

SUPREME COURT OF INDIA

Kamal Trading P.Ltd.

Vs.

State of West Bengal & Ors.

C.A.No.10878 of 2011

(G.S. Singhvi and Ranjana Prakash Desai, JJ.,)

13.12.2011

JUDGMENT

SLP(Civil)No.3654 of 2010

1. Leave granted.
2. This appeal, by grant of special leave, is directed against the judgment and order dated 19/8/2009 passed by the High Court at Calcutta dismissing the appeal filed by the appellant.
3. The appellant, which is a private limited company was entrusted by seventeen joint owners of the premises known as "Industry House" at No.10, Camac Street, Calcutta - 700 017 (for short, "the said premises"), to look after the day-to-day management and maintenance of the said premises as also to initiate proceedings for and on their behalf. The seventeen joint owners include respondents 6, 7 and 8 herein and one Piani Investment (hereinafter referred to as "owner companies" for convenience). They are seized and possessed of certain floors of the said premises. The State of West Bengal requisitioned the said floors under the provisions of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 (for short, "the 1947 Act"). Under the 1947 Act, the maximum period of requisition was fixed at 25 years from the date of initial order of requisition and the State Government was obliged to release the property under requisition after expiry of 25 years. It is the case of the appellant that, in fact, the release of the said floors was in contemplation of the concerned authorities. However, enquiries made by the appellant revealed that the State Government was planning to acquire the said premises in exercise of its powers under the Land Acquisition Act, 1894 (for short, "the LA Act"). The appellant along with owner companies, therefore, filed Writ Petition No.22859 (W) of 1997 praying for a writ of mandamus directing the State to release the said floors from requisition.
4. Instead of releasing the said floors from requisition, the State Government issued a notification dated 29/7/1997 under Section 4 of the LA Act stating, inter alia, that the said floors are needed for the public purpose viz. for permanent office accommodation of Public Works Department. The said notification was published in the Government Gazette on

12/8/1997. It is the case of the appellant that the owner companies raised objections vide letter dated 8/9/1997 under Section 5A of the LA Act. The Second Land Acquisition Officer issued notice dated 23/9/1997 fixing date of hearing of the objections on 26/9/1997. On receipt of the said notice, the representative of the appellant met the Second Land Acquisition Collector on 25/9/1997 and by letter of even date, requested that the hearing fixed on 26/9/1997 be postponed till after 29/9/1997 because the Constituted Attorney of the appellant was held up in Mumbai and was unable to attend the hearing. The Second Land Acquisition Collector issued another notice dated 26/9/1997 fixing the date of hearing of the objections on 30/9/1997. By letter dated 29/9/1997, the appellant again requested for adjournment till after 28/10/1997 on the ground that its Constituted Attorney was unable to attend and the advocate was out of station. According to the appellant, while they were waiting for further communication about the date of hearing, the State Government issued a declaration dated 24/10/1997 under Section 6 of the LA Act, which was published in the Gazette on 29/10/1997. In the said declaration, it was stated that the Government was satisfied that the said floors were needed for the public purpose. The Special Land Acquisition Officer did not accept the appellant's request for further adjournment and proceeded to submit report dated 30/9/1997.

5. The appellants along with the owner companies filed Writ Petition No.25632(W) of 1997 and prayed for quashing notifications dated 29/7/1997. One of the grounds taken by them was that the report submitted by the Second Land Acquisition Officer was vitiated due to violation of the rule of hearing enshrined in Section 5A(2) of the LA Act and non application of mind by the concerned officer to the objections filed under Section 5A(1) of the LA Act.

6. By an order dated 3/12/2003, the learned Single Judge dismissed both the writ petitions. FMA No.40 of 2004 filed by the appellant against dismissal of Writ Petition No.25632(W) of 1997 was dismissed by the Division Bench.

Hence, this appeal by special leave.

7. We have heard Dr. Singhvi, learned senior counsel appearing for the appellant and Mr. Chaudhari, learned senior counsel appearing for the contesting respondents, at some length. Though several points are raised in this appeal, Dr. Singhvi addressed us on violation of Section 5A of the LA Act as according to him, this point goes to the root of the matter.

8. Dr. Singhvi submitted that hearing contemplated under Section 5A of the LA Act is not an empty formality. He submitted that the said right has been raised to the level of a fundamental right by this Court. Learned senior counsel argued that the acquisition of the land is a serious matter and when the State decides to deprive a person of his property by taking recourse to LA Act, it is bound to afford him an opportunity to file objections under Section 5A(1) of the LA Act and of being heard by the Collector in terms of Section 5A(2) of the LA Act. Learned senior counsel then submitted that the Second Land Acquisition Officer wrongly rejected the genuine prayer made by the appellant vide letter 29/9/1997 for adjournment on the ground that the counsel was out of station. He argued that even if the concerned officer was not inclined to adjourn the case, he was duty bound to consider the

objections raised by the appellant with necessary seriousness and decide the same by assigning reasons. Dr. Singhvi submitted that although the report of the Second Land Acquisition Officer makes a mention of the objections raised by the appellant, but the same have not at all been dealt with and, thus, the report made by the Second Land Acquisition Officer, which contained recommendations for the acquisition of land suffers from the vice of non application of mind. In support of his submissions, Dr. Singhvi relied upon the judgments of this Court in *Union of India v. Mukesh Hans*¹, *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors.*², *Dev Saran v. State of Uttar Pradesh*³, *R adhy Shyam V. State of Uttar Pradesh*⁴.

9. Mr. Chaudhary, learned senior counsel for the respondents argued that the Second Land Acquisition Officer did not commit any illegality by declining the appellant's request for adjournment because the sole object of such request was to delay finalization of the acquisition proceedings. Learned senior counsel emphasized that if the counsel for the appellant was not available on 30/9/1997, i.e., the date to which the hearing was adjourned by the Second Land Acquisition Officer, the appellant should have made alternative arrangement and the concerned officer did not commit any error by declining the repeated request for adjournment made on its behalf. Mr. Chaudhary then submitted that the report submitted by the Special Land Acquisition Officer does not suffer from the vice of non 2

application of mind because he had duly considered the objections raised by the appellant. In support of his argument, he relied upon the judgment of this Court in *Jayabheri Properties Private Limited & Ors. v. State of Andhra Pradesh & Ors.*⁵ where according to him, a similar contention raised by the appellants therein was rejected on the ground that adequate opportunity had been given to the appellants to voice their objections and the objections were duly considered by the Special Deputy Collector. Counsel submitted that in the circumstances, the appeal may be dismissed.

10. Section 5A(1) of the LA Act gives a right to any person interested in any land which has been notified under Section 4(1) as being needed or likely to be needed for a public purpose to raise objections to the acquisition of the said land. Sub-section (2) of Section 5A requires the Collector to give the objector an opportunity of being heard in person or by any person authorized by him in this behalf. After hearing the objections, the Collector can, if he thinks it necessary, make further inquiry. Thereafter, he has to make a report to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the appropriate Government and the decision of the appropriate Government on the objections shall be final. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the concerned authority, inter alia, that the important ingredient namely 'public purpose' is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an ex-proprietary legislation, its provisions will have to be strictly construed.

11. Hearing contemplated under Section 5A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The

report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5A(2). As said by this Court in *Hindustan Petroleum Limited*, the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5A(2) of the LA Act. The recommendations must indicate objective application of mind.

12. We may make a brief reference to the judgments on which reliance has been placed by Dr. Singhvi, which support the view taken by us.

13. In *M unshi Singh v. Union of India*⁶, this Court while dealing with Section 5A of the LA Act observed as under :

"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

14. In *Om Pr akash v. State of Uttar Pradesh*⁷, referring to its earlier judgment in *State of Punjab v. Gurdial Singh*⁸, this Court raised the right under Section 5A of the LA Act to the level of fundamental right and observed that inquiry under Section 5A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least, observation regarding Article 14 vis-`-vis Section 5A of the LA Act would remain apposite.

15. In *Mukesh Hans*, this Court reiterated that right of representation and hearing contemplated under Section 5A is a very valuable right of a person whose property is sought

to be acquired and he should have appropriate and reasonable opportunity of persuading the concerned authorities that the acquisition of the property belonging to that person should not be made. This court further held that the right given to an owner/person interested under Section 5A to object to the acquisition proceedings is not an empty formality and is a substantive right which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the LA Act.

16. In Hindustan Petroleum Corporation, this Court again referred to Om Prakash and observed that it is trite that hearing given to a person must be an effective one and not a mere formality. This Court observed that formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. This Court further observed that the State in its decision-making process must not commit any misdirection in law. This Court observed that it cannot be disputed that Section 5A of the LA Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution, it has been held to be akin to a fundamental right. Pertinently, this Court made it clear that in a case where there has been total non-compliance or substantial non-compliance with the provisions of Section 5A of the LA Act, the Court cannot fold its hands and refuse to grant relief to the appellant. Again in Dev Saran, this Court reiterated the same view.

17. In Radhy Shyam, this Court was considering a case where the State had invoked urgency clause under Section 17(4) and dispensed with inquiry under Section 5A. This Court observed that the legislation which provides for compulsory acquisition of the private property by the State falls in the category of expropriatory legislation and such legislation must be construed strictly. The property of a citizen cannot be acquired by the State without complying with the mandate of Sections, 4, 5A and 6 of the LA Act.

18. The decision of this Court in Jayabheri on which counsel for the respondent has placed reliance does not take any contrary view. The Court had adverted to the facts of that case and concluded that there was no violation of Section 5A of the LA Act.

19. According to the appellant, notification under Section 4 of the LA Act was not served on owner companies. However, upon coming to know of this notification, the appellant vide their letter dated 8/9/1997 submitted objections running into four pages containing 8 paragraphs. We have already noted that the Second Land Acquisition Officer adjourned the hearing on one occasion as requested by the appellant. He, however, refused to adjourn the matter any further. The second request was rejected. We feel that looking to the nature of the issues involved, the Second Land Acquisition Officer could have adjourned the proceedings after putting the appellant to terms because hearing the representative of the owner companies was mandatory. In any event, if he did not want to adjourn the proceedings and wanted to consider the objections in the absence of counsel for the owner companies and assuming such a course is permissible in law, he should have dealt with the objections carefully and not in such a lighthearted manner because heavy responsibility rested on his shoulders. In the report, he has noted the objections as under:

"(i) Notification U/S 4 has not been published in the Newspapers nor publicly notified.

(ii) Premise is under requisition under the W Bengal Premises Requisition & Control (Temporary Provisions) Act, 1947 from 16/09/72 and is about to complete 25 years on 15/09/97 when as per the Law release of the premises is expected.

(iii) Anticipating impending release, tie-up has been made to accommodate foreign ventures/industrialists.

(iv) LA Collector has shown colourful authority by extending this acquisition proceeding."

20. He has then noted that the officers of the Acquiring Body vehemently protested against the statements made in the appellant's letter and stated that the said statements are false, arbitrary and groundless and they simply endeavour to oust the Acquiring Body by hook or by crook. The paragraphs which contain the submissions and the so-called reasons of the Second Land Acquisition Officer need to be quoted.

"Heard the officers present from the Requiring Body. They vehemently protested as regards the statements contained in this particular letter. Their submissions in short that the statements made by the interested persons are all fake, arbitrary and groundless. They simply endeavour to oust the Requiring Body by hook or crook in order to grab this office space so that in turn can realize higher rent. Further, the purpose of the Requiring Body is very much public oriented and if it is not acquired they will suffer immensely. They further submitted that acquisition proceeding to be completed as quickly as possible inasmuch as they have the time bound programmes to implement it as per guidelines of Government for the greater interest of public. In view of these circumstances and for greater interest of the public, the submissions made by the interested persons by their letter dated 8/9/1997 are overruled."

21. By no stretch of imagination, it can be said that the Second Land Acquisition Officer had applied his mind to the objections raised by the appellant. The above-quoted paragraphs are bereft of any recommendations. The Second Land Acquisition Officer has only reproduced the contentions of the officers of the Acquiring Body. The objections taken by the appellants are rejected on a very vague ground. Mere use of the words 'for the greater interest of public' does not lend the report the character of a report made after application of mind. Though in our opinion, the declaration under Section 6 of the LA Act must be set aside because the appellant was not given hearing as contemplated under Section 5A(2) of the LA Act, which is the appellant's substantive right, we must record that in the facts of this case, we are totally dissatisfied with the report submitted by the Second Land Acquisition Officer. His report is utterly laconic and bereft of any recommendations. He was not expected to write a detailed report but, his report, however brief, should have reflected application of mind. Needless to say that as to which report made under Section 5A(2) could be said to be a report disclosing application of mind will depend on the facts and circumstances of each case.

22. Having examined this case, in the light of the law laid down by this Court, we are of the opinion that the High Court wrongly rejected the prayer made by the appellant that the notification under Section 4 and declaration under Section 6 of the LA Act be quashed and set aside. The impugned judgment and order of the High Court, therefore, needs to be set aside and is, accordingly, set aside. Since no hearing was given to the appellant resulting in non compliance of Section 5A of the LA Act, the declaration under Section 6 of the LA Act dated 24/10/1997 published in the Government Gazette on 29/10/1997 must be set aside and is set aside. In view of the judgment of the Constitution Bench of this Court in *Padma Sundara Rao (Dead) & Ors v. State of T.N. & Ors*⁹, the State Government cannot now rely upon notification dated 29/7/1997 for the purposes of issuing fresh declaration under Section 6(1) of the LA Act. The said notification dated 29/7/1997 issued under Section 4 is also, therefore, set aside. It would be, however, open to the State Government to initiate fresh land acquisition proceedings in accordance with law if it so desires.

23. We make it clear that nothing said by us in this judgment should be treated as expression of our opinion on the merits of the case of either side.

24. The appeal is disposed of in the aforestated terms.

Judgment Referred.

¹(2004) 8 SCC 0014

²(2005) 7 SCC 0627

³(2011) 4 SCC 0769

⁴(2011) 5 SCC 0553

⁵(2010) 5 SCC 0590

⁶(1973) 2 SCC 0337

⁷(1998) 6 SCC 0001

⁸(1980) 2 SCC 0471

⁹(2002) 3 SCC 0533