

ITEM NO.1

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 16609/2010  
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 14/05/2010  
IN CMWP NO. 28505/2006 PASSED BY THE HIGH COURT OF JUDICATURE AT  
ALLAHABAD)

M/S SAHARA INDIA COMMERL.CORP.LTD. &amp; ORS

PETITIONER(S)

VERSUS

STATE OF U.P. &amp; ORS.

RESPONDENT(S)

(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES,  
PERMISSION TO FILE ADDITIONAL AFFIDAVIT AND INTERIM RELIEF AND  
OFFICE REPORT)

(FOR FINAL DISPOSAL)

WITH

SLP(C) NO. 16997-17007/2010

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17008-17030/2010

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17099/2010

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17110/2010

(WITH APPLN. (S) FOR DIRECTIONS AND EXEMPTION FROM FILING O.T. AND  
PLACING ADDL. FACTS AND DOCUMENTS ON RECORD AND SUBSTITUTION AND  
INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17111/2010

(WITH APPLN. (S) FOR DIRECTIONS AND EXEMPTION FROM FILING O.T. AND  
PLACING ADDL. FACTS AND DOCUMENTS ON RECORD AND INTERIM RELIEF AND  
OFFICE REPORT)

SLP(C) NO. 19333-19336/2010

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 20250-20255/2010

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 21353/2010

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 21559/2010  
(WITH APPLN.(S) FOR EXEMPTION FROM FILING O.T. AND PERMISSION TO  
SUBMIT ADDITIONAL DOCUMENT(S) AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 22995/2010  
(WITH APPLN.(S) FOR PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD  
AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 23341/2010  
(WITH APPLN.(S) FOR PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD  
AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 24241-24249/2010  
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 24609-24613/2010  
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 24759/2010  
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 30035/2010  
(WITH APPLN.(S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 30099/2010  
(WITH OFFICE REPORT)

SLP(C) NO. 30536/2010  
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 31099-31104/2010  
(WITH OFFICE REPORT)

CONMT.PET.(C) NO. 346/2015 IN SLP.(C) NO.24243/2010 @ SLP(C) NO.  
24241-24249/2010  
(WITH OFFICE REPORT)

Date : 30/11/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE N.V. RAMANA

For parties :

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rr in SLP(C) 16609/10  
 & SLP(C) 17008-30/10

Ms. Reena Singh, AAG  
 Mr. Devesh Kumar, AOR

Dr. (Mrs.) Vipin Gupta, AOR

Mr. P.N. Misra, Sr. Adv.  
 Mr. Abhishek Kumar Singh, Adv.  
 Ms. Archana Singh, Adv.  
 Mr. Abhishth Kumar, AOR.  
 Mr. Raman Yadav, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

Permission to file lengthy list of dates, to file additional affidavit, to place additional facts and documents on record and to submit additional documents is granted.

Exemption from filing O.T. is granted.

Application(s) for substitution is allowed subject to all just exceptions.

Delay condoned.

Leave granted in all the Special Leave Petitions.

The appeals as also the contempt petition is disposed of in terms of the signed order.

[VINOD LAKHINA]  
 COURT MASTER

[TAPAN KR. CHAKRABORTY]  
 COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE/ORIGINAL JURISDICTION  
CIVIL APPEAL NO.11501 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.16609/2010]

M/S SAHARA INDIA COMMERCIAL CORP.LTD.  
& ORS. . . . . APPELLANTS

VERSUS

STATE OF U.P.& ORS. . . . . RESPONDENTS

WITH  
CIVIL APPEAL NOS.11502-11512 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.16997-17007/2010]

CIVIL APPEAL NOS.11513-11535 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.17008-17030/2010]

CIVIL APPEAL NO.11536 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.17099/2010]

CIVIL APPEAL NO.11537 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.17110/2010]

CIVIL APPEAL NO.11538 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.17111/2010]

CIVIL APPEAL NOS.11539-11542 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.19333-19336/2010]

CIVIL APPEAL NOS.11543-11548 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.20250-20255/2010]

CIVIL APPEAL NO.11549 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.21353/2010]

CIVIL APPEAL NO.11550 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.21559/2010]

CIVIL APPEAL NO.11551 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.22995/2010]

CIVIL APPEAL NO.11552 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.23341/2010]

CIVIL APPEAL NOS.11553-11561 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.24241-24249/2010]

CIVIL APPEAL NOS.11562-11566 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.24609-24613/2010]

CIVIL APPEAL NO.11567 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.24759/2010]

CIVIL APPEAL NO.11568 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.30035/2010]

CIVIL APPEAL NO.11569 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.30099/2010]

CIVIL APPEAL NO.11570 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.30536/2010]

CIVIL APPEAL NO.11571-11576 OF 2016  
[Arising out of Special Leave Petition  
(Civil) No.31099-31104/2010]

CONTEMPT PETITION (CIVIL) NO.346/2015  
IN  
SLP(C) NO.24243/2010  
@  
SLP(C) NO.24241-24249/2010

ORDER

1. Leave granted in all the Special Leave Petitions.
  
2. The challenge in this bunch of Civil Appeals is against the order of the High Court of Allahabad which had negatived the challenge made by the landowners against acquisition of land for the public purpose, namely, "planned development of Ghaziabad Development Authority for residential colonies".

3. The notifications under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") (six in numbers) were issued on 16<sup>th</sup> October, 2004 (five notifications) and 11<sup>th</sup> November, 2004 (one notification) and published on 22<sup>nd</sup> October, 2004 (five notifications) and 9<sup>th</sup> December, 2004 respectively. The urgency clause under Section 17(1) read with Section 17(4) of the Act was invoked and hearing of objections under Section 5A of the Act was dispensed with.

4. There were interim orders passed in the writ petitions directing stay of dispossession. The earliest of such order was dated 22<sup>nd</sup> May, 2006. No award was passed possibly because of the pendency of the writ petitions and the interim orders passed therein.

5. Contending, *inter alia*, that the invocation of urgency clause was not justified and that the acquisition proceedings had lapsed under Section 11A of the Act as no award was published within a period of two years from the date of the publication of the notifications, the writ petitions in question were filed along with additional ground that compensation under Section 17(3A) of the Act to the extent of eighty per cent of the compensation for such land was also not paid which invalidates the acquisitions.

6. The twin issues, namely, the first with regard to lapsing of the proceedings under Section 11A of the Act in a case where Section 17(1) read with Section 17(4) has been invoked and, secondly, the consequence of the non-payment of

compensation under Section 17(3A) on an acquisition proceeding are presently pending before a larger Bench of this Court on the basis of a reference made in Delhi Airtech Services Private Limited and another versus State of Uttar Pradesh and another<sup>1</sup>. This Court, therefore, for the purposes of the present cases, will consider it expedient to confine its scrutiny to the question as to whether the invocation of urgency clause under Section 17 was justified in the facts of the present cases. This is with the consent of the parties. Even otherwise, if the Court is to hold the said issue in favour of the land owners the consequential finding would be determinative of the controversy between the parties.

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1 [(2011) 9 SCC 354

7. It will not be necessary to burden this order by a detailed reference to the numerous precedents available as to the scope and ambit of the jurisdiction of the Court to interfere with what is essentially a subjective satisfaction of the Authority for invoking the urgency clause under Section 17. The power is extremely circumscribed and what facts would justify the invocation of the said power can only be visualized illustratively and not exhaustively. In the present cases, from the proceedings of the acquisition prior to the issuance of Notification under Section 4 and particularly from a certificate setting out the grounds for invoking the urgency clause it appears that the sole ground for the same is to prevent unauthorized construction which, if made, would make it difficult to take possession of the land. This is evident from the

document described as 'Certificate for invoking of Section 17' dated 4<sup>th</sup> March, 2004 signed by the Officer on Special Duty, Ghaziabad Development Authority, Ghaziabad, the contents of which are as follows:

''Certificate for invoking of  
Section 17'

This is to certify that for the planned development of the city of Ghazibad, the expeditious acquisition of the proposed land of Rasoolpur Yaqootpur is required, because this is a scheme of public interest and any delay may cause unauthorized construction at work place, after which possession of the land would be difficult.

Therefore, for the acquisition of land under this scheme it is necessary to issue notification under sections 4 and 6 of Land Acquisition Act, 1894 for which the invoking of section 17 is necessary.

Sd/-

Officer on Special  
Duty,  
Ghaziabad Development  
Authority,  
Ghaziabad

Counter signed  
sd/-

Addl. District Magistrate (L.A)  
Irrigation, Ghaziabad"

8. The above being the stated ground, the Court would not be required to travel beyond what has been stated in the aforesaid certificate to determine the validity of the invocation of the urgency clause under Section 17 of the Act.

9. In Om Prakash and another versus State of U.P. and others<sup>2</sup>, this Court had an occasion to consider the validity of the very same ground as a justification for invoking the urgency clause under the Act. The view expressed in that regard is available in paragraphs 14 and 15 of the report in Om Prakash (supra) wherein this Court after holding that the said ground primarily relates to a law and order issue which is within the jurisdiction of the Authority to control went on to observe in

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2 [(1998) 6 SCC 1]

paragraph 15 as follows:

"15. So far as the present proceedings are concerned, the situation was tried to be salvaged further in the counter-affidavit filed on behalf of NOIDA. Its Working Secretary Rama Shankar has filed a counter-affidavit in the present proceedings explaining the necessity to apply emergency provisions. It has been averred in para 9 of the counter to the effect that what necessitated application of emergency provisions was imminent possibility of unauthorised construction and/or encroachment upon the suit land which would have hampered the speedy and planned industrial development of the area which was the purpose of acquisition proceedings. This stand is in line with the earlier stand of NOIDA in its written requisition dated 14-12-1989. We have already seen that the said stand reflects a ground which is patently irrelevant for the purpose of arriving at the relevant subjective satisfaction by the State authorities about dispensing with Section 5-A inquiry. We could have appreciated the stand of the State authorities for invoking urgency clause under Section 17(4) of the Act on the ground that when about 500 acres of land were to be acquired for further

planned development of Sector 43 and other sectors of NOIDA, as mentioned in the impugned notification, hearing of objectors who might have filed written objections when there are a large number of occupants of these lands and who possess about 438 plots of land under acquisition, would have indefinitely delayed the acquisition proceedings and years would have rolled by before Section 6 notification could have been issued. Under these circumstances, the entire further development of the area would have, on the peculiar facts and circumstances of these cases, come to a grinding halt. Such a stand would have justified the subjective satisfaction of the authorities for invoking Section 17(4) of the Act. Such satisfaction then could not have been gone behind by a court of law. But unfortunately for the respondents, such was not their case nor did they even whisper in these cases that these aspects were kept in view while dispensing with Section 5-A inquiry. The court cannot obviously, therefore, make out a new case for them which is not pleaded in these proceedings to justify their action."

10. The view of this Court in Om Prakash (supra) being with regard to an identical ground and the purpose of acquisition in Om Prakash (supra) being largely similar to the present cases, we are of the view that the facts of the present cases would not justify a departure from what has been held in Om Prakash (supra).

11. From the discussions that have preceded the conclusion is obvious. The invocation of the urgency clause is invalid and the Notification under Section 6 issued without holding the enquiry/hearing of objections under Section 5A of the Act would not be justified and the acquisition proceedings as a whole would be open for interference.

12. The next question that confronts the Court is the relief that should be granted in the present cases. Ordinarily, in the normal course, interference with the acquisition proceedings would result in a return to the status prior to the commencement of the acquisition proceedings obliging the acquiring authority to return the land to the landowners. However, from the materials placed before us it appears that the purpose for which the land was acquired has been implemented and on parts of the land constructions under different Housing and other Schemes have come up. While there is a controversy with regard to the extent of the development that has taken place, what is reasonably certain is that a fairly large portion of the land has been put to use for the purposes for which the same was acquired. What, however, is clear that insofar as the land of the

appellants is concerned the same continue to be largely vacant on account of the interim orders passed by the Court. In such a situation, we are of the view that even though the impugned acquisition has been found to be legally fragile, requiring the acquiring authority to return the land to the landowners, at this stage, would have the effect of jeopardizing the Housing and other projects which either have been completed or have reached completion. This would be contrary to public interest. Therefore, we are of the view that in the totality of the facts of the case we should mould the relief in the following manner:

i) Though this Court is interfering with the acquisition proceedings as a whole, yet it directs that there will be no obligation on the part of the acquiring Authority to return any part of the land to

any of the landowners. In other words, the acquiring Authority would have the option to retain entire of the land acquired by the notifications in question. In such an event, only in respect of the land of the appellants before this Court [stated to be 76 in number and the area involved 281 acres, approximately] the date of the present order will be deemed to be the date of a fresh notification for acquisition of the aforesaid land of the appellants before this Court. We repeat to make it clear that for the rest of the land acquired and in respect of the landowner who may have received any part of the compensation the aforesaid directions would have no application. The compensation to be determined on the basis of the deemed notification, as directed, will be in accordance with the provisions of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013 and claims of compensation for constructions that may have come up on the acquired land prior to the dates of original Notifications (16<sup>th</sup> October, 2004 and 11<sup>th</sup> November, 2004) will also be considered by the Collector on their own merits.

13. All the appeals as also the contempt petition are disposed of in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(N.V. RAMANA)

NEW DELHI  
NOVEMBER 30, 2016