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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.6668-6669 OF 2013

[Arising out of SLP (Civil) Nos.12159-12160 of 2011]

GIAN CHAND & ORS.

Appellant(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO.6676 OF 2013

[Arising out of SLP(Civil) No.30452 of 2011]

CIVIL APPEAL NO. 6675 OF 2013

[Arising out of SLP(Civil) No.28707 of 2011]

CIVIL APPEAL NOS.6673-6674 OF 2013

[Arising out of SLP(Civil) Nos.20704-20705 of 2011]

CIVIL APPEAL NO.6672 OF 2013

[Arising out of SLP(Civil) No.17387 of 2012]

O R D E R

Leave granted.

These appeals are directed against order dated 25.01.2011 by which the Division Bench of the Punjab and Haryana High Court dismissed the writ petitions filed by the appellants and upheld the acquisition of their lands for development of Sectors 27, 28 and 30 Pinjore, Tehsil Kalka w as upheld.

By notification dated 30.11.2006 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act'), the Government of Haryana proposed the acquisition of 483 acres land for development of the three sectors of Pinjore. A number of land owners filed objections under Section 5A(1) and pleaded that their fertile land may not be acquired because huge chunks of waste land were available with the Government which could be utilised for developing the residential sectors. Some of them claimed that they had already raised construction and as per the policy framed by the Government, their land cannot be acquired. It was also pleaded that the acquisition was intended to benefit the developers engaged in real estate business and that in the guise of acquiring land for a public purpose, the State Government wanted to benefit private persons.

The Land Acquisition Collector is said to have given opportunity of hearing to the objectors and submitted a report in the form of compilation of cyclostyled sheets with the recommendation that the notified land may be acquired except those parcels on which A Class' construction had already been raised. The State Government mechanically accepted the report of the Land Acquisition Collector and made the declaration under Section 6(1) of the Act.

In the writ petitions filed by them, the appellants pleaded that their land cannot be utilised for housing purposes because vide order dated 29.01.1993 passed under Section 4 of the Punjab Land Preservation Act, 1990, as applicable to the State of Haryana the Governor of Haryana had imposed restriction/prohibition on clearing or breaking of land for cultivation, etc., and the cutting and felling of trees. The other ground taken by the appellants was that land in question was within ten kilometers from inter-State boundary and the same could not be acquired without obtaining prior permission from the competent authority in terms of notification dated 14.09.2006 issued under Rule 3(5) of the Environment (Protection) Rules. Yet another plea taken by the appellants was that the objections filed by them under Section 5A(1) of the Act wer

e not considered objectively by the Land Acquisition Officer and the State Government accepted the report of the Land Acquisition Collector without applying mind to the relevant factors. The Division Bench of the High Court negated all the grounds of challenge and dismissed the writ petitions. While dealing with the appellants' plea that the mandatory provisions contained in Section 5A had not been complied with, the High Court relied upon the statement made by learned Additional Advocate General appearing for the State and observed:

By making reference to the documents on record, Mr. Sehgal stated that after receipt of objections, notice was sent to the objectors and objections were heard from 25.4.2007 to 27.4.2007. Presence of objectors was marked, who came present (this fact is also not denied by the petitioners). The Land Acquisition Collector made recommendation for release of those residential buildings, which could have been adjusted in the over-all planning. Thereafter, a Joint Inspection Committee was constituted, consisting of Senior Government officers. The Committee went to the spot and made further recommendations regarding some structures and those were also released from acquisition.

We are satisfied with the reply given by the State Government. Except making a bald statement, there exists nothing on record that effective opportunity of hearing was not granted to the petitioners when objections filed under Section 5-A of the Act were disposed of. The very fact that the Collector has noted existence of construction and made recommendations wherever it was possible to release it, shows application of mind. On this score also, no relief can be granted to the petitioners.

As regards the objection of not obtaining environmental clearance, the High Court referred to the undertaking given by the State that construction will be started only after getting clearance from the competent assessment authority and observed:

It is not possible for us to give any relief to the petitioners on the basis of arguments raised by them, however, at the same time, we cannot ignore that the State authorities are duty bound to protect environment in terms of the Environment (Protection) Act, 1986 and the notifications issued on 29.1.1993, 27.11.1997 and 28.11.1997.

At the time of arguments, Mr. Sehgal, by making reference to the written statement filed and on getting instructions from Mr. Anil Kumar, Deputy Ranger stated that the trees will be cut only if it is most needed and not otherwise and that too after getting permission from the competent officer/authority. He further submitted that construction activities shall be started only after getting environment assessment report from the competent authority.

Shri V.K. Jhanji, learned senior counsel appearing for appellants, Gian Chand and others, Shri Manoj Swarup, learned counsel appearing for appellant, Sunit Sood and Shri Sanjeev Bhatnagar, appearing for appellant, Darshana Devi, reiterated the contentions raised before the High Court and submitted that the acquisition proceedings should be quashed because the purpose for which the land was acquired is contrary to the order issued under Section 4 of the Punjab Land Preservation Act, as interpreted by another Division Bench of the High Court in CWP No.20134/2004 Vijay Bansal and others v. State of Haryana and others decided on 15.5.2009. Learned counsel further argued that the impugned acquisition is liable to be nullified because the objections filed by the appellants were not considered by the Land Acquisition Collector and he mechanically signed the cryptic recommendations prepared by a third person.

Learned Senior Additional Advocate General appearing for the State of Haryana defended the impugned order and argued that this Court may not interfere with the acquisition proceedings because majority of the land owners have already accepted the compensation and handed over possession of the acquired land. He, however, conceded that the report prepared by the Land Acquisition Collector is cryptic and is not in consonance with the law laid down by this Court.

We have considered the respective submissions. In our view, it is not necessary to deal with various contentions which were raised before the High Court and reiterated before this Court because after carefully perusing the report prepared by the Land Acquisition Collector under Section 5A(2) which constituted the foundation of the declaration made under Section 6(1) of the Act, we are convinced that the officer concerned had not at all applied mind to the objections filed by the land owners and other interested persons and the State Government mechanically accepted the report signed by him.

A perusal of the report prepared by the Land Acquisition Officer, which was made available to the Court by the learned Senior Additional Advocate General, Haryana clearly depicts total non-application of mind by the officer to the objections filed by the appellants and other land owners. Out of nine columns of the cyclostyled proforma, 7 were filled by some person. In the ninth column another person made a brief note containing recommendation for release of the particular parcel of land or acquisition thereof and the Land Acquisition Collector simply appended his signatures. By no means this can be termed application of mind to the objections filed by the land owners and other interest persons.

The importance of Section 5A was highlighted by this Court in *Munshi Singh v. Union of India* (1973) 2 SCC 337 in the following words:

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. 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.

In *Raghubir Singh Sehrawat v. State of Haryana* (2012) 1 SCC 792, the Court reiterated the importance of Section 5A in the following words:

In this context, it is necessary to remember that the rules of natural justice have been ingrafted 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.

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.

In *Kamal Trading Private Limited v. State of West Bengal* (2012) 2 SCC 25, this Court again considered the scope of Section 5A and observed:

Section 5-A(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 5-A requires the Collector to give the objector an opportunity of being heard in person or by any person authorised 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 5-A 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 an arbitrary acquisition by pointing out to the authority concerned, 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 expropriatory legislation, its provisions will have to be strictly construed.

Hearing contemplated under Section 5-A(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 5-A(2). As said by this Court in *Hindustan Petroleum Corpn. Ltd.*, 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

g 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 5-A 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 5-A(2) of the LA Act. The recommendations must indicate objective application of mind.

In *Usha Stud and Agricultural Farms Private Limited v. State of Haryana* (2013) 4 SCC 210, the Court referred to a large number of precedents 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).

If the report prepared by the Land Acquisition Collector is scrutinized in the light of the principles laid down in the afore-mentioned judgments, it becomes clear that the Land Acquisition Collector did not comply with the mandate of Section 5A(2) of the Act and mechanically signed the note of recommendation prepared by someone else by assuming that the only plea taken by the land owners etc. was for release of land on the ground of existence of construction. None of the other objections was even referred to in the report signed by the Land Acquisition Collector. The exercise undertaken by the Land Acquisition Collector was nothing but a poor reflection of showing compliance of Section 5A(2) of the Act and the High Court committed serious error by approving the same.

In view of the above conclusions, we do not consider it necessary to deal with the other contentions urged by learned counsel for the appellants to which reply was aborted by us in view of the fact that we found total non-compliance of Section 5A(2) of the Act.

Learned Senior Additional Advocate General, Haryana urged that even if the declaration made under Section 6(1) is found to be defective on account of non-compliance of Section 5A(2), the Court may not annul the notification issued under Section 4(1) because the State Government has spent huge amount in acquiring the land and the entire expenditure will go waste if Section 4(1) notification is also quashed.

Though the submission of the learned Senior Additional Advocate General seems attractive, we are unable to accept the same in view of the Constitution Bench judgment in *Padma Sundara Rao (dead) and others v. State of T.N. and others* (2002) 3 SCC 533 wherein it has been held that once declaration made under Section 6(1) is quashed and the time gap between the notification issued under Section 4(1) and the declaration made under Section 6(1) is more than one year, Section 4 notification cannot survive. In the result, the appeals are allowed, the impugned order is set aside and the acquisition of the appellants land is quashed. It is, however, made clear that this order shall not preclude the State Government from again acquiring the appellants land afresh by following the procedure as prescribed in law.

While disposing of the appeals in the manner indicated above, we consider it necessary to make it clear that this Court has not expressed any opinion on other grounds of challenge raised by the appellants and if the State Government again acquires the land, then they shall be free to raise all the objections and the findings recorded by High Court shall not operate as res judicata.

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(G.S. SINGHVI)

For Respondent(s) Mr. Narendra Hooda, Sr. Adv. (AAG)
Mr. Ambuj Kumar, Adv.
Ms. Anubha Agarwal, AOR.

Mr. Govind Goel, Adv.
Mr. Sanjay Kumar Yadav, Adv.
for Dr. Kailash Chand, AOR

HUDAMs. Sangeeta Bharti, Adv.

Mr. Mohan Lal Sharma, AOR.

Ms. Naresh Bakshi, AOR

Mr. Subhasish Bhowmick, AOR

Mr. Shreekant N. Terdal, AOR

Mr. Kamal Mohan Gupta, AOR

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

Leave granted. SLP(C) Nos. 12498-12499 of 2010, listed along with other appeals is delinked.

Application for substitution is allowed.

The appeals are allowed in terms of the signed order.

(Sheetal Dhingra)
AR-cum-PS

(Usha Sharma)
Court Master
[Signed order is placed on the file]