REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 738- 739 OF 2021

(Arising out of SLP (C) Nos. 9834-9835 of 2020)

PUNALUR PAPER MILLS LTD. …APPELLANT

Versus

WEST BENGAL MINERAL DEVELOPMENT
AND TRADING CORPORATION LTD. & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NOS. 740-741 OF 2021

(Arising out of SLP (C) Nos.9837-9838 of 2020)

AND

CIVIL APPEAL NOS. 742-744 OF 2021

(Arising out of SLP (C) Nos.10581-10583 of 2020)

JUDGMENT

R.F. Nariman, J.

1. Leave granted.

2. In the facts of these appeals, the entire second floor of premises no. 13, Nellie Sengupta Sarani (Lindsay Street), Calcutta ["**the Premises**"],

measuring approximately 7500 square feet, owned by Punalur Paper Mills Ltd. ["**Appellant**"], was requisitioned under the West Bengal Premises Requisition And Control (Temporary Provisions) Act, 1947 ["**West Bengal Requisition Act**"] on 16.08.1973. Pursuant to certain judgments of this Court, section 10B was inserted in the West Bengal Requisition Act by way of an amendment on 31.03.1987. The said section reads as follows:

> "**10B.** Notwithstanding anything contained in section 10 or section 10A, the State Government shall release from requisition any property requisitioned or deemed to be requisitioned under this Act on or before the expiry of a period of twenty-five years from the date of such requisition:
>
> Provided that the benefit of this section shall not be available until after the expiry of a period of five years from the date of coming into force of the West Bengal Premises Requisition and Control (Temporary Provisions) (Second Amendment) Act, 1986."

3. As a result of the operation of section 10B of the West Bengal Requisition Act, any property requisitioned under the Act had to be released by the State Government on or before the expiry of a period of 25 years from the date of requisition. For the Premises, this 25-year period ended on 15.08.1998, obligating the State to release the Premises. It is common ground between the parties that the Premises was not in fact released and physical possession remained with the

West Bengal Mineral Development and Trading Corporation Ltd. ["**WBMDTCL**"].

4. Subsequent to the lapse of such period, by way of a notification under section 4 of the Land Acquisition Act, 1894 ["**Land Acquisition Act**"], published on 12.08.1999, the Premises was sought to be acquired for the public purpose of providing the permanent office accommodation of WBMDTCL. This notification of 12.08.1999 was challenged in Writ Petition No. 1045 of 2000 filed on 18.04.2000 before the High Court of Calcutta by the Appellant, who owned the said Premises. It may also be mentioned that Writ Petition No. 1042 of 2000 was also filed by the Appellant on 17.04.2000, seeking handover of vacant possession of the Premises since the 25-year period prescribed by section 10B of the West Bengal Requisition Act had ended.

5. By an order dated 22.06.2000, in Writ Petition No. 1042 of 2000, a learned Single Judge of the High Court of Calcutta held as follows:

> "The learned counsel Mr. Bhattacharji appearing on behalf of the Respondent no. 4 as well as the learned counsel Mr. Dutt appearing on behalf of the State submitted that three months time should be granted to the Respondent no. 4 to vacate the premises in question without prejudice to its rights to take such appropriate legal steps as are available to it to acquire the property in question, accordingly such an order is passed with the consent of the learned counsel appearing for the petitioners. The learned counsel have also submitted that [insofar] as the compensation is

concerned the same may be decided by the Court on materials to be placed by them by filing separate affidavit.

Let such affidavit be filed within three weeks from the date, reply, if any, within two weeks thereafter with liberty to mention the matter before me as and when I will be sitting singly.

The writ petition is kept alive only for the purpose of determination of the amount of compensation to be paid by the Respondent No. 4 to the Writ Petitioner for occupying the property in question subsequent to coming to an end of the order of requisition until delivery of possession thereof is effected in terms of this order. This order has been passed by consent of all the parties and the counsel appearing for parties have signed a copy of the same in acknowledgement thereof and the same is kept with the record."

6. On the same day, in Writ Petition No.1045 of 2000, the Single Judge passed the following order:

"The interim order already granted is vacated as the learned counsel for the petitioner does not press for continuation of the same after having seen the newspaper publication of the notification in question. It is made clear that Court has not decided any issue in the instant writ petition.

Affidavit-in-opposition to this writ petition shall be filed [in] 3 (three) weeks from date, reply, if any, within 2 (two) weeks thereafter and liberty to mention the matter before the appropriate Bench.

All parties to act on a signed copy of this dictated order on the usual undertaking."

7. Without pursuing the section 4 notification of 12.08.1999, another notification for the same property was issued on 04.08.2000, under section 4 of the Land Acquisition Act, this time invoking the urgency provision under section 17(4) thereof, as follows:

> "In exercise of the powers conferred by Sub-Section (4) of Section 17 of the Land Acquisition Act, 1894 (Act I of 1894), the Governor is pleased to direct that the provisions of Section 5A of the Act shall not apply to the lands as described in the schedule above to which in the opinion of the Governor, the provisions of Sub-section (1) of Section 17 of the said Act are applicable"

8. A declaration under section 6 of the Land Acquisition Act soon followed, on 11.08.2000. These two notifications became the subject of challenge in Writ Petition No. 3003 of 2000 filed by the Appellant on 05.09.2000, on the ground that the urgency provision was improperly invoked, and thus the composite notification dated 04.08.2000, under section 4 read with section 17 of the Land Acquisition Act, would have to be set aside.

9. A learned Single Judge of the High Court of Calcutta, by an order dated 16.01.2017, disposed of all three writ petitions, namely, Writ Petition Nos. 1042, 1045 and 3003 of 2000. The learned Single Judge, noting that the urgency provision had wrongly been invoked in the facts of this case, followed the judgments of this Court and struck down the composite notification under section 4 read with section 17 of the Land

Acquisition Act, dated 04.08.2000. Consequently, he directed WBMDTCL to vacate the Premises within three months and handover vacant possession to the Appellant.

10. On appeal, the learned Single Judge's judgment and order dated 16.01.2017 was set aside by consent of the parties, and the writ petitions were to be heard *de novo* in the six different appeals that were filed by the Land Acquisition Collector, WBMDTCL and the First Land Acquisition Collector. As a result, a *de novo* hearing of the writ petitions was taken up by the Division Bench of the High Court of Calcutta, which passed the impugned judgment and order dated 30.09.2019. After setting out the facts of this case, the questions that the Division Bench put to itself were as follows:

> "**5.** After hearing the rival contentions and considering the materials on record, we are of the view that the moot questions to be considered while disposing of the three writ petitions and the six appeals arising therefrom are as follows:
>
> a. After the expiry of 25 years from the date of requisition, were the appellants liable to vacate the requisitioned property being the said property?
>
> b. Is respondent / writ petitioner no. 1 entitled to any compensation on WBMDTCL having overstayed at the said property after expiry of 25 years from the date?
>
> c. In the facts of the instant case, could the said respondents acquire the said property by

applying the special powers in case of urgency as provided in section 17 of the 1894 Act particularly when they had proceeded to acquire the property by following the normal method and had in fact given a notice under section 4 of the 1894 Act on 12th August, 1999?

d. Could the right of objection available to the respondent / writ petitioner no.1 be taken away in the facts and circumstances of the instance case?"

11. The Division Bench held:

"**6.** We take up the two issues together as they are inter-related in the instant case. A conjoined reading of the letters dated 25th March, 1997 issued by WBMDTCL and 23rd September, 1997 issued by the Land Acquisition Collector, it will appear that both the State and the WBMDTCL were aware of the fact that on completion of 25 years from the date of requisition, the requisitioned property had to be released from requisition and had to be vacated. The provisions of section 10B of the said Act also say so and, as such, in the letter dated 23rd September, 1997, the Land Acquisition Collector had specifically indicated that the requiring body has to vacate possession after completion of 25 years of requisition. Despite such specific knowledge, WBMDTCL did not vacate the said property on expiry of 15th August, 1998. The said State / respondents who had requisitioned the property also did not take any step to have the said property released of the requisition and possession be returned to the owner of the same.

It also appears that WBMDTCL have been enjoying the said property without paying any money for the same subsequent to the expiry of 25 years."

12. Referring to the order of the Single Judge dated 22.06.2000, the Division Bench then went on to hold:

> "It further appears that on 22nd June, 2000 at the invitation of the State / respondents and WBMDTCL, an order was passed giving three months' time to vacate the said property with the consent of the petitioner. It will also appear that the compensation to be paid by the WBMDTCL (respondent no.4 in the said writ petition) to the writ petitioner for occupying the property in question subsequent to coming to an end of the order of requisition until delivery of possession thereof was left to be decided by the Court. The writ petition being WP No.1042 of 2000 was kept alive only for the purpose of determining the amount of such compensation. Affidavits were invited and from the gamut of the said order dated 22nd June, 2000, it is evident that the affidavits were called for also for the purpose of determining the compensation. It will also appear from the said order that the order to vacate the said property was without prejudice to the rights of the State to take such appropriate legal steps as available to it to acquire the property in question. At the time when the said order dated 22nd June, 2000 was passed, the section 4 notification and the objection under the provisions of section 5A were already on record. The Court was conscious about the same. The order thereof has to be interpreted that the said property had to be vacated within a period of three months from the date of the order and at the same time, there was no embargo on the part of the State to proceed with the acquisition. The view in favour of such interpretation of the order dated 22nd June, 2000 is further emboldened from another order, also passed on the same day in WP No.1045 of 2000 when the Court vacated the interim order earlier passed staying the hearing of the objection filed by the respondent / writ petitioner no.1 in terms of the provisions of section 5A of the 1894 Act. It is,

therefore, apparent that the Court while passing the two orders had clearly meant that WBMDTCL had to vacate the premises within three months from 22nd June, 2000 and, at the same time, the State Authorities were free to proceed with the acquisition proceeding initiated by publication of the section 4 notice on 12th August, 1999 after hearing out the objection filed by respondent / writ petitioner under the provisions of section 5A of the 1894 Act."

13. After referring to some of the judgments of this Court, the Division Bench then concluded:

"**13.** The findings in these judgments, therefore, clearly answer the question of the scope of judicial review raised by the appellants. In the instant case, the property was requisitioned in the year 1973 until a few months prior to expiry of the 25 years period; no request was made for re-requisitioning of the property. Receiving such request as discussed hereinabove, the State / respondents gave a firm view that the property has to be vacated on expiry of the period of 25 years and the same cannot be re-requisitioned. However, the State expressed a view that the property can be acquired if a request to that effect is made. The State / respondents, thereafter, proceeded to acquire the property without invoking the extraordinary power available to the Government under section 17(1) read with section 17(4) of the said Act. So it is clear that at the relevant point, the Government did not form an opinion as to invoking of the urgency clause. The Government, therefore, was of the view that the acquisition proceedings could wait for few months for completion of an enquiry under section 5A of the 1894 Act. This is also evident from the steps taken by the Government on issuance of notice under section 4 and inviting objections under section 5A of the 1894 Act. After amendment to the said Act of 1947 made in 1986 with the introduction of section 10B, it was known to the WBMDTCL

being the requiring body as also the Government that on expiry of 25 years, the property was to be released from requisition. Even if we consider that a five years gap for the release of the property after 25 years was available under the said Act that takes us to the year 1991. There was ample time between 1991 and 1998 when the 25 years came to an end to acquire the property in the normal procedure by conducting an enquiry if the WBMDTCL or the Government was so keen in maintaining the registered office of WBMDTCL at the said property or for providing the said property to maintain the registered office of WBMDTCL thereat. No steps for acquiring the property were taken for all these years. The acquisition proceeding too under the normal mode was commenced on 10th / 12th August, 1999. Pursuant to such notification, objection under section 5 was invited and the same was filed by the respondent / writ petitioner no.1. During the time when the hearing of the objection of section 5A of the 1894 Act was kept pending, the respondents / writ petitioners approached this Court by filing two writ petitions being WP Nos.1042 and 1045 of 2000 in the month of April, 2000. So the challenge to the notification under section 4 was made within a reasonable time period from the publication of the notification. The fact situation at that material point clearly established that no case of urgency was in the mind of the Government. Only after the order of 22nd June, 2000, was obtained at the invitation of the State / respondents and the WBMDTCL, the three months period to vacate the said premises was used to invoke the extraordinary powers of urgency to dispense with the enquiry under section 5A of the 1894 Act."

"**15.** The facts of the instant case are also not such that the acquisition could not brook the delay for even a few weeks or months. That apart and in any event, using the order dated 22nd June, 2000 as a fact situation to invoke the urgency clause smacks of mala fides and is, as such,

vitiated. We, therefore, set aside the order of acquisition invoking the provisions of section 17(1) read with section 17(4) of the 1894 Act. It is declared that the preliminary notification under section 4 which was cancelled by invoking the provisions of section 17(1) had stood lapsed by efflux of time as no section 6 declaration followed within a period of one year. This will, however, not prevent the Government from initiating acquisition proceedings afresh, if entitled to in law. The possession of the said property should be vacated and possession thereof to be made over to the respondents / writ petitioners within a period of three months from date. These directions are peremptory.

16. The Chief Judge, City Civil Court at Calcutta shall also assess the compensation / rent / occupational charges for the period of 16th August, 1998 till the possession of the said property is made over to the respondents / writ petitioners. Section 11(1)(b) of the 1947 Act provides for the same.

17. The writ petitions being WP Nos.1042, 1045 & 3003 of 2000 are disposed of in the light of the observations made hereinabove."

14. Ms. Liz Mathew, learned advocate appearing on behalf of the State of West Bengal, assailed the impugned judgment of the Division Bench by arguing that the order of the Single Judge dated 22.06.2000 had made it clear that the State could take appropriate steps to initiate land acquisition proceedings, which were then done pursuant to such order on 04.08.2000. Taking shelter under this order, she therefore argued that it would not be possible to strike down the notification under section 4 read with section 17 of the Land Acquisition Act, since this

was done pursuant to the order dated 22.06.2000. For this purpose, she relied upon the judgments of this Court in **State of U.P. v. Keshav Prasad Singh, (1995) 5 SCC 587** and **State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739**.

15. Shri Mukul Rohatgi, learned senior advocate appearing on behalf of the Appellant, stoutly refuted these arguments and relied upon certain judgments of this Court which covered the issue in the Appellant's favour. In any case, he also argued that given the conduct of the parties in not vacating the Premises by 15.08.1998 and continuing to be in unauthorised possession till date, as well as not paying a single paisa towards compensation, this Court ought not to entertain the State's appeals under Article 136 of the Constitution of India.

16. The judgments of this Court relied upon by Ms. Liz Mathew are distinguishable from the facts of this case. In **State of U.P. v. Keshav Prasad Singh, (1995) 5 SCC 587**, this Court dealt with a specific case of urgency, namely, a mandatory injunction issued by a Civil Court to demolish a compound wall and to restitute possession. This Court, thus, had no difficulty in stating that there was a need for immediacy in the case, as follows:

> "**5.** The next question is whether the Government would be justified in exercising its power under Section 17(4) and dispense with the inquiry under Section 5-A of the Act. Mandatory injunction issued by the civil court to demolish

> the compound wall and to restitute possession to the respondent had to be complied with. There is thus urgency. The public purpose was obvious as the compound was required to be retained to protect the safety of the office. The object of Section 5-A enquiry was to show whether there was no public purpose or the land was not suitable or some other lands may be acquired. All these relevant and related facts are redundant due to the facts of the case."

17. Likewise, in **State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739**, on the facts of the case, this Court held that the High Court of Andhra Pradesh could not have struck down the acquisition of property on the ground of *mala fides* only because the State had lost in eviction proceedings and initiated acquisition proceedings, after giving an undertaking to vacate a dilapidated 100-year old school building. This Court therefore held:

> "**17.** The High Court of Andhra Pradesh held the action of acquisition of the property by the State as malicious in law only because before passing of adverse orders by the court against it, no action for acquisition of the building which was in its occupation since 1954, was initiated. In our opinion, even if that be the situation that the State as tenant of the school building took no step to acquire the land before [the] order of eviction and direction of the High Court, it cannot be held that when it decided to acquire the building, there existed no genuine public purpose. If only the possession of the property could be retained as a tenant, it was unnecessary to acquire the property. The order of eviction as well as the direction to vacate issued by the High Court only provide just, reasonable and proximate cause for resorting to acquisition under the Land Acquisition Act. Resort, therefore, to acquisition at a stage when there was

> no other alternative but to do so to serve a genuine public purpose which was being fulfilled from 1954 signifies more a reasonable and just exercise of statutory power. Such exercise of power cannot be condemned as one made in colourable or *mala fide* exercise of it."

18. This judgment is completely distinguishable also for the reason that the urgency provision contained in section 17 of the Land Acquisition Act was not invoked, it being held that the continuance of a school served a genuine public purpose, which public purpose could not suddenly be deemed to become non-existent, only because the State had lost in eviction proceedings.

19. On the facts of this case, the impugned judgment of the Division Bench is correct in law. In this case, the State was on notice from 31.03.1987, i.e., from the date of insertion of section 10B in the West Bengal Requisition Act, that the Premises would have to be released on or before 15.08.1998. This gave the State the time of 11.5 years to act and acquire the Premises. Such acquisition could easily have been done by way of a notification under section 4 of the Land Acquisition Act before the lapse of the 25-year period, and would have also preserved the valuable right contained in section 5A of the Land Acquisition Act. As a matter of fact, as correctly held by the Division Bench, long after the requisition period elapsed on 15.08.1998, the State issued a notification under section 4 of the Land Acquisition Act,

without invoking any urgency provision. To then say that the urgency provision could be invoked on account of the Single Judge's order dated 22.06.2000, is to attempt to infer from the said order, much more than it actually said. Therefore, the Division Bench rightly held that at best this order could possibly refer to the acquisition proceedings that had already been initiated by the notification of 12.08.1999 under section 4 of the Land Acquisition Act. In any case, this order could not and did not wash away the lethargy of the State in initiating acquisition proceedings, which ought to have been done before the 25-year period elapsed, by preserving the valuable right contained in section 5A of the Land Acquisition Act, which could have been availed of by the owner of the Premises, i.e., the Appellant.

20. The impugned judgment of the Division Bench is fortified by several judgments. In **Banwarilal & Sons Pvt. Ltd. v. Union of India, C.W.P. No. 2385 of 1988** reported in **1991 Supp DRJ 317** ["**Banwarilal (Delhi HC)**"], a Division Bench of the High Court of Delhi, vide an order dated 04.02.1991, quashed a similar notification in the context of a similar provision contained in the Requisitioning and Acquisition of Immovable Properties Act, 1952. The High Court of Delhi held:

> "**8.** In the Notification challenged before us the only thing that is stated is that the property was required for the "residential use of government servants." There is not a whisper of what was the urgency to take immediate

possession and to deny the right of raising [objections] to the owner under Section 5-A of the Act. The Notification under Sections 4 and 17(1) in the present case, therefore, stand vitiated for non-compliance of the requirement of mentioning urgency in the Notification itself. What is more objectionable is the fact that the building was already in occupation of the officers of Delhi Administration and the Administration knew that the Requisitioning and Acquisition of Immovable Properties Act was to lapse on 10.3.1987. Thus, they had sufficient time to make alternate arrangement for the residence of their officers and there was no urgency whatsoever for invoking the provisions of Section 17(1). The provisions of Section 17(1) cannot be utilised to cover up the laxity or lethargy of the Administration to take appropriate steps in time for making available alternate accommodation for its officers."

(page 320)

"**13.** In *Assam Sillimanita Limited* v. *Union of India* (AIR 1990 SC 1417) the Supreme Court had appointed an Arbitrator for determining the damages in case of unlawful termination of a lease. Considering the fact that more than three years have elapsed since the Requisitioning and Acquisition of Immovable Property Act has lapsed, it would be more just and appropriate that an Arbitrator is appointed in the present case to determine the damages payable by Delhi Administration instead of making the petitioners run to the Civil Court for that purpose. We appoint Mr. T.V.R. Tatachari, former Chief Justice, Delhi High Court, as an Arbitrator who will enter upon the reference within four weeks of the communication of this order to him. He may make the Award within a period of four months thereafter. The Arbitrator will not be obliged to give reasons for his conclusions. The parties will be at liberty to produce their valuers before the Arbitrator for the assessment of damages, if they so desire. The petitioners as well as the Delhi Administration will pay a sum of Rs. 10,000/- each to

> the Arbitrator as the initial payment towards his fees. A copy of this order [be] sent to the learned Arbitrator by the Registry."
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> (pages 321-322)

21. This judgment of the High Court of Delhi travelled to this Court, the Special Leave Petition filed by the Union of India being dismissed on 21.03.1991. In other off-shoot proceedings as well, such as **Union of India v. Shakuntala Gupta, (2002) 10 SCC 694**, the judgment in **Banwarilal (Delhi HC)** (supra) was again confirmed on 14.11.2000. A review against the aforesaid order met with the same fate in **Union of India v. Shakuntala Gupta, (2002) 7 SCC 98**, in which this Court dismissed the review on merits on 27.08.2002, stating:

> "**15.** In any event the order dated 14-11-2000 was not legally erroneous. The notification under Section 4 was a composite one. The "opinion" of the Lt. Governor that the provisions of Section 17(1) of the Act were applicable, as expressed in the last paragraph of the impugned notification, was relatable in general to the 14 properties specified in the notification. The impugned notification was quashed in *Banwari Lal case* [*Banwari Lal & Sons (P) Ltd.* v. *Union of India*, DRJ 1991 Supp 317] inter alia on the ground that the "opinion" of the Lt. Governor as expressed in the notification was insufficient for the purpose of invoking the provisions of Section 17(1) of the Act. This ground was not peculiar to the premises in *Banwari Lal case* [*Banwari Lal & Sons (P) Ltd.* v. *Union of India*, DRJ 1991 Supp 317] but common to all fourteen properties. The urgency sought to be expressed in the impugned notification cannot be held to be sufficient for the purposes of Section 17(1) in this case when it has already been held

to be bad in *Banwari Lal case*. [*See observations in Abhey Ram* v. *Union of India*, (1997) 5 SCC 421 (para 11); *Delhi Admn.* v. *Gurdip Singh Uban*, (2000) 7 SCC 296 (paras 53-55)] The expression of urgency being one cannot be partly good and partly bad like the curate's egg. It must follow that the acquisition in respect of the respondent's premises as mentioned in the notification which were sought to be acquired on the basis of such invalid expression of "urgency" cannot be sustained."

22. These judgments were then followed in **Union of India v. Krishan Lal Arneja, (2004) 8 SCC 453** ["**Krishan Lal Arneja**"]. After setting out the relevant provisions of the Land Acquisition Act, this Court held:

"**16.** Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being

acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration.

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21. One more aspect to be noticed is, as observed by the High Court, that the properties in question continued to be in possession of the appellants; in other words, there was no urgency of taking immediate possession nor was there any immediate threat of dispossessing them from the properties. At the most, after the lapsing of the Requisitioning Act on 10-3-1987, their possession over the properties would have been unauthorised, maybe so long they continued in unauthorised possession of the properties, they were liable to pay damages for their occupation for a few months during which period they could have completed acquisition proceedings in the normal course without resorting to provisions of Sections 17(1) and (4) of the Act. During the course of the hearing, we specifically asked the learned counsel for the appellants in this regard, the only answer was that the appellants being the Union of India and others did not want to remain in the unauthorised possession of the properties. We are not

convinced by this reply so as to justify invoking urgency clause to acquire the properties. Having regard to the facts and circumstances of the case in these appeals, the authorities could have completed acquisition proceedings in a couple of months even after providing opportunity for filing objections and holding inquiry under Section 5-A of the Act if they were really serious.

22. In the objects and reasons of Act 20 of 1985, it is stated that all the properties which were requisitioned prior to the amendment of the Act in 1970 were required to be released from requisition or acquired by 10-3-1985; although the Government is expeditiously implementing the policy of acquiring or releasing from requisition the requisitioned properties, a number of them are expected to be needed by the Government even after 10-3-1985 for public purposes; the Ministry of Defence is taking action for either releasing or acquiring the requisitioned properties. It was, therefore, decided to extend the maximum period for which the properties could be retained under requisition by a period of two years. Thus, it is clear that the authorities were aware that the properties were to be released or acquired and the maximum period was extended up to two years for the purpose. From 1985 to 1987 they had sufficient time to acquire the properties in question in the usual course. They had enough time to provide opportunity for filing objections and holding inquiry under Section 5-A of the Act. There was no need to invoke Section 17 of the Act. The office memorandum dated 19-7-1979 extracted above shows that the Executive Council took the decision in view of the amendment in the Requisitioning and Acquisition of Immovable Property Act, 1952 that all the requisitioned/leased houses which were with the Administration for more than 10 years were to be released to their owners immediately and all the occupants of requisitioned/leased houses were requested to furnish the relevant information by 16-7-1979 failing which the officer

concerned will be liable for eviction from the requisitioned house without provision for alternative accommodation. Here again, it is clear that the authorities were in the know of the situation in the year 1979 itself. Further, the minutes of the meeting held on 8-4-1985 in the room of the Secretary (PWD/L&D), Delhi Administration, Delhi show that the position regarding all the requisitioned properties in Delhi which were requisitioned under the 1952 Act was reviewed. The said meeting was attended by: (*1*) Secretary (PWD/L&D), (*2*) Joint Director (Training), (*3*) Additional District Magistrate (Registration) and Under-Secretary (LA). In the said meeting, it was decided that all the pre-1970 residential buildings which were partially requisitioned and were not in full occupation of the Delhi Administration should be derequisitioned in stages.

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27. Thus, from the Statement of Objects and Reasons of Act 20 of 1985, statement by the Minister concerned to the Lok Sabha on 28-3-1985, the office memorandum aforementioned and the minutes of meeting dated 8-4-1985, it is sufficiently clear that the appellants were fully aware that they had to make arrangements either for acquiring the properties or derequisitioning them by making alternate arrangement within a period of two years i.e. up to 10-3-1987 inasmuch as no further extension of the Requisition Act was possible. Further having regard to the observations made by this Court in the case of *Vora* [(1984) 2 SCC 337 : (1984) 2 SCR 693] , there would have been no justification for the appellants to continue the properties in question under the Requisitioning Act any more. If the appellants were really serious in acquiring the properties in question, they had almost 2 years' time even after taking the decision to acquire them or derequisition them within which time, acquisition proceedings could be completed in the usual course without depriving the respondents of their

valuable right to file objections for acquisition and without dispensing with inquiry under Section 5-A of the Act.

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29. Having regard to the facts and circumstances and the material available on record, we are of the view that invocation of urgency clause was without justification and was untenable as held in *Banwari Lal* [*Banwari Lal & Sons (P) Ltd.* v. *Union of India*, DRJ 1991 Supp 317 (Del HC) [**Ed.**: This order of the High Court was affirmed by the Supreme Court while dismissing the SLP (No. 4458 of 1991) in *Union of India* v. *Banwarilal & Sons (P) Ltd.* by its order dated 21-3-1991 quoted in para 5 below. See also para 11 below. See connected case at (2004) 5 SCC 304.]] and *Shakuntala Gupta* [*Union of India* v. *Shakuntala Gupta*, (2002) 7 SCC 98 [**Ed.**: See also the earlier order reported at (2002) 10 SCC 694.]] . This Court in *State of Punjab* v. *Gurdial Singh* [(1980) 2 SCC 471] as to the use of emergency power under Section 17 of the Act has observed that: (SCC p. 477, para 16)

> "[I]t is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

30. In *Om Prakash* v. *State of U.P.* [(1998) 6 SCC 1] referring to *State of Punjab* v. *Gurdial Singh* [(1980) 2 SCC 471] this Court in para 21 has observed that: (SCC pp. 23-24)

> "[A]ccording to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-à-vis, Section 5-A of the Land Acquisition Act would remain apposite."

In the present appeals, the appellants have not been able to show before the High Court any genuine subjective satisfaction depending upon any relevant material available to the State authorities at the time when they issued the impugned notification under Section 4(1) of the Act and dispensed with Section 5-A inquiry taking aid of Section 17(4) of the Act. A Bench of three learned Judges of this Court in *Narayan Govind Gavate* v. *State of Maharashtra* [(1977) 1 SCC 133 : 1977 SCC (Cri) 49] has expressed that Section 17(4) cannot be read in isolation from Sections 4(1) and 5-A of the Act and has expressed that having regard to the possible objections that may be taken by the landowners challenging the public purpose, normally there will be little difficulty in completing inquiries under Section 5-A of the Act very expeditiously. In the same judgment, it is also stated that: (SCC p. 148, para 38)

> "The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an

> urgency but the need to dispense with an inquiry under Section 5-A which has to be considered.””

23. Justifying the quashing of the notification under section 4 of the Land Acquisition Act along with the invocation of urgency under section 17 thereof, this Court then concluded:

> “**35.** The alternative argument urged on behalf of the appellants that if the impugned notification suffers from infirmity in relation to invoking urgency clause, it can be quashed only to the extent of invoking the aid of Section 17 and the said notification can be sustained confining it to Section 4 of the Act, cannot be accepted. Otherwise, the same common notification stands quashed in respect of a few parties as in the cases of *Banwari Lal* [*Union of India* v. *Banwarilal & Sons (P) Ltd.*, SLP (C) No. 4458 of 1991 dated 21-3-1991] and *Shakuntala Gupta* [*Union of India* v. *Shakuntala Gupta*, (2002) 7 SCC 98 [**Ed.**: See also the earlier order reported at (2002) 10 SCC 694.]] and it stands sustained in respect of others i.e. the respondents in these appeals leading to anomalous situation. Added to this, if the argument, as advanced on behalf of the Union, is accepted, the notification under Section 17 of the Act invoking urgency clause would stand quashed but the landowner would nonetheless be deprived of the possession of the property as also payment of 80% of compensation under Section 17(3-A) of the Act. Such an unjust result cannot be allowed to happen by quashing the notification in part only to the extent of Section 17 of the Act and maintaining it for the purpose of Section 4 of the Act. Thus, having regard to the facts and circumstances brought on record in these appeals, it is not possible to accept this argument particularly when the very foundation of invoking Section 17 was invalid and unjustified as upheld by this Court in *Banwari Lal*‡ and *Shakuntala Gupta* [*Union of India* v.

Shakuntala Gupta, (2002) 7 SCC 98 [**Ed.**: See also the earlier order reported at (2002) 10 SCC 694.]]."

24. Given the aforesaid, it is clear that the appeals filed by the State, namely, civil appeals arising out of SLP(C) No.10581-10583 of 2020 have to be dismissed.

25. Coming to the appeals filed by the Appellant,[1] the said appeals are only on a limited ground, namely, that compensation for the illegal occupation of the Premises cannot be assessed by the District Judge under section 11(1)(b) of the West Bengal Requisition Act, as section 11(1) refers to compensation during the period of requisition and not after the property continues to remain with the State without any authority of law even after the requisition period ends. Section 11(1) of the West Bengal Requisition Act reads as follows:

"*Provisions regarding compensation.*

11. **Procedure for fixing compensation**.-

(1) Where any premises are requisitioned under this Act, there shall be paid to all persons interested compensation the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, namely:

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

1 Civil appeals arising out of SLP (C) Nos.9834-9835 of 2020 and SLP (C) Nos.9837-9838 of 2020.

> (b) where no such agreement can be reached, the State Government shall appoint a District Judge or an Additional District Judge as arbitrator;…"

26. A cursory reading of the aforesaid provision will make it clear that the Appellant is correct in its submission, which is therefore accepted and the impugned judgment of the Division Bench is set aside to this extent. Civil appeals arising out of SLP (C) Nos. 9834-9835 of 2020 and SLP (C) Nos. 9837-9838 of 2020 are thereby allowed.

27. A very disturbing feature of these appeals is the fact that WBMDTCL, which is "State" within the meaning of Article 12 of the Constitution of India, has continued in unlawful possession of the Premises since 15.08.1998 without paying a single pice towards compensation till date. Following the judgments of this Court, most notably, **Assam Sillimanite Ltd. v. Union of India, (1990) 3 SCC 182** (*see* paragraphs 13 and 14) and **Krishan Lal Arneja** (supra), we appoint Shri Soumitra Pal (Retd. Judge, High Court of Calcutta) as arbitrator to determine compensation that is payable by way of damages for occupation of the Premises without any authority of law. A written authority to appoint such arbitrator is to be furnished to us immediately, i.e., within a week from 23.02.2021. If not so furnished, WBMDTCL will be liable to pay a sum of Rs. 100 per square foot, per month (being the average of the rental amounts paid by other tenants in the same building since August

1998 as per the Valuation Report dated 30.11.2019 prepared by Banibrata Mukherjee, Chartered Engineer, Engineer Commissioner & Valuer of Alipore Judges' Court) for the entire period of illegal occupation of the Premises within four months from the date of this judgment.

28. If written authority for appointment of the arbitrator is received within time, the learned arbitrator is to proceed on a *prima facie* view of the case submitted to him by the parties to determine interim compensation payable within a period of two months of entering upon the reference. This is owing to the fact that not a single pice has been paid for the last 22 years for the illegal occupation of the Premises by WBMDTCL. Further, neither party is to take any adjournment before the arbitrator within this period of two months, so that the arbitrator can decide the interim compensation that is to be paid. After such interim order, the learned arbitrator will proceed to deliver a final award.

29. WBMDTCL has asked for reasonable time to vacate the premises. However, in light of the fact that WBMDTCL has been in possession of the Premises without any authority of law for the last 22 years, we do not feel that it is justified to give time as prayed for, till the end of this year. Thus, we only grant time of four months from the date of this judgment to vacate the Premises, conditional upon the responsible officer filing an undertaking before this Court, that they will vacate the

Premises within four months and handover vacant possession of the Premises to the Appellant, and that the interim compensation, if ordered before such date, will be paid within the time stipulated by the arbitrator so appointed.

Civil Appeals @ SLP (C) Nos. 9837-9838 of 2020

30. In these appeals,[2] though no one appears on behalf of West Bengal Sugar Industries Development Corporation Ltd. ["**WB Sugar Industries**"], who have been in illegal occupation of a portion of the fifth floor of premises no. 13, Nellie Sengupta Sarani (Lindsay Street), Calcutta ["**Fifth Floor Premises**"], measuring approximately 1350 square feet, the same directions apply *qua* WB Sugar Industries. Thus, WB Sugar Industries is also to submit a written authority to appoint the arbitrator within a week from 23.02.2021, failing which they shall pay a sum of Rs. 100 per square foot, per month, for the entire period of illegal occupation of the Fifth Floor Premises, within four months from the date of this judgment. Further, WB Sugar Industries is given four months to vacate the Fifth Floor Premises, upon the submission of an undertaking to vacate and handover vacant possession of the Fifth Floor Premises to the Appellant, and to pay the interim compensation within the time to be stipulated by the arbitrator.

2 Civil appeals arising out of SLP (C) Nos. 9837-9838 of 2020.

31. These appeals are disposed of accordingly.

……J.
(R.F. Nariman)

……J.
(B.R. Gavai)

New Delhi;
March 01, 2021.