

SUPREME COURT OF INDIA

Lajja Ram

Vs.

Union Territory, Chandigarh

C.A.No.1964 of 2013

(H.L.Dattu and Dipak Misra, JJ.,)

27.02.2013

ORDER

SLP(Civil) No.24916 of 2008

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 14018 of 2008, dated 13.08.2008, whereby and whereunder the High Court has dismissed the aforesaid Writ Petition filed by the appellants.

3. The dispute relates to acquisition of lands situated in village Lahora and Sarangpur, Chandigarh, by the respondent No. 1 for the purpose of development of complex for important projects and allied purposes, i.e., Chandigarh Science Park and Institutional Area and also for regulated and planned development under the Capital of Punjab (Development and Regulation) Act, 1952.

4. The respondent No. 1 had issued a notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'), dated 25.07.2005, for acquisition of lands including lands in Khasra Nos. 111, 112, 113, 114/1, 114/2 and 244 in the village Lahora, whereat the residential houses of the appellants are also situated for the aforesaid purpose. Pursuant to the said notification, the Land Acquisition Officer (for short 'the LAO') had issued a notice under Section 5-A of the Act, inter alia, directing the appellants to file their objections, if any, to the proposed acquisition of lands in question. The appellants had filed their detailed objections, inter alia, bringing it to the notice of the LAO that they have made 'A' class construction over the lands in dispute. Having considered the objections so filed and also keeping in view the stand of the appellants and the respondent no. 1, a favorable report dated 17.02.2006 was submitted by the LAO recommending, inter alia, exemption of the appellant's lands from acquisition to the competent authorities who matters much. Later on, after conducting survey of the said lands, the LAO has modified his earlier report made

under Section 5-A of the Act and accordingly has withdrawn his recommendation in respect of grant of exemption to the appellant's lands, vide his letter dated 07.07.2006.

5. The notification under Section 6 of the Act dated 24.07.2006 was issued by the respondent-authorities. Upon issuance of such notification, the appellants had approached respondent-authorities for release of their lands from acquisition proceedings. On 26.03.2007, the matter was remitted by respondent no. 2 to the LAO for re-consideration, whereafter the LAO, after providing opportunity of hearing to the appellants and inspection of the site, recommended release of the said lands under Section 48 of the Act, by his report dated 16.05.2007. After a series of communications between the respondent-authorities, the final decision was taken on 22.07.2008 releasing Khasra No. 113 in part and exempting Khasra Nos. 114/1 and 114/2 while acquiring Khasra Nos. 111 and 112 completely and Khasra Nos. 113 and 244 in part. Immediately thereafter, award came to be passed vide order dated 23.07.2008. Aggrieved by the said award, the appellants had approached the Writ Court in Civil Writ Petition No. 14018 of 2008, inter alia, questioning the notifications issued under Sections 4 and 6 of the Act.

6. By the impugned judgment and order, the High Court has dismissed the Writ Petition on two grounds: firstly, that there is delay of nearly three and two years respectively in approaching the Writ Court from the date of Notifications issued under Sections 4 and 6 of the Act, and therefore they are fatal to the proceedings; and secondly that after the award passed by the LAO, the appellants could not have approached the Writ Court, inter alia, questioning the notifications issued by the respondent no. 1 under Section 4 and 6 of the Act. Aggrieved by the aforesaid, the appellants are before us in this appeal by special leave.

7. We have heard the learned counsel for the parties to the lis and also perused the documents on record.

8. Shri V.K.Jhanji, learned senior counsel appearing for the appellants would submit that the High Court has erred in dismissing the petition on the ground of delay and laches. The learned counsel would submit that the appellants could not approach the Writ Court amidst the variable recommendations made by the LAO in respect of their lands. He would further submit that it is only after the final decision was taken by the respondent-authorities rejecting the request of the appellants to exempt their lands from acquisition on 22.07.2008, the appellants have approached the Writ Court. He would further submit that the LAO was not justified in modifying his report dated 07.07.2006 under Section 5-A of the Act without duly notifying and affording an opportunity of hearing to the appellants. He would point out that the said action of the LAO is not only in violation of the statutory provisions but also in violation of the principles of natural justice and therefore, the notification issued by the respondent-authorities under Section 6 of the Act requires to be set aside.

9. Per contra, the learned counsel appearing for the State would support the impugned judgment and order of the High Court and would contend that the LAO, after considering the objections filed by the appellants, pursuant to the notice issued under Section 5-A of the Act, had sent his report to the respondent-authorities after complying with the mandatory

provisions of the Act and therefore, the notification issued under Section 6 of the Act is justiciable.

10. We would first advert to the question of dismissal of the Writ Petition by the High Court on the ground of delay and laches and thereafter, delve into the merits of the submissions made by the learned counsel for the parties. There is indeed some delay on the part of the appellants in approaching the Writ Court questioning the notifications issued by the respondent no. 1 under Sections 4 and 6 of the Act. It has come on record that the LAO has taken variable stands in his reports dated 17.02.2006, 07.07.2006 and 16.05.2007 with regard to grant of exemption from acquisition of the lands in dispute. It is only when the appellants were informed that their lands cannot be kept out of acquisitions, they have approached the Writ Court by filing a petition under Article 226 of the Constitution of India.

11. Although the underlying policy behind dismissal of petitions on grounds of delay and laches is to discourage agitation of stale claims, still this Court has held that the delay in approaching the Court must not always act in prejudice to the aggrieved party and the Court must prudently exercise its discretion in doing so. This Court in *Tridip Kumar Dingal v. State of W.B.*¹, has held that this Court may refuse to exercise its discretion where there is delays and laches in invoking jurisdiction of the Writ Court. However, the exercise of such discretion must be based on the facts and circumstances of each case and the decision must rest upon variety of factors including the nature of fundamental rights breached, the remedy claimed and when and how the delay arose. This Court, in *Northern Indian Glass Industries v. Jaswant Singh*², has observed that the conduct of the party challenging the notifications and pleading condonation of delay also plays an important role in exercise of this discretion.

12. Keeping in view the aforesaid observations of this Court, in our considered opinion, the delay in approaching the Court is satisfactorily explained by the appellants. The conduct of the appellants is evidenced by the consistent stand adopted by them in requesting the respondent-authorities throughout the course of acquisition proceedings to exempt their lands from acquisition proceedings. The appellants have assigned cogent reasons for the delay in approaching the Writ Court amidst successive reports of the LAO making variable recommendations in terms of grant of such exemption. The appellants have approached the Writ Court soon after a final decision was made by the respondent-authorities in this regard. Therefore, the High Court was in error in dismissing the writ petition on the ground of delay and laches on the part of the appellants in approaching the High Court.

13. In view of the aforesaid discussion and in the present set of facts and circumstances, considering the non-compliance of mandatory provisions of the Act by the LAO during the acquisition proceedings resulting in flagrant violation of the principles of natural justice, as pointed out by Shri Jhanjhi, we are of the considered view that the delay ipso facto should not be put against the appellants and the case must be decided on its merits.

“1. The High Court has non-suited the appellants on yet another ground viz. that the writ petition cannot be entertained after the award is passed by the Land Acquisition Officer. In the words of the Court:

“... the instant Writ Petition has been filed after making of award by Land Acquisition Collector. On making of award, the land vested in the State, free from all encumbrances and, therefore, the acquisition of the land cannot be challenged at this stage. In this view, we are fortified by the ratio of law laid down by the Hon’ble Apex Court in a recent judgment in *Swaika Properties Pvt Ltd. v. State of Rajasthan*,³. It has been categorically and authoritatively laid down in this judgment by the Hon’ble Apex Court that writ petition, after making of award by the Land Acquisition Collector, cannot be entertained.”

15. In our view, while dismissing the Writ Petition on the aforesaid ground, the High Court has erred in two aspects, firstly, the reasons recorded by the High Court do not reflect the correct position of law in respect of challenge to acquisition proceedings after passing of an award by the LAO and secondly, the High Court has ignored that the possession of acquired lands has not been taken over by the LAO from the appellants after the passing of the award.

16. Section 16 of the Act bears utmost relevance to the discussion and is extracted hereunder:

“16. Power to take possession- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.”

17. It is settled law that after the award is passed by the LAO/Collector, for the acquired lands to vest in the State Government, free from all encumbrances, it must be succeeded by his taking of possession of the lands under Section 16 of the Act. It is only after taking possession that the acquired lands would vest absolutely in the *State Government*. (See: *Jethmull Bhojraj v. State of Bihar*⁴,; *State of Rajasthan v. D.R. Laxmi*⁵,; *May George v. Special Tahsildar*⁶, and *Raghubir Singh Sehrawat v. State of Haryana*⁷,. In the instant case, the Writ Petition is filed by the appellants after the LAO has passed the award, dated 23.07.2008. However, the High Court has failed to notice that appellants continued to be in possession of the lands and their residential premises constructed on the said lands so acquired and therefore, the possession of the said lands acquired under the notification has not been taken over by the LAO so as to lead to vesting of land in the respondent No. 1 free from all encumbrances.

18. The High Court, in arriving at its conclusion, has relied upon the decision of this Court in *Swaika Properties (P) Ltd. v. State of Rajasthan*⁸, wherein this Court has observed:

“19. In the present case also, the writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the orders of the learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the writ petition and the special appeal without going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs.” (emphasis supplied)

19. In following the aforementioned decision of this Court, the High Court has erroneously omitted to consider the requisite of taking over of possession by the LAO so as to lead to vesting of the land in the State Government which was noticed by this Court while dismissing the petition on ground of delay and laches.

20. It is true that the lands vest in the State Government after an award is passed and the possession of the lands is taken; the aggrieved persons cannot challenge the validity of notifications. This Court, in *Market Committee v. Krishan Murari*⁹, has observed that after such vesting of land in the State Government the High Court could not have interfered with the acquisition proceedings so as to grant relief addressing the stage contemplated under Section 5-A. In our considered view, in this case the High Court while recording its reasons has proceeded on incorrect assumptions in respect of possession of acquired lands and erroneously concluded towards the vesting of land in respondent No. 1. Therefore, the aforesaid reasons recorded by the High Court for dismissal of the Writ Petition filed by the appellants cannot be sustained by us and the High Court ought not to have dismissed the Writ Petition on this ground also.

21. The only issue that survives for our consideration and decision is, whether the LAO, without affording an opportunity of hearing, could have passed the order rejecting their objections and submitting his report adverse to the interest of the land owners, to the respondent no. 1 recommending acquisition of the lands in question, pursuant to which the impugned notification under Section 6 of the Act is issued.

22. Before we advert to the aforesaid question, it is appropriate that we briefly notice Section 5-A of the Act which reads as under:

“5A. Hearing of objections.-

(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.”

23. The sub-section (2) of Section 5-A envisages the rule of audi alteram partem and makes it sine qua non to the acquisition proceedings under the Act. It mandates the LAO to first provide an opportunity of hearing to the objector(s) in respect of their objections to the acquisition of lands notified under Section 4(1) of the Act. The LAO or the Collector may also conduct a further enquiry in this regard, if he deems it necessary, and thereafter decide upon the objections raised by such objector(s) and submit his recommendations to the State Government in the form of a report, on the basis of which the State Government is to formulate its opinion in respect of acquisition of lands notified under Section 4(1) of the Act and issue appropriate notification under Section 6 of the Act. The purpose is to afford an opportunity of making representation to the aggrieved person before any order, which may adversely affect his interest in any immovable property, may be passed by the LAO and subsequent notification be issued by the State Government.

24. The said purpose has been noticed by this Court in *State of Punjab v. Gurdial Singh*¹⁰, wherein this Court has observed as under:

“16. ... it is fundamental that compulsory taking of a man’s property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons.”

25. Further, this Court in *Raghubir Singh Sehrawat v. State of Haryana*¹¹, has reflected upon the purpose of inclusion of principles of natural justice in the mandatory provisions of Section 5-A of the Act and their strict compliance by the LAO in the following words:

“39. ... it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported

by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons.”

26. This Court in *Munshi Singh v. Union of India*¹², has highlighted the importance of the rule of audi alteram partem embodied in Section 5-A of the Act in the following words:

“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. We may refer to the observation of this Court in *Nandeshwar Prasad v. State of U.P.*¹³, that the right to file objections under Section 5-A is a substantial right when a person’s property is being threatened with acquisition and that right cannot be taken away as if by a side wind. Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). 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.”

(emphasis supplied)

27. This Court in *Surinder Singh Brar v. Union of India*¹⁴, while analyzing the legality of the notification issued under Section 6 of the Act in the light of principles of natural justice as envisaged in the mandatory provisions of the Act under Sections 5-A and 6, has observed that the opportunity of hearing as envisaged under Section 5-A(2) must not be denuded to mere formality and the LAO/Collector must take into consideration the objections raised by the objectors and record reasons in his report as to why or why not the lands requires to be acquired for public purpose. This Court has emphasized that it is the reasons recorded by the LAO/Collector, after providing appropriate hearing to the objectors that contribute to the decision reached by the State authorities in issuing the notification under Section 6 of the Act. The relevant paragraph is extracted hereunder:

“84. What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different

reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorized to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file [pic]objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1)...”

(emphasis supplied)

28. It is not in dispute that at the initial stages and after issuance of the notice under Section 5-A of the Act, the LAO, after considering the objections had sent a report favorable to the appellants inasmuch as recommending that the lands in question need not be acquired by the respondent-authorities for the purpose intended in the acquisition notification. Thereafter, upon the survey of lands, the LAO has changed his stance and has suggested that the said lands should not be exempted from acquisition and thus, must be acquired by the respondent-authorities. The order so passed by the LAO was adverse to the interests of the appellants and they were entitled to be provided with a reasonable opportunity of hearing to represent their stand before the LAO in the altered circumstances of the case. This non-adherence to the principles envisaged under the Act at the stage of making recommendations, not only defeats the purpose and object of the provisions of Section 5-A(2) but also introduces illegality into the opinion formulated by the State Government after considering the report so submitted by the LAO and therefore, by necessary implication, permeates the notification issued under Section 6 of the Act with such illegality.

29. In our considered opinion, before passing the said order, opportunity of hearing ought to have been granted to the land owners who have immovable property rights in the lands

acquired. Since that has not been done, the action of the respondent-authorities is contrary to the statutory provisions and also in violation of the principles of natural justice.

30. In view of the above, we set aside the notification issued under Section 6 of the Act by the State Government qua the petitioners only. However, we permit the State Government and its authorities, if they so desire, to proceed from the stage from which we have pointed out the mistake/defect in the course of acquisition proceedings in so far as the lands of the appellants.

31. We clarify that the award in respect of other lands shall stand as it is and is not disturbed.

32. The appeal is disposed of accordingly. Parties to bear their own costs.

33. Ordered accordingly.

Judgment Referred..

¹(2009) 1 SCC 0768

²(2003) 1 SCC 0335

³(2008) 2 RCR (Civil) 96

⁴(1972) 1 SCC 0714

⁵(1996) 6 SCC 0445

⁶(2010) 13 SCC 0098

⁷(2012) 1 SCC 0792

⁸(2008) 4 SCC 0695

⁹(1996) 1 SCC 0311

¹⁰(1980) 2 SCC 0471

¹¹(2012) 1 SCC 0792

¹²(1973) 2 SCC 0337

¹³AIR 1964 SC 1217