturing certain articles and their running E business had come to the standstill because of the land acquisition activities.

7. In one set of Writ Petitions, it was found that notifications were issued under Section 4 and sub Section (4) of Section F 17 of the Act, simultaneously with the declaration under Section 6 of the Act. In these cases, the possession was taken by Lucknow Development Authority (hereinafter referred to as 'LDA' for short), so also the award was passed on 25.2.1987.

G 8. In another set of Writ Petitions, wherein the leading Writ Petition was W.P. No. 2220 (L/A) of 1996 filed by Tika Ram & Anr., the notification was issued under Section 4(1) and 17 and declaration under Section 6 of the Act simultaneously. However, they were treated to be lapsed and a fresh notification came to be issued on 30.12.1991 under Section 4(1) and 17 of the H

Act. Even in these Writ Petitions, the awards were passed and the concerned persons were asked to receive payment of 80% compensation by a general notice. In short, the challenge generally was to the land acquired at the instance of LDA. Besides this challenge to the provisions of the Act, as also to the provisions of the Validating Act, the Writ Petitioners have claimed the non-compliance with the essential provisions of Section 4 and 6 of the Act. They have also challenged the urgency clause made applicable to the various land acquisitions. On merits, it has been suggested that there has been no proper publication in the newspapers or at the convenient places of the locality as required under Section 4(1) and Section 6 of the Act. There has been no preliminary survey as envisaged under Section 3(A) of the Act and no damages were paid to any tenure holder as provided under Section 3(B) of the Act, either before or after passing of the Validating Act. There are various such challenges on merit to the process of acquisition.

Short History of Validating Act

9. Earlier, the acquisitions were made by formulating a scheme known as Ujariyaon Housing Scheme (Part-II and Part III). In these, the notifications under Section 4(1) and declaration under Section 6(2) of the Act were issued simultaneously. That was challenged before the High Court at the instance of one Kashmira Singh. All the Writ Petitions came to be allowed on the ground that simultaneous notifications under Sections 4(1) and 6(2) could not be issued, particularly, after the amendment of Section 17(4) of the Act, which provision was amended by Amending Act No. 68 of 1984. State of Uttar Pradesh filed Special Leave Petition before this Court, where the order passed by the High Court was upheld in a reported decision in *State of Uttar Pradesh vs. Radhey Shyam Nigam* reported in 1989 (1) SCC 591. In these petitions, schemes known as Ujariyaon Housing Scheme Part-II and Ujariyaon Housing Scheme Part-III were the subject matter of the dispute. While

A disposing of the case of *State of Uttar Pradesh vs. Radhey Shyam* (cited supra), this Court observed:-

> "It will, however, be open to the appellants to issue a fresh declaration under Section 6, if so advised, within a period
B contemplated in the proviso to Section 6(1) of the Act read with its first explanation."

However, instead of doing that, it seems that a Bill was brought before the State Legislature and was passed and the same also received assent of the President of India in February,
C 1991, which was published in the Gazette on 27.2.1991. There was a prefatory note to the following effect:-

> "The Supreme Court in case of its judgment dated January 11, 1989 held that after the commencement of the land
D Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984), the declaration under Section 6 of the Land Acquisition Act, 1894 cannot be made simultaneously with the publication in the Gazette Notification under Section 4(1) even though the application of Section 5-A has been dispensed with
E under Section 17(4) of the said Act. In a large number of proceedings of acquisition of land for the Development Authorities for the implementation of various housing schemes, the declaration under Section 6 were made simultaneously with publication in the Gazette of notification
F under Section 4(1). The said proceedings were likely to be held void in view of the aforesaid judgment of the Supreme Court. In order to save the said scheme from being adversely affected, it was decided to amend the Land Acquisition Act, 1894 in its application to Uttar Pradesh to provide for validating the proceedings of land
G acquisition in respect of which the notifications under sub Section (1) of Section 4 and sub Section (4) of Section 17 of the said Act had been published in the Gazette on after September 24, 1984 (the date of amendment) but before January 11, 1989 (the date of judgment of the
H Supreme Court) and the declaration under Section 6 had

been issued either simultaneously or at any time after the application in the Gazette of the said notification under Section 4(1)." A

Sections 2, 3 and 4 of the said Validating Act were as under:- B

"2. *Amendment of Section 17 of Act No. 1 of 1894:-*

In Section 17 of the Land Acquisition Act, 1894 as amended in its application to Uttar Pradesh, hereinafter referred to as the Principal Act, in sub-Section (4), the following proviso shall be inserted at the end and shall be deemed to have been inserted on September 24, 1984, namely:- C

Provided that where in the case of any land notification under Section 4, sub-Section (1) has been published in the official Gazette on or after September 24, 1984 but before January 11, 1989 and the appropriate Government has under this sub-Section directed that the provisions of Section 5-A shall not apply, a declaration under Section 6 in respect of the land may be made either simultaneously with or at any time after the publication in the official Gazette of the notification under section 4, sub-Section (1). D E F

3. *Validation of certain acquisitions:-*

Notwithstanding and judgment, decree or order of any Court, Tribunal or other authority, no acquisition of land made, or purporting to have been made under the Principal Act, before the commencement of this Act and no action taken or thing done (including any order or alteration made, agreement entered into or notification published in connection with such acquisition which is in conformity with the provisions of the Principal Act as amended by this G H

A Act shall be deemed to be invalid of ever to have been invalid merely on the ground that declaration under Section 6 of the Principal Act was published in the official Gazette on the same date on which notification under Section 4, sub Section (1) of the
B Principal Act was published in the official Gazette or on any other date prior to the date of publication of such notification as defined in Section 4, sub Section (1) of the Principal Act.

C 4. *Repeal and saying:-*

(1) The land Acquisition (Uttar Pradesh Amendment and Validation) ordinance 1990 (U.P. Ordinance No. 32 of 1990) is hereby repealed.

D (2) Notwithstanding such repeal, anything done or any action taken under the provisions of the Principal Act, as amended by the Ordinance referred to in sub Section (1) shall be deemed to have been done or taken under the corresponding provisions of the
E Principal Act, as amended by this Act, as it the provisions of this Act were in force at all material times."

10. It should be noted that this Act, which came on 27.2.1991, receiving assent of the President of India, was
F earlier challenged before the Allahabad High Court, where it was found to be valid. The High Court held that the invalidity of the land acquisition in issuance of the Section 4 and Section 6 notification simultaneously, was cured by this Act, which was made applicable with retrospective effect. It was not with an
G intention to wipe out the judgment of this Court in the case of *Radhey Shyam* (cited supra). Validity of the Validating Act also came before this Court in *Meerut Development Authority vs. Satvir Singh & Ors.* reported in 1996(11) SCC 462. There, it was held that the exercise of the power under Section 4(1) and
H declaration under Section 6 were not vitiated and the Validating

Act was not invalid. This Court specifically observed in that case:- A

> "It is not in dispute that the State Amendment Act 5 of 1991 was enacted or reserved for consideration of the President and received the assent of the President on 26.2.1991 and B the Act was published in the Gazette on 27.2.1991. It is to be seen that as regards simultaneous publication of the notification and the declaration in respect of acquisition of the land for public purpose exercising the power of eminent domain in certain situation where possession was needed C urgently, depending upon the local needs and the urgency, Government requires such power. Consequently, the State Legislature thought it appropriate that despite the enactment of the Amendment Act, 68 of 1984 amending Section 17(4), the State needed further amendment. Resultantly, the U.P. Amendment Act 5 of 1991 came to D be made and it was given retrospective effect from the date of the Amendment Act 68 of 1984 has come into force, i.e., September 24, 1984.
>
> It is true that the proviso was not happily worded but a E reading of it would clearly give us an indication that the proviso to sub Section (4) introduced by Section 2 of the Amendment Act 5 of 1991 would deal with both the situations, namely, the notifications published on or after September 24, 1984 but before January 11, 1989 but also F the declaration to be simultaneously published subsequent thereto. The literal interpretation sought to be put up by Shri Pradeep Misra would defeat the legislative object. Therefore, ironing out the creases we are of the view that the proviso applies not only to the notifications and G declarations simultaneously published after the date of coming into force of the Amendment Act 68 of 1984, but also to the future declarations as well. Thus, it could be seen that the proviso would operate prospectively and retrospectively from April 24, 1984 applying to the previous H

A notifications and declarations but also the notification and declaration to be published subsequently.

It is true that normally the Legislature has to give effect to the judgment of the Court only to cure the defects pointed B out in the previous judgment so that the operation of the law would be but in view of the peculiarity namely the special needs of the State Article 254(2) itself gives such a power to the State Legislature to amend the law, to make applicable in relation to that State through Central Law may be inconsistent with the law operation in the other States. C In other words, when the topic is occupied in the Concurrent List, uniformity of the operation of the law is not the rule but simultaneous existence of the inconsistency would also operate in the same field. But when the assent of the President to the extent of inconsistency is saved in D relation to that State. Therefore, the amendment by proviso to Section 17(4) is not invalid. Any other construction would dry out the power of the State Legislature to enact the law on the subject of acquisition."

E The effect of judgment in case of *Radhey Shyam* (cited supra), thus, was nullified. This Court also took note of the fact that despite enactment of the Amendment Act 68 of 1984, amending Section 17(4), the State needed further amendments and for that reason, the U.P. Amendment Act V of 1991 was F passed by giving the retrospective effect from the date of the Amendment Act, 1984, which came into force on 24.9.1984.

11. Relying on these two judgments, the High Court, by the impugned judgment, affirmed the validity again and the High Court further repealed the argument that these judgments were G *per incurium* and hence required reconsideration. The High Court came to the finding:-

"We have no reason to differ from the decisions of the Division Benches of this Court, which upheld the vires of H Validation Act particularly after the decisions of Hon'ble

Supreme Court which binding upon this court under Article 141 of the Constitution. As we have indicated in the foregoing paragraph, this Court in exercise of power under Article 226 of the Constitution of India cannot open a chapter which had been closed by Hon'ble Supreme Court by upholding the vires of the Validating Act. This Court cannot declare the pronouncement of the Hon'ble Supreme Court, as per incurium, even if the Hon'ble Supreme Court has not dwelled into the"

The High Court held that the Legislature, by amending Act, has merely removed the defect pointed out by this Court in case of *Radhey Shyam* (cited supra) and removed the basis of the decision rendered by the Court. The High Court also rejected the argument regarding the Section 17(4) and the proviso added to it by Validating Act. Ultimately, the High Court, wholly relying on the judgments in *Ghaziabad Development Authority vs. Jan Kalyan Samiti Sheopuri* reported in 1996 (1) SCC 562, *Ghaziabad Development Authority vs. Jan Kalyan Samiti, Sheopuri* reported in 1996(2) SCC 365 and *Meerut Development Authority vs. Satvir Singh & Ors.* (cited supra), held that the High Court had no authority to hold these three cases as *per incurium* and since in these three cases the Validating Act was upheld, there was no question of finding fault with the Validating Act. Similarly, the High Court also rejected the argument regarding the invalidity of Sections 17(1)(3A) and (4) of the Act. The High Court also independently considered the principle of eminent domain. The High Court also considered the Ujariyaon Housing Scheme Part-II and found that the final award was made on 25.2.1987 while in Ujariyaon Housing Scheme Part-III Scheme, proceedings for passing the award were completed and were sent to the appropriate authority for scrutiny, consideration and approval. The High Court went on to approve of the application of the urgency clause in both the schemes. It also took into account the argument of the LDA that the possession of the lands were already taken and a new city has already come up on the banks

A of river Gomti and a huge township has come up consisting of flats, houses and markets etc. which was constructed by LDA. Not only this, those premises have been transferred to thousands of people, inhabited in the colonies and, therefore, it would not be worthwhile to interfere in the process of
B acquisition. The High Court also approved the argument that once a possession was already taken, the Government would not withdraw from acquisition nor would the proceedings lapse. The High Court also found, as a matter of fact, that the possession of the whole land was already taken over, contrary
C to the claim made by the Writ Petitioners that they were still in possession. Ultimately, on all these grounds, the Writ Petitions came to be dismissed. All the present appeals are against the aforementioned common judgment of the High Court, disposing of the Writ Petitions.

D 12. Before this Court also, prolonged arguments were submitted by the parties and more particularly, by Shri R.N. Trivedi, Learned Senior Counsel and Shri Qamar Ahmad & Shri Sudhir Kulshreshtha, Learned Counsel, all appearing on behalf of the appellants. We will consider their contentions serially. All
E these contentions raised were opposed by Shri Rakesh Kumar Dwivedi, Learned Senior Counsel appearing on behalf of the LDA, Shri Dinesh Dwivedi, Learned Senior Counsel appearing on behalf of State of Uttar Pradesh, as also other Learned Counsel like Shri Manoj Swarup, Shri Anil Kumar Sangal, Shri
F C.D. Singh and Shri Arvind Varma etc., who addressed us extensively, supporting the order. We have now to consider the various contentions raised.

Rival Contentions (Broadly)

G **I. The Validating Act did not remove the defects**

13. Shri Trivedi, Learned Senior Counsel, who ably led arguments on behalf of the appellants, as also Shri Qamar Ahmad, first pointed out that the U.P. Legislature passed U.P.
H Ordinance No. 32 of 1990, being the Land Acquisition (Uttar

Pradesh Amendment and Validation) Ordinance, 1990 and enforced the same on 27.12.1990. This Ordinance later on got the status of an Act, being Land Acquisition (Uttar Pradesh Amendment and Validation) Act, 1991 (U.P. Act No. V of 1991). Amending Act was identical as the Ordinance. The thrust of the argument of Shri Trivedi, Learned Senior Counsel, as also other Learned Counsel was against the constitutional validity of this Act. The Act consisted of 4 Sections. Section 1 is reproduced hereunder:-

"1. Short Title, extent and commencement:-

(1) This Act may be called the Land Acquisition (Uttar Pradesh Amendment and Validation) Act, 1991.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall be deemed to have come into force on December 28, 1990.

Sections 2, 3 & 4 have already been quoted hereinabove. The basic argument against this Act was that the only purpose of this Act was to set at naught or nullify the judgment of this Court in *State of Uttar Pradesh vs. Radhey Shyam* reported in 1989(1) SCC 591, by which it was held that the declarations under Section 6 of the Land Acquisition Act, which were made simultaneously with the publication of the notification under Section 4 of the Land Acquisition Act, was an invalid exercise. It was pointed out by the Learned Senior Counsel further that it is clear from the Prefatory Note and Statement of Objects and Reasons that in a large number of cases, the declarations under Section 6 of the Act were made simultaneously with the publication of a notification under Section 4 of the Act and all those acquisitions had become invalid on account of the aforementioned judgment of this Court. Further, in order to save the scheme of the land acquisition, it was decided to amend the Act for validating the proceedings in respect of the notifications under Section 4 of the Act published on or after

A 24.9.1984 but before 11.1.1989. Our attention was invited to sub-Section (4) of Section 17, which was introduced by the amendment, thereby amending Section 17 of the Act in its application to State of Uttar Pradesh. The Learned Senior Counsel contended that while it was permissible for the State B Legislature to pass any legislation, it was not permissible to pass such a legislation only to nullify the judgment of this Court, without providing for the displacement of the basis or foundation of that judgment. Number of reported decisions of this Court were relied upon for this purpose. In short, the contention was C that the State Legislature, by passing the Validating Act, could not knock down the judgment passed by this Court unless and until the said Act took care to remove the defects or mischiefs pointed out by this Court in its judgment, on which the said action was invalidated, and since the Validating Act of 1991 D did not remove the basis or foundation of the aforementioned judgment of this Court in *State of Uttar Pradesh vs. Radhey Shyam* (cited supra), the Act itself was constitutionally invalid. According to the Learned Senior Counsel, this exercise of passing the Validating Act is nothing, but the invalid trenching upon the judicial powers. The Learned Senior Counsel, in E support of his arguments, relied on the following decisions:-

1. *S.R. Bhagwat vs. State of Mysore* 1995 (6) SCC 16.

F 2. *ITW Signode India Ltd. vs. Collector of Central Excise* 2004(3) SCC 48.

3. *Bakhtawar Trust vs. M.D. Narayan & Ors.* 2003 (5) SCC 298.

G 4. *Madan Mohan Pathak vs. Union of India* 1978 (2) SCC 50.

5. *Indira Gandhi vs. Raj Narayan* 1975 Supp. SCC 1

H 6. *Virender Singh Hooda vs. State of Haryana*

2004(12) SCC 588. A

7. *I.N. Saxena vs. State of Madhya Pradesh* 1976(4) SCC 750.

8. *Janpad Sabha vs. C.P. Syndicate* 1970 (1) SCC 509. B

II. Act is ultra vires and constitutionally invalid

14. The second submission was that the said Act is *ultra vires* the Article 300A of the Constitution of India, as its effect C was to deprive the appellants of higher compensation which may be admissible, pursuant to the fresh acquisition proceedings after 1987. Three decisions of this Court were relied upon for this purpose, they being:-

1. *State of Gujarat vs. Ramanlal* reported in 1983 (2) D SCC 33

2. *T.R. Kapur & Ors. vs. State of Haryana* reported in 1986 Supp. SCC 584

3. *Union of India vs. Tushar Ranjan Mohanty* E reported in 1994 (5) SCC 450

Apart from the challenge to the validity of the Act itself, or, as the case may be, to the legislative exercise, the amendment brought about by that Act vide sub-Section (4) of Section 17 F of the Act was challenged as ultra vires, as it sought to validate the simultaneous notifications only between 24.9.1984 and 11.9.1989 and no others. Thereby, the Learned Counsel contended that the other simultaneous notifications were not covered in the Act, therefore, the provision was discriminatory. G As a sequel of this Act, it was contended that Section 3 of the Amending Act was *ultra vires* the Land Acquisition Act, as it permitted declaration being made even earlier than the publication of a notification under Section 4 of the Act, which was in clear breach of provisions of Sections 4 and 6 of the H

A Act. The Learned Senior Counsel further urged that even as per the language of the amended Section 17(4), the said provision insisted that a declaration under Section 6 should come "after" Section 4 notification and did not permit the declaration under Section 6 of the Act and the notification under Section 4 of the B Act being published simulateneously. It was pointed out that main part of the Section 17(4) was not amended.

15. The further contention was that Section 3 of the Amending Act is ultra vires, inasmuch as the various steps in between Section 4 notification and Section 6 declaration were C sought to be avoided by the same. The Learned Senior Counsel also sought to highlight the basic difference in Section 4 and Section 6 by contending that while in the former, there is no declaration required, in the latter, first the declaration would come and thereafter, the notification thereof would come D under Section 6(2) of the Act. It was, therefore, pointed out that what was sought to be seen is the date of declaration under Section 6 of the Act and not its publication and thereby, the Learned Senior Counsel pointed out that since the declaration under Section 6 of the Act was made on 4.12.1984, i.e., before E the date of publication of the notification, therefore, the same is invalid. The judgment in *Khadim Hussain vs. State of U.P. & Ors.* reported in 1976(1) SCC 843 was relied upon. Number of other cases were relied upon to suggest that the law required in case of *Khadim Hussain vs. State of U.P. & Ors.* (cited F supra) was still good law and held the field.

15A. The Learned Senior Counsel also contended that even otherwise, the language of the Validating Act and more particularly, of the proviso added to Section 17(4) of the G principal Act could not remove or cure the defect. It was also contended that *casus omissus* cannot be supplied by the Court

16. The Learned Senior Counsel then suggested that there was discrimination in Ujariyaon Housing Scheme Part-II and Ujariyaon Housing Scheme Part-III and, therefore, there was H

invidious discrimination meted out to the Writ Petitioners (appellants herein). A

17. Finding that the challenge to the notification was held to be valid by this Court in *Ghaziabad Development Authority vs. Jan Kalyan Samiti* (cited supra) and in *Meerut Development Authority vs. Satvir Singh* (cited supra), the Learned Senior Counsel assailed these cases on the ground that in these cases, the constitutional validity was not considered at all. It was pointed out then that the High Court judgment was bad, as it did not consider the question of validity of the Act merely on the ground that in the aforementioned two decisions in *Ghaziabad Development Authority vs. Jan Kalyan Samiti* (cited supra) and in *Meerut Development Authority vs. Satvir Singh* (cited supra), the said Act was held valid though extensive arguments were made before the High Court suggesting as to why the two cases did not apply to the matter. It was also suggested that we should refer the matter to the larger Bench, as in the aforementioned two cases, the questions raised in the appeal were not decided. The contentions raised by Shri Trivedi, Learned Senior Counsel for the appellants can be classified in two major parts, the first part being constitutional validity of the Amending Act and the constitutional validity of Section 17(4) proviso of the Act introduced thereby, as also the constitutionality of Section 3 of the Amending Act. This would be the first part. The other contentions of Shri Trivedi pertain to the merits of the land acquisition on the question of date of taking possession, non payment of 80% compensation and the policy of the State Government regarding Cooperative Societies. B C D E F

Constitutional Validity of the Principal Act provisions G

Doctrine of per incuriam

18. These contentions of Shri Trivedi, Learned Senior Counsel were adopted by Shri Qamar Ahmad, Learned Counsel who led the arguments in Tika Ram's case on behalf H

A of appellants. According to him, the judgments referred to in the earlier para were *per incuriam*. Learned Counsel further argued that Sections 17 (1), 17(1A), 17(3A) and 17(4) as also Section 2 are *ultra vires* of Constitution. Learned Counsel further contends in reference to the "explanation" that power
B given to issue Section 4 notification is without any guidelines. Learned Counsel further relied on the case of *Anwar Ali Sarkar v. State of U.P.* reported in AIR 1952 SC 75 and contended that the said decision which was given by a Larger Bench of this Court has remained undisturbed. The stress of Learned
C Counsel is on Article 14 of the Constitution and he contended that the Validation Act allowed the State to discriminate and as a result, the State Government allowed the notification pertaining to Ujariyaon Part-III Scheme to lapse while the notifications pertaining to Ujariayon Part-II Scheme were
D allowed to get protection of the Validation Act and, therefore, the Validation Act itself is hit by Article 14. The Learned Counsel, as regards the Constitutional validity of Section 17 (1) to 17 (4), contends that the guidelines on urgency or emergency in Section 17 did not furnish a clear and definite guideline and consequently the State Government discriminated by arbitrarily
E invoking these provisions in some cases while doing so in other cases of similar nature. It is for this purpose that *Anwar Ali Sarkar's* case and *State of Punjab v. Gurdial Singh* reported in AIR 1980 SC 319 were relied on by Shri Qamar Ahmad besides the decisions which followed *Anwar Ali Sarkar's* case
F (cited supra).

Defence

19. As against this, Shri Rakesh Kumar Dwivedi, Learned Senior Counsel appearing on behalf of the LDA and Shri
G Dinesh Dwivedi, Learned Senior Counsel appearing on behalf of State of Uttar Pradesh vehemently contended that the argument regarding the invalidity of the Amending Act could not be reconsidered. The Learned Senior Counsel relied on Doctrine of *stare decisis* in support of their contentions. They
H pointed out that this very Act was tested by this Court in the

aforementioned two decisions in *Ghaziabad Development Authority vs. Jan Kalyan Samiti* (cited supra) and in *Meerut Development Authority vs. Satvir Singh* (cited supra) and found to be valid and, therefore, it was no more open to the appellants to reiterate the constitutional invalidity all over again on the spacious ground that this Court had not considered some particular arguments. The Learned Senior Counsel were at pains to point out that such course is not permissible in law.

20. Even otherwise, according to the Learned Senior Counsel for the respondents, there was not dearth of power in the State Legislature in introducing Section 17(4) proviso to the Act for the State. It was then contended that the very basis of the judgment in *State of Uttar Pradesh vs. Radhey Shyam* (cited supra) was the invalidity of the State action in passing simultaneously the notification under Section 4 and the declaration under Section 6 of the Act. Considering the language of Sections 2 and 3 of the amending Act, as also considering the proviso provided to Section 17 of the Principal Act, this Court had come to the conclusion that even after applying the urgency clause under Section 17, such exercise of passing the Section 4 notification and Section 6 declaration simultaneously was valid. All that the Amending Act had done was to provide a power to do so by introducing a proviso by the amendment with retrospective effect and, therefore, in reality, the State Government had removed the defect pointed out by this Court of there being no power on the part of the State Government to issue the notification under Section 4 of the Act and declaration under Section 6 of the Act simultaneously. The Learned Senior Counsel further argued that such exercise has been approved of by this Court on number of occasions in number of reported decisions. The Learned Senior Counsel for the State, therefore, submitted that the Amending Act, as passed, was perfectly valid, even apart from the argument that it was found to be valid by the two earlier decisions of this Court. As regards the argument of Shri Trivedi that by the newly added proviso the defect was not cured. The Learned Senior Counsel

A for the State argued that the challenge was based on the phrase, *"a declaration may be made"*. Learned Counsel further contended that the plain reading or the literal construction of those words was not correct for the reason that the Legislature which is the author of Section 6(1) is the Central Legislature B while the proviso which was introduced was by the Legislature of the State of Uttar Pradesh. Learned Counsel argued that both the Legislatures being different, their choice of words are guided by their own objectives and, therefore, the word *"made"* in Section 6(1) of the principal Act and Section 2 of the U.P. C Amendment Act can have different meanings depending upon the objectives which either Legislature had in mind while legislating. The argument went further and suggested that if by giving effect to the plain meaning, the very purpose of the law (the Amendment Act) is defeated or is rendered nugatory or D redundant, it would raise the issue of ambiguity necessitating the purposive construction based not only on text but also the context. Therefore, the Learned Counsel argued that the plain meaning could not be attributed to the concerned words. Leaned Counsel further argued that since the Objects and Reasons appended to the U.P. Amendment Act were clear so E as to save the scheme which were affected by the declaration in *Radhey Shyam's* case (cited supra) such context had to be kept in mind while interpreting the terms. In *Radhey Shyam's* case (cited supra) admittedly the notifications under Sections 4(1) and 6(2) were published simultaneously in the Gazette F clearly implying that the declaration under Section 6(1) was *"made"* before Gazette publication of the notification under Section 4(1). If the object of Amendment Act was to save the schemes affected by *Radhey Shyam's* case (cited supra), which is clear also from the language of Section 3 of the G Amendment Act, then by accepting the plain meaning, the UP Amendment Act would be rendered redundant and, therefore, such interpretation has to be avoided. Learned Counsel, relying on various reported decisions like *D. Saibaba v. Bar Council of India & Anr.* reported in 2003 (6) SCC 186, *Union of India* H *v. Hansoli Devi & Ors.* reported in 2002 (7) SCC 273, *Prakash*

Kumar @ Prakash Bhutto v. State of Gujarat reported in 2005 (2) SCC 409, *High Court of Gujarat & Anr. v. Gujarat Kisan Mazdoor Panchayat & Ors.* reported in 2003 (4) SCC 712, *Padmausundara Rao (Dead)& Ors. v. State of Tamil Nadu & Ors.* reported in 2002 (3) SCC 533, *Smt. Meera Gupta v. State of West Bengal & Ors.* reported in 1992 (2) SCC 494, *M.V. Javali v. Mahajan Borewell & Co. & Ors.* reported in 1997 (8) SCC 72 stressed upon the purposive interpretation or, as the case may be, contextual interpretation and to avoid the literal construction rule. He relied on a few other cases like *State of Tamil Nadu v. Kodai Kanal* reported in 1986 (3) SCC 91, *Union of India & Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* reported in 1990 (1) SCC 277 and *Tirath Singh v. Bachittar Singh & Ors.* reported in AIR 1955 SC 830. The Learned Counsel contended that it was the duty of the Court to reshape the provisions, if need be, by adding or deleting words to make the provisions effective tools to achieve legislative objective and the Courts could not sit with folded hands blaming the draftsmen. As regards the concerned words appearing in the UP Amendment Act, the Learned Counsel suggested that while interpreting, the phrase *"may be made"* should be read as *"may be published in the Gazette".*

21. As regards the further arguments on merits, Learned Senior Counsel and, more particularly, the Learned Senior Counsel appearing on behalf of the LDA pointed out that the challenge to the land acquisitions on merits could not survive, particularly, in view of the fact that in all the land acquisitions, possessions were already taken and the awards were already passed. Both the Learned Counsel pointed out that in case of Ujariyaon Housing Scheme Part-III, the Government had shown its *bona fides* by allowing the notifications therein to lapse and thereby, the interests of the land holders covered in Ujariyaon Housing Scheme Part-III were safeguarded, particularly, because that scheme had not been completed. However, Ujariyaon Housing Scheme Part-II was long back completed and could not be rejuvenated now, finding fault with the process

of land acquisition covered between Section 4 and Section 18 thereof. Learned Counsel further pointed out that the delay in filing the writ petitions is also liable to be taken into account since it is likely to cause prejudice to those for whom the schemes were framed. As regards the urgency clause, Learned Counsel urged that the land was very urgently required for urban housing and after the acquisition there has been large scale development and utilization on the acquired land and thousands of constructions have been made and the schemes have been evolved leading to allotments to third parties. Now at this stage, if the notifications were to be quashed it would seriously prejudice the interest of the large number of people and the High Court was right in dismissing the Writ Petitions on this ground. The Learned Counsel further argued that in this case it must be noted that there are no allegations of *mala fides* or any evidence in support of it. Relying on a judgment in *State of U.P. V. Pista Devi* reported in 1986 (4) SCC 251 the Senior Counsel pointed out that judicial notice has been taken by the High Court of the fact that the housing development and planned developments are matters of great urgency and obviate Section 5A enquiry. In short, the argument was that the housing development was itself in urgency justifying the invocation of the urgency clause. It was then pointed out by the Learned Senior Counsel that the High Court had looked into the record and found that there was sufficient material before the State Government so as to invoke the urgency clause. It was also urged that there was no discrimination in between Ujariyaon Part-II Scheme and Ujariyaon Part- III Scheme as the factual situation was different. It was further argued that the argument pressed on Section 17 (3A) i.e. non-payment of compensation before taking possession cannot be held fatal to the acquisition as the Land Acquisition Act does not so provide, though it has so provided in case of Section 11 and Section 11A read with Section 23 (1A) of the Land Acquisition Act. Besides, the use of word "shall" in Section 17 (3A) is directory and not mandatory as held in *S.P. Jain v. State of U.P.* reported in 1993 (4) SCC 369, *Nasiruddin & Ors. v. Sita Ram*

Agrawal reported in 2003 (2) SCC 577, *State of U.P. v. Manbodhan Lal Srivastava* reported in 1957 SCR 533. It was also pointed out that the rulings relied on by the appellants covering this aspect, namely, *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors.* reported in 2005 (7) SCC 627 and *Union of India & Ors. v. Mukesh Hans* reported in 2004 (8) SCC 14 were not applicable and were distinct.

22. The appeals were also opposed by respondent No. 9 Avadh School who supported the arguments on behalf of the State of Uttar Pradesh and LDA. The respondent No.9 Avadh School pointed out that the land was granted to it by LDA for 99 years dated 01.12.1995 whereas the Writ Petition challenging the same bearing No. 2220 (L/A)/1996 from which the Civil Appeal No. 2650/1998 arose was filed only later on, in the year 1996. It was pointed out that the respondent-Avadh School had already paid the entire amount due to the LDA. It was also pointed out that the total constructed area on the land is 26,000 square feet. It was urged that considering the laudable objects of the scheme, the school was developed and further considering its progress in the matter of infrastructure and the standard of education, it would be too late to cancel the acquisition of land a portion of which was allegedly allotted by the LDA.

23. Learned Counsel on behalf of LDA referred to the history of case law and reiterated upon the validity of the UP Act No.5 of 1991. The Learned Counsel also reiterated that the declaration under Section 6 (1) was different from a published declaration. The contention, therefore, was that considering the scheme of the Act, the declaration referred to in Section 6 is public or notified declaration. Taking that clue, it is argued that there will be no difficulty if Sections 2 and 3 of the Validating Act are properly understood. It was argued that the Validating Act removes the defect pointed out in the case of *Radhey Shyam* (cited supra) and also the validating provisions and,

A therefore, it is not a case of simplicitor overruling of the judgment of the Supreme Court.

24. Learned Counsel for LDA also opposed reference to Larger Bench. It was further pointed that since the schemes of Ghaziabad Development Authority (GDA) and Meerut Development Authority (MDA) were already upheld, the dispute in Ujariyaon Part-II scheme of LDA involved only 150 bighas whereas the notification pursuant to Ujariyaon Part-II Scheme involved 1776 acres of land and barring the appellants, everybody had accepted this scheme. Learned Counsel seriously disputed the claim in Tika Ram's case and contended that the landowners had already accepted the compensation. In case of Pratap Sahakari Grih Nirman Samiti Ltd., it was pointed out that the sale agreement in that case was that there was no passing of consideration and even transfers were subsequent to Section 4 notification. Therefore, it was contended that the sale deed and the agreement of sale were created to take advantage of the policy decision of the State for giving back 25 per cent of the developed land to the Society for its members. The *bona fides* of the Pratap Sahakari Grih Nirman Samiti Ltd. were, therefore, seriously questioned by the Counsel. It was also pointed out that the land involved in this case was already taken over in the year 1985 and the same also stood utilized inasmuch as the whole township had come up thereupon. Learned Counsel also relied on the principle of *staire decisis* insofar as the validity of the UP Amendment Act is concerned.

25. Learned Counsel further argued that there was no question of future operation of the proviso as it was not concerned in this case. It was pointed out that only two appeals of Ujariyaon Part-III Scheme were concerned, with that question. However, in that case the notification was published in the year 1991 and the Section 6 declaration was signed and published in the year 1992. Therefore, there was no question of simultaneous publication and, therefore, the issue of reference

to the Larger Bench was a non-issue and could not be gone into. It is pointed out that the case of *Meerut Development Authority* (cited supra) was the complete answer to the validation aspect as that issue had arisen directly. It was further argued that there was no question of discriminating between the Ujariyaon Part-II Scheme and Part-III Scheme, and, therefore, there was no question of breach of Article 14 of the Constitution of India. It was argued that in Ujariyaon Part-II Scheme, the award was made by the Collector within the time prescribed, so there was no question of discrimination between Ujariyaon Part-II and Part-III Schemes where the award was not made within time. Therefore, it was lapsed and hence, there was necessity of a fresh notification. As regards the question of validity of Section 17 of the Act, it was mainly in Tika Ram's appeal, it was pointed out by Shri Qamar Ahmad, Learned Counsel that the reference to the decision in *Anwar Ali Sarkar v. State of U.P.* reported in AIR 1952 SC 75 and *State of Punjab v. Gurdial Singh* (cited supra) was not called for. In support of his argument Shri Dwivedi pointed out that *Anwar Ali Sarkar's* case (cited supra) was distinguished in the later decisions of *Kathi Ranning Rawat v. State of Saurashtra* reported in 1952 SCR 435 and *Kedar Nath Bajoria v. State of West Bengal* reported in 1953 SCR 30. It was pointed out that it was now crystallized law that if the Legislature indicates the policy which inspired it and the object which it seeks to attain then it can leave selective application of the law to be made by the Executive Authority. Learned Counsel relied on *R.K. Dalmia v. S.R. Tendolkar* reported in 1959 SCR 279 and *In re: Special Courts Bills,* 1978 reported in 1979 (1) SCC 380. It was pointed out that the criteria of "urgency" and "emergency" in the instant case have been prescribed in the context of the exercise of power of eminent domain and this power under the Constitution of India can be exercised only for public purpose.

26. Learned Counsel argued that the process of acquisition begins only when there is a public purpose and in such situation the effectuation of public purpose does not brook

A any delay and requires quick implementation, then alone the power under Section 17 (1) read with Section 17 (4) can be exercised. The Learned Counsel firmly admits that the criterion of "emergency" is still narrower category and there is sufficient guideline in sub-Section (2) of Section 17. Therefore, the B Counsel argues that the true criteria being clear guidelines, they are not arbitrary. It was further argued that there is no discretion in the matter of applied urgency clause to these acquisitions in question. Carrying the same argument further, Learned Counsel firmly admitted that Section 5A is a protection to the C land acquisition and should not be lightly dispensed with. He also admitted that there are cases where it was held that the mere existence of urgency is not enough and State Government must independently apply its mind to the need of dispensing with Section 5A enquiry. Further it is pointed out that the High Court had considered this aspect in details and recorded the D finding that the land was acquired for planning and development of housing accommodations. It was pointed out that the High Court had also looked into the records and it found that there was sufficient material for forming opinion that the land was needed urgently for developing a new township known as E Gomti Nagar. Learned Counsel also pointed out to the finding of the High Court to the effect that the township had already come into the existence and the houses were allotted to thousands of people.

F 27. Relying on *Keshav Das v. State of U.P.* reported in 1995 (6) SCC 240, Learned Counsel urged that it has been held in the above ruling that where the possession of the land was already taken during the acquisition process and construction had been made and completed, the question of G urgency and exercise of duty under Section 17 (4) of the Act could not be raised at a belated stage. Therefore, Learned Counsel insisted that the situation is no different in the present case. Further relying on *Aditya Bhagat v. State of Bihar* reported in 1974 (2) SCC 501 and *Om Prakash v. State of* H *U.P.* reported in 1998 (6) SCC 1, Learned Counsel urged that

as compared to the total acquisition, the appellants' land holding is limited to only 150 bighas of land and in such circumstances the Court should not block the acquisition. As regards the question of non-payment of compensation under Section 17 (3) and (3A) of the Act, Learned Counsel pointed out that the documents filed in support of their plea were never filed before the High Court whereas this Writ Petition was pending for as long as 13 years and even after filing the special leave petition, it was pending for about 10 years. The documents came to be filed only after 8 years. Since the document involved question of fact, applications made in this behalf, namely, I.A. Nos. 4-5 of 2006, were liable to be rejected. It was pointed out that the documents filed along with the said I.As. were not authenticated and verified by the appellant. The sources from which the documents emanated were also not indicated. It was further pointed out that sub-Section (3) of Section 3(3A) of Section 17 are not attracted to a case where the power under Section 17 (4) has been exercised and Section 5A has been dispensed with. It is again pointed out that Section 17 (3) and (3A) do not provide consequences of non-tendering and non-payment of estimated compensation in terms of the said provision and the Act does not say that the if possession and development have been taken and the development work has been done without compliance of the provisions then the taking of possession and the work done would become illegal. Learned Counsel further pointed out that all that it provided for was the payment of interest at the rate of 9 per cent per annum on the amount of compensation where compensation is not paid or deposited on or before taking possession. In support of this argument the Counsel relied on *S.P. Jain v. State of U.P.* reported in 1993 (4) SCC 369 and *State of Maharashtra v. Manubhai Pragaji Vashi & Ors.* reported in 1996 (3) SCC 1.

28. On the basis of these rival claims we shall now proceed to decide the issues raised in this appeal, which are as follows.

A **I. Constitutional Validity of Amendment Act 5/1991**

29. The basic issue raised is regarding the Constitutional validity of the Land Acquisition Act (Amendment Act No. 5 of 1991) (hereinafter called, "the Amending Act"). In this case the notification under Section 4 read with Section 17 (4), as it stood then, was made on 04.12.1984. This notification was published in the Gazette on 08.12.1984. It is claimed that the declaration under Section 6 of the Act was made on 04.12.1984 and the said declaration was published in the Gazette on 08.12.1984. It was found that simultaneous notification under Sections 4 and 6 of the Act could not be made and, therefore, the acquisitions were bad, as held in *Kashmira Singh vs. State of U.P.* reported in AIR 1987 Allahabad 113 (II/1). *Kashmira Singh's* judgment was upheld by this Court. It was, therefore, that an Ordinance came to be passed on 27.12.1989 by U.P. Act No. 32 of 1990 which ultimately became an Act on 27.02.1991 being UP Act No.5 of 1991. The Statement of Objects and Reasons made reference to the aforementioned judgment in the *Kashmira Singh's* case (cited supra) and provided that in large number of cases, declarations under Sections 6 were made simultaneously with publication of notification under Section 4 and the said proceedings were likely to be held void and, therefore, in order to save the scheme, it was decided to amend the Act for validating the proceedings in respect of the notification under Section 4 publication on or after 24.09.1984 but before 11.01.1989. The amendment of Section 17 was brought on the legal anvil by way of a proviso to sub-section (4) thereof which ran as under:

> "provided that where in case of any land notification under Section 4(1) has been published in the official Gazette on or after 24.09.1984 but before 11.01.1989 and the appropriate Government has under this sub-Section direction that proviso of Section 5A was not applied, a declaration under Section 6 in respect of the land may be made either simultaneously at a time after the publication

in the official Gazette of the notification under Section 4(1)" A

30. The first objection which was raised by Shri Trivedi, Learned Senior Counsel for the appellants, as well as, the other Learned Counsel was that it was merely to overrule the decision of this Court in the aforementioned case of *Kashmira Singh* (cited supra) or, as the case may be, *State of U.P. v. Radhey Shyam Nigam* (cited supra) which matter was also disposed of along with *Kashmira Singh's* case (cited supra) and, therefore, the State Legislature could not do so. This argument is completely answered in *Meerut Development Authority vs. Satbir Singh* reported in 1996 (11) SCC 462. This Court was considering this very proviso of Section 17 (4) inserted by Land Acquisition [U.P. Amendment and Validation Act, 1991 [UP Act No. 5 of 1991] and relying upon the judgment reported as *GDA vs. Jan Kalyan Samiti, Sheopuri* reported in 1996 (2) SCC 365, the Court took the view in paragraph 10 that when this Court had declared a particular statute to be invalid, the Legislature had no power to overrule the judgment. However, it has the power to suitably amend the law by use of proper phraseology removing the defects pointed out by the Court and by amending the law inconsistent with the law declared by the Court so that the defects which were pointed out were never on statute for enforcement of law. Such an exercise of power to amend a statute is not an incursion on the judicial power of the Court but as a statutory exercise on the constituent power to suitably amend the law and to validate the actions which have been declared to be invalid. The Court had specifically referred to the aforementioned judgment of *State of UP. v. Radhey Shyam Nigam* (cited supra) as also *Somwanti & Ors. v. State of Punjab* reported in 1963 (2) SCR 775. The Court also referred to the judgment reported as *Indian Aluminium Co. 7 Ors. v. State of Kerala & Ors.* reported in 1996 (7) SCC 637 and referred to the nine principles of legislation referred to in this case, where principle Nos. 8 and 9 ran thus:

"[8] In exercising legislative power the Legislature by

A mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The Legislature can change the character of the tax or duty form impermissible to permissible tax but the tax or levy should answer such character and the Legislature is competent to recover the invalid tax validating such a tax or removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorize its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the Court or the direction given for recovery thereof.

[9] The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same."

31. As regards the proviso in question, the Court firstly observed in paragraph 13 and 14 as under:

"13. It is not in dispute that the State Amendment Act 5 of 1991 was enacted and reserved for consideration of the President and received the assent of the President on 26.02.1991 and the Act was published in the Gazette n 27.02.1991. It is to be seen that as regards simultaneous publication of the notification and the declaration in respect of acquisition of the land for public purpose exercising the power of eminent domain in certain situations where possession was needed urgently, depending upon the local needs and the urgency, Government requires such power. Consequently, the State Legislature thought it appropriate that despite the enactment of the Amendment Act 68 of 1984 amending Section 17(4), the State needed further amendment. Resultantly, the UP Amendment Act 5 of 1991 came to be made and it was given retrospective effect from the date the Amendment Act 68 of 1984 has come into force, i.e. 24.09.1984.

14. It is true that the proviso was not happily worded. But a reading of it would clearly give us an indication that the proviso to sub-Section (4) introduced by Section 2 of the Amendment Act 5 of 1991 would deal with both the situations, namely, the notifications published on or after 24.09.1984 but before 11.01.1989 but also the declaration to be simultaneously published subsequent thereto. The literal interpretation sought to be put up by Shri Pradeep Misra would defeat the legislative object. Therefore, ironing out the creases we are of the view that the proviso applies not only to the notifications and declarations simultaneously published after the date of coming into force of the Amendment Act 68 of 1984 but also to *the future* declarations as well. Thus, it could be seen that the proviso would operate prospectively and

A retrospectively from 24.04.1984 (sic 24.9.1984) applying to the previous notifications and declarations but also to the notification and declaration to be published subsequently."

B **Further in paragraph 16, the Court held:**

"16. It is seen that Section 3 of the Amending Act No.5 of 1991 seeks to validate the illegal declarations made simultaneously with the publication of Section 4 notification and in some cases even prior to the C publication of Section 4 notification; it also seeks to validate certain acquisitions envisaged therein. This validation is not illegal."

32. In the same paragraph the Court found that the D amendment was not illegal merely because it was brought during the pendency of matter before this Court. The Court also did not find anything wrong with the retrospective operation of the Amendment Act. The Court further in paragraph 19 observed:

E "It is seen that where large extent of land was acquired mere existence of some houses even if they were constructed may be according to the rules or may not be according to the rules; the exercise of power under Section 17 (4) by the Government dispensing with the enquiry does F not become invalid, when there was urgency to take possession of the acquired land. It is now settled legal position that the acquisition for planned development of housing scheme is also an urgent purpose as laid down by this Court in *Aflatoon v. Lieutenant Governor of Delhi,* G *State of UP v. Pista Devi and in recent judgment of this Court .in State of Tamil Nadu v. L. Krishnan.* In the light of settled legal position the acquisition for housing development is an urgent purpose and exercise of the power under Section 17(4) dispensing with the enquiry H under Section 5A is not invalid."

33. In fact, this judgment is a complete answer to the questions raised by Shri Trivedi, Learned Senior Counsel for the appellants. It holds Section 3 to be valid and also holds that it had cured the defect. The judgment also takes care of the contention that there was no necessity to raise the urgency clause in these acquisitions and the exercise of raising the urgency clause was not *bona fide*. Various other judgments were referred by Shri Trivedi which we have included in the earlier part of the judgment like *S.R. Bhagwat v. State of Mysore* (cited supra), *ITW Signode India Ltd. v. Collector of Central Excise* (cited supra), *Bakhtawar Trust v. M.D. Narayan & Ors.* (cited supra), *Madan Mohan Pathak v. Union of India* (cited supra), *Indira Gandhi v. Raj Narayan* (cited supra), *Virender Singh Hooda v. State of Haryana* (cited supra), *I.N. Saxena v. State of Madhya Pradesh* (cited supra) and *Janpad Sabha v. C.P. Syndicate* (cited supra). In view of the specific questions of this very act having been considered in *Meerut Development Authority's* case (cited supra) there would be no necessity to go into the principles laid down in aforementioned cases in details here.

34. The next argument of Shri Trivedi, Learned Senior Counsel was that the Amending Act did not remove the defect. In our opinion, the contention is incorrect in view of the fact that this question was considered and concluded in *Meerut Development Authority's* case (cited supra). The same applies to the further question challenging Section 3 of the Amending Act wherein it is provided that the notification would not be invalid on the ground that declaration under Section 6 of the Act was published on the same day on which the notification under Section 4 of the Act was published or on any other date prior to the date of publication of notification under Section 4 of the Act. We have already pointed out that this Section was also considered specifically in paragraph 7 where it is quoted. Further in paragraph 16 which we have quoted, this question is specifically answered. We, therefore, need not dilate on that issue here.

35. At this juncture, we must note the argument raised in the present case that the declaration under Section 6 of the Act was made on 04.12.1984 but was published on 08.12.1984. Therefore, in reality, the proviso did not actually cure the defect. It is because of the wording used to the effect "*a declaration under Section 6 in respect of the land may be made either simultaneously with or at any time after the publication in the official Gazette of the notification under Section 4.*"

36. Learned Counsel pointed out that in the present case, Section 6 declarations were made earlier to the publication of notification under Section 4 of the Act. They further pointed out in proviso again the wording used is *"declaration may be made."* Learned Counsel, therefore, argued that even reading Sections 2 and 3 of the Amending Act, the defect is not cured as the proviso empowers to "make a declaration" and does not refer to "notification of declaration" under Section 6(2). The Learned Counsel, therefore, intended that it is not permissible to supply words (*casus omissus*) to the proviso and, therefore, if the proviso is read as it is, then it conflicts with the language of Section 3 which speaks not of declaration, but "publication of Section 6 notification". We do not think that the contention is correct. In paragraph 16 of *Meerut Development Authority's* case (cited supra), this Court considered Section 3 and observed that:-

> "it is seen that Section 3 of the Amending Act No.5 of 1991 seeks to validate the illegal declarations made simultaneously with the publication of Section 4 notification *and in some cases even prior to the publication of Section 4 notification.*"

Thus, even a situation where Section 6 declaration was made prior to the publication of notification under Section 4, was held to be covered and cured under Section 3, the validity of which was confirmed by this Court. It would, therefore, be futile to argue that the Act did not

cure the defect and on that account, the provision is bad. In our opinion, added proviso would have to be read along with and in the light of Section 3 of the amending Act which clearly envisages a situation of the declaration under Section 6 being *published in the official Gazette on the same date on which notification under Section 4 sub-section (1) of the principal Act was published in official Gazette or on any day prior to the date of publication of such notification as defined in Section 4 sub-section (1) of the principal Act* (emphasis supplied). Therefore, what is contemplated in proviso is the "publication" of notification. Since this position was not happily obtained in the proviso, the Court in *MDA's* case (cited supra), in paragraph 14, commented that proviso was not happily worded.

37. It must be noted here that in *Somwanti's* case (cited supra), as also in *Mohd. Ali & Ors. vs. State of U.P. & Ors.* reported in 1998 (9) SCC 480 decided by 3 Judge Bench, identical situation was obtained on the facts where there was a simultaneous publication of the Section 4 notification along with the publishing of Section 6 declaration. The Court observed in *Mohd. Ali's* case (cited supra):

> "And, therefore, in relation to the State of U.P., it is now settled law that when the State exercises power of imminent domain and in exercise of the power under Section 17 (4) dispensing with the enquiry under Section 5A to acquire the land under Section 4 (1), the State is entitled to have the notification under Section 4(1) and the declaration under Section 6 simultaneously published so as to take further steps as required under Section 9 of the Act....."

38. In that case, the notification under Section 4(1) of the Act was published on 12.10.1974 whereas the declaration under Section 6 of the Act was dated 28.09.1974. However, it

A was published along with Section 4 notification simultaneously. This being the factual situation the argument regarding the prior declaration under Section 6 of the Act must fall to the ground.

39. We are also of the opinion that the word *'a declaration'* in proviso to Section 17 (4) as inserted by the Validating Act would mean published or a notified declaration under Section 6 (2) of the Act when it is read in the light of Section 3 which refers to and validates not merely *"a declaration"*, but the publication thereof in official Gazette. As such we do not find anything wrong even if the declaration is prior in time and its notification is simultaneous with the notification under Section 4 of the Land Acquisition Act. The two authorities cited above, namely, *Ghaziabad Development Authority's case and Meerut Development Authority's* case have taken the same view and we are in respectful agreement with the same.

40. It was then argued that Section 17 (4) of the Act as amended by the Amending Act is *ultra vires* of the Articles 245 and 246 of the Constitution as it nearly overrules the decision of this Court in *State of UP v. Radhey Shyam Nigam* (cited supra). We have already dealt with this issue and pointed out that this question was specifically dealt with in the two judgments of *Lucknow Development Authority and Meerut Development Authority* (cited supra). A very strong reliance was placed on *Madan Mohan Pathak v. Union of India* reported in 1978 (2) SCC 50 by Shri Trivedi, Learned Senior Counsel for the appellants. In *Meerut Development Authority's* case (cited supra), the aforementioned decision in *Madan Mohan Pathak's* case (cited supra) has already been considered in paragraph 11 of that judgment. Reliance was also placed on the judgment in *Bakhtawar Trust v. M.D. Narayan & Ors.* reported in 2003 (5) SCC 298. Learned Counsel for the appellant relied on paragraphs 14 to 16. In our opinion, paragraph 14 was completely against the appellants wherein the State Legislature's power to make retrospective legislation and thereby validating the prior executive and legislative acts

retrospectively is recognized. Of course, the same has to be done only after curing the defects that led to the invalidation. We respectfully agree with the propositions laid down in paragraphs 14, 15 and 16 thereof. In *Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality* reported in 1969 (2) SCC 283, which is referred to in paragraph 16 of the decision, it is stated that:-

> "the Legislature may follow any one method or all of them and while it does so, it may neutralize the effect of earlier decision of the Court which becomes ineffective after the change of law".

It is further stated therein that the validity of the validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defect which the Courts had found in the existing law. The Amending Act has clearly passed these tests. All the relevant cases on this subject have been considered in this judgment. Again in *ITW Signode v. Collector of Central Excise* reported in 2004 (3) SCC 48 (cited supra), our attention was invited by Shri Trivedi to paragraphs 44 to 46 of this decision which dealt with the question of validity of validating Act and reference is made to *Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality* reported in 1969 (2) SCC 283 and *M/s. Ujagar Prints and Others (II) vs. Union of India and Others* reported in 1989 (3) SCC 488. There is nothing in these paragraphs which would go counter to the expressions made in *MDA's* case (cited supra) or the finding that the present Amending Act has removed the defects pointed out *in Radhey Shyam's* case (cited supra). Of course, this case pertains to the taxing statutes. We do not find anything contrary in the other decisions, namely, *S.R. Bhagwat's* and *Indira Gandhi's* case (both cited supra) to which we have already made reference. The other cases, namely, *Virender Singh Hooda's* case, *I.M. Saxena's* case, and *Janpad Sabha's* case (all cited supra) need not be

considered in view of what we have held above and further there is nothing in those cases which would make us take another view of the matter. We, therefore, do not agree with the contention raised by Shri Trivedi that amended Section 17 (4) is *ultra vires* as it does not remove the defects That question is closed by *MDA's* case (cited supra). We also do not agree that it merely nullifies the judgment in *Radhey Shyam's* case (cited supra).

41. It was further argued by Shri Trivedi that the Amending Act is *ultra vires* the Article 300 A of the Constitution inasmuch as it deprives the petitioner of higher compensation as may be admissible pursuant to the fresh acquisition proceedings after 1987. Three cases have been relied upon, namely, *State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors.* reported in 1983 (2) SCC 33, *T.R. Kapoor & Ors. v. State of Haryana & Ors.* reported in 1986 Suppl. SCC 584 and *Union of India v. Tushar Rajan Mohanty* reported in 1994 (5) SCC 450, wherein it is held that the Legislature cannot create prospective or retrospective law so as to contravene the fundamental rights and that the law must satisfy the requirements of the Constitution. We have absolutely no quarrel with that, however, we fail to understand as to how it applies here. For establishing their rights, the appellants would have to establish that the State Government was required, in law, to make a fresh acquisition and could not continue with the old one. We have already held that we are not convinced by the argument that there was anything wrong with the old proceedings which came to be validated by the Amending Act. We have also found that the Amending Act was a perfectly valid legislation. In that view, the challenge must fail.

42. The second decision relied upon is *T.R. Kapoor & Ors. v. State of Haryana & Ors.* reported in 1986 Suppl. SCC 584. This case has been relied upon for the contents in paragraphs 5 and 16 wherein it has been held that benefits acquired under the existing rules cannot be taken away by an amendment with

retrospective effect. The present case is not such a case. No benefits could be said to have been accrued in favour of the appellants herein which have been taken away.

43. To the same effect, is the third decision reported as *Union of India v. Tushar Rajan Mohanty* reported in 1994 (5) SCC 450. We do not think that the case is relevant to the present issue.

44. The further argument by the Shri R.N. Trivedi, Learned Senior Counsel appearing on behalf of the appellants herein was about the validity of Section 3 of the Validating Act, providing that a notification would not be invalid on a ground that a declaration under Section 6 of the Act was published on the same date, on which the notification under Section 4 of the Act was published or any other day prior to the date of publication of the notification under Section 4 of the Act. The contentions made in this behalf have already been considered by us in the earlier part of the judgment, where we held that the relevant date would be that of notification under Section 4 of the Act or the notification of declaration under Section 6 of the Act and not the mere declaration under Section 6 of the Act. We have already held with reference to the earlier decisions in this behalf that this is not *res integra* and is partly covered in *Mohd. Ali's* case (cited supra). In *Mohd. Ali's* case (cited supra), a reference was made to *Khadim Hussain's* case (cited supra), where it has been held that a notification under Section 6(2) amounts to the evidence of declaration, which is in the form of an order. The notification is the publication of such declaration and the proof of its existence. Our attention was invited to another reported decision of this Court in *Sriniwas Ramnath Khatod vs. State of Maharashtra & Ors.* reported in 2002(1) SCC 689 to the effect that publication under Section 6(2) is a ministerial act. What is tried be impressed is that the relevant date should only be the declaration and not its publication. We have already dealt with this subject earlier, particularly relying on *Mohd. Ali's* case (cited supra) and the

A *MDA's* case (cited supra). In view of the subsequent decisions, we are not in a position to accept the argument that Section 3 itself, providing for the eventuality contained therein, is in any way invalid. We, therefore, reject the argument. The Learned Senior Counsel also referred to the decision in the case of
B *Eugenio Misquita & Ors. vs. State of Goa & Ors.* reported in 1997(8) SCC 47, in which reference was made to the decision in the case of *Krishi Utpadan Mandi Samiti vs. Makrand Singh & Ors.* reported in 1995(2) SCC 497. It must be immediately pointed out that both these decisions would not be
C relevant to the present controversy, as in these decisions, what was being considered was as to which would be the last date under Section 6(2) of the Act for the *purposes of Section 11A.* The controversy involved in the case of *Eugenio Misquita & Ors. vs. State of Goa & Ors.* (cited supra), as well as in the
D case of *Krishi Utpadan Mandi Samiti vs. Makrand Singh & Ors.* (cited supra) is entirely different than the one involved in this matter. Those two cases in *Eugenio Misquita & Ors. vs. State of Goa & Ors.* (cited supra) and *Krishi Utpadan Mandi Samiti vs. Makrand Singh & Ors.* (cited supra) would not be
E apposite.

45. A further reference was made by the Learned Senior Counsel for the appellants to the decision in the case of *Mohan Singh & Ors. vs. International Airport Authority of India & Ors.* reported in 1997(9) SCC 132 and *S.H. Rangappa vs. State*
F *of Karnataka & Anr.* reported in 2002(1) SCC 538. In the second matter, a reference was made to the larger Bench, as the Court was of the opinion that the view taken in two decisions in *Eugenio Misquita & Ors. vs. State of Goa & Ors.* (cited supra) and *Krishi Utpadan Mandi Samiti vs. Makrand Singh*
G *& Ors.* (cited supra) was contrary to the decision in *Khadim Hussain's* case (cited supra). As regards the case of *Mohan Singh & Ors. vs. International Airport Authority of India & Ors.* (cited supra), the Learned Senior Counsel relied on the observations made in paragraphs 13 and 16. In paragraph 13,
H it is stated there that:-

"What is needed is that there should be a gap of time of at least a day between the publication of the notification under Section 4(1) and of the declaration under Section 6(1)." A

Further in paragraph 16, it is observed that:- B

"What is material is that the declaration under Section 6 should be published in the Gazette after the notification under Section 4(1) was published, i.e., after a gap of at least one day." C

It will be seen that a reference is made to the decision in the case of *Radhey Shyam Nigam* (cited supra) in this paragraph, as also to the simultaneous publication of notification under Section 4 and the declaration under Section 6 of the Act. A reference was also made to Section 17(4), as also Section 17(1) A. It is significant to note that later on when the question of validity of the Validating Act came before this Court [which validating provision and proviso to Section 17 (4) were not available in *Mohan Singh's* case (cited supra), this Court upheld the validity of the Validating Act, refuting the argument that the Validating Act was only for the purpose of invalidating the decision in *Radhey Shyam Nigam's* case (cited supra). In our opinion, once this Court upheld the validity and once we have also approved of the Constitutional validity of Validating Act, all these questions must lose their relevance. We do not think that decision in the case of *Mohan Singh & Ors. vs. International Airport Authority of India & Ors.* (cited supra) can be of any help to the appellants in the light of the facts of the present case. Decision in *S.H. Rangappa vs. State of Karnataka & Anr.* reported in 2002(1) SCC 538, which is a decision after the reference was made to the larger Bench was also referred before us by the Learned Senior Counsel. The question, which fell for consideration in that decision was whether the notification under Section 6(2) of the Act should be published within the period prescribed by the proviso to Section 6(1) of the Act. The Court ultimately upheld the decision D E F G H

A in *Khadim Hussain's* case (cited supra) and observed that in the decisions in *Eugenio Misquita & Ors. vs. State of Goa & Ors.* (cited supra) and *Krishi Utpadan Mandi Samiti vs. Makrand Singh & Ors.* (cited supra), the binding decision of *Khadim Hussain's* case (cited supra) was not referred. It was B also observed that even otherwise in both these cases, declaration under Section 6 of the Act had been published within one year of the notification under Section 4 of the Act and the question in form, in which it has arisen in *S.H. Rangappa's* case (cited supra), did not arise there. We would C like to say the same thing in respect of the decision in the case of *S.H. Rangappa's* case (cited supra) that the question which we have to consider in the present case, as also the facts, are entirely different than the ones in that case. Once Section 3 of the Validating Act came validly on the statute book, there will be no question of any further consideration. The decision in the D case of *S.H. Rangappa's* case (cited supra) turns essentially on the question of limitation. In the decision in *S.H. Rangappa's* case (cited supra), the law laid down in *Khadim Hussain's* case (cited supra) has been approved. Once we give the interpretation that we have given to Section 3 and the proviso E supplied by Section 2, the things become clear. We are, therefore, of the clear opinion that decision in *S.H. Rangappa's* case (cited supra) also does not help the appellants herein in view of the different factual scenario, as also because the question of validity of the Validating Act is entirely different from F the question of limitation.

46. The Learned Senior Counsel further argued that we should make a reference to the larger Bench and has formulated the questions as under:-

G

"1. Whether the proviso to Section 17(4) inserted by the Amending Act cures the defect pointed out in Radhey Shyam only for the period between 24.9.1984 and 11.1.1989?

H

2. Whether "declaration" mentioned in the aforesaid

proviso refers to it as understood by Section 6(1) or Section 6(2)? A

3. Whether the validation provision in Section 3 of the Amending Act goes beyond the newly inserted proviso inasmuch as:- B

(h) it cures the defect of "publication" of the declaration and not making of the declaration.

(i) it validates publication of the declaration under Section 6 prior and subsequent to the date of the publication under Section 4(1) of the principal Act. C

4. Whether the distinction between declaration simpliciter in Section 6(1) and a published declaration under Section 6(2), pointed out in Khadim Hussain (4 Judges' decision) and followed by 3 Judges' decision in *Rangappa's* Case was ignored in *Meerut Development Authority's* case? D E

5. It would appear that what is cured is not validated and what it validates is not cured.

6. Whether in view of the admitted incapacity to offer, tender and pay the compensation under sub-Section (3) and (3A) of Section 17, the notification under Section 17(4) becomes void? F

47. We do not think that there is any need to refer any of the questions raised above in view of our observations in the earlier paragraphs, as the schemes of Ghaziabad G Development Authority and Meerut Development Authority have already been upheld by this Court in the earlier decisions. Secondly, the basic objective of the Validating Act was to protect the scheme during the period 1984-89 only and subsequently, there has been no such case of simultaneous H

A notification in the State of Uttar Pradesh for the last two decades, as stated by the Learned Senior Counsel appearing on behalf of the LDA. Even in respect of Ujariyaon Housing Scheme Part-III, the declaration under Section 6 of the Act is published much after the publication of notification under
B Section 4 of the Act. Thirdly, as has been done in *MDA's* case (cited supra) we have held that Section 17 (4) proviso has to be read together with and in the light of Section 3 of the amending Act and not *de hors* of each other in view of the statement of objects and reasons of that Act. It must be realized
C that this Court ironed the creases in the proviso added to Section 17(4) in *MDA's* case (cited supra). Fourthly, in one of the appeals before us in Civil Appeal Nos. 2116-2118 (*Tika Ram & Ors. vs. The State of U.P. & Ors.*) represented by Shri Qamar Ahmad, Learned Counsel, the land owners have already
D accepted the compensation, while in the matter of Civil Appeal No. 3415 of 1998 (*Pratap Sahkari Grih Nirman Samiti Ltd. vs. State of Uttar Pradesh & Ors.*), the title of Society itself has been found to be infirm and not established as per the findings of the High Court. It is obvious that registration of the Sale Deed in respect of the Society is subsequent to the notification
E under Section 4 of the Act and, therefore, inconsequential. The agreements in favour of that Society do not show that there was any consideration passed. Again, the possession of the land has already been taken, as claimed by the LDA, way back in the year 1985 for which there are documents like Panchanama
F and the whole township has now come up, persons have built their houses. As far as the sixth point of reference is concerned, we would deal with the same separately in this judgment as we do not agree with the proposition made in that point. Lastly, as held in the cases of *Mishri Lal (Dead) by L.Rs. vs. Dhirendra*
G *Nath (Dead) by L.Rs.* reported in 1999 (4) SCC 11 and *Central Board of Dawoodi Bohra Community vs. State of Maharashtra* reported in 2005(2) SCC 673, the principle of *Stare Decisis* would apply. In this case, their Lordships referred to observations by Lord Reid and quoted seven principles
H regarding the binding precedent. They are:

"(1) The freedom granted by the 1966 Practice Statement ought to be exercised sparingly (the 'use sparingly' criterion) (*Jones vs. Secretary of State for Social Services,* 1972 AC 944, 966).

(2) A decision ought not to be overruled if to do so would upset the legitimate expectations of people who have entered into contracts or settlements or otherwise regulated their affairs in reliance on the validity of that decision (the 'legitimate expectations' criterion) (*Ross Smith vs. Ross-Smith,* 1963 AC 280, 303 and *Indyka vs. Indyka,* (1969) AC 33, 69).

(3) A decision concerning questions of construction of statutes or other documents ought not to be overruled except in rare and exceptional cases (the 'construction' criterion) (Jones case (supra))

(4) (a) A decision ought not to be overruled if it would be impracticable for the Lords to foresee the consequence of departing from it (the 'unforeseeable consequences' criterion) (Steadman vs. Steadman, 1976 AC 536, 542C). (b) A decision ought not to be overruled if to do so would involve a change that ought to be part of a comprehensive reform of the law. Such changes are best done 'by legislation following on a wide survey of the whole field' (the 'need for comprehensive reform' criterion) (*Myers vs. DPP,* 1965 AC 1001, 1022; *Cassell & Co. Ltd. vs. Broome,* 1972 AC 1027, 1086; *Haughton vs. Smith,* 1975 AC 476, 500).

(5) In the interest of certainty, a decision ought not to be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step

A (the 'precedent merely wrong' criterion) (*Knuller vs. DPP,* 1973 AC 435, 455).

(6) A decision ought to be overruled if it causes such great uncertainty in practice that the parties' advisers are unable to give any clear indication as to what the courts will hold the law to be (the 'rectification of uncertainty' criterion), (*Jones* case (supra)); *Oldendorff (E.L.) & Co. GamBH vs. Tradax Export SA,* 1974 AC 479, 533, 535: (1972) 3 All ER 420)

(7) A decision ought to be overruled if in relation to some broad issue or principle it is not considered just or in keeping with contemporary social conditions or modern conceptions of public policy (the 'unjust or outmoded' criterion) (*Jones* case (supra)); *Conway vs. Rimmer,* (1968) AC 910, 938)."

48. We would immediately point out that principles at serial Nos. 2, 3, 4 (a) above as also principle No. 5 would apply to the present situation, where, by upsetting the whole acquisition tremendous upheaval is likely to follow. In that view we do not see any reason for making the reference as argued by the Learned Counsel.

II <u>Effect of alleged non-payment of 80% compensation under Section 17 of the Principal Act</u>

49. As has been observed in Para 47, we would not take up the above topic. It was urged by the Learned Counsel that the State Government, though it acquired the possession under Section 17 of the Act, did not pay the 80% of compensation, as required under Section 17 of the Act and on that account, the whole exercise was bad. We do not think that the proposition is correct. It was tried to be established that the sufficient funds were not available with the Government. We

would prefer not to go into the factual questions as the High Court has commented upon the same in great details. The tenor of the argument is that Sections 17(3) and 17(3A) of the Act are mandatory and the compensation ought to have been offered, tendered and paid to the land owners before taking the possession. Some documents were referred to in I.A. Nos. 4 and 5 of 2006 to show that LDA did not have the funds and it failed to provide sufficient funds even as late as upto 2004. The further argument was that even if it was assumed that the possession was taken on 21.5.1985, yet the compensation was paid to the concerned persons much later and in some cases, it was never paid.

50. Heavy reliance was placed on the documents which were filed alongwith I.A. Nos. 4 and 5. This question in the precise form, was not raised before the High Court. These documents were not the part of the High Court record. Shri Dwivedi, Learned Senior Counsel for LDA further argued that these documents could not be accepted at this late stage and that the LDA did not have any opportunity to meet those documents, since on I.A. Nos. 4 and 5, no notice has been issued by this Court. Since the source, authentication and verification of those documents was not clear, these documents were not liable to be considered. The Learned Senior Counsel, however, submitted that the land acquisition proceedings on that account cannot be faulted with and cannot be set at naught.

50A. The Learned Senior Counsel argued that in case where the accelerated possession is required to be taken, Section 17(1) of the Act, as also Section 17(2) of the Act would be attracted and such possession can be taken immediately after the publication of Section 9(1). Section 17(3) of the Act provides that in every case under Section 17(1) and Section 17(2) of the Act, the Collector shall offer compensation for standing crops and trees or other damage at the time of taking possession. The Learned Senior Counsel pointed out that the expression – "under either of the Sub-Sections" shows that Sub-

A Section (3) is attracted only when the possession is taken under Sub-Section (1) or (2) of Section 17 of the Act. He, therefore, contended that where Section 5-A is dispensed with under Section 17(4) of the Act, two Sub-Sections, i.e., (3) and (3A) of Section 17 of the Act would not apply. The argument is clearly B incorrect. By this, the attempt is to dissect Sub-Section (4) in two parts, firstly, where Sub-Section (1) and (2) are applicable and secondly, where the enquiry under Section 5-A is dispensed with. That is not the import of the language. Section 17 has to be read in full. It plainly reads that where the C possession is taken with the aid of Section 17(2), the compensation must fall in advance as per the provisions of Section 3A. In fact, Section 3A has been brought on the legislature with the sole purpose of providing a compensation for the possession taken. That is why 80% of the estimated compensation is to be paid because even thereafter, the award D proceedings would go on and the total compensation would be decided upon. The attempt on the part of the Learned Senior Counsel to read that the payment of compensation is not required where Section 5-A enquiry is dispensed with, would be doing violence to the language, firstly, of Section 3A and E secondly, of Sub-Section (4) itself. The clear legal position is that the dispensation of Section 5-A enquiry is only and only to enable the State Government to take possession under Sub-Section (1) and (2) of Section 17. A third category cannot be created so as to avoid the payment of compensation. The F contention is, therefore, clearly wrong.

51. However, the question is as to what happens when such payment is not made and the possession is taken. Can the whole acquisition be set at naught? In our opinion, this G contention on the part of the appellants is also incorrect. If we find fault with the whole acquisition process on account of the non-payment of the 80% of the compensation, then the further question would be as to whether the estimation of 80% of compensation is correct or not. A further controversy can then be raised by the landlords that what was paid was not 80% and H

was short of 80% and, therefore, the acquisition should be set at naught. Such extreme interpretation cannot be afforded because indeed under Section 17 itself, the basic idea of avoiding the enquiry under Section 5-A is in view of the urgent need on the part of the State Government for the land to be acquired for any eventuality discovered by either Sub-Section (1) or Sub-Section (2) of Section 17 of the Act.

52. The only question that would remain is that of the estimation of the compensation. In our considered view, even if the compensation is not paid or is short of 80%, the acquisition would not suffer. One could imagine the unreasonableness of the situation. Now suppose, there is state of emergency as contemplated in Section 17(2) of the Act and the compensation is not given, could the whole acquisition come to a naught? It would entail serious consequences. This situation was considered, firstly, in *Satendra Prasad Jain & Ors. vs. State of U.P. & Ors.* reported in 1993 (4) SCC 369. It was held therein that once the possession is taken as a matter of fact, then the owner is divested of the title to the land. The Court held that there was then no question of application of even Section 11-A. Commenting upon Section 11-A, it was held that that Section could not be so construed as to leave the Government holding title of the land without an obligation to determine the compensation, make an award and pay to the owner the difference between the amount of the award and the amount of the 80% of the estimated compensation. The three Judges' Bench of the Court took the view that even where 80% of the estimated compensation was not paid to the land owners, it did not mean that the possession was taken illegally or that the land did not vest in the Government. In short, this Court held that the proceedings of acquisition are not affected by the non-payment of compensation. In that case, the Krishi Utpadan Mandi Samiti, for which the possession was made, sought to escape from the liability to make the payment. That was not allowed. The Court, in para 17, held as under:-

A "17. In the instant case, even that 80% of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession
B was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated June 27, 1990 shows, failed to make the necessary
C monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first
D respondent is under no obligation to make an award."

53. Further, in a judgment of this Court in *Pratap & Anr. vs. State of Rajasthan & Ors. etc. etc.* reported in 1996 (3) SCC 1, similar view was reported. That was a case under the
E Rajasthan Urban Improvement Act, 1987, under which the acquisition was made using Section 17 of the Act. The Court took the view that once the possession was taken under Section 17 of the Act, the Government could not withdrew from that position under Section 18 and even the provisions of Section
F 11-A were not attracted. That was of course a case where the award was not passed under Section 11-A after taking of the possession. A clear cut observation came to be made in that behalf in Para 12, to the effect that the non-compliance with Section 17 of the Act, insofar as, payment of compensation is
G concerned, did not result in lapsing of the land acquisition proceedings. The law laid down by this Court in *Satendra Prasad Jain & Ors. vs. State of U.P. & Ors.* (cited supra) was approved. The Court also relied on the decision in *P. Chinnanna vs. State of A.P.* reported in 1994 (5) SCC 486

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and *Awadh Bihari Yadav vs. State of Bihar* reported in 1995 (6) SCC 31, where similar view was taken regarding the land acquisition proceedings not getting lapsed. The only result that may follow by the non-payment would be the payment of interest, as contemplated in Section 34 and the proviso added thereto by 1984 Act. In that view, we do not wish to further refer the matter, as suggested by Shri Trivedi, Learned Senior Counsel and Shri Qamar Ahmad, Learned Counsel for the appellants. Therefore, even on the sixth question, there is no necessity of any reference.

III.Challenge under Article 14 of the Constitution of India

54. Learned Senior Counsel then urged that the provisions of the amending Act and also the provisions of Land Acquisition Act like Section 17 (4) are invalid on the test of Article 14 of the Constitution. It is pointed out by Shri Trivedi, Learned Senior Counsel that in *GDA's* case (cited supra) the impugned notification was held to be valid in view of the amendment made to Section 17 (4) of the Act. However, there was no challenge to the validity of Section 17 (4) of the Act in the said case. Similarly, it was argued that in *MDA v. Satbir Singh* [1996 (11) SCC 462], the Court had made observation in paragraph 8 that the validity of Section 17 (4) was upheld in *GDA's* case (cited supra), whereas in fact it was not tested in *GDA's* case (cited supra) at all. It was further urged that the validity of the Act was not tested with respect to its inconsistency with Article 14 and Article 300A of the Constitution of India. In this behalf it was argued by the Learned Counsel that there was an observation to the effect in paragraph 14 that the proviso was not happily worded. But a reading of it would clearly give us an indication that the proviso to sub-section (4) introduced by Section 2 of the Amendment Act 5 of 1991 would deal with both the situations ,namely, the notification published on or after September 24, 1984 but before January 11, 1989 as also the declaration to be simultaneously published subsequent thereto. It was further argued that if we read the proviso in the manner

A that we have already done then it would be a case of *casus omissus* being supplied by the Court. We have already taken all these arguments into consideration. In view of the interpretation given by us to Section 3 and the proviso and the necessity of reading the two provisions in the light of each B other, there would be no occasion of supplying *casus omissus* and the argument in that behalf must fail.

55. Insofar as the validity on the backdrop of Article 14 is concerned, it is true that in paragraph 8 there has been an observation that the validity of the proviso added by the State C Legislature by way of an amendment to Section 17 (4) of the Act has been upheld by the two Judge Bench decision in *GDA's* case (cited supra). However, when we see the rest of the judgment it can be said that no such question was considered. However, the fact remains that in *GDA's* case D (cited supra), the validity was not questioned or doubted and the challenged Section was interpreted and treated to be valid by the Court. When we see the further judgment in *MDA's* case (cited supra) in the further paragraphs, this Court has approved of the whole amending Act reiterating on the decision in *Indian* E *Aluminium Co.* (cited supra). The Court has taken a full review of the then existing law by way of the decision of this Court in *State of Orissa vs. Gopal Chandrarath* reported in 1995 (6) SCC 243, *Bhubaneswar Singh and Anr. vs. Union of India and Ors.* reported in 1994 (6) SCC 77 and *Comorin Match* F *Industries P. Ltd, vs. State of Tamil Nadu* reported in 1996 (4) SCC 281. Thereafter, referring to *Gouri Shankar Gauri and Ors. vs. State of U.P. and Ors.* reported in 1994 (1) SCC 92, the Court also referred to the provisions of Article 254 (2) and (3) and approved of the whole Amending Act as such. In our G opinion, reading paragraph 14 of this judgment in its correct perspective would repel the argument of the appellants that the provision is arbitrary in any manner or has the effect of creating impermissible classification. In our opinion, the language of paragraph 14 does not help the petitioners. If the petitioners in

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MDA's case (cited supra) did not specifically address the Court on the question of Constitutional validity of the Amending Act (as is being claimed by the appellants), we do not think it will be permissible for the petitioners to raise this point which was admittedly not raised either in *GDA's* case (cited supra) or *MDA's* case (cited supra). Petitioners would not be permitted to take such a course [see *Delhi Cloth and General Mills Co. Ltd. vs. Shambhu Nath Mukherji & Ors.* reported in AIR 1978 SC 8]. We need not go in that question since *MDA's* case (cited supra) is a Larger Bench decision.

56. However, this is apart from the fact that in our opinion there can be no question of Section 17 (4) proviso or the provisions of the Amending Act being invalid in any way. We, therefore, do not feel necessary to refer this case on this issue to a Larger Bench, particularly, in respect of the validity of the provisions vis-à-vis Article 14 of the Constitution. We do not find the provisions in any manner arbitrary or making impermissible classifications or suggesting invidious discrimination nor can the provisions in the amending Act can be termed as "arbitrary" providing no guiding principles.

57. The Learned Senior Counsel appearing for the appellants had heavily relied on paragraph 14 of the judgment in *Meerut Development Authority vs. Satvir Singh & Ors.* (cited supra). Basically we do not accept the contention raised that the contents in paragraph 14 holding that the provisions of the amending Act are not limited to the two dates mentioned and can be applicable even subsequently, results in creation of two classes and the possible discrimination. In our opinion, it will not be necessary to go into that question as the present appeals pertaining to Ujariyaon Housing Scheme Part-II are relating only to the period between 24.9.1984 and 11.1.1989. It is stated by the Learned Senior Counsel appearing for the LDA that only two appeals pertain to Ujariyaon Housing Scheme Part-III and even in that case, the notifications were published in the year 1991 and the issue of simultaneous publication of

notification does not arise, as Section 6 declaration was signed and published in 1992. Therefore, there will be no need to go into the academic question whether Amending Act applies only to the period between 24.9.1984 and 11.1.1989 or even the subsequent period. Further, even if, as held in *MDA's* Case (cited supra), it applied to the subsequent period, it does not infringe Article 14 for the reasons given by us earlier.

58. Shri Trivedi, Learned Senior Counsel for the appellants further argued that there was invidious discrimination between the Ujariyaon Housing Scheme Part-II and Ujariyaon Housing Scheme Part-III, inasmuch as while the notification published on 8.12.1984 under Section 4 read with Section 17(4) of the Act was allowed to proceed with the help of the Validating Act, in case of Ujariyaon Housing Scheme Part-III, however, a fresh notification was issued on 30.12.1991 and Section 6 declaration came to be issued on 30.12.1992. Thus, while the notification in respect of Ujariyaon Housing Scheme Part-II was validated, the notification in respect of the Ujariyaon Housing Scheme Part-III was allowed to lapse and a fresh notification was published, meaning thereby that persons coming under Ujariyaon Housing Scheme Part-III, got the better deal (if they really did) and higher compensation. This argument of Shri Trivedi was adopted by Shri Qamar Ahmad. Though we have considered this argument in the earlier part of the judgment we again reiterate that the argument is clearly incorrect. The Validation Act did not confer any discretion on the State Government to apply its provisions to a particular scheme and then issue notifications. It was a one time exercise for validating a particular scheme by amending the Act which has already been found to be valid in *MDA's* case (cited supra). Again Ujariyaon Housing Scheme Part-III did not lapse because of the decision of the Government. Since the award was not made within the time prescribed by the Section 11A of the Act, it had the effect of lapsing the notifications. Therefore, the State Government was left with no other way and had to issue a fresh

notification. In Ujariyaon Housing Scheme Part-II, the award was made by the Collector within the time and, therefore, those notifications were not affected. Therefore, the argument that there was invidious discrimination in between the two schemes has to fail.

59. It was reiterated by Shri Trivedi, Learned Senior Counsel, as also, Shri Qamar Ahmed, Learned Counsel that the question of constitutional validity of the Act was not considered by the High Court as the Act was held to be valid in *GDA's* case (cited supra) and in *MDA's* case (cited supra). It was, however, urged that the question of Constitutional validity was never considered in these cases. Reliance was placed on judgments reported as *Amit Das v. State of Bihar* reported in 2000 (5) SCC 488, *State of UP & Anr. v. Synthetics & Chemicals Ltd. & Anr.* reported in 1991 (4) SCC 139, *Nirmal Jeet Kaur v. State of Madhya Pradesh & Anr.* reported in 2004 (7) SCC 558, *ICICI Bank & Anr. v. Municipal Corporation of Greater Bombay & Ors.* reported in 2005 (6) SCC 404, *A.R. Antulay v. R.S. Naik & Ors.* reported in 1988 (2) SCC 602, *Zee Telefilms Ltd. & Anr. v. Union of India & Ors.* reported in 2005 (4) SCC 649, *P. Ramachandra Rao v. State of Karnataka* reported in 2002 (4) SCC 578, *Nand Kishore v. State of Punjab* reported in 1995 (6) SCC 614, *Isabella Johnson v. M.A. Susai* reported in 1991 (1) SCC 494. We do not think that the law laid down in these cases would apply to the present situation. In all these cases, it has been basically held that a Supreme Court decision does not become a precedent unless a question is directly raised and considered therein, so also it does not become a law declared unless the question is actually decided upon. We need not take stock of all these cases and we indeed have no quarrel with the propositions settled therein. However, we may point out that, firstly, the question of validity is settled in *MDA's* case (cited supra). This is apart from the fact that we are of the opinion that there is nothing wrong with the Amending Act insofar as its Constitutional validity is concerned. We have already

A rejected the argument that there was any discrimination between Ujariyaon Part II and Ujariyaon Part III schemes. We are convinced with the explanation given by the State Government as to why Ujariyaon Part III scheme was left out of the consideration of validation. Indeed the acquisition therein B could not have been validated on account of the time having lapsed for doing so. Once Sections 2 and 3 and the proviso are read in the manner indicated in *MDA's* case (cited supra) as also in the light of observations made by us, no question remains of any Constitutional invalidity. We are not at all C impressed by the contention raised that the Amending Act cannot pass the test of Article 14. We hold accordingly.

60. Our attention was invited to *R.K. Dalmia v. S.R. Tendolkar* (cited supra). In fact, according to us this judgment does not help the appellants for assailing the Constitutional D validity of the statute. In so far as the Executive action is concerned, we do not think that there is any scope to interfere in this matter. Shri Qamar Ahmed in his written arguments has adopted the arguments of Shri Trivedi. In his written submissions he has challenged the provisions of Sections 17 E (1), 17 (1A), 17 (3A) and 17 (4A) and proviso to Section 17 (4) as *ultra vires* to the Constitution. He has also challenged the provisions of Section 2 of the UP Act No. 8 of 1974 as violative and *ultra vires* to Section 3A, 3B, 4, 5, 6, 7, 8 of Land Acquisition Act No.1 of 1894 as amended from time to time. F In support of his argument, Learned Counsel has relied on the law laid down in *Anwar Ali Sarkar's* case (cited supra). According to him, Sections 17(1), 17(1A), 17(3A) and 17(4) of the Act and Section 2 of the UP Act No. VIII of 1974, as also the UP Act No. 5 of 1991 are violative of Articles 14, 19, 21, G 39, 48, 48A and 300A for invidious discrimination. Learned Counsel also submits that there are no guidelines for the exercise of power under Sections 17(1), 17(1A) and Section 17 (4), as the word "urgency" is too vague, uncertain and elusive criteria to form the basis of a valid and reasonable

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classification. Learned Counsel also referred to the case of *Lachman Das v. State of Bombay* reported in AIR 1952 SC 235. A reference was also made to *Charanjit Lal Chowdhury v. Union of India & Ors.* reported in AIR 1951 SC 41. Learned Counsel has traced the whole case law following *Anwar Ali Sarkar's* case (cited supra) and has quoted extensively from that case as also from *Kathi Ranning Rawat v. State of Saurashtra* reported in AIR 1952 SC 123. We have already pointed out that this group of cases would be of no help to the appellants, particularly, because the fact situation and the controversy involved in the present matter is entirely different. We do not agree with the Learned Counsel that there is any classification, much less any impermissible classification and any group has been treated favourably as against another group or that the law has treated a group more favourably than the other, refusing equal protection to such group. As regards the general principles from *Anwar Ali Sarkar's* case (cited supra) as also from *State of Punjab v. Gurdial Singh* reported in AIR 1980 SC 319, we must point out that ultimately this Court culled out the principle that if the Legislature indicates a policy which inspires it and the object which it seeks to attain, then the selective application of the law can be left to the discretion of the Executive authority [see *Kedar Nath Bajoria's* case reported in 1953 SCR 30]. Such law has been approved in *R.K. Dalmia's* case (cited supra) as also in *In Re: Special Courts Bill* (cited supra).

61. There can be no dispute that the law must indicate the policy and the object clearly while acquiring. Discretion upon the application of law and the power under Section 17 of the Act of doing away with Section 5A inquiry has to be exercised in a proper manner. There are cases where this Court has not brooked any breach of provision under Section 17 of the Act. However, we must say that there are clear guidelines provided under Section 17(1) read with Section 4 for understanding the concepts of urgency and emergency. In this behalf, we must hold that the criteria of emergency as provided under Sub-Section

A (2) of Section 17 is separate and distinct from the criteria of urgency. In our opinion, these two criteria provide clear guidelines and cannot be held as arbitrary. In *Krishi Utpadan Mandi Samiti's* case and *Pista Devi's* case (cited supra), this Court has laid down that mere existence of urgency is not B enough and the Government must further consider the matters objectively as to the dispensation with Section 5A permissible under that particular situation. Section 17 of the Act has existed on the statute book for a long time and on a number of occasions the applicable criteria of urgency and emergency C have been tested by the Courts on account of the Government actions in that behalf being challenged. Wherever the Courts have found that urgency did not exist in reality or the dispensation of Section 5A was not considered separately such notifications have been struck down on a number of occasions. D However, we do not see any reasonable argument having been made against the Constitutional validity. The validity of this Section 17 of the Act has been upheld by the Allahabad High Court as also the Gujarat High Court in *Sarju Prasad Sahu v. State of Uttar Pradesh & Ors.* reported in AIR 1962 ALL 221 and *Ram Sevak v. State of UP Ors.* reported in AIR 1963 All E 24. The second judgment of Allahabad High Court has been approved by the court in *Ishwarlal Girdharlal Joshi etc. v. State of Gujarat & Anr.* reported in AIR 1968 SC 870. We, therefore, do not accept the contention raised by Shri Qamar Ahmad, Learned Counsel for the appellants that the power under F Section 17(4) of the Act of dispensing with the enquiry under Section 5-A is in the nature of unbridled and uncanalised power in the hands of Executive to take possession, invoking urgency clause. As discussed in the earlier cases by this Court (cited above), it cannot be said that the Section suffers from any G constitutional invalidity on account of being arbitrary in the nature.

62. In fact, the reliance was placed on the decision in *Suraj Mall Mohta and Company vs. A.V. Visvanatha Sastri and Anr.* H reported in AIR 1954 SC 545. That was a case under the tax

jurisprudence, dealing with certain Sections of the Taxation on Income (Investigation Commission) Act, 1947. It was found to be invalid as it had provided different procedure for the tax abettors. This Court had found that the procedure was more drastic for a certain group. The provisions of Sub-Section (4) of Section 5 were found to be discriminatory. The High Court has also dealt with this case. Though there can be no dispute on the principles, we do not think that the principle are applicable to the present controversy. We have already given a reference of the case of *Ishwarlal Girdharlal Joshi etc. vs. State of Gujarat* (cited supra). The Learned Counsel appearing on behalf of the respondents invited our attention to the findings recorded by the High Court, with which we are satisfied. We must observe that merely because the decision of the Government on question of urgency is not justiciable, it does not mean that Section 17(4) of the Act is discriminatory. The High Court has made a reference to the observation by this Court in *Matajog Dubey vs. H.C. Bhari* reported in AIR 1956 SC 44, holding that a discretionary power is not necessarily a discriminatory power and that abuse of such power is not to be easily assumed. Even at the cost of repetition, we may mention the case of *R.K. Dalmia v. S.R. Tendolkar* (cited supra) as a complete answer to the argument of Shri Qamar Ahmad, Learned Counsel for the appellants. *Ishwarlal's* case (cited supra) is also a total answer to the argument that Sub-Section (1) and (4) of Section 17 of the Act are unconstitutional. The High Court has correctly held that Sub-Sections (1), (3A) and (4) of Section 17 of the Act do not suffer from any unconstitutionality on account of the alleged breach of Article 14 of the Constitution of India. Shri Qamar Ahmad, Learned Counsel for the appellants also argued that before deciding to take the possession under the various provisions of Section 17 of the Act, a person is entitled to a notice. The High Court has correctly dealt with this question. It firstly considered the law laid down in the cases of *Kraipak vs. Union of India* reported in AIR 1970 SC 150, *Maneka Gandhi vs. Union of India* reported

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A in AIR 1978 SC 597 and *Olga Tellis vs. Bombay Municipal Corporation* reported in AIR 1986 SC 180 as also in *Union of India vs. Tulsi Ram* reported in AIR 1985 SC 1416 which were relied upon by the High Court. The High Court was, undoubtedly, correct in holding that there was no necessity of a notice since B the satisfaction required on the part of the Executive is a subject of satisfaction, which can only be assailed on the ground that there was no sufficient material to dispense with the enquiry or the order suffers from malice. We will deal with the question as to whether there was an urgency and what is the nature of C urgency required. We, therefore, do not think that Sub-Sections (1) (3A) and (4) of Section 17 of the Act suffer, as there is no notice provided in those Sub-Sections before the possession is taken.

D **IV. Issue of urgency and application of Section 17 of the Principal Act**

63. At this juncture itself, we must also consider the argument that there was no real urgency in this matter. It can not be ignored that this land was urgently needed for housing. E Large-scale development and utilization of acquired land after the acquisition is apparent on the face of the record. A number of houses have been constructed, third party interests were created in whose favour the plots were allotted and the High Court has also commented while disposing of the writ petitions F that the quashing of the notification at this stage will prejudice the interests of the people for whom the schemes were evolved. While considering as to whether the Government was justified in doing away with the inquiry under Section 5A, it must be noted that there are no allegations of *mala fides* against the G authority. No evidence has been brought before the judgment and the High Court has also commented on this. The housing development and the planned developments have been held to be the matters of great urgency by the court in *Pista Devi's* case (cited supra). In the present case we have seen the judgment of the High Court which has gone into the records and H

has recorded categorical finding that there was sufficient material before the State Government and the State Government has objectively considered the issue of urgency. Even before this Court, there were no allegations of *mala fides.* A notice can be taken of the fact that all the lands which were acquired ultimately came to be utilized for the scheme. We, therefore, reject the argument that there was no urgency to justify dispensation of Section 5A inquiry by applying the urgency clause. In a reported decision *Kishan Das & Ors. v. State of UP & Ors.* reported in 1995 (6) SCC 240, this Court has taken a view that where the acquisition has been completed by taking the possession of the land under acquisition and the constructions have been made and completed, the question of urgency and the exercise of power under Section 17(4) would not arise. We must notice that acquisitions in this case are of 1984-1985 and two decades have passed thereafter. The whole township has come up, the houses and the lands have been allotted, sold and re-sold, awards have been passed and overwhelming majority of land owners have also accepted the compensation, this includes even some of the appellants. In such circumstances we do not think that the High Court was in any way wrong in not interfering with the exercise of power under Section 17 (4) of the Act. At any rate, after the considered findings on the factual questions recorded by the High Court, we would not go into that question.

64. The High Court has taken a stock of the argument on behalf of the respondents herein that there was material available in support of the satisfaction on the part of the Executive to take possession under Section 17 of the Act. The High Court has relied on the decisions in *Raja Anand Braha Shah vs. State of U.P.* reported in AIR 1967 SC 1081, in *Narayan vs. State of Maharashtra* reported in AIR 1977 SC 183, in *Kailashwati vs. State of U.P.* reported in AIR 1978 All. 181, in *Deepak Pahwa vs. Lt. Governor of Delhi* reported in AIR 1984 SC 1721, as also in *Pista Devi's* case (cited supra) and *Krishi Utpadan Mandi Samiti's* case (cited supra). The

A High Court has correctly come to the conclusion that there was all the justification for invoking the urgency clause and taking the possession for the lands in question. We endorse the said finding of the High Court.

B **Other contentions on merits**

65. Apart from these contentions, both Shri Trivedi, Learned Senior Counsel, as also Shri Qamar Ahmed, Learned Counsel again raised the same questions of facts like the non-publication of Sections 4 and 6 notifications. Insofar as that is
C concerned, we have mentioned it only for rejecting the contention. After the judgment of the High Court we will not go into that question again being a pure question of fact. Similar is the question raised about the land belonging to the cooperative society and the release of the same. We do not
D think that that question needs to be answered in the wake of the High Court's judgment. The High Court judgment is absolutely correct in that behalf. In our considered opinion, even if the Government had taken a decision not to acquire the land belonging to the cooperative society as far as possible, there
E is nothing wrong if such lands were acquired. What is to be seen is the *bona fides* of the Government behind the decision to acquire the lands. On that account no fault can be found with the concerned notifications under Sections 4 and 6.

66. Similar contentions were raised regarding the
F possession. We do not propose to go into the question of facts and questions relating to the individual claims. We have noted that the respondents herein having specifically claimed that the possession of the lands has already been taken. Therefore, accepting that claim, as has been done by the High Court, we
G would not go into those questions of fact.

67. To put the record straight, there is enough evidence in shape of the stand taken by the LDA in its counter affidavit before the High Court, where it was asserted that the

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possession was already taken. Even in the present Civil Appeal, the same stand is reported with reference to a particular date, i.e., 21.5.1985 that the possession was taken and there is also a true copy of the Panchanama on record. Insofar as the Civil Appeal Nos. 2116-2118 (*Tika Ram & Ors. vs. The State of U.P. & Ors.)* are concerned, it was urged by the appellants that in the affidavit of State of U.P. before the High Court, the date of taking possession was mentioned as 30.3.1986 and, therefore, it was urged that the possession could not have been taken on 21.5.1985 as per record. The Learned Senior Counsel for the LDA pointed out that this was incorrect and the correct date of taking possession was only 21.5.1985, while the possession of some plots was handed over to the LDA on 30.3.1986. This is apart from the fact that in today's context, when the whole township is standing, this question goes to the backdrop. In the face of Panchanama, which is on record, we would endorse the finding of the High Court that the possession was taken on 21.5.1985.

68. Shri Dwivedi, Learned Senior Counsel appearing on behalf of the LDA also found fault with the Sale Deed in favour of Pratap Sahkari Grih Nirman Samiti Ltd., which is being represented by Shri Trivedi, Learned Senior Counsel. It was urged that its claim was based on the Sale agreement, which was executed one day before the publication of Section 4 Notification in the Gazette, i.e., 8.12.1984. It is admitted case that the Sale Deed was registered on 22.1.1986, which is clearly a date beyond the date of Section 4 notification. It is already held by this Court in *U.P. Jal Nigam vs. Kalra Properties Ltd.* reported in 1996 (3) SCC 124 and *Star Wire (India) Ltd. vs. State of Haryana & Ors.* reported in 1996 (11) SCC 698 that if any purchases of the land are made after the publication of Section 4(1) notification, landlords in this case would not get any right or entitlement to question the validity of the title of the State based on the acquisition. Obviously, the claim of this society is on the basis of the Agreement of Sale dated 7.4.1983. It was reported by the Learned Senior Counsel

A that Shri Hukum Chand Gupta also expired on 27.7.1983 and ultimately, the Sale Deed was executed on 7.12.1984. We do not want to go into this question of fact, but we will certainly go with and endorse the finding of the High Court in this behalf that the society had purchased the land after the issuance of
B notification.

69. It was urged by Shri Trivedi, Learned Senior Counsel for the appellants that there was a policy to give back 25% of the acquired land to the cooperative societies. This was suggested on the basis of various letters on record, suggesting
C that LDA was considering the revision. Shri Dwivedi, Learned Senior Counsel for LDA pointed out that once the land was acquired and the possession had been taken, Section 48 did not apply. Besides, according to the Learned Senior Counsel, the policy applied to the cooperative societies, who had land
D before the acquisition process begins. This was obviously with the object to safeguard the interests of the members of the society. The Learned Senior Counsel was at pains to point out that there is no such disclosure as to who were the members of the society. According to the Learned Senior Counsel, the
E society was nothing, but a front piece set up for obtaining 25% of the land. Therefore, the rent of the 25% of the land was not acceptable. It was also pointed out that the Sale Agreement was also entered into a day before the publication of the notification in the Gazette and the registration of the Sale Deed
F was also done much after the notification was published and, therefore, this policy, even if there is one, would not be applicable to the society in question. We would not, therefore, accept that claim that Pratap Sahkari Grih Nirman Samiti Ltd. should be given back 25% of the land acquired, which is again
G not possible in view of the township having come up in Gomti Nagar.

70. In view of what we have held above, we confirm the judgment of the High Court and dismiss all the appeals being

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Civil Appeal Nos. 2650-2652 of 1998, 3162 of 1998, 3176 of 1998, 3415 of 1998, 3561 of 1998, 3597 of 1998, 3923 of 1998, 3939 of 1998, 3645 of 1998, 3691 of 1998, 5346 of 1998, 2116-2118 of 1999, 2139 of 1999, 2121 of 1999, 2113 of 1999 and 4995-4996 of 1998. A

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SLP (CIVIL) No.....(CC 1540/1999)

71. Delay condoned in SLP (Civil) No. 23551 of 2009 (CC 1540/1999). The Special Leave Petition is dismissed in view of the above order.

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72. In the circumstances, there would be no orders as to the costs.

K.K.T. Appeals dismissed.