reasons already recorded by me I have not been able to persuade myself to interfere with the same.

No other point was argued before me by either of the parties. This writ petition, therefore, fails and is dismissed. But in view of the fact that the petitioners are workmen, I leave the parties to bear their own costs.

B.R.T.

The Workmen of the Bhupindra Cement Workers, Surajpur
v.
The Industrial Tribunal, Punjab, Patiala and another

Narula, J.

FULL BENCH

Before S. B. Capoor, I. D. Dua and P. C. Pandit, J.J.

MURARI LAL GUPTA,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2377 of 1964

1965

September, 29th

Land Acquisition Act (1 *of* 1894)—*Ss. 5-A and* 17—*Government—Whether entitled to order that provisions of S. 5-A will not apply to a perticular acquisition—Decision as to urgency—Whether of the Government—Such decision—Whether reviewable by Courts.*

Held, that a combined reading of sub-sections (1) and (4) of section 17 of the Land Acquision Act, 1894, clearly shows that when land, in a particular case, is being acquired under the provisions of section 17(1), then under section 17(4) the Government can direct that the provisions of section 5-A will not apply.

Held, that the question whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review. The question of determining the urgency in a particular case is the main concern of the Government. The existence of the urgency is a matter for their subjective satisfaction. If this question were to be made a justiciable issue, the consequences would be that the Government would not be able to go ahead with the acquisition proceedings for a long time in urgent cases, the purpose for which the land was being acquired without complying with the provisions of section 5-A would be defeated and the Government would not able to execute the work, for which the land was being acquired, in time. Section 17 gives special powers to the acquiring authority in cases of urgency only and the appropriate authority could take action only after it is satisfied that the case

is one of urgency. The acquisition under the Act is always for a public purpose and it cannot be assumed that the said authority will misuse its powers under this section. In any case, the action of the said authority if proved to be *mala fide*, can always be challenged.

Case referred by the Hon'ble Mr. Justice S. B. Capoor and the Hon'ble Mr. Justice I. D. Dua on 22nd April, 1965, to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice S. B. Capoor, the Hon'ble Mr. Justice I. D. Dua and the Hon'ble Mr. Justice P. C. Pandit, on 29th September, 1965.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari, *or any other appropriate writ, order or direction be issued quashing the notifications dated 11th June,* 1964.

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Petitioners.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

ORDER OF THE FULL BENCH

Pandit, J.

PANDIT, J.—On 9th August, 1962, the Punjab Government published a notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) for acquiring about 5,200 square yards of land in village Bohar in tehsil and district Rohtak. It was mentioned in this notification that this land was being acquired for a public purpose, namely, for construction of a Text Books Sales Depot at Rohtak. It was further stated therein that the Governor of the Punjab was pleased to direct that action under section 17 of the Act should be taken in this case on the ground of urgency and that the provisions of section 5-A shall not apply in regard to this acquisition. On that very date, another notification under section 6 of the Act was also issued wherein the Land Acquisition Collector was directed to take orders for the acquisition of the said land. Out of this land, 1,542 square yards belonged to Murari Lal Gupta, who challenged the above notifications by filing a writ petition (Civil Writ No. 1813 of 1962) in this Court on 21st November, 1962. This petition was decided by D. K. Mahajan and Shamsher Bahadur, J.J., on 26th March, 1964.

In the notification issued under section 4, it was not mentioned by the State Government as to whether the acquisition had been made under sub-section (1) or sub-section (2) of section 17 of the Act. At the time of arguments, however, learned counsel for the State took up the position that the acquisition was under clause (c) of sub-section (2) of section 17. In other words, the land was required for a public purpose, which in the opinion of the Government was of urgent importance. The learned Judges then examined this position and came to the conclusion that the said acquisition could not be covered by this clause. As a result, the writ petition was accepted and the impugned notifications were set aside.

Thereafter, on 11th June, 1964, a fresh notification was issued by the Punjab Government under section 4 of the Act. In this notification, it was made clear that the acquisition was being made under the provisions of sub-section (1) of section 17 of the Act and the Text Books Sales Depot at Rohtak was required to be set up urgently and the provisions of section 5-A would not apply in regard to this acquisition. On the same date, another notification under the provisions of section 6 of the Act was issued. Murari Lal Gupta has again challenged these notifications by means of the present writ petition.

This petition, in the first instance, came up for hearing before Capoor and Dua, JJ., on 22nd April, 1965. The learned Judges were of the view that since the correctness of the earlier Bench decision of this Court was being questioned, this case should be heared by a larger Bench. That is how the matter has been placed before us.

The validity of these notifications is being challenged on the following two grounds:—

(a) that the Government had not at all applied its mind and had not satisfied itself that the land sought to be acquired was waste or arable. The petitioner's land was neither waste nor arable within the provisions of section 17(1) of the Act. It was a building site situate within the municipal limits of Rohtak Town, abutting on the Hissar-Delhi Grand Trunk Road and opposite the Jat Heroes Memorial College. On one side of it

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were situate the Power House and the Government College for Boys. Towards the Delhi side were situate the buildings of the Jat School Hostel and on the back side was the Dev Colony consisting of several built houses. Thus, the petitioner's land was surrounded on all sides by buildings; and

(b) that there was no urgency about the purpose for which the land was sought to be acquired and, consequently, the action of the Government in depriving the petitioner of his valuable rights under section 5-A of the Act was illegal.

The position of the Government with regard to the above two grounds, as is clear from the return, is as follows:—

(a) that the entire matter was fully scrutinised and examined before the two notifications were issued and the land in question was found either waste or arable. This land was neither under cultivation nor there existed thereon any building or structure at the time of the notification issued in respect of its acquisition. There was no indication either at the spot or later on that the land was meant for residential purposes. There existed no residential buildings on either side of it. This land was situated outside the Town at a distance of about 3 or 4 miles on Delhi-Rohtak Road just opposite the Jat College. It was not possible to say if the land was within or outside the municipal limits, which fact, however, was of not much consequence. It was not immediately surrounded by buildings. There were, however, buildings of public utility, as for example, Power House, educational institutions, in its vicinity. The land in question was lying waste and it was neither inhabitated nor cultivated; and

(b) that the land was being acquired by the Government for the construction of the Regional Text Books Sales Depot, which was a public office and was required to be set up for augmenting the distribution/sale of text books under the National Educational Programme. The setting up of this

Depot was included in the Third Plan schemes of the Education Department and was urgently required under the National Educational Programme. The Depot was at present functioning temporarily in the Government College for Boys located near the land in dispute, but the College required the accommodation very badly and the authorities were pressing hard for its vacation. The purpose for which the land had been acquired was definitely a public purpose and of urgent nature. That being so, there was ample justification for excluding the procedure under section 5-A of the Act. In any case, no prejudice had been caused to the petitioner by not giving him a notice and hearing his objections under section 5-A of the Act and that he would get compensation as required under the Act. In pursuance of the first notification, dated 9th August, 1962, the entire building of the Depot had already been constructed up to the roof leval and, in fact, some portion had already been roofed. Nothing was done by the Government with any bad motives. Whatever action was taken was in the interest of the general public and consistent with the policy of the Government to make the books available to the student community through the Government Depot. It was wrong to say that there was no urgency, which actually existed at the time of acquisition. The Government and the Department concerned had gone into and closely examined the situation before the necessary steps were taken to acquire the land, which was badly required in public interest. No fundamental rights of the petitioner had been affected and in any case, the action taken was in the interest of general public. Otherwise also, the fundamental right of holding the property was not absolute and was subject to reasonable restrictions.

It was also mentioned in the return that the Government had already constructed buildings on the site in dispute by incurring an expense of approximately Rs. 60,000. Thus, the acceptance of the writ petition would result in a heavy loss to the Government. Besides, it would adversely affect the progress of the Third Plan scheme

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of the Education Department. Under these circumstances also, it was not a fit case for the exercise of extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution.

The main grievance of the petitioner, as contended by his learned counsel, was that by the issue of the impugned notification, the Government was depriving him of his valuable right to object to the acquisition of the land under section 5-A of the Act. The right to file objections under this section was a substantial right when a person's property was being threatened with acquisition. If given the opportunity under section 5-A, he could have satisfied the authority concerned that his land could not and should not be acquired and the proposed acquisition should, therefore, be dropped. With regard to the first ground of attack against the impugned notification, as mentioned above, learned counsel contended that there was nothing in the notification to the effect that the land in dispute was either waste or arable. The Government, according to the learned counsel, had not applied its mind to this aspect of the question, and as a matter of fact, the land in dispute was neither waste nor arable. It was a building site situate within the municipal limits, surrounded on all sides by houses and was likely to fetch a high price when sold in the open market. For this submission, reliance was placed on a Bench decision of the Bombay High Court in *Shri Navnitlal Ranchhodlal* v. *State of Bombay and another* (1). Regarding the second ground for impugning this notification, learned counsel submitted that there was no urgency for the said acquisition. The construction of a text books sales depot was not of such an urgent nature that the provisions of section 5-A could be dispensed with. From the notification it appeared that the Government did not apply its mind to this matter also before issuing the same. This was not a case of such an urgent nature where by the compliance of the provisions of section 5-A, the very purpose of the acquisition would have been defeated. For this submission, learned counsel relied on a Bench decision of the Mysore High Court in *Thirumalaiah* v. *State of Mysore and another* (2).

In order to appreciate the contentions of the learned counsel for the petitioner, it would be necessary to briefly

(1) A.I.R. 1961 Bom. 89:
(2) A.I.R. 1963 Mysore 225.

refer to the scheme of the Act as amended by the Punjab State. Under section 4, a preliminary notification is made for the acquisition of the land for any public purpose. Under section 5-A, the objections against the proposed acquisition are heard and then follows the notification under section 6 declaring that the land is required for a public purpose. Thereafter, a notice is given to all the persons interested in that land under section 9. After enquiry with regard to the amount of compensation to be given, an award is made by the Collector under section 11. The possession of the land is then taken under section 16 and it vests absolutely in the Government free from all encumbrances. This is the normal procedure for acquisition of land. But, section 17 mentions certain exceptions to it. We are, however, concerned with only one of them, which is mentioned in section 17(1). It runs thus—

> "S. 17(1). In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.
>
> *Explanation.*—This sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered trees or temporary structures such as huts, pandals or sheds."

Since the Government in the present notification directed that the provisions of section 5-A shall not apply in regard to this acquisition, it would be pertinent to give below the provisions of sub-section (4) of section 17, under which this direction was given—

> "In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A shall not apply, and if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1)."

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A combined reading of sub-sections (1) and (4) of section 17 would show that when land, in a particular case, was being acquired under the provisions of section 17(1), then under section 17(4) the Government could direct that the provisions of section 5-A would not apply. As such, the Government was fully empowered to say that the provisions of section 5-A would not be applicable to the present acquisition.

Now let us examine the grounds urged by the learned counsel for the petitioner for impugning this notification.

As regards the first ground, it is clearly stated in the notification that the Text Books Sales Depot was required to be set up urgently, the acquisition was being made under section 17(1) and since the matter was urgent, the provisions of section 5-A would not apply, in regard to this acquisition. Section 17(1) applies to waste or arable lands and only in cases of urgency. Since section 17(1) was specifically mentioned in the notification, it was, therefore, not necessary to further specify therein that the land acquired was waste or arable. The non-mention of these words would, therefore, in my opinion, not in any way affect the validity of the notification. Further, the Government must have applied its mind to this aspect of the matter, because they have clearly said that the action was being taken under section 17(1), which, as already mentioned above, deals either with waste or arable lands. Besides, in para 6 of the written statement, they have definitely stated that the entire matter was fully scrutinised and examined before the necessary orders were passed and the land in question was found either waste or arable. In these acquisition matters, the Government is the best judge of its needs and to determine whether in a particular case the land is arable or waste. The words "waste" or "arable" have not been defined in the Act. In the Shorter Oxford Dictionary, the meaning of the word "waste" is given as "waste or desert land; uninhabited (or sparsely inhabited) and uncultivated country; a wild and desolate region; a wilderness; a piece of land not cultivated or used for any purpose, and producing little or no herbage or wood." According to this very Dictionary, the word "arable" means "capable of being ploughed; fit for tillage". As would be apparent from its meaning, the word "arable" as used in the Act relates to agricultural lands, which are fit for cultivation. "Waste lands" may be situated either in a rural

or an urban area. In rural areas, it will mean those lands which are unfit for cultivation on account of a number of reasons, as for example, they being marshy, stony, etc., and people do not even attempt to cultivate them, because their cultivation would be unremunerative and result in waste of money and labour. In urban areas, the waste lands are usually those which are not being put to any use and are not even fit for building sites. It cannot, however, be said that no part of land in an urban area can be termed as "arable". The lands, which lie within the developed part of a town, cannot be described as arable, but those which are situate beyond this area and are fit for cultivation would be considered as 'arable'. In the present case, according to the Government, there did not exist any residential buildings on either side of the land in question. It was situated outside the town at a distance of 3 or 4 miles. It was true that opposite this land there was the Jat College and there were buildings of public utility like Power House, educational institutions, etc., in its vicinity. But it was not immediately surrounded by buildings. This land, therefore, would be termed as "arable". It is immaterial if the same was not being cultivated, because it is nobody's case that it is not fit for tillage. As I have already mentioned above, it was primarily for the Government to come to the conclusion as to whether a particular land is "arable" or "waste". Even if their decision was subject to judicial review, on the facts of the instant case and on the basis of the finding given by me above, it cannot be said that the opinion formed by the Government regarding this matter was either arbitrary or so unreasonable or groundless that we should strike down the notification on this ground. The ruling relied upon by the learned counsel for the petitioner in *Shri Navnitlal Ranchhodlal's case* (1) held thus—

> "An arable land is a land which is fit for tillage and the expression is usually used to mean lands which are ploughed for raising ordinary annual crops such as rice, jowar, etc. The land which is a building site within the Municipal limits and situated in the developed part of the City cannot in our opinion he regarded as an arable land. The expression "waste land" in our opinion would apply to lands which are desolate, deserted, uninhabited and uncultivated as a result of

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natural barrenness or rendered unfit for cultivation by reason of natural ravages, etc. The expression "waste land" as contrasted with "arable land" would mean land which is unfit for cultivation by being marshy, stony, full of pits, ditches, etc., and so far as lands in the urban area are concerned, the expression "waste lands" may possibly be used with reference to pieces of land which are desolate, abandoned and not fit ordinarily for any use as building sites, etc. A building site which is quite suitable to be built upon cannot be regarded as a waste land simply because it is not put to any present use. It is its unfitness for use and not the mere fact that it is not put to any present use that must determine whether the land is waste or not."

This ruling supports the view that I have taken above and does not in any way advance the case of the petitioner. In this authority, the land in dispute was a building site within the municipal limits and was situated in the developed part of the City and, consequently, it was not termed as "arable" or "waste". There is, thus, no force in the first ground urged by the learned counsel for the petitioner.

Regarding the second ground, as already mentioned above, it was stated in the notification that the land was being acquired for the construction of a Text Books Sales Depot, which was required to be set up urgently. In the return filed by the State, they further explained this urgency by saying that this Depot was included in the Third Plan Schemes of the Education Department and was urgently required under the National Education Scheme. This Depot was at that time functioning in the Government College for Boys, but the College authorities required that accommodation very badly and they were pressing hard for early vacation of those premises. This Depot had to be set up for making the text books easily available to the students and this was, in my view, being done, presumably because there was lot of shortage of such books in the open market and, consequently, they were being sold at high prices in black-market. The Government and the Department had closely examined the question of urgency before the impugned notifications were issued. The question now arises as to whether this Court can go into the matter at all or is it solely for the Government to decide

whether in a particular case an urgency exists or not. This question came up for consideration before a Bench of the Madras High Court consisting of Rajamannar C.J., and Venkatarama Aiyer J., in *A. Natesa Asari* v. *State of Madras and another* (3), where it was held that whether an urgency existed or not was a matter solely for the determination of the Government and it was not a matter for judicial review. This decision was followed by the Andhra Pradesh High Court in V. *Harihara Prasad* v. *K. Jagannadham and another* (4). Both these authorities were then relied upon by a Division Bench of the Madhy Pradesh High Court in *Iftikhar Ahmed* v. *State of Madhya Pradesh and others* (5). Later on, these three rulings were followed by a Division Bench of the Rajasthan High Court in *Gopal Singh and another* v. *State of Rajasthan and another* (6). In the Bombay High Court, in *Shri Navnitlal Ranchhodlal's case,* (1) this proposition was taken to be so well settled that it was conceded by the learned counsel for the petitioner that the existence and extent of urgency at the stage of issuing a direction under section 17(4) was a matter for the subjective determination of the acquiring authority and would, therefore, not raise a justiciable issue. Learned counsel for the petitioner relied on the observations of the Bench in *Thirumalaiah's case* (2) to the effect that the cases of urgency under section 17(1) would be those where some great prejudice or inconvenience would be caused by adherence to the requirements of section 5-A, compliance with which would defeat the very purpose of the acquisition which had become emergent. In this very authority, the learned Judges further held—

> "Although it is true that the question whether the case is or is not an urgent one, is what the Government has to decide before it exercises power under sub-section (4) of section 17, it is nevertheless clear that if that power has been exercised without there being any real urgency, the notification issued under that sub-section dispensing with the requirements of section 5-A would be open to the criticism that it was made without the authority of law."

(3) A.I.R. 1954 Mad. 481.
(4) A.I.R. 1955 A.P. 184.
(5) A.I.R. 1961 M.P. 140.
(6) A.I.R. 1964 Raj. 270.

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In another portion of the judgment, it was observed—

> "I should not, however, be understood as stating that in all cases in which power is exercised under section 17(4), the notification issued under that section should always contain the materials demonstrating the urgency of the case. That urgency may be established by other materials which can be produced before us, such as may be contained in the proceedings resulting in the publication of the notification under section 17(4)".

Applying these principles to the facts of that case, they came to the conclusion that it was a case in which there was no materials of any description justifying resort to section 17(4). It may be mentioned that there the land had been acquired for the construction of a tank. The only urgency which was pointed out to the learned Judges was that the Public Works Department had suggested the construction of a tank, which the Government considered to be very necessary. On this, the Division Bench held—

> "I am unwilling to subscribe to the proposition that in all cases in which the Public Works Department suggests the acquisition of property for the construction of tank, the case must necessarily be regarded as the case of urgency. Unless the construction of the tank has to be made immediately without loss of time so that the emergent situation which has arisen demands its construction without compliance of the requirements of section 5-A, it would be obvious that the case is not one of urgency. But to say that the acquisition for the construction of tanks is always a case of urgency, would, in my opinion be stating the proposition too broadly. It would be in each case for the Government to consider whether notwithstanding the fact that the land is needed for the construction of a tank adherence to the requirements of section 5-A would occupy such a long time as to be productive of such great harm or prejudice as would defeat the very purpose of the acquisition."

It may be stated that the two learned Judges, three days after deciding *Thirumalaiah's case,* held in another decision *Kashappa, Shivappa* v. *Chief Secretary to the Government of Mysore and others* (7), as follows:—

> "Compliance with Section 5-A which enjoins a hearing to a person who is entitled to oppose the acquisition is indispensable. A direction dispensing with adherence to the provisions of section 5-A can be issued only in exceptional cases in which the case is so urgent that the time that is likely to be spent over the hearing directed by section 5-A would produce such great harm or public mischief. Cases in which compliance with the procedure prescribed by section 5-A could be dispensed with are those in which on account of exceptional circumstances of the case the acquisition does not brook any delay and has, therefore, become emergent. But the right to a hearing which is conferred on a person who is entitled to oppose the acquisition by section 5-A, a deprivation of which cannot be made save in exceptional cases, must be made available to that person as a rule. The opinion formed by the Government in their mind of the existence of urgency may be above judicial review; but there may be a case in which High Court may yet find it possible to say that that opinion is an impossible opinion either by reason of the fact that it rests upon no ground at all or rests on grounds which are demonstrated to be thoroughly irrelevant.
>
> That High Court could not substitute its own opinion for the opinion of the Government which they clearly formed that the case was undoubtedly one of urgency. The challenge made to the direction under section 17(4) on the ground that the case was not one of urgency on the ground that it was not believed to be one of urgency must, therefore, be negatived."

Thus, it would be seen that all the authorities, referred to above, have taken the view that the question whether an

(7) A.I.R. 1963 Mysore 318.

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urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review. The learned Judges of the Mysore High Court, however, have put a rider to this broad proposition, when they stated that there might be a case in which High Court might yet find it possible to say that the opinion formed by the Government was an impossible opinion either by reason of the fact that it rested upon no ground at all or rested on grounds which were demonstrated to be thoroughly irrelevant. They are, however of the view that the opinion clearly formed by the Government in their mind of the existence of urgency was above judicial review and the High Court could not substitute its own opinion for the opinion of the Government that the case was, undoubtedly, one of urgency. Learned counsel for the petitioner could not advance any cogent or convincing reason which could have impelled us to take a different view from the one expressed by the Division Bench *in A. Natesa Asari's case* (1). Even otherwise, a combined reading of sub-sections (1) and (4) would show that the question of determining the urgency in a particular case is the main concern of the Government. The existence of the urgency is a matter for their subjective satisfaction. If this question were to be made, a justiciable issue, the consequences would be that the Government would not be able to go ahead with the acquisition proceedings for a long time in urgent cases, the purpose for which the land was being acquired without complying with the provisions of section 5-A would be defeated and the Government would not be able to execute the work, for which the land was being acquired, in time. Section 17 gives special powers to the acquiring authority in cases of urgency only and the appropriate authority would take action only after it is satisfied that the case is one of urgency. The acquisition under the Act is always for a public purpose and the benefit goes to the entire public and we cannot assume that the said authority will misuse its powers under this section. In any case, the action of the said authority, if proved to be *mala fide*, can always be challenged. In this particular case, even if we apply the rule of law laid down by the Mysore Bench, it cannot be said that the opinion formed by the Government was an impossible one, because we cannot say that it did not rest upon any ground at all or rested on grounds which were demonstrated to be thoroughly irrelevant. The acquisition in the instant case was being made for the construction of a Text Book Sales Depot which was

required to be set up for augmenting the distribution/sale of text books under the National Education Plan. This Depot was included in the Third Plan Schemes of the Education Department and was urgently required under the National Education Programme. The Depot was at present functioning temporarily in the Government College for Boys, but that accommodation was required by the College Authorities very badly and they were pressing hard for its early vacation. As such, the Government was keen to start the construction of the Depot at an early date. This was being done also because the text books were not available in the open market at their proper prices and it was in the interest of the student community that these books should be provided to them at the rates fixed by the Government. Thus, the opinion about the urgency formed by the Government in the present case was not an unreasonable one. It was not necessary for the Government to specify all the various grounds on the basis of which it formed the opinion about the urgency in the notification itself. They have, however, clearly mentioned therein that the land was needed for the construction of the Text Books Sales Depot which was required to be set up urgently. Since the petitioner alleged that there was no urgency for this acquisition, therefore, the respondents explained their position in detail in the return filed by them and I have already mentioned above as to what they had said therein, which fully proves that the acquisition in the instant case was one of urgency. There is thus no force in this ground as well.

It may be mentioned that the learned counsel for the petitioner also submitted that the previous Bench decision of this court in this very case supported his contention that the acquisition was not of urgent nature and that the previous notification issued by the Government was set aside. As the circumstances had not changed in any manner since then, this notification should also be struck down.

There is no substance in this argument. In the previous notification, the Government had not specifically mentioned the sub-section of section 17 under which the acquisition was being made. At the time of arguments, however, the Government Advocate appearing for the State took up the

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stand that the acquisition was attracted by clause (c) of sub-section (2) of section 17. This clause reads as follows:—

"S. 17. (2). In the following cases, that is to say—

* * * *
* * * *

(c) whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance;

the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of said land, which shall thereupon vest absolutely in the Government free from all encumbrances.

* * * *
* * * *

The learned Judges then examined this clause and came to the conclusion that the notification was not covered by it and they, therefore, set aside the same. In the instant case, the lacuna in the notification was made good by the Government and they have clearly stated therein that action was being taken under sub-section (1) of section 17 and that the Text Books Sales Depot was required to be set up urgently. The previous decision, therefore, does not in any way help the petitioner. We are now called upon to decide as to whether the impugned notification is covered by sub-sections (1) and (4) of section 17. The two grounds on which this notification was being challenged by the petitioner have already been disposed of by me above.

There is an additional ground why I am of the view that we should not interfere with the impugned notifications in these proceedings. It is the case of the Government that after acquiring the land under the first notification dated 9th August, 1962, since the matter was of urgent nature, they constructed buildings worth about Rs. 60,000 thereon. The petitioner filed the first writ petition challenging the previous notification on 21st November, 1962, that is, after about 3½ months. Even then no stay order prohibiting the respondents from making any constructions on the land was

obtained by him. It was for the first time on 29th October, 1963, when the previous case was referred to a Division Bench, that the petitioner got the stay order. It means that no stay was obtained for about 15 months after the issue of the first notification, with the result that during this period the Government went on making constructions on the land in question. The acceptance of the writ petition at this stage will result in a great loss to the Government and so far as the petitioner is concerned, he will get the proper compensation for his land and would thus suffer no loss.

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in these proceedings.

S. B. CAPOOR, J.—I agree.

S. B. Capoor.

INDER DEV DUA, J.—So do I.

Inder Dev Dua.

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