IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.689 of 2012 (O & M)
Date of decision:16.05.2013

Prithvi Singh & others .....Petitioners

Versus

Union of India & others .....Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

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1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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Present: Mr.Ashutosh Kaushik, Advocate, for the petitioners.

Mr.Kunal Dawar, Advocate, for respondents No.2 & 4.

Mr.Ashish Chopra, Advocate, for respondents No.1 & 3.

Mr.Hawa Singh Hooda, A.G., Haryana
with Mr.Kamal Sehgal, Addl.A.G., Haryana,
for respondents No.5 & 7.

Ms.Monika Jalota, Advocate, for respondent No.6.

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G.S.Sandhawalia J.

1. The present writ petition has been filed challenging the notification dated 29.07.2010 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (for brevity, the 'Act') whereby land measuring 1503 acre 4 kanal 19 marlas situated in the revenue estate of village Gorakhpur, Kajal-Heri and Badopal in Tehsil Bhuna, District Fatehabad has been notified for acquisition for public purposes, i.e., for construction of 2800 megawatt Gorakhpur Atomic Power Project. Challenge is also made to the notification dated 25.07.2011 (Annexure P-7) issued under Section 6 read with Section 17(2)(c) of the Act and for a direction to the respondents to shift the site of the Atomic Power Project

towards barren/less fertile land available in the adjoining villages and to release the land of the petitioners from acquisition.

2. The pleaded case of the petitioners, who are 60 in number, is that their fertile agricultural land which was the only source of their livelihood was being sought to be acquired by the State Government for setting up of Atomic Power Plant and thus, depriving the petitioners of their only source of livelihood. It is pleaded that the land yields 2-3 crops every year and there were other lands available which yielded only one crop every year and it could be used for such purposes. There were three highly populated villages adjacent to the land of proposed power project and various guidelines have been laid down by the Atomic Energy Regulatory Board (for short, the 'AERB') with regard to setting up of a nuclear power plant due to the risk of leakage and storage of radioactive nuclear waste. Vide notification dated 14.09.2006 issued by the Ministry of Environment and Forests under Sub-Rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, restriction had been imposed on the ongoing projects and activities and the meetings of the State Level Environment Impact Assessment Council had to be held and public hearing had to be granted. Such procedure was not followed and the Government was seeking to acquire the land without assessing that the land was suitable for the project or not. Notification dated 29.07.2010 was issued for acquiring 1503 acres 4 kanals 19 marlas of land in 3 villages and there was no reference to the urgency clause in the said notifiction. The guidelines issued by the AERB had been flouted and the procedure for selecting the site had not been followed. Reference was made to the judgment of the Hon'ble Supreme Court in ***Devinder Singh Vs. State of Punjab 2007 (4) RCR (Civil) 799***. The petitioners had filed objections under Section 5-A of the Act to the notification issued under Section 4 of the Act and the petitioners were owners to the extent of 895 acres 5 kanals 19 marlas out of

1503 acres 4 kanals 19 marlas. The villagers had objected to the setting up of the nuclear plant but the declaration under Section 6 of the Act had been issued on 25.07.2011 wherein the respondents added Section 17(2)(c) of the Act and dispensed with the pending objections against the proposed acquisition which was incorrect as the initial notification under Section 4 of the Act never mentioned about the urgency clause. Had there been any urgency, objections would not have been invited by the respondents. The proper survey had not been carried out regarding the land in dispute as to how the nuclear waste disposal had to be done and densely populated villages and cities like Fatehabad and Hisar would be thoroughly encompassed within the radius of 30 KM of the site and the Government was pushing through the nuclear project in spite of the effect of radiation in Russia and Japan.

3. In the reply filed by the AERB-respondent No.2, it was pleaded that it had no role in the selection of the site of nuclear power plant (hereinafter referred to as 'NPP'). The site was to be selected by the Site Evaluation Committee of the Department of Atomic Power Energy. The function of the AERB is to grant consent for nuclear power plants as per the Atomic Energy Act, 1962. The siting/seeking consent for the nuclear power plant was to be sought by Nuclear Power Corporation of India Ltd. (for short, the 'NPCIL) and no such application had been submitted by the NPCIL. After the selection of the site, application for seeking consent was submitted to the AERB by NPCIL and then evaluation was to be carried out regarding the effect of external events such as earthquake, flood etc. and after the satisfactory review of the Site Evaluation Committee followed by advisory committee for Project Safety Review which consisted of expert members of the Board, the consent was to be granted.

4. Respondent No.3-NPCIL took the plea that while issuing notification under Section 6 of the Act, the words “read with clause (c) of sub-section (2) of

Section 17" inadvertently got incorporated in the said notification and a notification/corrigendum dated 21.09.2011 was published omitting those words from the said notification. The corrigendum was published in 'The Hindu', 'Dainik Jagran' and 'Dainik Bhaskar'. For development of sources of energy to meet the huge demand of the country for electric energy in an efficient and cost effective way, no single source or a set of sources could meet the demand and all sources needed to be deployed optimally. The energy mix needs to be diversified considering the volatility and the uncertainty of international energy security. Due to the thorium resources which were abundant, the demand could be met and nuclear power was clean and devoid of green house gas emissions and needed less land per megawatt and keeping in view the energy intensity, the same did not put a large demand on transportation and handling infrastructure in comparison to other sources of energy like thermal coal plants. The nuclear power plants planned at Gorakhpur are indigenous 4 units of 700 megawatt pressurised heavy water reactors being a part of 3 stage nuclear power programme and the answering respondent had an impeccable record of safety with no instance of release of radioactivity beyond the limits stipulated by the AERB. It has the experience of operating nuclear power plants exceeding 40 years. The siting of the nuclear power plants which is to be established for the first time was known as virgin/green-field site and as per the Site Selection Committee, constituted by the Department of Atomic Energy-respondent No.1 on 28.12.1998 for the purpose of identification of location, for setting up future atomic power stations, the committee had identified and recommended new site at Kumharia, Haryana amongst others on 20.05.2003. Thereafter, on 06.09.2005, another Site Selection Committee (for short, the 'SSC') was constituted which was to review the position of the sites recommended by the earlier Committee and was to submit its report by 31.12.2005. The new Committee recommended number of inland and coastal

sites which included Kumharia, Fatehabad Unit. The Committee considered the water availability, its drawl and discharge, its quality, radioactive liquid effluent management and thermal pollution etc. The Committee consisted of expert members drawn from Government bodies such as Central Electricity Authority, Ministry of Environment & Forests, Atomic Energy Regulatory Board, Indira Gandhi Centre for Atomic Research, Kalpakkam, Bhabha Atomic Research Centre, Mumbai, Atomic Minerals Directorate for Exploration & Research, Hyderabad, NPCIL. The recommendations of the Committee had been submitted to the Government of India and vide letter dated 08.10.2009, the Government had conveyed its approval in principal and the Cabinet Committee on Security for five new sites which included the site in question. The State Government, thereafter, nominated Haryana Power Generation Corporation Ltd. (HPGCL) which was to coordinate and support NPCIL for the pre-project activities like land acquisition, environmental clearance, specialized studies, water availability etc. vide letter dated 06.11.2009. ON 22.10.2008, the NPCIL was authorized by the Secretary, DAE, Government of India to act as the nodal agency on behalf of the Government and to commence land acquisition and pre-project activities. On 02.12.2009, under the Chairmanship of Financial Commissioner and Principal Secretary (Finance), Government of Haryana, a meeting was held and issues relating to land acquisition, relocation and rehabilitation policy, security and access control etc. were discussed. The NPCIL, vide letter dated 11.05.2010, intimated the District Revenue Officer that requirement of land was 1505 acres which had been considerably reduced as earlier indicated. The minimum exclusion zone in the radius of 1 KM had been approved and the action for seeking clearance from the Ministry of Environment and AERB had been done and the answering respondent awarded a consultancy contract to M/s MECON, Ranchi to carry out environmental impact assessment as per the existing

procedure as defined in EIA notification dated 14.09.2006. The project feasibility report was approved after deliberation as per the letter dated 13.10.2010. Notice under Section 9 of the Act was issued and the Land Acquisition Collector (LAC) had called upon the answering respondent to deposit a sum of ₹447,73,24,997/- towards part of the compensation. The Government of Haryana had brought out a comprehensive policy for rehabilitation and resettlement of landowners in November, 2010 and the landowners had been adequately compensated. The land in question involved minimum displacement of human beings and given its topography and geographical location including accessibility. It was erroneous to contend that the land was sought to be acquired without due assessment qua suitability of the same for the project. The feasibility report had been prepared and approved by the Ministry of Environment. The decision of establishing the nuclear power plant was entrusted to the regulatory authorities like respondent No.2 who are expert bodies. Thus, it is wrong to contend that the ongoing project could cause serious and irreversible harm to human health and environment and that precautionary measures have not been taken. In fact, the establishment, maintenance and operations of the project were to be carried out under the strict vigilance of the answering respondent and as per the guidelines framed from time to time. The notification dated 14.09.2006 provided the opportunity of public hearing especially taking into account the environment concerns of the area raised by the people concerned and the clearance was subject to the management plan. The private interest had to yield to larger public interest and the location of the site was suitable and the water requirement for generation of electricity is minimal as compared to the overall availability of water in the canal as only 160 cubic feet per second was for consumptive use and the same would not cause any stagnation of water to be utilized and the remaining water was to be

returned to the sources.

5. In the reply filed by Ministry of Environment & Forests, respondent No.4, it was pleaded that the site selection for setting up the NPP does not fall in its domain and the same fell within the domain of Department of Atomic Energy, respondent No.1. The notification dated 14.09.2006 provided the construction of new projects and modernization of existing projects. The setting up of NPP and processing of nuclear fuel fell within Category A of Schedule attached with the said notification and required prior environmental clearance from the Ministry of Environment & Forests. As per letter dated 13.10.2010, the Ministry of Environment & Forests had prescribed terms for undertaking detailed environment impact assessment study and the proponent was required to get the public hearing conducted as per the procedure prescribed in the notification and public hearing was to be addressed in the final environment impact assessment report. The Ministry had not yet received the report which was to be prepared by the NPCIL.

6. The State, in its reply, submitted that exhaustive procedure had been followed in selecting the site of NPP and the SSC had selected the site after due application of mind and keeping in view the judicious use and allocation of resources and that larger public interest would prevail over the right of the petitioners. The policy for rehabilitation and resettlement of landowners had already been prepared by the Government of India and published in the official gazette. The notification under Section 6 read with Section 17(2)(c) of the Act dated 25.07.2011 was issued by mistake and it was set right by another notification/corrigendum dated 21.09.2011. The acquisition was for a public purpose and the Central Government owned companies were permitted to set up NPP in the country under the Atomic Energy Act, 1962.

7. In the written statement filed by respondent No.7, Land Acquisition

Collector, it was pleaded that 1313 acres 5 kanals 8 marlas of land was acquired in Village Gorakhpur, 4 acres 3 kanals 14 marlas in Village Kajalheri and 185 acres 3 kanals 17 marlas in Village Badopal, total measuring 1503 acres 4 kanals 19 marlas. 43 landowners out of the petitioners filed objections under Section 5-A of the Act and notices had been issued for personal hearing on 29.10.2010. Out of the 43 objectors, only 25 landowners appeared for personal hearing. After hearing the objections under Section 5-A of the Act, the LAC sent its report to the Government for taking further necessary action. There was no recommendation for release of the land. The Government issued the declaration under Section 6 of the Act on 25.07.2011. The substance of the declaration was published in Haryana Government Gazette and also in two daily newspapers, i.e., 'Dainik Bhaskar' (Hindi) dated 06.08.2011 and 'The Hindu' (English) dated 08.08.2011. The entry of the declaration was made in the Patwari Halqa Roznamacha Wakayati vide rapat No.301 dated 05.08.2011. For the land situated in Village Gorakhpur, munadi was also made by the village chowkidar. Inadvertent error in the notification under Section 6 of the Act was rectified vide notification/corrigendum dated 21.09.2011 which was also published in two daily newspapers, i.e., 'Dainik Bhaskar' (Hindi) dated 18.10.2011 and 'The Hindu' (English) dated 18.10.2011. Out of total 1313 acres 5 kanals 8 marlas land, all the 60 petitioners were owners of only 209 acres 1 kanal 1 marla. The site had been selected by the NPCIL. The allegation that people had died in dharna was wrong and one Ishwar aged about 60 years had expired due to illness and that his land was not under acquisition.

8. Counter affidavit was also filed by the petitioners pleading that there is no proper water-ways in the ongoing project and the site could be shifted to less fertile lands. Accordingly, numerous references were made to various nuclear mishaps all over the world. In the latest status report, the District

Revenue Officer, in its affidavit, submitted that the award had been passed on 18.07.2012 and the compensation was paid. That out of 689 landowners, 60 had filed the present writ petition and 50 of them had received compensation and the 4 petitioners whose land had not been acquired were also party. Out of the petitioners, only 6 petitioners at Sr.No.6, 26, 29, 30, 32 & 51 had not received compensation for the acquired land so far and the total land of these persons was 22 acres as per Annexure R-1.

9. Counsel for the petitioner firstly submitted that no suitable site had been selected and proper procedure had not been followed. It was next submitted that prior permission was required as per notification dated 14.09.2006 and there was threat of radiation and the precautionary principles, as laid down by the Hon'ble Apex Court in ***A.P.Pollution Control Board Vs. Prof.M.V.Nayudu (Retd) & others*** decided on 27.01.1999 were not being followed.

10. Counsel for the respondents, on the other hand, submitted that proper procedure had been followed by the Site Selection Committee. Out of 60 persons who challenged the acquisition, 50 persons had already accepted the compensation whereas 6 landowners had not accepted the compensation and they are opposing the acquisition of 1503 acres which is meant for public purpose, i.e., setting up of a nuclear power plant and the larger public interest under the principles of eminent domain would prevail over the private interest. Prior clearance was not required for clearing and securing the land and procedure under the environment protection had been followed. The benefit of the nuclear power to the State and the citizens was stressed and that the safety measures would be considered and reliance was placed upon the recent judgment of Hon'ble Supreme Court in **Civil Appeal No.4440 of 2013** titled **G.Sundarrajan Vs. Union of India & others** decided on 06.05.2013.

11. After hearing counsel for the parties and perusing the record, we

notice that initially, the case of the petitioner was that the State was going ahead with the acquisition proceedings by invoking the urgency provisions without getting any environmental clearance certificate for setting up the NPP. In the reply of the State, it would be clear that firstly, urgency provisions were not invoked in the present case and it was only by mistake that there was reference to Section 17(2)(c) in the notification dated 25.07.2011 issued under Section 6 of the Act. The State, thereafter, issued a corrigendum dated 21.09.2011 which was published in two daily newspapers, i.e., 'Dainik Bhaskar' (Hindi) dated 18.10.2011 and 'The Hindu' (English) dated 18.10.2011. It has also been clarified that regarding the 1503 acres 4 kanals 19 marlas of land, 43 landowners out of the petitioners themselves filed objections under Section 5-A of the Act and notices had been issued for personal hearing on 29.10.2010 and out of the said objectors, only 25 had appeared for personal hearing. After hearing the said objections, the LAC had sent its report to the Government for taking further necessary action giving no recommendation for release of land and thereafter, the notification had been issued on 25.07.2011 in which there was reference to Section 17(2)(c) which was subsequently cleared by publishing the corrigendum specifically mentioning that the said clause, wherever occurred, was to be omitted. Thus, the initial submission of the counsel for the petitioners that there was resort to the urgency provisions without affording any opportunity of hearing to the petitioners does not carry any weight as in pursuance to the notification dated 29.07.2010, forty-three land owners had filed objections.

12. The issue regarding the suitability of the site and whether a proper site had been selected and proper procedure had been followed is also explained in detail in the reply filed by the NPCIL which was given the job of “siting the NPP” which was to be established for the first time. The SSC is a statutory body constituted by the Central Government on 28.12.1998 in exercise of its powers to

carry out certain regulatory functions regarding the siting of such plants. The SSC, which was constituted by the DAE (respondent No.1), recommended various sites out of which, one was Kumharia, District Fatehabad, Hisar, the site in question, apart from 4 other sites in northern India falling in Punjab, Haryana, Rajasthan and U.P. A perusal of the report of the Chairman and Managing Director would go on to show that the working group members drawn from various organisations had participated in the collection, scrutiny and review of the site related characteristics and also in preparing the recommendations and conclusions. The working group members were expert members from Bhabha Atomic Research Centre (BARC), Atomic Minerals Directorate for Exploration & Research (AMD), Central Electricity Authority (CEA), Union Ministry of Environment and Forests (MOEF) and Units of NPCIL. Respondent No.1, thereafter, on 06.09.2005, constituted a fresh SSC of 9 members and the Chairman was the Managing Director of the NPCIL apart from various other members from the CEA, representative from the MOEF; AERB; Indira Gandhi Centre for Atomic Research, Kalpakkam; Director, Health Safety & Environment Group; BARC, Mumbai; Director, Atomic Minerals Directorate for Exploration & Research, Hyderabad; Executive Director (Corporate Planning), NPCIL; Sh.M.N.Ray, ACE, NPCIL, Mumbai. The SSC was to recommend a panel of coastal sites for setting up of NPPs of 4000 to 6000 megawatts on the basis of electricity regions in the country and to indicate the order of suitability of sites selected in each electricity region and also to consider the sites recommended by the earlier SSC and review the position in the light of the changes that have taken place in the intervening period apart from considering new sites. The SSC was to submit its recommendations by 31.12.2005. The site at Kumharia which is situated at the left bank of the Bhakra main canal in Fatehabad District having water requirement for setting up of 4 x 700 megawatts had been committed by the

State Government of Haryana vide letter dated 06.02.2006. The population of the exclusion zone was nil and the total area was moderately cultivated agricultural land and the sub-strata of the soil was alluvial. It was also considered that there was possibility of canal closure for maintenance. The canal closure for maintenance was very infrequent and it was also possible that the maintenance outage of NPP could be synchronised with the canal closure and provision for site storage water to cool safety related system could be made as quantities of water for shutdown cooling was much smaller. The site was close to international border and the strategic aspect and location of the new NPP required technical clearance from Ministry of Defence which was also taken into consideration. Various other factors were taken into consideration including the population of the area where the land was situated including Village Gorakhpur, Village Kajal Heri and the fact that since there was no population in the area, there would be no rehabilitation problems. It was also noticed that the site was 06 Kms from national highway No.10 and the route Delhi to Hisar and further upto Kharakheri was a black-topped national highway and was considered good to pass ODC and heavy equipment related to 220 MW units. The equipment could be brought to site and transported further since the nearest railway head was 22 KM South-Western of the site. It was also noticed that action on site clearance on safety angle from AERB and on environmental angle from MOEF would be necessary. Thereafter, on 08.10.2009, respondent No.1, in principle, approved the new site and wrote to the Chairman, Managing Director of NPCIL who, vide letter dated 06.11.2009, through its Chief Secretary, Haryana, Chandigarh, appointed Haryana Power Generation Corporation Limited as the nodal agency. Respondent No.1, on the other hand, appointed NPCIL as its nodal agency authorising them to commence the land acquisition and pre-project activities and requested the State Government to appoint a nodal officer with

whom NPCIL could interact for expeditious resolution of issues that may arise. In a meeting held on 02.12.2009 between the officers of the State Government and NPCIL, it was clarified that the exclusion zone of the project had been reduced from 1.6 KM to 1 KM and the requirement of land had also been reduced. A meeting was to be held with the media persons, sarpanches and prominent persons of the area to allay the fears and apprehension about the setting up of a NPP. Vide letter dated 11.05.2010, the NPCIL took out a digital map of the boundary of the village and surveyed the area under acquisition and came to the conclusion that the total requirement was 1505 acres and fresh list of the khasra numbers was prepared in the draft of Section 4 notification and a request was made to the LAC to take necessary action for issuing the said notification. Accordingly, in pursuance of the said letter, notification dated 29.07.2010 was issued. Thus, from a perusal of the facts detailed above, it would be clear that proper procedure had been followed by a committee which had been set up by respondent No.1 to review the earlier sites and the said committee made its recommendations and the same had been accepted by respondent No.2. Thus, the submission of the counsel for the petitioners that no procedure had been followed for selection of the site is without any basis and necessarily is rejected.

13. The second issue which the counsel for the petitioners has vehemently submitted is that the notification dated 14.09.2006 issued under Sub-Rule (3) of Rule 5 of the Environment Protection Rules, 1986 which provided that prior clearance had to be taken from the MOEF/respondent No.4. Paragraph 2 of the notification provides that projects or various activities would require prior environmental clearance from the concerned regulatory authority which is the Central Government in the MOEF for matters falling under Category 'A' of the Schedule. As per the Schedule A, under clause 1(e), new NPPs were one of the projects which required prior environmental clearance. However, a close

reading of paragraph 2 and paragraph 7 would show that before any construction work or the preparation of the land by the project management, such prior environmental clearance is required and there is an exception regarding the securing of the land which is started on the project or activity. Thus, paragraph 2 clearly excludes the prior environmental clearance for the acquisition of the land for the NPPs and no such prior environmental clearance is required from the Central Government as has been contended by the counsel for the petitioners. Paragraph 2 of the notification read as under:

> "2. Requirements of prior Environment Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management **except for securing the land, is started on the project or activity**:
>
> (i) All new projects or activities listed in the Schedule to this notification;
>
> (ii) Expansion and modernization of the existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or mordernization.
>
> (iii) Any change in project – mix in an existing manufacturing unit included in Schedule beyond the specified range."

14. Clause 6 further provides that an application is to be filed for seeking prior environmental clearance and it talks about commencing any construction activity or preparation of land at the site by the applicant. Clause 6 reads as under:

> "6. Application for Prior Environmental Clearance (EC):-
>
> An application seeking prior environmental clearance in all

> cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report."

15. Thus, from the combined reading of paragraphs 2 & 6, it would be clear that clearance is to be sought before construction activity is to be started or the land is levelled. At present, the case in hand pertains to the acquisition of the land and does not provide for construction in any manner, rather, the award was only passed on 18.07.2012 and the stage for prior clearance or starting of any activities has not come since the writ petition was listed for hearing prior to that date, i.e., on 12.01.2012, for the first time.

16. A similar view has also been taken by a Division Bench of this Court in **CWP No.4186 of 2009** titled **Daljit Singh Vs. Union of India** decided on 22.11.2010 wherein the acquisition for development of industrial model township at Faridabad was challenged by the landowners on the ground that prior environmental clearance had to be obtained. One of the issues which was under consideration before the Division Bench reads as under:

> "(ii) Before proposing to acquire the land in question, prior environmental clearance (EC) has not been obtained by the respondents from the State Level Environment Impact Assessment Authority (in short, assessment authority), constituted by the Central Government under sub-section 3 of the Environment (Protection) Act, 1986."

17. After examining the notification dated 14.09.2006 in detail, the Division Bench came to the conclusion that prior environmental clearance was

not required at the time of the issuance of the notification under Section 4 of the Act or at the time of the passing of the award. The judgment of the Hon'ble Supreme Court in ***Karnataka Industrial Areas Development Board Vs. C.Kenchappa & others (2006) 6 SCC 371***, on which reliance had been placed by the petitioners was held to be distinguishable since it was prior to the notification dated 14.09.2006. Relevant portion of the judgment reads as under:

> "After looking at the provisions of notification P4/A and Form 1A Appendix II, it is to be seen as to what are the requirements to get environmental clearance and at what stage.
>
> For this project, which falls in category B in part 2 it has been stated that prior environmental clearance from assessing authority is required before *"any construction work, or preparation of land by the project management except for securing the land is started on the project or activity."*
>
> Sub-para 6 indicates that *application for prior environmental clearance is to be made after identification of prospective site(s) for the project and or activities to which the application relates before commencing any construction activity or preparation of land at the site by the applicant.* In application, to be moved in Form 1A, to get environmental clearance it needs to be stated that the proposed land use shall conform to the master plan/ development plan of the area. Change of land use certificate and statutory approval from the competent authority is required to be submitted with the application, along with maps, site locations etc. *Project requirements in terms of land area, built up area, water consumption, power requirement, connectivity, community facilities, parking needs etc. are to be indicated in the application. What will be the effect of proposed activities on existing facilities adjacent to the proposed site shall also requires to be given. Requirement of water, effect of vegetation, air, change in aesthetics, what building material shall be used and what measures shall be taken for energy conservation are also to be mentioned in the application.*
>
> If that is so, it is not possible for us to accept argument raised by Mr.Aggarwal that prior environmental clearance before issuance of notification under Section 4 of the Act or at the maximum before passing of the award is required.
>
> As per notification issued under Section 4 of the Act and the averments made in this writ petition, after finalization of the

acquisition proceedings, the land acquired shall be handed over to HUDA (respondent No.4) and HUDA will develop the project. After issuance of notification under Section 4 of the Act, nobody knows how much land will be left out of acquisition in terms of objections filed by the land owners under Section 5-A of the Act. After issuance of notification under Section 6 of the Act, power still remains with the government to release land in terms of the provisions of Section 48 of the Act. As per law, before passing of an award it is also permissible to the land owners to lay challenge to the notifications issued under Sections 4 and 6 of the Act. In many cases, their objections raised to those notifications in the Courts may be accepted and the land in their favour be released. As per ratio of various judgments of the Hon'ble Supreme Court, including in *Swaran Lata etc. v. State of Haryana and others AIR 2010 Supreme Court 1664*, no challenge to the acquisition lies after passing of the award by the Land Acquisition Collector. At that stage, probably, it will become known to the government as to how much land shall remain available with it for development in a particular project. As per provisions of notification P4/A, it is specifically mentioned that prior environment clearance is needed before start of any construction work or preparation of land by the project management except for securing land. It is contention of counsel for the respondents that in terms of the provisions mentioned above, environmental clearance is needed only after the land acquisition process has become final, exact quantum of land is known to the government and when it is handed over to HUDA. Before start of development activities at the project, application for clearance has to be moved. Mr.Sehgal specifically stated that not even a brick shall be laid to develop the project unless environmental clearance is granted to the government/ HUDA.

As per Oxford dictionary and thesaurus, the word "secure" would mean safe, reliable, stable/ obtain. Contention of counsel for the petitioners that the word secure would mean only to take steps to secure the land from encroachment is liable to be rejected. The word secure here would mean to acquire the land finally. If that is so, we are of the opinion that environmental clearance is needed only when exact quantum of land, after passing of an award is known to the government and the project developers. This fact is apparent when we look into the conditions and the requirements to be mentioned in an application to be moved for environment clearance in Form 1A. It talks of submission of change of land use certificate granted by the competent authority with the application

and statutory approval, map, site location, surrounding features like levels and contours of the site in question. It has to state about major requirements and their effect on the existing facilities existing near to the proposed site, effect of vegetation, energy conservation, air pollution has also to be mentioned. All these facts can be mentioned only when it is known to the government or HUDA, after going through the entire process of acquisition, as to how much land would remain available and not otherwise.

Contention of counsel for the petitioners that in terms of the judgment of the Hon'ble Supreme Court in *Karnataka Industrial Areas Development Board (supra)*, prior approval is must, does not appear to be very sound because when that judgment was passed by the Hon'ble Supreme Court, detailed procedure as envisaged in notification P4/A was not available for perusal of the Hon'ble Supreme Court. Otherwise also, when we look into directions issued in para 100 of the above said judgment, the (i) part it only mandates that before acquisition of land etc. for development environment impact must be properly comprehended and the land be acquired if do not gravely impair the ecology and environment. In direction (ii), it is mandated that the State authorities shall incorporate a condition when allotting land for development to obtain clearance certificate from the Pollution Control Board. If we look at both the directions together, it becomes apparently clear that actually environmental clearance certificate is needed only before starting development activities. Before that only assessment has to be done. If the authorities before initiation of acquisition proceedings have not undertaken the assessment process, it may be an irregularity and not illegality, which will not go to the root of the case.

In the present case, it has specifically been stated by Mr.Sehgal that before starting any development activity on the land acquired, the State/HUDA shall get prior environmental clearance from the assessment authority."

18. In view of the above, the second submission of counsel for the petitioners also necessarily fails and is, thus, repelled.

19. The last submission of the counsel for the petitioners that there was a threat of radiation and precautionary principles, as laid down by the Hon'ble Apex Court in **A.P.Pollution Control Board**'s case (supra) would be of no help

to the petitioners. The said submission, at this stage, is totally premature. Admittedly, at present, only the acquisition proceedings qua the project are being concluded after identification of the site in question. A perusal of the letter dated 13.10.2010, issued by the MOEF would show that it had asked the NPCIL regarding further works which had to be continued and environmental clearance which was required to be taken as prescribed under the EIA notification. The Hon'ble Apex Court in **G.Sundarajan** (supra), while examining the immense use of nuclear energy for generating electricity and while issuing directions regarding the safety measures for setting up the NPP at Kudankulam in the State of Tamil Nadu, noticed the supervisory jurisdiction of AERB to enforce the rules and regulations and observed that the Court had to respect the NPP policy which is for the welfare of the country and its balanced economic growth. The balance between the developmental needs and the principles of sustainable development at the cost of the smaller number of people for the larger public interest and for a project which was beneficial was dilated upon and the comparative hardship of the persons whose land was being acquired and how it was to be balanced for the benefits of the larger public interest, was noticed. Relevant observations read as under:

> "228. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four

corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property. I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different. I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be "zero" regard being had to the nature's unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good."

20. In ***Girias Investment Vs. State of Karnataka 2008 (7) SCC 53***, the

Hon'ble Apex Court again noticed the rights of the individuals and deserved that it had to give way for the larger public interest and the Court were not to quash such acquisitions which were for the benefit of the public at large. The relevant observations read as under:

> "27. The aforesaid paragraphs clearly reveal that the request for a personal hearing was conditional in that if a clarification or additional documents were required, time for that purpose be given. It is also significant that the objections filed by the appellants form (almost exclusively) the basis for the present writ petition inasmuch the fact that there was no need for the change of the alignment of the trumpet interchange and the access road or that alternative land was available for that purpose, had been spelt out therein. The Collector in dealing with the objections had observed that several objections/documents had been filed by the appellants but were liable to rejection as the acquisition was necessary for the Bangalore Airport. We are also not mindful of the fact that though the rights of an individual whose property is sought to be acquired must be scrupulously respected, an acquisition for the benefit of the public at large is not to be lightly quashed and extraordinary reasons must exist for doing so."

21. Another peculiar fact which requires to be noticed is that out of the 60 persons involved, 50 have already received compensation as per the latest status report and out of the 10 remaining, 4 were not owners of the land in dispute and had thus, no interest in the acquisition. Only 6 petitioners were remaining who are now contesting the acquisition of the land and the total area of the land of these 6 persons is only 22 acres out of 1503 acres 4 kanals 19 marlas.

22. Thus, the observations in ***Nand Kishore Gupta Vs. State of U.P. 2010 (10) SCC 282*** would be applicable in the facts and circumstances of the case. Relevant portion of the judgment reads as under:

> "46. The learned Counsel appearing on behalf of the appellants could not deny the fact that the total number of petitioners concerned in these acquisition proceedings,

> coming up before the High Court, was extremely insignificant as compared to those who had accepted the compensation. Of course, that by itself may not be the only reason to hold against the appellants (petitioners), however, that fact will have to be kept in mind while deciding the issues which cover the whole acquisition process, which acquisition is for the purpose of development of 25 million square meters of land. The High Court has also noticed this aspect. We have mentioned this aspect only with a limited objective of showing that the criticism against the whole scheme which would invalidate the acquisition would be difficult to be accepted, particularly in this case, in view of the fact that majority of the land owners have parted with possession, taken the compensation and thus, the whole scheme has progressed to a substantial level, wherefrom it will be extremely difficult now to turn back to square one.
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> xxxx xxxx xxxx
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> 50. It is also to be seen that this was not a case where the exercise of power of eminent domain by the State was for any of the purposes set down in Section 40 of the Act. Further, it is not as if the power of acquisition was exercised by the State Government for the work or Project of the Company. Lastly, it is not a case where the power of exercise was exercised by the State Government so that the acquired land was to belong or vest permanently in the Company for its own purpose."

23. **Devinder Singh's** case (supra) on which reliance had been placed by the counsel for the petitioners, would not advance their case in the facts and circumstances of the present case as in that case, there was acquisition for a limited company and the acquisition was set aside by the Hon'ble Supreme Court on the ground that the mandatory provisions of the Act had not been followed. It was further observed that the power of eminent domain for acquisition for a private company and the statutory requirement provided for strict compliance had not been done as the rules provided that the fertile agricultural land should be avoided from being acquired. In the present case, the acquisition is not for a

company and it is for a public purpose, i.e., for setting up a NPP, as distinguished from aforesaid pronouncement.

24. Resultantly, in view of the above, the present writ petition is dismissed and consequently, the notifications acquiring the land in question are upheld.

(G.S.SANDHAWALIA)
JUDGE

16.05.2013 **(AJAY KUMAR MITTAL)**
sailesh **JUDGE**