2024:DHC:489-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 24.01.2024

\+ W.P.(C) 11104/2018, CM APPL. 43169/2018- (stay) & CM APPL. 10231/2022-by R-5 (for vacation of stay)

YUDHVIR SINGH & ANR. ..... Petitioners

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

AND

\+ W.P.(C) 320/2018

GAJENDER SINGH DRALL AND ORS. ..... Petitioners

versus

GOVT OF NCT OF DELHI AND ORS.

..... Respondents

Present : Mr.Dhruv Mehta, Sr. Advocate with Ms.Smita Maan, Mr.Vishal Maan, Mr.Keeeth Verghese, Mr.Aakash Sehrawat, Mr.Aditya Singh and Mr.Jitin Chillar, Advocates for the petitioners.

Mr.Sanjay Kumar Pathak, Standing Counsel with Mr.Sunil Kumar Jha, Mr.M.S. Akhtar, Ms.Rini V.Tigga and Ms.Nidhi Thakur, Advocates for respondents No.1 to 4.

Mr.Manish Vashisht, Sr. Advocate with Mr.Karunesh Tandon, Mr.Rahul and Mr.Anurag Yadav, Advocates for respondent No.5/DJB.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

Table of Contents

(I) BRIEF BACKGROUND

1. The directions of National Green Tribunal vide order dated May 08, 2015 in ***Manoj Kumar Mishra v. Union of India*** to the concerned department for setting up of WWTP (Waste Water Treatment Plant) for tackling of discharge of waste and toxic effluents in Yamuna River, necessitated the acquisition of land in different villages under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'RFCTLARR Act, 2013').

2. In **Writ Petition (C) 11104/2018 (Yudhvir Singh and Another v. Govt. of NCT of Delhi and Others)** land of the petitioners in Khasra No.ll//ll (4-00), 12/2 (2-10), 19 (4-16), 20 (4-16), 21 (4-12), 22 (4-16), 28 (0-04) and 16//2 (4-12), total ad-measuring **30 bighas 6 biswa,** situated in **Village Tajpur Khurd, Delhi** was notified for acquisition**.** Petitioners seek quashing of notification bearing No.F.8/2/16/2015/L&B/LA/10643 dated August 28, 2015 issued under Section 11 (1) of the RFCTLARR Act, 2013 and further proceedings including declaration under Section 19 issued vide notification No.F.NO.ADM/LAC/SW/2015/921-927 dated July 27, 2017 under the said Act.

3. In **Writ Petition (C) 320/2018 (Gajender Singh Drall and Others v. Govt. of NCT of Delhi and Others)**, land of the petitioners in Khasra No.74/21 (4-16), 74/22 (4-03), 85//2/1 (2-08), 85//2/2 (2-08) and 85//3/1 (1-09) situated in **Village Tikri Kalan, New Delhi** was notified for acquisition. Petitioners seek quashing of Notification bearing No.F.8/2/15/2015/L&B/LA/10621 dated August 28, 2015 under Section

11(1) of the RFCTLARR Act and further proceedings including declaration issued under Section 19 vide Notification No.F.NO.LAC(W)/MISC./2017/4160 dated August 24, 2017 under the said Act.

4. At this stage, it may be noticed that RFCTLARR Act, 2013 which came into force *w.e.f.* January 01, 2014 repealed the Land Acquisition Act, 1894 and provided for 'rehabilitation and resettlement mechanism' for the project affected persons and their families, on displacement from the acquired land. The same required an assessment of economic disadvantages and **'social impact'** arising out of displacement and aimed at holistic improvement of all round living standard of the affected persons and families due to acquisition of land, in terms of Chapter II of the RFCTLARR Act, 2013. As provided under Section 9 of the RFCTLARR Act, 2013, the authorized government may exempt undertaking of the Social Impact Assessment Study, if the land is proposed to be acquired under the urgency provisions under Section 40 of the said Act. Also, Section 10 of the Act dealing with special provisions to safeguard food security, exempted the application of said provision in case of projects that are linear in nature, such as those relating to Railways, Highways, major District Roads, Irrigation Canals, Power Lines and Light. It may also be noticed that RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 were notified w.e.f. August 08, 2014 under Section 109 of the RFCTLARR Act, 2013.

5. On December 31, 2014, the RFCTLARR (Amendment) Ordinance, 2014 was promulgated by the President of India in exercise of the powers conferred by Article 123 of the Constitution of India to amend the RFCTLARR Act, 2013 which *inter alia* inserted Chapter III-A

empowering the Appropriate Government for exempting certain projects from provisions of Chapter-II & III of the Act.

Section 10A therein provides that provisions of Chapter-II (relating to determination of social impact and public purpose) and Chapter-III (relating to special provisions to safeguard food security) may be exempted by the Appropriate Government in public interest with reference to following projects:

> *(a) such projects vital to national security or defence of India and every part thereof, including preparation for defence; or defence production;*
>
> *(b) rural infrastructure including electrification;*
>
> *(c) affordable housing and housing for the poor people;*
>
> *(d) industrial corridors; and*
>
> *(e)* ***infrastructure and social infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government****."*

6. Thereafter, the RFCTLARR (Amendment) Bill was introduced on February 24, 2015 in the House of the People to replace the 2014 Ordinance and was passed with amendments on March 10, 2015 in the House of People but could not be passed by Council of States.

In view of above, RFCTLARR (Amendment) Ordinance, 2015 was promulgated by the President of India on April 03, 2015 whereby the Chapter-IIIA as referred in the earlier Ordinance was retained. Further, a proviso was introduced which provided that Appropriate Government shall before the issue of notification exempting the projects from application of Chapter-II and Chapter-III of the RFCTLARR Act ensure that extent of land for proposed acquisition is the bare minimum

land required for such projects. Also, sub-section 2 of Section 10A of the Ordinance provided that the Appropriate Government shall undertake a survey of its waste land including arid land and maintain a record containing details of such lands in a manner as may be prescribed by the Appropriate Government.

7. The RFCTLARR Act (Amendment) Second Bill, 2015 was introduced in the House of People on May 11, 2015 and referred to Joint Committee of the House. **In order to give continued effect to the provisions of RFCTLARR (Amendment) Ordinance, 2015, the President of India in exercise of powers under Article 123 of the Constitution of India promulgated RFCTLARR (Amendment) Second Ordinance, 2015 on May 30, 2015**. By virtue of repeal and saving clause, it was provided that the RFCTLARR (Amendment) Ordinance, 2015 is hereby repealed and further notwithstanding such repeal anything done or any action taken under the principal Act as amended by RFCTLARR (Amendment) Ordinance, 2015 shall be deemed to have been done or taken under the principal Act as amended by this Ordinance. **The RFCTLARR (Amendment) Second Ordinance, 2015 finally lapsed on August 31, 2015**.

8. Apart from other grounds *inter alia*, challenging the acquisition proceedings, the main plank of the petitioners is that the Land Acquisition proceedings initiated vide issue of notification under Section 11 of RFCTLARR Act, 2013 by invoking Section 10A(1)(e) of RFCTLARR (Amendment) Second Ordinance, 2015 without complying with provisions relating to Social Impact Assessment under Chapter II and III of RFCTLARR Act, 2013 could not be continued in view of lapsing of the RFCTLARR (Amendment) Second Ordinance on August 31, 2015.

9. At the request of the counsel for the petitioners and as agreed by the counsel for the respondents, Writ Petition (C) No.11104/2018-Yudhvir Singh &. Another v. GNCTD & Others is treated as a lead case. The date of notification under Section 11 of RFCTLARR Act, 2013 in both the cases is August 28, 2015 but the declaration under Section 19 of the RFCTLARR Act, 2013 was issued on different dates {(i.e. July 27, 2017 in WP(C) 11104/2018 and August 24, 2017 in WP(C) 320/2018)}. Similar legal contentions have been raised in both the cases except that DJB (Delhi Jal Board) is not a party in W.P.(C) 320/2018-Gajender Singh Drall and Others v. Govt. of NCT of Delhi and Others and there is no reduction of proposed land of acquisition in said proceedings.

(II) CASE SET UP BY THE PETITIONERS

10. As per the case of the petitioners, preliminary notification issued under Section 11 of the RFCTLARR Act, 2013, invoking Section 10A(1)(e) of the RFCTLARR (Amendment) Second Ordinance, 2015 is ineffective and inoperative on lapse of Ordinance on August 31, 2015 and the proceedings could not have been continued in furtherance thereof. Reliance in support of the contentions is placed upon the Constitution Bench judgment of the Hon'ble Supreme Court of India in ***Krishna Kumar Singh and Another v. State of Bihar and Others,*****(2017) 3 SCC 1**.

11. It is further the case of the petitioners that the identification of the land by the respondents was behind the back of private land owners and the process and procedure for identification of proposed land identified for acquisition is unknown to all. The land is stated to have been identified

contrary to proposed location of STPs as per Sewerage Master Plan (SMP-2031), MPD-2021 and Zonal Development Plan (ZDP).

12. Further, the land identified by respondent No.5 for proposed acquisition was initially 51 bigha 07 biswa which included land admeasuring 30 bigha 06 biswa owned and possessed by the petitioners, and 21 bigha 01 biswa owned and possessed by a private company namely M/s. Allied Realty Pvt. Ltd. However, the requirement was subsequently reduced from 51 bigha 07 biswa to 30 bigha 06 biswa and only the land of the petitioners was included while the land owned by Private Company was excluded for oblique reasons. This reduction in land is stated to be without any justification and was done to favour the said Private Company and petitioners stood discriminated.

13. It is further stated that pursuant to representations/complaints filed by the petitioners, Delhi Jal Board (respondent No. 5) decided to carry out a Vigilance Inquiry. Respondent No.5 also called upon the petitioners to participate in the Vigilance Inquiry and petitioners filed their reply dated July 12, 2017 to the queries raised during the inquiry. The copy of the representation dated June 08, 2017, letter dated July 07, 2017, notice/reply dated July 12, 2017 and noting-sheet dated August 24, 2017 made by CEO are also relied by the petitioners. It is further the case of the petitioners that during the said inquiry, it was revealed that noting-sheet dated August 24, 2017 made by CEO, Delhi Jal Board reflects that after the reduction of the total area demand, Member (DR), Department of Land (EE) did not discuss the selection of the land with the superiors and only after the complaint filed by the petitioners, Member (DR) reviewed the requirement of land for the proposed project and once again made a preliminary observation that instead

of 30 bigha, 50 bigha of land would be required. Further, to ascertain the exact requirement for the said purpose, Delhi Jal Board (respondent No.5) constituted an Expert Committee and it was decided that if the Committee proposes 50 bigha of land then respondent No. 5 Department would go for acquisition for additional 20 bigha of remaining land. Also, noting-sheet dated October 06, 2017 by the Minister of Revenue revealed that the Vigilance Department of Delhi Jal Board concluded its inquiry with the recommendations to initiate major penalty proceedings against the four officials of Delhi Jal Board found responsible for the lapses. In disregard to the representations of the petitioners and ignoring the findings of the Vigilance Inquiry, the authorities obtained approval from the Competent Authority for issuance of declaration under Section 19 of the RFCTLARR Act, 2013.

The same was followed by a noting-sheet dated October 30, 2017 by the Hon'ble Lt. Governor (respondent No.2) stating that the entire process of land acquisition should be conducted in a transparent manner as per law and if any lapses have been found on the part of the officials of Delhi Jal Board, disciplinary action should be taken against them. Further, as the issue as to how much land is required for the proposed project is still pending before the Expert Committee, therefore, before taking any action, it would be advisable to wait for the report of the Committee.

14. It is further the case of the petitioners that the land owned by the said Private Company falls in the facility corridor as per the provisions of Master Plan for Delhi 2021 and the Zonal Development Plan and the same is the vacant land easily available for acquisition for the alleged public purpose.

On the other hand, the land in question owned and possessed by the petitioners, falls outside the utility corridor and the usage thereof has been specifically provided as 'Residential' in the Zonal Development Plan for Zone – K.

15. It is also submitted that though the hearing notice was issued to the petitioners and hearing granted but the objections filed on behalf of the petitioners in response to the notification under Section 15 of RFCTLARR Act, 2013 were dismissed without any application of mind and reasoning.

16. Further, on one hand, the acquisition is sought to be made under emergency, depriving the land owners of statutory benefits of Chapter-II and III of the RFCTLARR Act, 2013 and on the other hand, the extension of time was considered for issuance of declaration under Section 19 by six months at the request of requisitioning department.

17. It is also stated that though the compliance with the provisions post declaration under Section 19 of the Act is pending but notification under Section 25 of the Act was issued extending the time for making the award. The entire acquisition proceedings are stated to be vitiated by *malafide*, arbitrariness and discrimination.

(III) CASE SET UP BY THE RESPONDENTS

18. On the other hand, respondents have put forth factual position with detailed list of dates in **W.P.(C) 11104/2018**, which may be noticed, for appreciating the stand of the respondents:

(i) In the light of Order dated May 08, 2015 passed by the National Green Tribunal, Principal Bench at New Delhi in OA No.06/2012 and OA No.300/2013 titled as ***Manoj Kumar***

Mishra v. Union of India for setting up of waste water treatment plants (WWTP), for effectively tackling the problem of discharge of waste, Delhi Jal Board (Respondent No.5) requested the Principal Secretary, L&B Department, GNCTD/Respondent No.1 to **acquire land in seven villages including Village Tajpur Khurd, Delhi and Village Tikri Kalan, Delhi** under emergency clause. It was mentioned therein that DJB first tried to get the Gaon Sabha land allotted from GNCTD but the same was not available/sufficient for said projects and, thus, private land was identified with the help of DC (SW) office. In the annexure to the requisition letter, the area of land in Village Tajpur Khurd was reflected as 51 bigha 07 biswa. In the meantime, the RFCTLARR (Amendment) Second Ordinance, 2015 was promulgated by the President of India on May 30, 2015.

(ii) The matter remained under correspondence and consideration of GNCTD as well as MHA, Government of India for issuing corrigendum in the notification conferring power of Appropriate Government on Lieutenant Governor since the Central Government is the Appropriate Government in relation to acquisition of land situated within a 'Union Territory' (except Pudducherry) and inadvertently in the notification issued by the Central Government, it had been mentioned as 'State Government'. Also, there appeared to be some reservations of respondents that requisition of DJB was not strictly covered for

acquisition of land under provisions of Section 40 of the RFCTLARR Act, 2013, which deals with urgency clause.

(iii) On June 19, 2015 DJB sent requisition for acquiring land for setting STPs/SPSs by DJB in various villages in compliance of directions of NGT. On June 23, 2015 Deputy Secretary, LA/L&B Department, GNCTD informed the concerned LACs the schedule for a joint survey of the land sought to be acquired in different villages including Tajpur Khurd, Delhi and further on June 30, 2015 joint survey of land was conducted in three villages including village Tajpur Khurd.

(iv) Thereafter, on July 17, 2015 as per DJB, the requirement of land in village Tajpur Khurd was reduced from 51 bigha and 07 biswa to 30 bigha 06 biswa as per the opinion of 'M/s Engineers India Limited-the project management consultant', appointed by DJB. The piece of land of petitioners is stated to have been chosen by the respondent-DJB keeping in view that the land is continuous and of regular shape and in terms of the opinion of the officials and revenue staff, it is easier to tackle with minimum number of persons whose land is to be acquired.

(v) On July 20, 2015 with reference to letter dated June 19, 2015 by DJB, the Deputy Secretary, L&B, GNCTD informed DJB that the proposal did not qualify under 'urgency clause' as specified under Section 40 of the RFCTLARR Act, 2013, since the same was applicable only to proposals specified in Section 40(2) of the Act. Thus, detailed information on land required village-wise, khasra no. and area-wise along with coordinates, map of

the land required and number of persons to be affected by the proposed acquisition, was sought to be clarified. DJB was also asked to clarify whether the project is qualified as infrastructure project as specified under Section 10A(1)(e) of the Ordinance, along with proper justification and that the proposed land required for acquisition is bare minimum land for executing the project.

(vi) In the meantime, the notification No.2740(E) dated 21.10.2014 regarding delegation of power to Appropriate Government was amended by notification No.2004(E) dated 21.07.2015, by substituting the words 'Appropriate Government' for the words 'State Government'.

(vii) On August 13, 2015, DJB issued a letter to Principal Secretary, L&B giving a detailed information on the land to be acquired in terms of the clarification earlier sought by them.

(viii) Thereafter, vide note dated August 22, 2015 of the L&B Department, the draft preliminary notification under Section 11 of the Act was put up for approval of the competent authority along with relevant details in the note and stating that the land proposed to be acquired in the said villages is bare minimum and proposed to be acquired under Section 10A(1)(e) of the RFCTLARR (Amendment) Second Ordinance dated May 30, 2015. Further, the proposed acquisition would be exempted from application of the provisions of Chapter-II (determination of social impact and public Purpose and Chapter III (special provisions to safeguard food security) of the RFCTLARR Act,

2013. It was also mentioned that ADM (SW) will be the Administrator under Section 43 (1) of the Act for rehabilitation and resettlement of displaced persons due to acquisition of said land. After vetting of the draft notifications and suitable amendments, the same were put up for the approval of the competent authority on August 26, 2015. After consideration and due application of mind, the approval is stated to have been granted by the Deputy Chief Minister and Hon'ble Lt. Governor of Delhi on August 28, 2015.

(ix) The preliminary notification under Section 11 of the Act notifying the land measuring 30 bigha 06 biswa in village Tajpur Khurd for purpose of construction of waste water treatment plant was issued on August 28, 2015.

(x) Similar separate notifications are stated to have been issued simultaneously for other villages, namely, Kakrola (11 bigha 15 biswa), Kair (9 bigha 12 biswa), Kazipur (4 bigha 16 biswa), Tikri Kalan (15 bigha 04 biswa) and Bijwasan (2 bigha 11 biswa) (2150 sqm).

(xi) The notification in respect of Village Tajpur Khurd under section 11 is stated to have been got published in two local Delhi newspapers one in English (Hindustan Times) and one in Hindi (Navbharat Times).

(xii) The RFCTLARR (Amendment) Second Ordinance lapsed on August 31, 2015.

(xiii) On October 05, 2015, the petitioners are stated to have filed objections under Section 15 of the Act followed by a reminder

dated October 19, 2015. Vide hearing notice dated December 11, 2015, the petitioners were directed to appear before the District Magistrate (DM) for hearing on December 21, 2015.

(xiv) Further, in the meantime, on 18.12.2015, RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015 were notified by the Central Government in exercise of powers under Section 109 of the Act and published in the Gazette of India.

(xv) On December 22, 2015, DM recorded the points for determination and on the request of the petitioners, the matter was fixed for hearing for January 05, 2016 which was finally closed on January 28, 2016.

(xvi) Further, after considering the objections, the DM(SW)/LAC submitted his report under Section 15(2) of the Act on the objection received against the acquisition proceedings in Village Tajpur Khurd for infrastructure project i.e. construction of Waste water treatment plant thereby rejecting the objections filed by the petitioners finding no merit and thus, recommending acquisition of the notified land measuring 30 bigha 06 biswa.

(xvii) Thereafter, the report of the DM(SW)/LAC was put up for conveying the recommendations on the objections, to the 'Appropriate Government' together with record of proceedings for approval and the file was sent to the Deputy Chief Minister.

(xviii) On April 26, 2016, the 'Administrator' under the Act conducted a joint field survey/ inspection of proposed acquired land with field staff in village Tajpur Khurd, Delhi.

(xix) On May 25, 2016, the 'Administrator' under the Act, issued Public Notice with copy of the same to the petitioners/affected parties for the purposes of rehabilitation and resettlement and required a report regarding the land owners under Section 16 (1) of the Act and June 17, 2016 was fixed for public hearing and field survey.

(xx) On August 22, 2016, upon receipt and consideration of proposal received from concerned district for extension of time for issuance of declaration under section 19 of the Act, the Competent Authority extended the time for issuance of declaration under Section 19 of the Act by a period of six (06) months in terms of Section 19 (7) of the Act vide notification dated August 22, 2016**.** The same was duly notified and published as per the statutory requirements by all modes.

(xxi) The ADM/Administrator (RR) under the RFCTLARR Act, 2013 prepared a detailed report for Rehabilitation and Resettlement Scheme under Section 16 of the Act. The report was prepared under various heads, namely, preface, particulars of lands and immovable properties being acquired of each affected families, List of Trees, building, other immovable property or assets attached to the land or building to be acquired, list of affected families (including tenants on the land) with Aadhar No. (if available), name of members of affected

families, livelihood lost in respect of landlosers and landless whose livelihoods are primarily dependent on the land being acquired, list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved, details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved, details of any common property resources being acquired, list of displaced families with Aadhar No of its members if available, consultation with Gram Panchayat/Gram Sabha and Rehabilitation and Resettlement Scheme.

(xxii) On December 13, 2016, Dy. Secretary (LA), L&B/GNCTD requested the LAC (SW) to expedite the matter so that notification under Section 19 of the Act may be issued within the time.

(xxiii) On January 11, 2017 &January 14, 2017, the proposal for approval of the Report of the DM(SW)/LAC was resubmitted by D.C.(HQ) for approval of the Appropriate Government i.e. Hon'ble Lt. Governor of Delhi. The Chief Secretary/GNCTD returned the file on January 14, 2017 seeking certain clarifications.

(xxiv) On January 19, 2017, with reference to The RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015, the Dy. Secretary (LA), L&B/GNCTD requested the DM (SW) to process further for the acquisition proceedings as per the Rules of 2015.

(xxv) On February 07, 2017, the DM/LAC requested the DJB to immediately deposit the total amount of Rs.13,02,91,667/- (including Rs.6,69,12,500/- for village Tajpur Khurd) for the cost of land acquisition in five villages so that the process is not delayed.

(xxvi) On February 15, 2017, the petitioners submitted representations to the Hon'ble LG, Deputy Chief Minister, Revenue Minister of Delhi and Divisional Commissioner alleging the following:

(a) Initially a total land measuring 51 bigha 07 biswas was identified for acquisition which included land measuring 30 bigha 06 biswas of the petitioners. However, land measuring 21 bigha 01 biswa of Allied Realty Pvt. Ltd. was left out from the Notification.

(b) Acquisition is contrary to the provisions of MPD-2021 and Zonal Development Plan.

(c) The land in question does not fall in place where the WWTP can be set up and there is more than sufficient vacant land in two places.

(d) The proposed acquisition defeats the purpose of land pooling policy.

(xxvii) On February 22, 2017, upon receipt and consideration of the proposal from concerned district for extension of time for issuance of declaration under Section 19 of the Act, the Competent Authority extended the time for issuance of declaration under Section 19 of the Act by a period of six (06)

months in terms of Section 19 (7) of the Act vide notification dated February 22, 2017. The same was duly notified and published as per the statutory requirements by all modes.

(xxviii) Vide detailed note dated May 25, 2017, the DM/LAC(SW), Delhi provided the necessary details regarding the objections of the petitioner as also the clarification as sought for by the Chief Secretary vide note dated January 14, 2017 and submitted the file for approval of the recommendation of the recommendation of the Collector for the acquisition of the notified land for the project and for publication of declaration under Section 19 of the Act along with summary of the Rehabilitation and Resettlement Scheme.

The said note was thereafter put up on June 02, 2017 for approval of the Appropriate Government/Competent Authority i.e. Hon'ble Lt. Governor Delhi. After due consideration and application of mind, the approval was granted by the Hon'ble Lt. Governor of Delhi on June 09, 2017 as per the proposal.

(xxix) On July 20, 2017, DJB submitted a cheque bearing No.560403 dated July 20, 2017 for a Sum of Rs.6,69,12,500/- drawn on Corporation Bank, Jhandewalan Branch, New Delhi to the Collector District South West towards the cost of land for construction of WWTP in Village Tajpur Khurd.

(xxx) On July 27, 2017, a Declaration was made under Section 19 (1) of the Act thereby acquiring the land in question for the purpose of setting up of Waste Water Treatment Plant (WWTP). It was

recorded that there was no family which was to be resettled and also that the Petitioners were the land-owners but not the farmers.

(xxxi) On August 08, 2017, the petitioners instead of assailing or challenging the acquisition, again made representations to the Hon'ble LG, CEO/DJB and Divisional Commissioner for leaving the adjoining land.

(xxxii) After issuance of declaration and Rehabilitation and Resettlement notification under Section 19 of the Act, the Collector proceeded, inter alia, towards ascertaining the market value of the acquired land by calling requisite information relating to sale from the concerned Sub Registrar for the purpose of making the requisite awards.

(xxxiii) On November 09, 2017, vide UO letter/note dated November 08, 2017 (received on November 09, 2017 in the office of the DM(SW)/Collector), the Secretary to Minister conveyed to the Secretary Revenue and DM(SW)/Collector Delhi the instructions of Hon’ble Lt. Governor of Delhi for Delhi Jal Board and Revenue Department along with noting part of CD No.000440853 containing the said instructions in the subject matter on the complaints made by the petitioners.

(xxxiv) Since the requisitioning department i.e. Delhi Jal Board had requested for some more time for deciding the elements of rehabilitation and resettlement entitlement for the project to affected families as provided under second schedule of the Act, proposal was sent by District (South West) for extension of time

for making Award under Section 25 of the Act. Upon consideration of the said proposal the Competent Authority extended the time for making the award under Section 25 of the Act by a period of six (06) months vide notification dated July 25, 2018 and the same was duly notified and published as per the statutory requirements by all modes.

(xxxv) On October 10, 2018, petitioners filed the writ petition challenging the acquisition of land in Village Tajpur Khurd. Vide order dated October 15, 2018, this Court granted an interim injunction in favour of the petitioners.

(IV) CONTENTIONS ON BEHALF OF THE PETITIONERS

19. Learned counsel for the petitioners submits that validity of impugned acquisition proceedings is to be tested on following principles:

A. *Any compulsory acquisition must stand by the rigours of Article 300A of the Constitution and has to compulsorily be in accordance with law.*

B. *Impugned acquisition initiated under RFCTLARR Act, 2013, which stipulates a scheme of both pre and post acquisition safeguards to ensure the process to be fair, transparent, participative & justice oriented.*

C. *The acquisition based on principle of eminent domain is compulsory/unavoidable and only protection available is that of procedure.*

D. *Being an expropriatory legislation, every provision/procedure to be construed & applied strictly & very stringently.*

It is urged that the acquisition proceedings initiated by respondents failed to qualify the aforesaid tests as the proceedings are neither fair nor transparent and petitioner was kept out of exercise of identification of land

for acquisition. The procedural rigours are stated to have been ignored by respondents and acquisition has been undertaken ignoring the availability of other land.

20. It is urged that preliminary notification issued under Section 11 of the RFCTLARR Act, 2013 as well as Section 10A of the Ordinance is ineffective and inoperative post the expiry of the Ordinance and proceedings cannot be continued in furtherance thereof and is not saved. Further, actions and transactions pending in pipeline or even concluded actions taken under the RFCTLARR (Amendment) Second Ordinance, 2015 does not survive, post ceasing of Ordinance on August 31, 2015.

Relying upon observations in ***Krishna Kumar Singh and Another v. State of Bihar and Others*** (supra**).** It is urged that the concurring view of the Bench was that the nature of power invoked for issuing of Ordinances does not admit of creation of any enduring rights in favour of those affected by such Ordinances. Further, as per observations of Hon'ble Mr. Justice Madan B. Lokur, when an Ordinance ceases to operate, all actions in the pipeline on the date it ceases to operate will terminate and pipeline actions cannot continue. It is also submitted that neither any pending action or transaction nor any concluded action or transaction can survive beyond the date of expiry of an Ordinance and actions/transactions under an Ordinance do not continue beyond the life of the Ordinance.

It is further submitted that for actions taken or concluded under an Ordinance, to continue after it has lapsed, a saving clause is required and no express provision has been made in Article 123 and Article 213 of the Constitution of India for saving of rights, privileges, obligations, liabilities

which have arisen under an Ordinance which has ceased to operate. It is emphasized by him that in the absence of a saving clause, the Constitution of India does not attach any degree of permanence to actions or transactions pending or concluded during the currency of Ordinance.

Further, relying upon observations of Hon'ble Mr. Justice D.Y. Chandrachud in aforesaid judgment in paras 133.2-135, it is urged that enduring rights theory which had been applied in English decisions to temporary statutes was wrongly brought in while construing the effect of an Ordinance which has ceased to operate. It is pointed out that there is a fundamental fallacy in equating an Ordinance with a temporary enactment and the nature of power invoked for issuance of Ordinances does not admit of creation of any enduring rights in favour of those affected by such Ordinances. Attention is also drawn to para 4, 56, 63 to 73, 133 to 135, 136, 137, 145 & 146 of the judgment.

Referring to para 132 of the judgment, it is contended that Section 6 of General Clauses Act protects and continues rights and liabilities only in case of repeal of an enactment and Section 6 of General Clauses Act does not come to the rescue of the respondent in case of an Ordinance, as an Ordinance lapses/ceases to operate when it has failed to obtain the legislative approval, whereas 'repeal' takes place through legislation. Reliance is further placed upon ***Punjab National Bank v. Union of India &Ors.*, 2022 SCC OnLine SC 227**.

Referring to para 71-73 and 148 of the said judgment, it is contended that as per views of Hon'ble Mr. Justice Madan B. Lokur, not even irreversible effect or public interest or constitutional necessity theory is applicable. Further in holding the relief, the Court would determine whether

undoing what has been done under the Ordinance would manifestly be contrary to public interest or constitutional necessity.

21. Learned counsel for the petitioners referring to ***Alok Agrawal v. State of Chattisgarh***, ***W.P.(C) No.1401/2015 decided on 03.11.2017*** contends that the theory of irreversibility cannot be applied in the present case as award is yet to be passed. It is pointed out that the High Court of Chattisgarh therein quashed the notification issued under Section 11 of 2013 Act read with Section 10A of Ordinance following the judgment in ***Krishna Kumar Singh v. State of Bihar and Others*** (supra) and held that such a notification would stand lapsed on the date upon which the Ordinance ceased to operate, as the situation has not become irreversible and only notification under Section 11(1) of the Act of 2013 had been issued. Further, since neither award had been passed nor possession had been taken from the petitioners, the provisions of Chapter-II and Chapter-III ought to have been complied with by the Appropriate Government and without following the said provision, the acquisition of the petitioners' land is unsustainable and bad in law.

22. It is further contended that the preliminary notification under Section 11 of the RFCTLARR Act, 2013 is *sine qua non* of acquisition and condition precedent to exercise of further powers under the Act. It is urged that once the notification under Section 11 read with Section 10A(1)(e) of the RFCTLARR (Amendment) Second Ordinance, 2015 does not survive due to the lapse of the Ordinance, the proceedings taken thereunder cannot be deemed to have been saved. As such, the acquisition proceedings in furtherance of preliminary notification are bad in law and without any basis.

It is also submitted that the contention of respondents pertaining to survival of land acquisition proceedings in the guise of making compliance with orders passed by the Hon'ble Supreme Court and NGT is untenable as government cannot be allowed to transgress the express legal provisions and procedure, in the garb of implementing Court's directions. In support of said contention, reliance is placed upon ***Devender Kumar Tyagi &Others v. State of Uttar Pradesh & Others,* (2011) 9 SCC 164**.

23. The acquisition proceedings are further stated to be unsustainable in law for complete non application of mind at all stages. It is contended that the entire proceedings relating to identification of land for the purpose of construction of STP was without any meaningful survey or inquiry and the same was done completely at the discretion of the officials. The only survey that is stated to have been conducted was on June 30, 2015 while the selection/identification was made on May 13, 2015. It is pointed out that Section 4 mandates consultation and participation of public and affected persons even at the stage when the government only intends to acquire land. Further, the DJB Sewerage Master Plan-2031 is stated to be not available at the time of making selection.

24. It is also submitted that there was no application of mind as to whatsoever as to the need, urgency, basis and foundation for invocation of powers conferred under Section 10A of the Second Ordinance to deprive the land owners of the mandatory provisions of the RFCTLARR Act, 2013. The reasons extended by the respondents in this regard are stated to be without any relevance. It is urged that even proviso to Section 10A of the Ordinance, requires authorities to ensure that the area of land required is minimum,

whereas the requisitioning department/R5/DJB was not certain about the same even post issuance of declaration under Section 19 of the Act.

25. It is further contended that the declaration under Section 19 of the Act was obtained keeping the Hon'ble Lt. Governor in dark and there was no application of mind on the objections filed by the land owners or on the recommendation of report of LAC. Also, the objections under Section 15 of the Act are stated to have been rejected without dealing the same effectively and objectively and making it a mere formality. In support of contentions, reliance is further placed upon ***Gojer Brothers Private Limited and Another v. State of West Bengal and Others,* (2013) 16 SCC 660** and ***Usha Stud and Agricultural Farms Private Limited and Others v. State of Haryana and Others,* (2013) 4 SCC 210**.

26. It is further submitted by learned counsel for the petitioners that the proceedings for acquisition reflect colourable exercise of power which stands vitiated by *malafides*, discrimination, arbitrariness and favouritism. The land of the private company measuring 21 bigha 01 biswa is stated to have been excluded from acquisition for oblique reasons and only the land of the petitioners was wrongly included for acquisition. No fresh survey regarding comparable suitability for exclusion/inclusion of particular land is stated to have been carried out and also no justifiable reasons were given as to why deviation was made from the location of STP in SMP-2031, when the vacant land was already available there. The land of the petitioners is stated to have been picked up amidst large tracks of continuous land owned by private limited companies to give them the benefit.

27. The proposed acquisition is stated to be in violation of SMP-2031, MPD-2021, ZDP and DDA's Land Pooling Policy. It is urged that Village

Tajpur Khurd falls in area eligible for DDA's land pooling policy and petitioners had already opted and applied for surrendering their land in the said scheme. It is pointed out that under the said Scheme, 40% of the pooled land is available to the DDA/government for development purposes. It is further submitted that the petitioner's land which is now sought to be acquired if taken through the land pooling policy from the DDA shall be available free of cost to the public exchequer and that too in public interest. Reliance is further placed upon ***R.K. Mittal and Others v. State of Uttar Pradesh and Others*, (2012) 2 SCC 232**.

28. It is submitted by learned counsel for the petitioners that land acquisition proceedings have to be stayed wheresoever the same have been initiated without following the provisions of Chapter II & Chapter III of the Act. Reliance is further placed upon ***Valluri Jayaram and Another v. State of Andhra Pradesh*,2020 SCC OnLine AP 3396**, ***Karri Prathap Rayala Reddy v. State of Andhra Pradesh***, **2020 SCC OnLine AP 4034** and ***Kanuparthi Venkata Simhadri v. State of Telangana*, 2020 SCC OnLine TS 2312.**

(V) CONTENTIONS ON BEHALF OF THE RESPONDENTS

29. The contentions raised on behalf of the respondents in both the writ petitions are common. Learned Counsel appearing for Respondent 1 to 3 and Respondent 1 to 4 in W.P(C) 320/2018 and W.P (C) 11104/2018 also rely upon submissions made on behalf of Respondent No.5 DJB in WP(C) No.11104/2018-Yudhvir Singh &. Another v. GNCTD & Others.

Learned counsels for respondents submit that the writ petitions preferred by petitioners are not maintainable due to delay, laches, waiver,

acquiescence and estoppel. The writ petitions have been preferred without showing any sufficient cause after about two to three years from the date of publishing of impugned notification under Section 11 of the RFCTLARR Act, 2013 on August 28, 2015 and only after issue of declaration under Section 19 of the RFCTLARR Act, 2013 on August 24, 2017 in {WP(C) 320/2018)} and July 27, 2017 in {WP(C) 11104/2018} respectively. The petitioners are further stated to have participated in the process of acquisition proceedings by filing objections, making representations and complaints before various authorities. Therefore, the petitioners by their express conduct acquiesced in the proceedings for proposed acquisition and waived their right to question the legality and validity of acquisition proceedings. It is also urged that the acquisition proceedings had substantially progressed from the date of issuance of the preliminary notification under Section 11 of the Act and even declaration under Section 19 was issued on August 24, 2017 and July 27, 2017. In support of the contentions, reliance is placed upon ***State of Madhya Pradesh and Another v. Bhailal Bhai and Others***, **1964 SCC OnLine SC 10**, ***Aflatoon and Others. v. Lt. Governor of Delhi and Others,*** **(1975) 4 SCC 285**, ***State of Maharashtra v. Digambar*****, (1995) 4 SCC 683** and ***Banda Development Authority v. Moti Lal Agarwal &Others*****, (2011) 5 SCC 394** and ***Chairman, State Bank of India and Another v. M.J. James***, **(2022) 2 SCC 301**.

The petitioners are stated to have not approached this Court with clean hands, as the complete material facts had not been disclosed or had been distorted. Reliance is further placed upon ***V. Chandrasekaran and Another v. Administrative Officer and Others***, **(2012) 12 SCC 133** and ***Ramjas Foundation and Another v. Union of India and Others,*****(2010) 14 SCC 38**.

30. The primary contention raised on behalf of the petitioners challenging the validity of the acquisition proceedings on lapse of the Ordinance, placing reliance upon ***Krishna Kumar Singh v. State of Bihar and Others (supra)***, has been vehemently disputed. Also, the *malafides* attributed *qua* the acquisition proceedings are denied. The acquisition proceedings are stated to have been undertaken *bonafide* in view of the directions issued by the NGT in ***Manoj Kumar Mishra v. Union of India and Others*** (supra). It is urged that the public purpose and public interest is paramount than the private interest of the petitioners and the action was initiated for setting up of STP in terms of the directions of the NGT. The matter is stated to have been proceeded with in accordance with mandate under the RFCTLARR (Amendment) Second Ordinance, 2015 and relevant provisions under the RFCTLARR Act, 2013. Reference is also made to detailed list of dates which has already been noticed to contend that due process in terms of the Act was followed and the objections filed on behalf of the petitioners were duly considered in accordance with law. The acquisition proceedings is stated to have been carried out in respect of the land identified in other villages for setting up of STP without challenge but objections had been raised only in respect of the land involved in present Writ Petitions.

31. Learned counsel for the respondents contends that the factual position in ***Krishna Kumar Singh and Another v. State of Bihar and Others*** (supra) is distinguishable since in the said case, none of the Ordinances which were issued in exercise of the power of the Governor under Article 213 of the Constitution were placed before the State Legislature as mandated. Further, the State Legislature did not enact a law in terms of the Ordinances and the last of them was allowed to lapse.

It is urged that in the present case, after the promulgation of the Ordinance initially on December 31, 2014, the RFCTLARR (Amendment) Bill, 2015 was introduced on February 24, 2015, which was passed in the House of People but could not be passed by the Council of States. In view of above, RFCTLARR (Amendment) Ordinance, 2015 was promulgated on April 03, 2015. Thereafter, the RFCTLARR (Amendment) Second Bill, 2015 was introduced in the House of People on May 11, 2015 which referred the Bill to the Joint Committees of the Houses. In view of above, to give continued effect to the RFCTLARR (Amendment) Ordinance, 2015, the RFCTLARR (Amendment) Second Ordinance, 2015 was promulgated on May 31, 2015.

32. It is vehemently contended that in para 93 in ***Krishna Kumar Singh v. State of Bihar and Others*** (supra), the threefold test was noticed i.e. first test of irreversibility of effect, second impracticality of reversing a consequence which has ensued under the Ordinance and the third being test of public interest. The majority view of the Constitution bench is stated to have been recorded in conclusion in para 105.12 of the said judgment regarding the question as to whether rights, privileges, obligations and liabilities would survive in Ordinance which has ceased to operate, holding that the question must be determined as a matter of construction. In the light of the aforesaid test, the petitioners are stated to be disentitled for the relief as claimed since the acquisition proceedings have been undertaken in public interest for the purpose of setting of Waste Water Treatment Plant. No challenge is stated to have been made by the petitioners to the legality or validity of the three Ordinances in this regard. It is urged that the case of the petitioners fails

even on the test of 'constitutional necessity' as there is neither any dispute on the public purpose (setting up of WWTP) nor there is any challenge to the said public purpose.

33. Reliance is also placed upon ***Datla Venkata Appala Prasadraju v. State of Andhra Pradesh***, **2022 SCC Online AP 2526** wherein the Division Bench placing reliance upon ***Krishna Kumar Singh v. State of Bihar and Others (supra)*** dismissed the writ petitions and appeals challenging the acquisition proceedings initiated for establishing Green Field Airport exempting the projects from the provisions of Chapter II and Chapter III of the Act under Section 10A inserted by Ordinance. It is submitted that even in the said writ petition, the projects were exempted from the provisions of Chapter II and Chapter III of the Act under Section 10A inserted by Ordinance 9 of 2014.

34. Placing reliance upon ***Chameli Singh and Others v. State of U.P. and Another,*** **(1996) 2 SCC 549** and ***First Land Acquisition Collector and Others v. Nirodhi Prakash Gangoli and Another***, **(2002) 4 SCC 160**, it is contended by learned counsel for the respondents that pre-notification and post notification delay by government officials would not render the exercise of power to invoke urgency clause invalid.

35. Referring to ***Deepak Resorts and Hotels Pvt. Ltd. v. Union of India and Ors.***, **149 (2008) DLT 582 (DB)**, it is further urged that choice of site at which STP should be constructed is a matter left to the Executive for determination and the interference with the selection is uncalled for, unless decision is so outrageously perverse that no reasonable person could countenance the same. Placing reliance upon ***Ramniklal N. Bhutta and Another v. State of Maharashtra and Others***, **1997(1) SCC 134,** it is

contended that power under Article 226 of the Constitution of India must be exercised only in furtherance of interest of justice and not merely on making of a legal point. Malice could not be inferred in the present case as the acquisition proceedings were for a public purpose of setting up of WWTP pursuant to the directions of the NGT.

36. It is further pointed out by learned counsel for the respondents that Clause 15 of the Ordinance provides for a saving clause for all actions taken under the Principal Act to be deemed to have been done or taken under the Principal Act as amended by the Ordinance. The rights acquired pursuant to the acquisition are stated to endure and last even after the expiry of the Ordinance as the acquisition was for a public purpose.

37. It is also pointed out that the notifications issued under Section 11 and 19 of the RFCTLARR Act, 2013 and proceedings thereunder are just and valid and have been undertaken by the Competent Authority after taking the necessary approvals of the Appropriate Government, which was granted after consideration of all the facts, material and due application of mind.

38. Learned counsel for Respondent No.5 DJB in WP(C) 11104/2018 also pointed out that the compensation amount to the tune of Rs.6,69,00,500/- (Rupees Six Crore Sixty Nine Lakh Five Hundred Only) was also deposited by respondent No. 5 with the land acquiring agency and only when the award was to be passed, the petitioners preferred the writ petitions in January and October, 2018 after a period of more than two years from the date of issuance of the preliminary notification under Section 11 dated August 28, 2015. The petitioners also filed complaints against officials of DJB on unfounded allegations but when the results did not go as per their expectations, they challenged the notifications and declarations after a

considerable delay. The writ petition is stated to have been filed only after the closure of vigilance case by the CVC, while the challenge could have been made immediately after issuance of notification under Section 11 on August 28, 2015.

39. Reliance is also placed upon ***Urban Improvement Trust, Udaipur v. Bheru Lal and Others,*** **(2002) 7 SCC 712,** ***Reliance Petroleum Limited v. Zaver Chand Popatlal Sumaria and Others,*** **(1996) 4 SCC 579** and ***Hari Singh and Others v. State of UP and Others, (1984)*** **2 SCC 624**to contend that where the land is needed for a public purpose, the Court ought to have taken care and not entertain the writ petition on the grounds of delay, as it is likely to cause serious prejudice to the persons for whose benefit the land is being acquired.It is further urged that it has been observed in various judgments by Hon'ble Apex Court that the jurisdiction of Court should not be exercised in favour of the persons who are guilty of laches and inordinate delay. Reference is also made to ***Mahant Narayana Dessjivaru v. State of Andhra Pradesh,*** **AIR 1959 AP 471** and ***Arce Polymers Private Limited v. Alphine Pharmaceuticals Private Limited and Others, (*****2022) 2 SCC 221**.

Learned counsel for respondent No.5 DJB also draws attention to ***Administrative Law (Page 300 to 307), Oxford University Press, 9th Edition*** to emphasize that the Court may hold that the act or order is invalid but may refuse relief to the petitioner on the grounds as referred in the relevant paragraph reproduced below:

> *"Such an absolute result depends, however, upon the willingness of the court to grant the necessary legal remedies. The court may hold that the act or order is invalid, but may refuse relief to the applicant because of his lack of standing." because he does not deserve a discretionary remedy," because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective*

> *and, must be accepted as if it was valid. It seems also that an order may be void for one purpose and valid for another;" and that it may be void against one person but valid against another." A common case where an order, however void, becomes valid for practical purposes is where a statutory time limit expires after which its validity cannot be questioned." The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result." As Lord Diplock said of a compulsory purchase order alleged to be made in bad faith but challenged after the expiry of the limitation period, the order 'had legal effect notwithstanding its potential invalidity"*

40. Reliance is placed upon Para 16 to Para 19 in ***Krishna Devi Malchand Kamathia and Others v. Bombay Environmental Action Group and Others***, **(2011) 3 SCC 363** to submit that the petitioners have not challenged or assailed the "Ordinance" terming it to be void but within the teeth have alleged the actions of Government to be a nullity. It is contended that an order, even if not made in good faith is still an act capable of legal consequences and bears no brand of invalidity upon its forehead unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose**.**

41. It is further urged by learned counsel for Respondent No.5 DJB that there is nothing in the Ordinance relating to Section 11 of the RFCTLARR Act, 2013 which required the same to be placed before the Parliament. There was no question of any such provision under the Ordinance either in the nature of repeal or a fresh enactment of Section 11 of the Act, which was required to be tabled for consideration of the Parliament. The Ordinance masked the applicability of Chapter II and Chapter III of the Act for the purposes of infrastructure projects and that too for public purpose by suggesting inclusion of Chapter IIIA. This inclusion could not be brought

into the statute book with the result that the enactment which was introduced on January 1, 2014 remained unaffected. The preliminary notification that was issued under Section 11 of the RFCTLARR Act therefore remained unaffected as the same was issued under the Act and not under the Ordinance. It is submitted that so far as non-adherence to chapter II and chapter III were concerned, at the relevant time the application of the same was exempted or masked as per the Ordinance which was 'law' during the relevant period and the provisions of the same were to be strictly construed and applied. Thus, there was no error in exercise of power while issuing the preliminary notification under section 11 of the Act.

42. It is further urged that substantial compliance was undertaken to fulfill the objective of the Act, as prior to issuance of preliminary notification in the Section 11 of the act, the purpose for acquisition and the bare minimum requirement of land was strictly complied with. The effect of acquisition on the environment was considered by the acquiring agency and it was ensured that nobody was displaced and permission of Hon'ble LG of Delhi was duly obtained.

43. Section 15 of the Ordinance is stated to provide for a saving clause for all the actions taken under the Principal Act to be deemed to have been done or taken under the Principal Act as amended by the Ordinance.

44. Placing reliance upon ***Dr. Abraham Patani of Mumbai and another v. State of Maharashtra and Others, 2022 SCC Online SC 1143,***it is submitted that public interest will always prevail upon the private interest and the private interest must give way to the interest of the general public. Reference is also made to ***63 Moons Technologies Limited v. Union of India,*** **(2019) 18 SCC 401,** wherein the Supreme Court after referring to

various decisions where the phrase 'public interest' has been interpreted, observed that the expression public interest would mean the welfare of the public or the interest of society as a whole, as contrasted with the selfish interest of a group of private individuals. Thus, 'public interest' may have regard to the interest of production of goods or services essential to the nation, so that they may contribute to the nation's welfare and progress, and in so doing, may also provide much needed employment.

45. The plea of *malafide* as set out by the petitioner is also contended to be pointless as the land in question is stated to have been found to be more suitable, and the requirement was reduced from 50 bighas to 30 bighas after the same was examined as per the report of Engineers India Ltd dated July 17, 2015. Reliance is placed upon ***Bharat Singh and Others v. State of Haryana and Others*, (1988) 4 SCC 534,** wherein it has been observed that the government would acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners is stated to have been acquired considering the same as suitable for the public purpose. It is urged that the petitioners cannot complain of any discrimination merely because land of other persons had not been acquired by the Government.

46. From the date of issuance of the preliminary notification, till the filing of the writ petition, it is stated to be evident that the 'Appropriate Government' wanted to construct the WWTP and took determinative steps to ensure that waste and polluted water does not enter the river Yamuna in line of the directions of Hon'ble Supreme Court and NGT. The entire project was given a final shape and steps were taken to conclude the same and no action is stated to remain in pipeline. It is further submitted that the power of

eminent domain has enshrined in article in Article 300A of the Constitution has been exercised by the Appropriate Government in accordance with the statute. The objection of the petitioners that the land in question falls in residential zone or the use of land was contrary to land pooling policy is disputed.

(VI) REBUTTAL SUBMISSIONS ON BEHALF OF THE PETITIONERS

47. In the rejoinder submissions, learned counsel for the petitioners reiterates that the only action taken under the Ordinance is issuance of notification under Section 11 dated August 28, 2015 and the same in the light of judgment in ***Krishna Kumar Singh v. State of Bihar and Others (supra)*** can be termed as an action in pipeline in the process of acquisition and not as a concluded act under the Ordinance. It is only the irreversible actions that endure even after the lapse of Ordinance and in the present set of circumstances, no such act done is of irreversible nature and undoing whereof would be prejudicing the public purpose.

The contention of the respondents that the acts are saved by the saving clause in Ordinance is stated to be untenable. Ordinance by its very nature cannot provide for any saving clause. Secondly, the wording of the saving clause in itself clearly intends to save acts done under the Ordinance only when the Ordinance is approved and the Principal Act is amended by the Ordinance.

48. It is vehemently contended that the plea of sufficient compliance as raised on behalf of respondents during the course of arguments was not at all raised in the pleadings. Further, the Social Impact Assessment survey under Chapter II and III of the act is entirely different and it is a settled position

that what is required to be done mandatorily under the statute must be done in the manner, process and procedure prescribed thereunder.

49. Reliance placed by respondent on ***Datla Venkata Appala Prasadraju v. State of Andhra Pradesh***(supra)is stated to be distinguishable on facts, as therein a lot of progress had taken place in the acquisition proceedings, like consent awards were passed, 1937 affected landowners had agreed to the consent awards, possession of 2064 acres of land was already taken, compensation amount of Rs 678 crores was already paid to the landowners and since land admeasuring only 37 acres remained , the court observed that test of irreversibility, impracticality and public interest as laid down in ***Krishna Kumar Singh v. State of Bihar and Others (supra)*** stood satisfied. However, it is submitted that in the present case respondents have totally failed to show if any other act was done under the Ordinance apart from mere issuance of notification under Section 11 of the Act.

50. It is further urged that Acquisition proceedings can be challenged at different stages till the time vesting of land takes places which is only by taking over physical possession under Section 16 of LA Act, 1894 or Section 38 of 2013 Act after passing of Award and a separate cause of action arises at each stage. Reliance is further placed upon ***Anil Kumar Gupta v. State of Bihar & Ors***. (supra). It is pointed out that in present case, neither Award has been made nor possession has been taken of the acquired, nor any vesting of land can be presumed and there is no delay in preferring the writ petitions. The judgments relied by respondents are stated to be distinguishable on facts as therein the challenge to acquisition proceedings was made after vesting of land in question.

51. It is further submitted that no plea regarding interconnection of all STP projects in different villages was taken nor any plea was raised in pleadings that quashing of acquisition in present case would affect all other projects. It is urged that pre and post notification delay on part of the Authorities and repeated extensions for making of declaration under Section 19, and Award under Section 26 of the Act demolish the plea of urgency raised by the respondents. Reliance is further placed upon ***Darshan Lal Nagpal v. Govt. of NCT of Delhi & Ors.*, (2012) 2 SCC 327.**

52. Learned counsel for the petitioners further reiterates that filing of statutory objections under section 15 of the Act and representations before competent authorities objecting to acquisition cannot be construed and interpreted as a consent or participation in acquisition or a waiver/estoppel/ acquiescence on part of petitioners.

(VII) FINDINGS/ANALYSIS

53. At the outset, relying upon ***A.V.G.P. Chettiar & Sons and Others v. T. Palanisamy Gounder*, (2002) 5 SCC 337,** a contention has been raised on behalf of the petitioners that the grounds taken by the respondents in their arguments have not been elucidated in their pleadings.

The same is refuted by respondents and it is submitted that the proceedings conducted by the LAC are self-speaking and the same have been relied and placed upon by the respondents on record. It is further submitted that the petitioners have suppressed and not completely brought out the complete factual details in the pleadings or to prove the allegations of malice. Reliance is also placed upon ***Bharat Singh and Others v. State of Haryana and Others*** (supra).

We are of the considered view that since the proceedings undertaken by the LAC have been placed on record along with relevant documents, the petitions can be disposed of after considering the submissions in the light of the pleadings and documents on record. Defective or vague pleadings would not be fatal, if the parties have understood what the case pleaded is and accordingly placed material before the Court, and if neither party is prejudiced. Reference is this regard may be made to ***Ram Narain Arora v. Asha Rani,*** **(1999) 1 SCC 141**.

It may also be observed that the power under Article 226 of the Constitution of India is discretionary and may be exercised only in furtherance of interests of justice and not merely on the making out of a legal point, as in the matter of land acquisition the interests of justice and the public purpose coalesce.

A. <u>Whether the writ petitions preferred by the petitioners are barred on the ground of delay and laches or acquiescence or waiver of rights by the petitioners</u>

54. Respondents have vehemently opposed the Writ Petitions being barred by delay and laches. It is also submitted that the petitioners having acquiesced in the acquisition proceedings, cannot challenge the validity of the proceedings. It is pointed out that though an *ultra vires* statute cannot be validated by acquiescence but an acquiescing party can be estopped from questioning it. Further, the action need not necessarily be set at naught in all events though the order may be void, if the party does not approach the Court within reasonable time which is always a question of fact. Reliance is further placed upon ***Mahant Narayana Dessjivaru v. State of Andhra Pradesh***(supra), ***Krishna Devi Malchand Kamathia and Others v. Bombay***

Environmental Action Group and Others(supra), ***State of Rajasthan and Others v. D.R. Laxmi and Others,*** **(1996) 6 SCC445** and ***Larsen & Toubro Ltd. v. State of Gujarat &Ors.,*** **(1998) 4 SCC 387.**

55. On the other hand, learned counsel for the petitioners submits that the initiation of acquisition proceedings right from the inception has been opposed and challenged by way of objections under Section 15 of the RFCTLARR Act, 2013 on October 05, 2015. A reminder in this regard was issued and the objections were reiterated at the stage of hearing notice on December 11, 2015. Also, the matter was taken up by the petitioners with various authorities by way of representations/reminders, challenging the acquisition proceedings and the same being vitiated by *malafide*, arbitrariness and discrimination, till 2017. The vigilance inquiry is also stated to have been directed to be conducted by the authorities on the basis of aforesaid representations. The declaration under Section 19 is stated to have only been issued on July 27, 2017. Representations are stated to have been further filed by the petitioners against the acquisition proceedings on August 08, 2017 and the present proceedings were initiated in 2018 after the petitioners were left with no other option. It is submitted that the Award is yet to be passed by the LAC. Reliance is further placed upon ***Royal Orchid Hotels v. G. Jayarama Reddy***, **(2011) 10 SCC 608,** ***Anil Kumar Gupta v. State of Bihar & Ors***., **(2012) 12 SCC 443**,***Lajja Ram and Others v. UT, Chandigarh and Others***, **(2013) 11 SCC 235,** ***V.K.M. Kattha Industries Pvt. Ltd. v. State of Haryana & Ors.,*** **(2013) 9 SCC 338**.

56. Noticing the distinction between 'acquiescence' and 'delay and laches' it was observed in ***Chairman, State Bank of India and Another v. M.J. James*** (supra), that 'doctrine of acquiescence' is an equitable doctrine which

applies when a party having a right, stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. Further, 'laches' unlike 'limitation' is flexible. However, both limitation and laches destroy the remedy but not the right. 'Laches' like 'acquiescence' is based upon equitable considerations, but 'laches' unlike 'acquiescence' imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel *in pais*. It bars a party afterwards from complaining of the violation of the right. 'Waiver' is applicable when a party knowingly gives up an existing legal claim, advantage, benefit, or privilege for a specific reason while being aware of the relevant facts and their legal rights in the case.

57. We are of the considered opinion that the Rule against laches is one of the practice and not law. There cannot be a hard and fast rule or straitjacket formula for deciding question of 'delay and laches' and each case needs to be considered on its own facts. The questions of prejudice, change of position, creation of third-party rights or interests are also relevant and the State being a virtuous litigant is expected to look into genuine claims, and abandonment of right or acquiescence cannot be inferred unless and until the same is express or implied. There is no dispute as to the principles of law laid down in the judgments relied upon, both by the learned counsel for the petitioners as well as the respondents, and the factor of delay has to be considered in the light of the facts and circumstances in respective cases.

58. In the instant case, it does not appear that the petitioners have been fence sitters, or they failed to take steps to file the objections, or pursue the matter with the concerned authorities. The petitioners continuously opposed

the notification issued under Section 11of the RFCTLARR Act, 2013 and also consistently followed with the concerned authorities. The petitioners cannot be deemed to have adopted any dilatory tactics or waived their rights as contended by the respondents but raised their *bonafide* concerns at appropriate stages. The petitioners, on the issuance of notification under Section 11 of the RFCTLARR Act, 2013 duly filed the objections and also took up the matter by way of representations/reminders with the concerned authorities and left with no other option, petitioners finally set the law in motion by way of filing of present writ petitions. The petitioners cannot be said to have acquiesced in any manner in the acquisition proceedings. The contention raised on behalf of the respondents is without merit.

59. The conclusions drawn by us are also supported by the authorities relied upon by the petitioners and may be briefly noticed:

(i) ***In Royal Orchid Hotels v. G. Jayarama Reddy*** (supra), the issue for consideration before the Hon'ble Apex Court was whether the land acquired by the State Government at the instance of Karnataka State Tourism Development Corporation for the specified purpose i.e. golf-cum-hotel resort near Bangalore Airport could be transferred by the Corporation to a private individual and corporate entities. The High Court allowed the petitions quashing the land acquisition proceedings. One of the contentions before the Apex Court was that the High Court could not have entertained the writ petitions since there was an unexplainable delay of 12 years in preferring the writ petitions. The Apex Court observed that discretion exercised by High Court to entertain and decide writ petition on merits is not vitiated by any patent legal infirmity as the

respondent was not sleeping over his rights and was not guilty of laches. It was further held that Rule against laches is one of practice and not of law. There is no hard and fast rule and no straitjacket formula for deciding question of delay/laches. Each case is to be decided on its own facts.

(ii) In ***Anil Kumar Gupta v. State of Bihar & Ors***. (supra), the Hon'ble Apex Court held that a writ petition challenging Section 6 declaration after two years' gap cannot be held to be barred by delay/laches. The Court observed that appellant had challenged the acquisition proceedings immediately after passing of the award and pleaded that the declaration issued under Section 6(1) was liable to be declared a nullity because of violation of the time-limit prescribed in the first proviso (ii) to Section 6(1) and, thus, the writ petition cannot be stated to have been barred by time. It was also held that even if the petition is filed beyond the period of limitation prescribed for filing a suit, the Court may entertain the petition provided the petitioner gives a satisfactory explanation or may decline relief in a case where the petition is filed within limitation but the explanation for the delay is not satisfactory.

(iii) In ***Lajja Ram and Others v. UT, Chandigarh and Others*** (supra), the dispute pertained to acquisition of land situated in Villages Lahora and Sarangpur, Chandigarh, by respondent no. 1 for the purpose of development of complex for important projects and allied purposes, i.e., Chandigarh Science Park and institutional area and also for regulated and planned development under the Capital of Punjab (Development and Regulation) Act, 1952. The High

Court dismissed the writ petitions preferred by the petitioners on the ground that there was delay of nearly three and two years respectively in approaching the writ court from the date of notifications issued under Section 4 & 6 of the Act and is fatal to the proceedings. Secondly, that after the award passed by the LAO, the appellants could not have approached the Writ Court questioning the notifications issued by respondent No.1 under Section4 & 6 of the Act. However, the Hon'ble Apex Court set aside the judgment of High Court and held that acquisition challenged after making of an award but before the possession is taken, is not barred by delay and laches.

(iv) In ***V.K.M. Kattha Industries Pvt. Ltd. v. State of Haryana & Ors.***(supra), the appellant company was an industrial unit and the land owned by it for running the business was notified for acquisition for public purpose, namely, for the development of Industrial estate. The appellant challenged the acquisition which was dismissed by the High Court on the ground of delay and laches.

The contention of the appellant was that the notification under Section 4(1) of the Act was not published in the locality wherein the land is situated, which prevented the appellant company from filing objections under Section 5-A of the Act and the High Court erred in dismissing the writ petition on the ground that the same is not maintainable after the announcement of award.

Hon'ble Apex Court held that the writ petition preferred before the High Court could not have been simply dismissed on the

ground of delay or laches or on the ground that the same was filed after passing of the award.

60. The judgments relied upon by learned counsel for the respondents are distinguishable and may be briefly noticed:

(i) In ***Reliance Petroleum Limited v. Zaver Chand Popatlal Sumaria and Others*** (supra), Hon'ble Apex Court observed that the High Court was not justified in entertaining the writ petition and exercising the discretionary jurisdiction to quash the notifications and award made therein since the petitioners did not challenge the validity of notification under Section 4(1) and declaration under Section 6 **immediately after publication and waited till the award was passed** finding that the compensation as claimed was not given.

On the face of record, the writ petition therein was not preferred after notification under Section 4(1) and declaration under Section 6 of the LA Act, 1894, but after passing of the award, which is not the factual position in the present case.

(ii) In ***Hari Singh and Others v. State of UP and Others*** (supra), writ petition under Article 226 challenging notification under Sections 4, 6 & 17 of Land Acquisition Act, filed after two and a half years after notification, on the ground of not being aware about the notification till notices under Section 9(1) were issued, was dismissed by the High Court. Hon'ble Apex Court noticed that absence of notification of notice in the locality under Section 4(1) was not pleaded and co-tenures had not impeached the notification

and held that no interference was called for on preliminary grounds of laches as well as on merits.

Apparently, the aforesaid case is distinguishable as the Hon'ble Apex Court noticed that absence of notification of notice in the locality under Section 4(1) was not pleaded and the co-tenures had not impeached the notification.

(iii) In ***Urban Improvement Trust, Udaipur v. Bheru Lal and Others*** (supra), Hon'ble Apex Court held that the writ petitions should have been dismissed by the High Court on the ground of delay and laches since the notification under Section 6 of LA Act was published in the official gazette on 24.05.1994 but the writ petitions were virtually filed after two years. It was further held that in a case where land is needed for a public purpose that too for a scheme framed under Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under said Act and also in having planned development of the area.

The authority on the face of record is distinguishable since there was delay of about two years in challenging the proceedings. The writ petition therein was challenged after a period of almost two years after notification under Section 6 of the LA Act, 1894 while in the present case, the objections challenging the acquisition proceedings were raised by the petitioners before various

authorities and have filed the writ petitions almost after a year of declaration under Section 19 of the RFCTLARR Act, 2013.

(iv) ***Larsen & Toubro Ltd. v. State of Gujarat & Ors.*** (supra), relates to Section 48 & 41 of Land Acquisition Act, 1894 and Hon'ble Apex Court held that withdrawal from acquisition must be preceded by a notification to the beneficiary (in the said case a Company) for whom the acquisition proceedings were initiated and also an opportunity to such beneficiary to show-cause against the proposed withdrawal should be given. It was further observed in para 21 that writ petition challenging the notifications issued under Section 4 & 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time and the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and declaration under Section 6 were valid, and then to attack the notifications on the grounds which were available to him at the time when they were published.

It may be observed that there is no dispute on the proposition of law laid therein but the factual position in the present case is completely distinguishable.

(v) In ***State of Rajasthan and Others v. D.R. Laxmi and Others*** (supra), Hon'ble Apex Court held that when there is inordinate delay in filing the writ petitions and when all the steps have become final in acquisition proceedings, the court should be loathe to quash the notification. It was further observed that if the party does not approach the Court within reasonable time, which is

always a question of fact and have the order invalidated or acquiesces or waives the rights, the discretion of the Court has to be exercised in a reasonable manner. It was held that since the acquisition therein had become final and possession taken as well as reference was sought for enhancing the compensation which was accepted, the High Court was unjustified in interfering and quashing the notification under Section 4(1) and declaration under Section 6 of LA Act, 1894.

The factual position in aforesaid case is apparently distinguishable since the delay and laches are manifest in view of the award proceedings becoming final.

(vi) In ***Mahant Narayana Dessjivaru v. State of Andhra Pradesh*** (supra), the writ petition was preferred for a declaration that the Madras Hindu Religious Endowments Act of 1923, Madras Act I of 1925, Madras Act II of 1927, Madras Act XIX of 1933, Madras Act XIX of 1951 and Andhra Act VII of 1954, insofar as they are inconsistent with the constitution are *ultra vires* and inoperative. The High Court dismissed the writ petition on the ground that petition has been preferred after a period of five years and nine months after the constitution came into vogue on January 26, 1950. It was further held that the jurisdiction of writ, Court will not be exercised in favour of persons, who are guilty of laches and inordinate delay. It was also held that where a person receives a benefit under the Act and acquiesces in it, it is not open to him to challenge the validity of that Act.

It may be observed that the factual position is apparently distinguishable since the petition had been preferred after a period of five years and nine months in the said case.

(vii) In ***Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan***, **(1975) 4 SCC 296**, the appellants preferred writ petition challenging the validity of notifications issued under Section 4 & 6 of the Act after a period of 9 years. The High Court dismissed the writ petition on the ground of delay and the same was upheld by the Hon'ble Apex Court. The Hon'ble Apex Court observed that any challenge to a notification under Section 4 and a declaration under Section 6 of the Act should be made within a reasonable time thereafter and the length of delay is an important circumstance because of the nature of acts done during the interval on the basis of the notification and declaration.

The aforesaid case is apparently distinguishable since notification under Section 4 was published on June 09, 1960, award was made on January 09, 1964 and the writ petitions were preferred only on January 23, 1970 after a period of nine years.

(viii) In ***Arce Polymers Private Limited v. Alphine Pharmaceuticals Private Limited and Others*** (supra), the challenge was made to a judgment of the High Court, whereby, the proceedings initiated by Andhra Bank were set aside as being in violation of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") and The Security Interest Enforcement Rules, 2002. The factual ground in the instant case was that the bank had issued

notice under Section 13(2) of SARFAESI Act for discharging its liability within 60 days. The borrower neither made any payment nor responded with a reply instead wrote letters, accepting default and non-payment and further enlisting reasons for not adhering to the payment schedule. Subsequently, notices were issued by the Bank for auction of property. The borrower challenged the validity of proceedings initiated under Section 13(2) of SARFAESI Act. Hon'ble Apex Court applying the principle of waiver and estoppel, allowed the appeals against the impugned judgment. It was observed that Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision.

The fact that the other side has acted on it, is sufficient consideration. Since borrower by express conduct, had asked the bank to compromise its position and alter the contractual terms, hence, the principle of equitable estoppel as a rule of evidence, bars the borrower from complaining of violation.

It may be observed that the principle of waiver and estoppel highlighted in the aforesaid case relating to SARFAESI Act is not disputed. Further, the 'waiver of rights' was express by conduct of borrower therein.

(ix) In ***State of Madhya Pradesh v. Bhailal Bhai & Ors.***(supra), it was observed that it was necessary for the High Court to consider the question of delay before any order for refund of tax was made and the directions issued for refund were set aside by the Hon'ble Apex Court. It was also observed that Limitation Act does not as such apply to the granting of relief under Art 226. Further, the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.

(x) In ***Aflatoon and Others. v. Lt. Governor of Delhi and Others*** (supra), Hon'ble Apex Court dismissed the writ petitions on the ground of delay and laches as there was no reason why the petitioners waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. It was also observed that a valid notification under Section 4 is a *sine qua non* for initiation of proceedings for acquisition of property. Further, to have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid, and then to attack the notification on grounds which were available to them

at the time when the notification was published would be putting a premium on dilatory tactics.

It may be observed that the said case is distinguishable as the challenge in the aforesaid case was made after completion of the acquisition proceedings.

(xi) In ***State of Maharashtra v. Digambar*** (supra), respondent being an agriculturist had preferred a writ petition for grant of compensation for his land which he alleged was utilized by the government without his consent in the course of execution of scarcity relief works in 1971-1972. The High Court therein had allowed the writ petition condoning the delay of 20 years. However, the Supreme Court set aside the order of High Court in appeal and held that persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

There is no dispute to the proposition of law laid down in aforesaid case but it is pertinent to note that the delay in approaching the Court in the said case was for about 20 years.

(xii) In ***Banda Development Authority v. Moti Lal Agarwal & Others*** (supra), the Court held that it is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

In the said case, it was further observed that delay of even a few years would be fatal, if acquired land has been partly or wholly utilized for the public purpose. The delay of nine years from the date of publication of declaration issued under Section 6(1) of LA Act, and almost six years from the date of passing of award was held sufficient for denying equitable relief to respondent no.1. It was further held that where objection of delay/laches was not raised by DDA or State Government, High Court was duty bound to take cognizance thereof and decline relief since acquired land had been utilized for implementing the residential scheme and third-party rights had been created.

It may be observed that the aforesaid case is clearly distinguishable since the delay was almost of nine years after the

declaration under Section 6(1) of the Act and about six years from the date of passing of award.

(xiii) In ***Chairman, State Bank of India and Another v. M.J. James*** (supra), it was observed that absence of period of limitation in clause 22(x) of the Service Code to file Appeal, does not mean any time, and assumption is that appeal should be filed at earliest possible opportunity though the reasonable time cannot be put in straitjacket formula or judicially codified in form of days. It depends upon facts and circumstances of each case and right not exercised for long time is non-existent. The doctrine of delay and laches as well as acquiescence is applied to non-suit litigants who approach the Court/Appellate Authorities belatedly without any justifiable reason.

It may be observed that in the said case, the studied silence of the respondent who did not correspond or make any representation for nine years was observed to be with an ulterior motive as he wanted to take benefit of the slipup though he had suffered dismissal.

(xiv) There is not dispute to the proposition of law as referred in ***V. Chandrasekaran and Another v. Administrative Officer and Others*** (supra), relied upon by the respondents, wherein it is reiterated that whenever a person approaches a Court of equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said Court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity.

Also, the principle that a person who does not come to the Court with clean hands is not entitled to be heard on merits of his grievance, and in any case such person is not entitled to any relief as emphasized in ***Ramjas Foundation and Another v. Union of India and Others*** (supra) is not disputed.

B. <u>Whether notification under Section 11 of RFCTLARR Act, 2013 is ineffective and inoperative after lapse of RFCTLARR (Amendment) Second Ordinance, 2015</u>

61. The challenge of the petitioners to the acquisition proceeding is primarily on the ground that the preliminary notification issued by the respondents on August 28, 2015 under Section 11 of the RFCTLARR Act, 2013 invoking Section 10A(1)(e) of the RFCTLARR (Amendment) Second Ordinance, 2015, is ineffective and inoperative in view of lapsing of Ordinance on August 31, 2015. As such, it is contended that the respondents were bound to comply with the provisions of Chapter-II and Chapter-III of the RFCTLARR Act, 2013 since no enduring rights survive on lapsing of the Ordinance. In support of the contentions, reliance is placed upon ***Krishna Kumar Singh v. State of Bihar and Others*** (supra) along with ***Alok Agrawal v. State of Chattisgarh***(supra).

62. On the other hand, the stand of the respondents is that since the preliminary notification under Section 11 of the RFCTLARR Act, 2013 invoking Section 10A(1)(e) of the Ordinance satisfies the three-fold test of irreversibility, impracticality and public interest, as propounded in ***Krishna Kumar Singh v. State of Bihar and Others*** (supra), the dispensation with requirements of Chapter-II and Chapter-III of the RFCTLARR Act, 2013 is valid. Consequently, the further steps taken thereupon for acquisition

including declaration under Section 19 of the RFCTLARR Act, 2013 are in accordance with law. Reliance is further placed upon ***Datla Venkata Appala Prasadraju v. State of Andhra Pradesh*** (supra).

63. The issue for consideration is whether on lapse of RFCTLARR (Amendment) Second Ordinance, 2015 on August 31, 2015, the notification under Section 11 invoking Section 10A(1)(e) of the Ordinance issued by the competent authority did not create any enduring rights in favour of the respondents. Consequently, if the respondents after lapse of the Ordinance were bound to issue a fresh notification under Section 11 of the RFCTLARR Act, 2013 after complying with the provisions of Chapter-II & III of the 2013 Act in respect of Social Impact Assessment.

64. Relying upon ***Punjab National Bank v. Union of India & Ors.*** (supra), a contention has been further raised by learned counsel for the petitioners that wherein a provision is omitted without a saving clause in favour of pending proceedings, then fresh proceedings may be initiated for the same purpose and the pending proceedings shall not continue. Reference is also made to Constitution Bench judgment of Hon'ble Apex Court in ***Kohlapur Canesugar Works Ltd. v. Union of India,*** **(2000) 2 SCC 536** which was referred in aforesaid case.

It may be noticed that in ***Punjab National Bank v. Union of India & Ors.***(supra), it was held that the proceedings initiated under the erstwhile Rule 173-Q(2) of Central Excise Rules, 1944 would come to an end on the repeal of said Rule. The respondent's submission that proceedings would be saved on account of 38A(c) and 38A(e) of the Central Excise Act, 1944 and Section 6 of General Clauses Act, 1897 was not accepted. In the aforesaid context, it was further noticed that Constitution Bench in ***Kohlapur***

Canesugar Works Ltd. v. Union of India (supra) held that Section 6 of General Clauses Act, 1897 is applicable where any Central Act or Regulation made after commencement of General Clauses Act 'repeals' any enactment but is not applicable in case of omission of Rule.

65. There is no dispute to the proposition that Section 6 of the General Clauses Act, 1897 protects rights, privileges and obligations and continues liabilities in case of repeal of an enactment which takes place through legislation. However, the consequences in case of lapsing of Ordinance may not be protected under Section 6 of the General Clauses Act, 1897.

On the face of record, the present case relates to consequences arising from lapsing of Ordinance or where it 'ceases to operate'. The reliance placed upon ***Punjab National Bank v. Union of India & Others*** (supra) is not of much assistance to the petitioners, since it relates to omission of Rule.

66. In ***Krishna Kumar Singh & Others v. State of Bihar & Others*** (supra), the question for consideration before the Seven Judge Constitution Bench was, whether the seven successive repromulgations of the Bihar Non Government Sanskrit Schools (Taking Over Management and Control) Ordinance, 1989, suffer from illegality or Constitutional impropriety. The judgment authored by Hon'ble D.Y. Chandrachud J., which is the majority view concluded that the successive repromulgations of the first Ordinance issued in 1989 was a fraud on the Constitution, especially when none of the Ordinances were ever tabled before the Bihar Legislative Assembly as required under Article 213(2) of the Constitution. The views expressed by both Hon'ble D.Y. Chandrachud J., as well as Hon'ble Madan B. Lokur J. that the Ordinances issued by the Government in exercise of power under Article 213 or Article 123 of the Constitution of India does not admit of

creation of enduring or irreversible rights in favour of those affected by such Ordinances, where the Ordinances themselves were fraud on the Constitution, were also concurred by Hon'ble Justice T.S. Thakur, CJI. The Constitution Bench decisions in ***State of Orissa v. Bhupendra Kumar Bose,* 1962 Supp. 2 SCR 380, *T. Venkata Reddy v. State of Andhra Pradesh,* (1985) 3 SCC 198**to the extent the same extended the theory of 'creation of enduring rights' were overruled.

It may also be noticed that while Hon'ble D.Y. Chandrachud J. was of the view that non-placing of Ordinances before the Parliament and State Legislature, as the case may be, would still create a fraud on the Constitution. However, Hon'ble Madan B. Lokur J., took a different view that the same is not mandatory under Article 213(2) of the Constitution of India and nor would the failure to do so result in the Ordinance not having the force and effect as an enacted law or being of no consequence whatsoever.

67. On the issue of effect of consequence or survival of actions and transactions concluded under an Ordinance, the observations of Hon'ble D.Y. Chandrachud, J. in para 147 and 148 may be noticed:

> ***"147.*** *When an Ordinance ceases to operate, there is no doubt that all actions in the pipeline on the date it ceases to operate will terminate. This is simply because when the Ordinance ceases to operate, it also ceases to have the same force and effect as an Act assented to by the Governor of the State and therefore, pipeline actions cannot continue without any basis in law. Quite naturally, all actions intended to be commenced on the basis of the Ordinance cannot commence after the Ordinance has ceased to operate.*
> ***148.*** *Do actions or transactions concluded before the Ordinance ceases to operate, survive after the terminal date?"*

68. In the conclusions drawn in ***Krishna Kumar Singh v. State of Bihar and Others*** (supra), it has been held that the expression '*cease to operate*' in Article 123 and 213 does not mean that on the expiry of a period of six weeks of the reassembling of the Legislature or on resolution of disapproval being passed under Article 213, the Ordinance is rendered *void ab initio.* **The question as to whether rights, privileges, obligations and liabilities would survive an Ordinance which has ceased to operate must be determined as a matter of construction. The appropriate test to be applied is the test of public interest and constitutional necessity.** This would include the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. Further, in suitable cases it would be open to Court to mould the relief. The conclusions in para 105.9 to 105.12 may be beneficially quoted for reference:

> ***"105.9.***
>
> *Article 213(2)(a) provides that an Ordinance promulgated under that Article shall "cease to operate" six weeks after the reassembling of the legislature or even earlier, if a resolution disapproving it is passed in the legislature. The Constitution has used different expressions such as "repeal" (Articles 252, 254, 357, 372 and 395); "void" (Articles 13, 245, 255 and 276); "cease to have effect" (Articles 358 and 372); and "cease to operate" (Articles 123, 213 and 352). Each of these expressions has a distinct connotation.* ***The expression "cease to operate" in Articles 123 and 213 does not mean that upon the expiry of a period of six weeks of the reassembling of the legislature or upon a resolution of disapproval being passed, the Ordinance is rendered void ab initio.*** *Both Articles 123 and 213 contain a distinct provision setting out the circumstances in which an Ordinance shall be void. An Ordinance is void in a situation where it makes a provision which Parliament would not be competent to enact [Article 123(3)] or which makes a provision which would not be valid if enacted in an Act of the legislature of the State assented to by the Governor [Article 213(3)]. The Framers having used the expressions*

"cease to operate" and "void" separately in the same provision, they cannot convey the same meaning.

105.10

The theory of enduring rights which has been laid down in the judgment in Bhupendra Kumar Bose and followed in T Venkata Reddy by the Constitution Bench is based on the analogy of a temporary enactment. There is a basic difference between an ordinance and a temporary enactment. These decisions of the Constitution Bench which have accepted the notion of enduring rights which will survive an ordinance which has ceased to operate do not lay down the correct position. The judgments are also no longer good law in view of the decision in S R Bommai.

105.11

No express provision has been made in Article 123 and Article 213 for saving of rights, privileges, obligations and liabilities which have arisen under an ordinance which has ceased to operate. Such provisions are however specifically contained in other articles of the Constitution such as Articles 249(3), 250(2), 357(2), 358 and 359(1A). ***This is, however, not conclusive and the issue is essentially one of construction; of giving content to the 'force and effect' clause while prescribing legislative supremacy and the rule of law***

105.12

The question as to whether rights, privileges, obligations and liabilities would survive an Ordinance which has ceased to operate must be determined as a matter of construction. The appropriate test to be applied is the test of public interest and constitutional necessity. This would include the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. In a suitable case, it would be open to the court to mould the relief."

69. It may be observed that the validity of the Ordinances has not been challenged by the petitioners. Apparently, steps were taken for introducing RFCTLARR (Amendment) Bill on February 24, 2015 after promulgation of RFCTLARR (Amendment) Ordinance, 2014. Since the said Bill could not be passed by the Council of States, RFCTLARR (Amendment) Ordinance, 2015 was promulgated. The RFCTLARR (Amendment) Second Bill, 2015 was further introduced in the House of People on May 11, 2015, which referred it to the Joint Committee of the House. In order to give continued

effect to the provisions of RFCTLARR (Amendment) Ordinance, 2015, the President of India promulgated RFCTLARR (Amendment) Second Ordinance, 2015 which lapsed on August 31, 2015. The exercise undertaken by the Executive to obtain the legislative approval is apparent on the face of record though the Ordinance was ultimately permitted to lapse.

70. In order to determine whether the obligations, rights and liabilities survive after issue of preliminary notification under Section 11 read with Section 10A(1)(e) of the Ordinance, the test of 'public interest' and 'constitutional necessity' may be applied. The term 'public interest' cannot be put in a straitjacket formula and broadly includes the purpose in which the general interest of the society is served as opposed to the particular interest of the individual with which he may be vitally concerned. The necessity for acquisition can in no manner be disputed since the land is proposed to be acquired in the present case for setting up of WWTPs as directed by NGT. It is well settled that public interest must have paramountcy over private interest and the rights of the individuals must only be watered down when the necessary circumstances demanding such a drastic measure exist. Reliance in this regard may also be placed upon ***63 Moons Technologies Ltd. & Ors. v. Union of India & Ors.*** (supra), ***Abraham Patani v. State of Maharashtra***, **2022 SCC OnLine SC 1143**, ***Aircraft Employees' Housing Coop. Society Ltd. v. Secy., Rural Development and Panchayat Raj, Govt. of Karnataka***, **(1996) 11 SCC 475** as referred by respondent No.5.

71. It may also be noticed that similar notifications were issued under Section 11 of RFCTLARR Act. 2013 for the STP projects in different villages pursuant to directions of NGT and the same are under implementation. The process of acquisition was instituted far back in May,

2015 and some time was consumed by the concerned departments in order to iron out the issues and understand the nuances of the Ordinances. Section 10A(1)(e) of the RFCTLARR (Amendment) Second Ordinance, 2015 was finally invoked since the project for installation of WWTP was required to be urgently commissioned and duly fell within the category of social infrastructure projects which may be exempted by the Appropriate Government. The exemption under Section 10A of the RFCTLARR (Amendment) Second Ordinance, 2015 was invoked in public interest to curb the delay in execution of infrastructural project which would have been occasioned by adherence to provisions of Social Impact Assessment under Chapter II of the RFCTLARR Act, 2013. The notification under Section 11 was followed with the normal procedure of consideration of objections under Section 15 of the Act and declaration under Section 19 of the RFCTLARR Act, 2013.

The petitioners duly participated in the acquisition proceedings by filing of objections which were considered in accordance with law and overruled.

72. In the facts and circumstances, we are of the considered view that the notification under Section 11 of RFCTLARR Act, 2013 notified on August 28, 2015 resulted in vesting of rights of irreversible character for purpose of acquisition and no other action remained in pipeline specifically with reference to the procedure to be followed for issuance of preliminary notification under Section 11 of the RFCTLARR Act, 2013. The enduring rights created by issue of notification under Section 11 of the Act cannot be deemed to be reversible merely on account of ceasing of operation of Ordinance on August 31, 2015. The respondents were not required to follow

the procedure under Section 3 to 10 of the RFCTLARR Act, 2013 after issue of notification under Section 11 and invoking of Section 10A(1)(e) of the Ordinance as nothing remained in pipeline and again resorting to the provisions of Chapter II and Chapter III would be impracticable and contrary to public interest, as it would have delayed the execution and implementation of the project. We have no hesitation to hold that the notification under Section 11 of the RFCTLARR Act, 2013 attained finality and the rights created thereunder would not lapse on the expiry of the Ordinance on August 31, 2015.

73. The aforesaid proposition in law also stands squarely covered by ***Datla Venkata Appala Prasadraju v. State of Andhra Pradesh*** (supra)relied on behalf of the respondents. An identical issue was raised therein challenging the acquisition proceedings undertaken under the Ordinance No.5 of 2015. The land in question was acquired for establishment of an Airport at Bhogapuram,Vizianagaram District near Visakhapatnam city, since the existing Airport in Visakhapatnam is a defence airport under the control of the Ministry of Defence, Government of India and there were operational constraints and lack of scope for its expansion to meet the requirements of an International Airport standards. The initial proposal was for acquisition of about 5311.88 acres of land, which was subsequently reduced to 2004.54 acres only for phase 1 of the development of Airport and Airport related activities, besides 119 acres for approach roads. Most of the land owners had given consent and accepted compensation for the said acquisition. Further litigation remained pending only in respect of 37 acres of land. **The District Collector issued Rc.No.30/20212G3 dated 31.08.2015 exempting Chapter II and III of the RFCTLARR Act, 2013 and**

published the same in the District Gazette on 31.08.2015 and thereafter issued land acquisition notification, which was challenged in the petitions before the High Court.

A contention was raised by the petitioners therein that since the Ordinance stood lapsed, the entire action undertaken under the said Ordinance stood lapsed. The submission on behalf of the State that consent awards had been passed *qua* 2064 acres belonging to 1937 owners paying compensation amount of Rs.678 crores was also stated by the petitioners to be ill founded, on the ground that there is unequal bargaining power between the land holders and the State. Also, issues were raised on the point of identification and segregation of land for purpose of land acquisition. Challenge was also made to constitutional validity of AP State Act No.22 of 2018.

On the other hand, the challenge was contested on behalf of the respondents on the ground that the notification for land acquisition did not lapse with the lapsing of Ordinance in view of overriding test of public interest and constitutional necessity laid down in ***Krishna Kumar Singh v. State of Bihar and Others*** (supra) which subsumed the requirement of irreversibility and impracticality. It was also pointed out that Rs.678 crores had been paid to the land owners and the Government was in possession of 2064 acres against 2200 acres. Further, 1937 land owners out of affected 1959 land owners had agreed for consent awards which have since been passed. It was also argued that there was no violation of Section 10A of the Ordinance since the State had ensured minimum acquisition of land as the proposed acquisition of 5311 acres was pruned to 2700 acres.

The issue for consideration before the High Court was whether the impugned notifications under Section 11(1) of the RFCTLARR Act, 2013 would lapse, as the same are not saved after Ordinance No.9 of 2014, Ordinance No.4 of 2015 and Ordinance No.5 of 2015 were allowed to lapse without there being any saving clause.

The High Court applied the three-fold test of irreversibility, impracticality and public interest as referred in *Krishna Kumar Singh v. State of Bihar and Others* (supra) and held that requiring the State to follow the procedure contemplated under Section 3 to 10 of the LA Act, 2013 would be contrary to public interest as the same will delay implementation of the project when almost entire land except 37 acres is available for development of the Airport. Thus, the Court was of the view that despite lapse of the last Ordinance No.5 of 2015, the acts done or action taken by issuing notification under Section 11(1) of the LA Act, 2013 would not lapse and the same holds good for the impugned acquisition.

It may further be observed that the judgment of the High Court has been further **upheld by the Hon'ble Apex Court since the Special Leave Petition No.21164/2022** preferred by the petitioners has been dismissed, observing that construction and development of an Airport is for public interest and only because of small patch of land, the entire project cannot be held up. It was further observed "*Even otherwise, also the questions being raised in this special leave petition have been answered by the High Court which in our considered opinion are well considered and in accordance with*

law and the impugned judgment and order does not require any interference".

74. Insofar as ***Alok Agrawal v. State of Chattisgarh*** (supra) relied by the learned counsel for the petitioners is concerned, a preliminary notification under Section 11(1) of RFCTLARR Act, 2013was issued on April 01, 2015 along with notification dated March 02, 2015 in exercise of power under Section 10A of RFCTLARR Ordinance, 2014 exempting all projects as stated in Ordinance from application of Chapter II & III of the Act of 2013. It was therein held that since neither the award had been passed, nor possession of land was taken under Section 38 of the Act of 2013, the position cannot be said to be irreversible and the notification issued by the State Government dated March 02, 2015 would also come to an end. The effect of the same being that provisions of Chapter II & III of the Act of 2013 are required to be complied with mandatorily for land acquisition.

75. In our opinion, the aforesaid judgment given by the learned Single Judge of Chhatisgarh High Court on a closer look is clearly distinguishable, since therein it was held that the exercise of the power by Appropriate Government under Section 10A of the Ordinance of 2014 vide notification dated March 02, 2015 **exempting all the projects** (enumerated in Section 10A without reflecting individual projects) from provisions of Chapter II & III of the Act fulfilling the conditions for exercise of power in public interest is bad in law. It was also observed that the notification dated March 02, 2015 issued under section 10A of the Ordinance exempting all projects from provisions of Chapter II & III of the Act of 2013 is nothing but a colourable

exercise of power by the State Government, to make acquisition for supplying water to private companies.

However, the facts and circumstances in the present case, clearly spell out the need of public interest for setting up of WWTP in view of directions of NGT. The declaration of the Appropriate Government that acquisition is proposed for public purpose, is conclusive and is not open to challenge since the petitioners have not been able to establish that the proposed acquisition is sought to be made for some collateral purpose.Any delay in execution of project would have been detrimental to interest of public and also delayed the interconnectivity of WWTPs, for which purpose the land was notified to be acquired in different villages and similar notifications were issued. It may further be noticed that the notification under Section 11 in the present case has been followed by subsequent consequential proceedings including issuance of declaration under Section 19 of the Act of 2013 after duly considering the objections raised by the petitioners. The entire project was given a final shape including submission of cheque of Rs.6,69,12,500/- towards cost of land by DJB for construction of WWTP. Nothing remained in pipeline once the notification under Section 11 of the Act of 2013 invoking Section 10A(1)(e) of the Ordinance was issued. In the facts and circumstances, we are unable to agree with the submissions of learned counsel for the petitioners that the rights, privileges, obligations and liabilities do not survive or endure, once the Ordinance has ceased to operate.

76. It may further be observed ***Valluri Jayaram and Another v. State of Andhra Pradesh*** (supra), ***Karri Prathap Rayala Reddy v. State of Andhra Pradesh*** (supra) and ***Kanuparthi Venkata Simhadri v. State of Telangana***

(supra) relied by the learned counsel for the petitioners are not of much relevance since the proceedings in said cases are yet to be finally disposed of and the stay appears to have been granted during the pendency of the proceedings.

C. Challenge to the acquisition proceedings on the grounds of urgency, discrimination and malafides

77. A contention has also been raised by learned counsel for the petitioners that the preliminary notification under Section 11 of the RFCTLARR Act, 2013 has been issued without any application of mind as to the need, urgency and without any basis or foundation for invocation of powers conferred under Section 10A of the Ordinance, which has done away with complying with the mandatory provisions enshrined in Chapter II (Determination of Social Impact and Public Purpose) and Chapter III (Special Provision to Safeguard) of RFCTLAAR Act, 2013. Further, placing reliance upon ***Devender Kumar Tyagi & Others v. State of Uttar Pradesh & Others*** (supra), it is submitted that the Appropriate Government is not permitted to transgress, express legal provisions and procedure in the garb of implementing Court directions/orders. The directions/orders issued by the Hon'ble Supreme Court must be abided by within four corners of legal framework and statutory provisions. Referring to paras 25 to 29, 35 to 38 and 48 of ***Darshan Lal Nagpal v. Govt. of NCT of Delhi & Ors.*** (supra), it is also urged that long time gap on the part of authorities in their own actions militates against the plea of urgency in acquisition. Reliance is further placed upon ***Dev Sharan & Ors. v. State of Uttar Pradesh,*** **(2011) 4 SCC 769.**

78. The authorities relied by learned counsel for the petitioners may be briefly noticed:

(i) In ***Dev Sharan & Ors. v. State of Uttar Pradesh*** (supra), the consideration emphasized by the Hon'ble Apex Court is that if public purpose can be satisfied by exploring other avenues of acquisition, the Court before sanctioning an acquisition focus its attention on the concept of social and economic justice. Though the construction of jail in the said case was held to be in public interest but it was observed that the acquisition could not have been made by invoking the urgency clause under Section 17 of LA Act, 1894 since there was a slow pace at which the government machinery had functioned in processing the acquisition.

(ii) In ***Devender Kumar Tyagi &Others v. State of Uttar Pradesh & Others*** (supra), it was held by Hon'ble Apex Court that there was no justification for invoking urgency provisions in an arbitrary manner by referring to Court's earlier directions as a defence for illegal and arbitrary act of acquiring land without an opportunity of raising objections and hearing to petitioners under Section 5A of LA Act, 1894. It was further observed that notifications under Section 4 of LA Act, 1894 were issued after about two years of directions to State Government for relocation of polluting bone mills and allied industries and declaration under Section 6 was issued six months thereafter which exhibited lethargical and lackadaisical attitude of State Government and as such there was no justification in invoking urgency provisions. It was also held that there was no approval for constitution of Leather City Project

as a sub-regional plan in consonance with regional plan by NCRPB (National Capital Region Planning Board) and, therefore, acquisition in absence of express approval in terms of Section 19 and operation of Section 27 of NCRPB Act, 1985 renders entire acquisition proceedings illegal and hence vitiated.

(iii) In ***Darshan Lal Nagpal v. Govt. of NCT of Delhi & Ors.*** (supra), the issue for consideration before the apex court was that whether the Government of NCT of Delhi could have invoked Section 17(1) and (4) of the Land Acquisition Act, 1894 and dispense with the rule of hearing embodied in Section 5A(2) thereof for the purpose of acquiring or establishment of electric substation at village Mandoli. It was observed that The Division Bench of the High Court accepted the explanation given by the respondents by observing that sub-station in East Delhi is needed to evacuate and utilize the power generated from 1500 MW gas based plant at Bawana and while doing so the Bench completely overlooked that there was long time gap of more than five years between initiation of the proposal for establishment of the sub-station and the issue of notification under Section 4 (1) read with Section 17 (1) and (4) of the Act. Further no tangible evidence was produced by the respondents before the Court to show that the task of establishing the sub-station at Mandoli was required to be accomplished within a fixed schedule and the urgency was such that even few months time, which may have been consumed in the filing of objections by the land owners and other interested persons under Section 5A(1) and holding of inquiry by the Collector under Section 5A(2), would

have frustrated the project. The urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard.

The authorities relied upon by petitioners are distinguishable since in the aforesaid cases the consideration was slow pace at which the government functioned which exhibited lackadaisical attitude of the officials and there was no ground for invoking urgency provisions. However, it may be noticed that in the present acquisition proceedings, only application of Chapter II and III of RFCTLARR Act, 2013 has been done away with but the objections on behalf of the petitioners could still be filed in accordance with Section 15 of the 2013 Act. Also, the urgency for establishment of WWTPs could not be doubted in view of directions of NGT as well as the fact that WWTPs in different villages were to be connected for effective implementation of the project. After issue of directions by NGT in May, 2015, the notification under Section 11 of 2013 Act had been issued on August 28, 2015, in a short span of time. The project, however, remains in limbo because of the stay of proceedings in the writ petitions filed by the petitioners.

79. On the other hand, learned counsel for the respondents have submitted that the urgency for implementation of the project for setting up of Waste Water Treatment Plant is manifest in view of the directions issued by NGT and the action of the Appropriate Government is fully justified. Reliance is further placed upon ***Union of India and Another v. Mohiuddin Masood and Others*, (2020) 14 SCC 760, *Chameli Singh and Others v. State of U.P. and Another***(supra) and ***First Land Acquisition Collector and Others v. Nirodhi Prakash Gangoli and Another***(supra)

80. The decision regarding urgency is an administrative decision and a question of subjective satisfaction to be taken by the Appropriate Government on the basis of material on record. It has been observed in***First Land Acquisition Collector and Others v. Nirodhi Prakash Gangoli and Another*** (supra) that if notification has been issued invoking powers under Section 17(1) and 17(4) (of the LA Act, 1894), the same should not be interfered with by the Court unless it comes to a conclusion that appropriate authority had not applied its mind to the factors and decision has been taken *malafidely*. Mere allegation that power was exercised *malafide* while invoking provisions under Section 10A(1)(e) of the Ordinance in the present case would not be enough and in support of such allegations, specific material should be placed before the Court.

The observations of the Hon'ble Apex Court in ***Chameli Singh v. State of U.P.*** (supra), are also apt to be noticed wherein it was held that the State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose.

It was also observed that the opinion of urgency formed by the Appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by *malafides* or colourable exercise of power. The delay by itself accelerates the urgency : Larger the delay, greater be the urgency. It was further observed that so long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the government on the basis of material formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power *malafide*.

Also, it may be observed that in ***Union of India and Another v. Mohiuddin Masood and Others*** (supra), Hon'ble Apex Court held that the High Court had erred in holding that invocation of the urgency clause was bad, as it failed to appreciate that there was only a time gap of 3 months between the notification under section 4 and notification under Section 6 of the Act. Merely, that some time had been taken in identifying the land and in issuing actual Section 4 notification, the High Court is not justified in observing that there was no urgency at all and/or there were no grounds to invoke the urgency clause.

In the present case, there can be no second opinion that imminent steps were required to be taken for setting up of Waste Water Treatment Plants (WWTPs) in different locations in view of directions of NGT in May, 2015. The steps for setting up WWTPs were accordingly taken after identification of land followed with notification under Section 11 of 2013 Act on August

28, 2015 invoking Section 10A(1)(e) of the Ordinance in different villages. The urgency is writ large in the facts and circumstances and it cannot be said that the action in this regard is actuated with delay, collateral motives or there was no justification for undertaking the process invoking Section 10A of the Ordinance.

81. The conclusion drawn by us is also supported by ***Deepak Resorts and Hotels Pvt. Ltd. v. Union of India and Ors.*** (supra) relied upon by the respondents, wherein land was acquired for setting up of Sewage Treatment Plants (STP) in Delhi in Village Kapashera. The land acquisition proceedings were challenged on the ground that the notification under Section 17(1) and 17(4) of the Act was vitiated inasmuch as the same used the expression "likely to be acquired" which implies that there was no existing need for the land in question and that the land may be required some time in future. **The High Court observed that the urgency regarding the need for setting up of the sewage treatment plants, has been judicially recognised by the Supreme Court and the work of setting up of such plants has been directed to be undertaken forthwith and completed at war footing and, as such, it is futile for the petitioners to contend that there was no real justification for invoking the emergency provisions of Section 17(4). It was further observed that a number of Sewage Treatment Plants have already been set up by the respondents but the fact that there is need for setting up one at Kapashera is not in dispute. That being so, no fault can be found with the Government taking adequate steps for setting up of such a plant on an urgent basis by invoking the provisions of Section 17(1) and 17(4) of the Act**. Placing reliance upon ***Union of India and Others v. Praveen Gupta and Others,***

***(*1997) 9 SCC 78** it was observed that the decision regarding urgency is an administrative decision and a matter of subjective satisfaction of the Appropriate Government to be taken at, on the basis of the material on record. It was further held that the invocation of the powers under Section 17(1) and 17(4) of the Act was perfectly justified and there was neither any illegality nor any irregularity in the decision to invoke said powers.

82. The petitioners also challenge the acquisition proceedings on the ground of discrimination and *malafides* and it is alleged that the land of the private company was left out for oblique reasons. It is further submitted that the survey was not carried in accordance with the provisions of the RFCTLARR Act, 2013 and neither any effort was made to find out the availability of arid or waste land. It is also urged that the land which was already earmarked for the purpose was not taken into consideration.

83. The same has been disputed on behalf of the respondents and it has been contended that the identification of land was carried after the survey and the requirement of land in case of Village Tajpur Khurd had been reduced after reassessing the requirement and acquisition was proposed only for the bare minimum land required for the public purpose of setting up of Waste Water Treatment Plant (WWTP) in terms of the directions of the NGT. It is emphasized that the matter was considered and since the identified land was suitable and owned only by a single person, it would have been more convenient to deal, considering the objectives under the RFCTLARR Act, 2013. Reliance is further placed upon ***Bharat Singh and Others v. State of Haryana and Others*** (supra), ***State of A.P. v. Goverdhanlal Pitti***, ***(*2003) 4 SCC 739, *Union of India v. Tarsem Singh*,**

(2019) 9 SCC 304, ***Girias Investment (P) Ltd. v. State of Karnataka,*** **(2008) 7 SCC 53.**

84. The authorities relied on behalf of the respondents may be briefly noticed:

(i) In ***State of A.P. v. Goverdhanlal Pitti*** (supra) relied by respondent No.5, the Division Bench came to a conclusion that the proceedings for acquisition initiated by the State were not fair and *bonafide* since the school building was a hundred years old and was declared unfit for human habitation as far back as in the year 1990 and no action was taken to acquire the building. The proceedings for acquisition were commenced only when it suffered an order of eviction under the Rent Control Act and obtained extended period from the High Court to vacate the premises of the school. Aggrieved by the order of Division Bench, State approached the Hon'ble Apex Court wherein it was observed that even if that be the situation that the State as tenant of the school building took no steps to acquire the land before 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.

(ii) In ***Bharat Singh and Others v. State of Haryana and Others*** (supra), the petitioners challenged the validity of the acquisition of

their land by the State of Haryana under the Land Acquisition Act, 1894 for a public purpose i.e. for the development and utilization of land for industrial purpose at Gurgaon by the Haryana Urban Development Authority. One of the grounds on which the appellant challenged the acquisition proceedings was that since the land is agricultural, it should not have been acquired in view of the policy decision of the government. The Hon'ble Apex Court overruling this contention observed that in a welfare State, it is the duty of the government to proceed with the work of development and take steps for the growth of industries which are necessary for the country's progress and prosperity and for solving the question of unemployment. It is true that agricultural land is necessary and should not ordinarily be converted to non-agricultural use, but keeping in view the progress and prosperity of the country, the State has to strike a balance between the need for development of industrialization and the need for agriculture. It was also contended that the petitioners have been discriminated against inasmuch as the land of other persons in the village has not been acquired. The apex court dismissing the appeals observed that the government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the appellants have been acquired obviously considering the same as suitable for the public purpose and as such the appellants cannot complain of any discrimination because the land of other persons has not been acquired by the government.

(iii) In ***Union of India v. Tarsem Singh*** (supra), it was held that Section 3-J as amended by National Highways Laws (Amendment) Act, 1977 excluding applicability of LA Act, 1894, resulting in non-grant of solatium and interest in respect of lands acquired under National Highways Act, is violative of Article 14 of the Constitution of India and the judgment of the High Court was affirmed.

(iv) In ***Girias Investment (P) Ltd. v. State of Karnataka*** (supra), the appellant was aggrieved by the land acquisition proceedings initiated for a public purpose namely for construction of trumpet interchange and access road from National Highway-7 to Bangalore airport. The appellants raised a plea of mala-fides in land acquisition proceedings on the ground that original location of proposed construction was deliberately changed to help important persons whose land would have been otherwise acquired under the original proposal.The Hon'ble Apex Court observed that there can be two ways by which a case of *malafides* can be made out; one that the action which is impugned has been taken with the specific object of damaging the interest of the party and, secondly, such action is aimed at helping some party which results in damage to the party alleging mala fides. It was further held that mere allegation of mala-fide is not enough to succeed and the land which had been de-notified belonged to those who had no position or power.

85. In ***State of A.P. v. Govardhanlal Pitti*** (supra), Hon'ble Apex Court interpreted the term "malice" and the relevant excerpts of the judgment may be beneficially referred:

> ***"12.*** *The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)*
>
> ***13.*** *Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other.*
>
> ***14.*** *Legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings."*

86. We have already observed that in the instant case the land in question was acquired for 'public purpose' of setting up of WWTP and there cannot be any challenge to aforesaid extent. It cannot be ignored that in a welfare State, the Appropriate Government is bound to undertake the work of development keeping in consideration the issues of environment and the same could not have been ignored in view of directions of NGT. Since Section 10A(1)(e) of the RFCTLARR (Amendment) Ordinance, 2015 as

well as RFCTLARR (Amendment) Second Ordinance, 2015 empowers the Appropriate Government in public interest to exempt infrastructural projects including projects under public private partnership, from the application of provisions of Chapter-II and Chapter-III of the RFCTLARR Act, 2013, the steps for acquisition in this regard were initiated by the department in accordance with the provisions to avoid any delay in execution of project. At the aforesaid stage of initiation of acquisition proceedings as well as till final approval of the competent authority for issuance of notification under Section 11 of the RFCTLARR Act, 2013 on August 28, 2015, the authorities would not have visualized that the RFCTLARR (Amendment) Second Ordinance, 2015 which was promulgated to give continued effect of the provisions of RFCTLARR (Amendment) Ordinance, 2015 would lapse on August 31, 2015. The pleadings as well as the documents filed on record by the respondents in respect of the acquisition proceedings clearly reflect that area of land which was necessary and suitable for the public purpose of setting up of WWTP was approved. Merely because the land belonging to the petitioners happened to be acquired, leaving the land of another Private Company, cannot be assumed to be the sole ground of discrimination, since the matter was considered by the competent authority from the perspective of suitability as well as considering the number of persons, who may be affected by the proposed acquisition. In view of above, the contention of *malafides* and discrimination raised on behalf of the petitioners, is without merits.

D. <u>Challenge to acquisition proceedings on the ground of non-consideration of objections</u>

87. The acquisition proceedings have next been challenged by the petitioners on the ground that the objections of the petitioners were not considered in accordance with law. Referring to paras 1,4,8,31 & 32 of ***Chatro Devi v. Union of India & Ors.*, 2007 (93) DRJ 738,** it is contended that right to raise objection to acquisition under Section 5A of the LA Act, 1894 was held to be a substantive right and provision thereof must be complied with strictly. Further, it was held that hearing granted by one Collector, while report made by another Collector does not satisfy the requirement of said provision. Reliance was also placed upon ***Gojer Brothers Private Limited and Another v. State of West Bengal and Others*** (supra), wherein the Hon'ble Apex Court allowing the appeals observed that the LAC summarily rejected the objections, without dealing with the same effectively and objectively and hence the non- consideration of objections filed by appellants had resulted in denial of effective opportunity of hearing to them. The manner in which the Joint secretary to the government approved the recommendation made by LAC favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by LAC and the report prepared by him.

Reference was also made to ***Usha Stud and Agricultural Farms Private Limited and Others v. State of Haryana and Others*** (supra), wherein the Court observed that Issuance of Section 6 declaration without considering the objections of the appellants and other relevant factors must be held as vitiated due to non-application of mind. The court observed that it is surprising that not only the Chief Minister but the High Court also overlooked the fact that Chief Minister had ordered acquisition of vacant

land belonging to M/s Rani Shaver Poultry Farm Ltd. Further, when notification was issued, state government released the acquired land leaving appellant's land and, in this manner, they were subjected to hostile discrimination.

88. The contentions have been opposed on behalf of the respondents as the objections are stated to have been duly considered in accordance with law and also an opportunity of hearing was granted to the petitioners after they filed their objections in writing. The matter is stated to have been duly considered by the competent authority at relevant appropriate stages till issue of declaration under Section 19 of the RFCTLARR Act, 2013.

Relying upon ***CCE v. Hari Chand Shri Gopal,*** **(2011) 1 SCC 236**, it is submitted on behalf of the respondents that substantial compliance of the relevant provisions of the RFCTLARR Act, 2013 had been made keeping in perspective the object and purpose of the relevant provisions.

Relying upon ***Anand Singh v. State of U.P.,*** **(2010) 11 SCC 242**, it is contended that the power of eminent domain is inherent in the government and in the present case the objections were duly considered and opportunity was granted to the petitioners. Further, since the acquisition proceedings had culminated in issuing of declaration, the clock could not be turn backwards by holding that objections were not considered by the competent authority.

89. It may be appropriate to notice that in ***Anand Singh v. State of U.P.*** (supra), the Hon'ble Apex Court held that the power of eminent domain being inherent in the government is exercisable in the public interest, general welfare and for public purpose. It was also observed that Section 5A of the LA Act, 1894 confers an important right to submit objections and persuade the authorities to drop the acquisition for the reasons of unsuitability of the

land for the stated public purpose, grave hardship that may be caused by such expropriation, availability of alternative land for achieving public purpose etc. The exceptional and extraordinary power of doing away with inquiry under Section 5A in a case where possession of land is required urgently or in an unforeseen urgency is provided in Section 17 of the LA Act, 1894 and such power should not be lightly invoked in a routine manner, save circumstances warranting immediate possession. In view of above, the principle highlighted by the learned counsel for the petitioners that the summary rejection of objections without dealing with the same effectively and objectively results in non-consideration of objections, cannot be disputed.

90. Keeping the aforesaid principle in consideration, it may be seen that as per case of respondents, on June 23, 2015 Deputy Secretary, LA/L&B Department, GNCTD informed the concerned LACs for a joint survey of the land sought to be acquired in different villages and further on June 30 the joint survey of the land was carried. The reduction of land from 51 bigha and 00 biswa to 30 bigha 06 biswa was taken in view of the opinion of M/s Engineers India Ltd. The urgency clause under Section 40 of RFCRLARR Act, 2013 was not invoked considering that the same is only for proposals specified in Section 40(2) of 2013 Act. After due consideration, the draft notifications were put up for approval of the competent authority on August 26, 2015 and notification under Section 11 of the Act was accordingly issued on August 28, 2015. The same was followed with a hearing notice dated December 11, 2015 to the objections filed by the petitioners on October 05, 2015 and the matter was finally fixed for hearing on January 05, 2016. The objections were duly considered and the report was placed under Section

15(2) of the Act thereby rejecting the objections filed by the petitioners. The report of DM (SW/LAC) was accordingly placed conveying the recommendations of the objections to the Appropriate Government with record of proceedings, which after following of procedure, culminated in passing of declaration under Section 19 dated July 27, 2017 after extension of time for issuance of declaration in accordance with law. The objections/representations filed on behalf of the petitioners appear to have been duly reflected during the process of seeking approval by the competent authorities. In the facts and circumstances, due process appears to be followed by the respondents and the findings of the competent authority cannot be substituted merely because a favourable view was not taken in respect of the petitioners.

E. <u>Challenge to notification under Section 11 of RFCTLARR Act, 2013</u>

91. It is next contended by learned counsel for the petitioners that preliminary notification under Section 11 of the 2013 Act was published in the local Newspapers by the Appropriate Government only on September 01, 2015, whereas the Ordinance had already lapsed on August 31, 2015.Learned counsel for the petitioners further contends that notification under Section 11 of 2013 Act (corresponding to Section 4 of LA Act, 1894) is a *sine qua non* of any acquisition and condition precedent for exercise of any other powers under the Act and publication of the same after August 31, 2015 vitiates the proceedings. Reference is made to para 7, 9 to 11 in ***Narendrajit Singh & Anr. v. The State of U.P. and Anr.,*****(1970) 1 SCC 125**.

Placing reliance on para 8 and 17 in ***Madhya Pradesh Housing Board v. Mohd. Shafi & Others,*** **(1992) 2 SCC 168**, it is emphasized by the petitioners that acquisition has to start with a notification issued under Section 4 of LA Act, 1894 which is mandatory even in case of urgency and a condition precedent for exercise of any further powers under the LA Act, 1894. Further, the preliminary notification has to be construed strictly and any lapse in the same vitiates the entire proceedings.

Further, referring to para 14 & 15 in ***D. B. Basnett (Dead) through LRs. v. Collector, East District Gangtok, Sikkim & Anr.,*****(2020) 4 SCC 572**, it is urged that where notification under Section 4 is invalid, entire proceedings would be vitiated.

Referring to paras 19 & 20 of ***P. Parthasarathy v. State of Karnataka,*** **2011 (12) SCC 183** it is contended that definitive intent and conclusive proof for acquisition is only by issuance of declaration under Section 6 of the LA Act, whereas Section 4 notification is a mere proposal.

92. On the other hand, the contentions have been opposed on behalf of the respondents. Gazette notification under Section 11 is stated to have been issued on August 28, 2015after obtaining the approval of the competent authority and it is submitted that publication of the same in the newspaper after August 31, 2015 does not vitiate the proceedings. Reliance is further placed upon ***Krishna Devi Malchand Kamathia and Others v. Bombay Environmental Action Group and Others*** (supra) to contend that the authorities rightly continued with the acquisition proceedings as the notification under Section 11 could not be deemed to be void by virtue of lapse of Ordinance. The notification under Section 11 continued to have the

legal force until and unless it was so declared to be void by a competent forum.

Reliance is also placed upon ***Sandeep S. Metange v. State of Maharashtra*, 2021 SCC OnLine Bom 5726** and ***State of M.P. v. Vishnu Prasad Sharma*, (1966) 3 SCR 557.**

93. It is well settled that the right in land is a constitutional right under Article 300A of the Constitution of India and in case any person is divested of the rights in property by way of acquisition, the provisions of the enactment have to be strictly followed. Undoubtedly, the acquisition commences with notification under Section 11 of 2013 Act, which is mandatory and condition precedent to exercise of further powers by Appropriate Government. The public announcement by the Appropriate Government followed by publication of notice enables the affected land owners to canvass their objections, if any, to acquisition. Accordingly, if notice under Section 11 of 2013 Act is defective and does not comply with requirements of the Act, the same not only vitiates the notification but also renders subsequent proceedings connected with the acquisition as bad.

94. In the present case, the gazette notification under Section 11 of the RFCTLARR Act, 2013 has been published after the approval of competent authority on August 28, 2015 prior to lapsing the Ordinance on Augusts 31, 2015. The publication in the Newspaper thereafter is only for the purpose of notification to the public of the intention to acquire the proposed land and the same does not nullify the gazette notification issued on August 28, 2015. The notification under Section 11 of the RFCTLARR Act, 2013 invoking Section 10A(1)(e) does not suffer from any infirmity on aforesaid ground.

95. The authorities referred to by the petitioners are distinguishable on facts and may be briefly noticed:

(i) In ***Narendrajit Singh & Anr. v. The State of U.P. and Anr.*** (supra)**,** the Hon'ble Apex Court held that notification under Section 4 of LA Act, 1894 suffered from serious defect since the locality where the lands were needed was not specified and defect in notification under Section 4(1) cannot be cured by giving full particulars in the notification under Section 6(1). Further, even before issue of notification under Section 4, the Government had made up its mind to acquire the land of petitioners inasmuch as there was enquiry between the two notifications and no valid reason had been given to explain why the details specified in notification under Section 6(1) could not be given in the one under Section 4(1).

(ii) In ***Madhya Pradesh Housing Board v. Mohd. Shafi & Others*** (supra), it was noticed that notification under Section 4(1) and 17(1) was very cryptic as the khasra numbers had not been given nor precise locality had been indicated and as such the description was found to be insufficient. Also, the 'public purpose' for which the land was acquired was mentioned as 'residential', which was held to be vague and as such the State was prevented from taking further steps in the matter. The non-disclosure of the locality with precision was held to invalidate the publication.

(iii) In ***D. B. Basnett (Dead) through LRs. v. Collector, East District Gangtok, Sikkim & Anr.***(supra), since the respondents failed to show any notification showing intent to acquire land or any other

declaration thereafter, except covering letter for compensation, it was held that land was not acquired in accordance with law.

(iv) In ***P. Parthasarathy v. State of Karnataka*** (supra), the challenge was to an order passed by the High Court holding the validity and legality of notification issued by respondent State under sub-section 4 of Section 28 of the Karnataka Industrial Areas Development Act, 1966. An appeal was preferred against the said order and the Division Bench of the High Court dismissed the appeal holding that any defect in the preliminary notification would not prove fatal to the acquisition proceedings. In the SLP preferred against the same, the Hon'ble Apex Court upheld the order passed by the Division Bench observing that though there was some discrepancy in the description of property proposed to be acquired but it did not mislead the petitioner regarding the identity of land. Also, the decision in ***Narendrajit Singh & Anr. v. The State of U.P. and Anr.***(supra) was held to be distinguishable on facts, since in the said case there were no particulars given in the notification. Reference was also made to ***Babu Barkya Thakur v. State of Bombay,*** **AIR 1960 SC 1203**, wherein it was observed that it is only under Section 6 that a firm declaration has to be made by the Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a Company.

There is no dispute to the principle referred in ***Babu Barkya Thakur v. State of Bombay*** (supra) as emphasized by learned counsel for the petitioners.

F. <u>Challenge to acquisition proceedings being in violation of MPD 2021, ZDP and DDA's Land Pooling Policy</u>

96. Relying upon ***R.K. Mittal and Others v. State of Uttar Pradesh and Others*** (supra), learned counsel for the petitioners have also contended that the respondents failed to consider that acquisition is in violation of the Master Plan of Delhi and Zonal Plans. It is also pointed out that Village Tajpur Khurd is covered under DDA's land pooling policy and the petitioners had opted for surrendering their land to DDA under the said scheme whereunder an area of 37.2 acres is available to the authorities. It is urged that same land can be acquired from the land pooling policy from DDA and would be available free of cost to the exchequer.

The contentions have been opposed on behalf of the respondents.

97. At the outset, it may be observed that the option of development by way of land pooling policy is still under consideration and no final rights can be said to have been culminated under the said scheme. Merely an option exercised by the petitioners in this regard cannot foreclose the rights of the Appropriate Government to acquire the land if the ownership of the same vests with the concerned petitioners.

It may be noticed that in ***Aflatoon and Others v. Lt. Governor of Delhi and Others*** (supra), the issue before the Hon'ble Apex Court was whether the acquisition proceedings could have been initiated for planned development of Delhi in the absence of Master or Zonal Plan. It was observed by the Hon'ble Apex Court after taking into consideration the Delhi Development Act, 1957, that the proceedings did not get vitiated in the absence of such plan. It was also observed that acquisition generally

precedes development and if for proper development, land is sought to be acquired, the action taken by the Appropriate Government cannot be said to be unlawful or in colourable exercise of power.

In the present case, there is nothing on record if any of the competent authorities/DDA has objected to the construction of WWTPs on the identified land in the concerned villages being contrary to the provisions of Master Plan or Zonal Plan. The land of the petitioners constitutes only a small chunk of land which is proposed to be acquired in larger public interest and in case any such consequential amendment in Zonal Plan is required, the steps in this regard can be taken by the authorities keeping in view the ratio laid down in ***Aflatoon and Others v. Lt. Governor of Delhi and Others*** (supra). The petitioners' main grievance leading to filing of complaints with the relevant authorities was initially with respect to methodology adopted for identification of land and maliciously leaving the adjacent land owned by the company by reducing the area of land required for acquisition.

In the aforesaid context, the authorities have duly explained that the bare minimum land was considered for acquisition and since the land of the petitioners in chunk was owned by a single party, the same was considered suitable for acquisition. The discretion vested with the authorities in this regard cannot be deemed to have been exercised with malice the department concerned was only in a position to ascertain the suitability of the land. The petitioners cannot complain of discrimination because the land of other persons had not been acquired by the government and was in the best position to ascertain the suitability of the land.

98. Insofar as ***R.K. Mittal and Others v. State of Uttar Pradesh and Others*** (supra) relied upon by the petitioners is concerned, the same is distinguishable. In the said case, the main issue for consideration before the Hon'ble Apex Court was to consider the ambit and scope of power of the NOIDA Authority to permit users, other than residential, in the sectors specially earmarked for residential use in the Master-Plan of the New Okhla Industrial Development Area and whether the residential premises can be, wholly or partly used by the original allottee or even its transferee, for any other purpose other than residential as banks were being run on the land in question. It was contended by appellants that there was inadequacy of space for banks, clinics and other commercial offices in the development area and the numbers of plots for the banks was not sufficient to meet the needs of the public in the residential sectors and no alternative spaces are available for relocation of the banks. NOIDA Development Authority, on the other hand contended that banking activity is impermissible in the residential sectors as it causes inconvenience to public and disturbance to residents. The Hon'ble Apex Court observed that the master plan and zonal plan have binding effect in law and if a scheme/master plan is being nullified by the arbitrary acts of the authorities, the court needs to intervene and whenever it is necessary even quash the orders of the authorities. Further, it was held that Banking, Nursing Homes or any other commercial activity in any sector in development area earmarked for "residential use" not permitted and if done is in patent violation of Master Plan.

In the present case, the land under acquisition is an agricultural land which is not to be used for commercial purpose but for establishment of

WWTP/STP. No specific objection by the concerned competent authority has been placed to assume that the acquisition could not be made for said purpose or Zonal Plan could not be modified, if required. Development for public purpose cannot be curtailed on aforesaid grounds. In the facts and circumstances, we do not find merits in the contention raised on behalf of the petitioners.

99. It may also be noticed that in reply on behalf of the petitioners in WP(C) 320/2018, a stand has also been taken that previously acquired land of appropriate size has been acquired for same purpose of establishing WWTPs/STPs vide award No.17/DCW/1997-98 in Village Tikri Kalan which is lying vacant. The perusal of copy of award no.17/DCW/1997-98 Village Tikri Kalan reveals that the land was acquired for the public purpose of resettlement of PVC dealers as reflected in the introductory para itself. Nothing further has been brought to the notice of this Court in support of the contention that any other plot for establishment of WWTPs as proposed for present project is available with the Appropriate Government.

G. <u>Substantive Compliance</u>

100. We agree with the submission made by learned counsel for the respondents that the statute has been sufficiently followed so as to carry out the intent of the statute and accomplish the reasonable object for which it was passed. In ***CCE v. Hari Chand Shri Gopal*** (supra)**,** the Hon'ble Apex Court highlighted the doctrine of substantial compliance, which means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and

accomplish the reasonable objectives for which it was passed.It was also observed that however, such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. The observations in para 32 to 34 may be beneficially reproduced:

> ***"32.*** *The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.*
>
> ***33.*** *A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that*

are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. *The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."*

(VIII). CONCLUSION

101. In view of the directions of NGT, the Appropriate Government took the steps for acquisition for realizing the lawful public purpose of setting up of WWTPs which falls within clause (e) of Section 10A(1) of the Ordinance. The public purpose must have paramountcy over the private interest as already held above. The decision of the competent authority in this regard does not appear to have been exercised *malafidely* or for collateral purpose. The objections filed on behalf of the petitioners were duly considered in accordance with the relevant provisions. Substantial compliance to the provisions of 2013 Act has been made by the respondents. The objections raised on behalf of the petitioners on the ground of discrimination, *malafides*, absence of urgency to dispense with Chapter II & Chapter III of the 2013 Act are without any merit, as discussed above. In the facts and circumstances, it is not a fit case wherein this Court may exercise powers under Article 226 of the Constitution of India for setting aside the acquisition proceedings.

102. For the foregoing reasons, both the writ petitions are dismissed. Stay orders in both the writ petitions also stand vacated. No order as to costs.

Pending applications, if any, also stand disposed of. A copy of this judgment be placed in other writ petition.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JANUARY 24, 2024*/sd*