

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.6151-6152 OF 2013  
(Arising out of SLP(C)Nos.13783-13784 OF 2013)

NAGENDRA &amp; OTHERS

.....APPELLANTS

VERSUS

STATE OF KARNATAKA &amp; OTHERS

.....RESPONDENTS

O R D E R

Perused the office report. The notice has been duly served upon the respondents, but no one has appeared on their behalf. Leave granted.

These appeals are directed against judgment dated 10.12.2012 by which the Division Bench of the Karnataka High Court, Circuit Bench at Gulbarga dismissed the writ appeals filed by the appellants and upheld the order passed by the learned Single Judge refusing to quash the acquisition of their land.

By notification dated 20.05.2010 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), the State Government proposed the acquisition of 23 acres 28 guntas land situated in Survey No.114/2 village Tidagundi, District Bijapur for a public purpose, namely, extension of Agricultural University Tidagundi for Horticulture Research Centre. The predecessor of the appellants filed objections under Section 5A(1) of the Act. The relevant portions of the same are extracted below:

"That, the family of my client is a big family which consists of his wife Smt. Kasturi and their sons namely (1) Nagendra, (2) Anil (3) Sunil who are the educated unemployed persons.

That my client is the owner of a land bearing R.S. No. 114/2 measuring 23 Acres 28 guntas and assessed at Rs.9-00 ps of Thidagundi village and the same is a garden land wherein my client along with this family members is growing the commercial crops, on the income of which the survival of my client's family completely depends as there is no other source of income except the above said one. But now yourself by making a publication have issued the Notice as above referred expressing the intention to acquire the above said land. As such if the above said land is acquired then it is nothing but throwing client's entire family on the road that too at the mercy of the almighty.

That, if it is certain to acquire the above said land for the University of Horticulture Science then inevitably you are required to look into the following matters.

a) The area wherein the above said land is situated is definitely within the jurisdiction of the municipal corporation proposed to be implemented within a short span of time by the Government of Karnataka.

b) The above said land is too much nearest to the National Highway No. 13.

c) The construction of National High way No. 13 into four way is now under progress.

d) The above said land is located in between the lands belonging to the University of Horticulture Science.

e) The National High way to which the above said land is too much nearest is surrounded thickly by the commercial out lets.

f) In the light of the above said facts and reasons the valuation of the above said land is required to be made not on the basis of acre-wise but on the basis of square feet.

g) The present market value of the land around the above said land is Rs.300/- to Rs.400/- per square feet.

h) In view of the above said facts the present market value of the land in question is Rs.25,00,000/- (Rupees Twenty Five lakhs) per acre.

That, taking into consideration the poverty of my client's family, the un-employed educated sons of my client and dependency of my client's entire

family only on the agriculture, a suitable employment is to be given to any one of my client's sons. Therefore, in view of the above said facts and reasons it is requested and called upon you by this reply to acquire the land in question on the basis of the valuation of Rs.25,00,000/- (Rupees Twenty Five lakhs only) per acre failing which my client will inevitably be constrained and forced to take necessary legal action against you in the courts of law. For the costs and consequences of which you will be held personally liable which please note."

The Land Acquisition Officer did not consider the objections in a correct perspective and submitted report under Section 5A(2) which was mechanically accepted by the State Government resulting in the issue of declaration dated 07.06.2011 under Section 6(1).

The appellants challenged the acquisition proceedings in Writ Petition Nos.83526-527 of 2011 on several grounds including the one that the objections filed by their predecessor had not been considered objectively and the declaration was made by the State Government without satisfying itself that the land was needed for a public purpose.

The learned Single Judge neither adverted to the contents of objections filed by the appellants nor considered their plea that the Land Acquisition Officer and the State Government had not applied their mind to the same and dismissed the writ petitions by simply observing that the landowners grievance was only regarding valuation of the land.

The writ appeals filed by the appellants were also dismissed by the Division Bench by assuming that the appellants were only interested in higher compensation. This is evinced from the following portions of the impugned judgment:

"A reading of the entire reply at Annexure-E dated 23.6.2010 would clearly disclose that the

appellants have called upon the respondents to pay compensation at the rate of Rs.25.00,000/- per acre and also a suitable job to one of them. A Division Bench of this Court in V.T. KRISHNAMOORTHY VS STATE OF KARNATAKA (ILR 1991 KAR 1183) has held that the writ petition challenging the acquisition proceedings is not maintainable when the petitioners have filed an application seeking compensation for the lands in question. Where a person has asked for compensation, he cannot maintain a Writ Petition under Article 226 of the Constitution of India.

In the instant cases also, the appellants have sought for compensation in a sum of Rs.25,00,000/- per acre and a suitable job. That is why the learned Single Judge has held that if the writ petitioners are aggrieved by the valuation made by the Land Acquisition Officer in his award, then they can seek reference under Section 18 of the Act. We do not find any error in the reasoning assigned by the learned Single Judge while dismissing the writ petitions. The writ appeals are accordingly dismissed. No costs."

We have heard learned counsel for the appellants and perused the record. We have also gone through the objections filed by the predecessor of the appellants under Section 5A(1), the relevant portions of which have been extracted herein above.

In our opinion, the impugned judgment is liable to be set aside because the learned Single Judge and the Division Bench of the High Court did not consider the appellants' plea that the Land Acquisition Officer and the State Government had not applied mind to the objections filed under Section 5-A(1) and dismissed the writ petitions and the appeals by wrongly assuming that the appellants were only interested in getting higher compensation.

The scope of the enquiry envisaged under Section 5-A(2) of the Act has been considered in a large number of cases. In Usha Stud and Agricultural Farms Private Limited and others vs. State of Haryana and others (2013) 4 SCC 210, this Court referred to the earlier judgments in Munshi Singh v. Union of India (1973) 2 SCC 337, Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, Raghbir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792, Kamal Trading (P) Ltd. v. State of West Bengal (2012) 2 SCC 25 and held:

"The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)."

A somewhat similar view was expressed in Surinder Singh Brar and

others vs. Union of India and others (2013) 1 SCC 403.

By applying the ratio of the aforementioned judgments to the facts of this case, we hold that the report prepared by the Land Acquisition Officer was not in consonance with Section 5A(2) and the State Government illegally issued the declaration under Section 6(1) of the Act.

We further hold that the order passed by the learned Single Judge and the impugned judgment are legally unsustainable and are liable to be set aside because they decided the matter without even advertent to the substantive grievance made by the appellants on the issue of non-compliance of Section 5A(2) read with Section 6(1) of the Act.

In the result, the appeals are allowed, the impugned judgment and the order passed by the learned Single Judge are set aside and the matter is remitted to the High Court for fresh disposal of the writ petitions filed by the appellants.

The interim order passed by this Court on 18.04.2013 shall remain operative till the disposal of the writ petitions by the High Court.

.....J.  
( G.S. SINGHVI )

.....J.

( V. GOPALA GOWDA )

NEW DELHI;  
JULY 26, 2013.  
ITEM NO.11

COURT NO.2

SECTION IVA

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

Petition(s) for Special Leave to Appeal (Civil) No(s).13783-13784/2013

(From the judgement and order dated 10/12/2012 in WA No.50563/2012,WA No.50564/2012 of The HIGH COURT OF KARNATAKA AT GULBARGA)

NAGENDRA & ORS.

Petitioner(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

(With prayer for interim the review petition is dismissed relief and office report)

Date: 26/07/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr.S.K.Kulkarni, Adv.  
Mr.M.Gireesh Kumar, Adv.  
Mr. Ankur S. Kulkarni, A.O.R.

For Respondent(s)

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

Perused the office report.

No one has appeared on behalf of the respondents despite the service of notice.

Leave granted.

The appeals are allowed in terms of the signed order.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master

( Signed order is placed on the file )