

Before Ajay Kumar Mittal & G.S. Sandhawalia, JJ

DEVENDRA SINGH YADAV AND OTHERS - *Petitioners*

versus

STATE OF HARYANA AND OTHERS - *Respondents*

CWP No. 23876 of 2011

February 26, 2013

Constitution of India, 1950 - Art. 226, 227 - Land Acquisition Act, 1894 - Ss. 4, 5A, 6 - Petitioner's land acquired & Notifications u/s 4 & 6 issued - Mandatory provisions of S.5A violated - Writ Petition for quashing Notifications - Petition allowed - Notification u/s 6 qua Petitioners quashed.

Held, that the issue of hearing of the objections under Section 5-A of the Act has been time and again held to be very material right of the land owners whose property is sought to be compulsorily acquired in accordance with law. The substantial right could not have been brushed aside by respondent no. 2 on the ground that the objections were barred on the ground of limitation.

(Para 13)

Further held, that Recently, in Surinder Singh Brar and others vs. Union of India and others, 2012(4) RCR (Civil) 684, the Hon'ble Apex Court, while striking down the acquisition of land for purposes of I.T. Park in Chandigarh, held that the hearing under Section 5-A(2) of the Act is to be effective hearing and not an empty formality on the basis of which the Collector has to make a report in respect of the land which is to be notified and forward his recommendations to the Government. It was further held that any violation of this mandatory procedure would render the whole acquisition bad.

(Para 14)

Further held, that Thus, keeping in view the principles laid down above that the mandatory procedure has to be followed and the substantial right of the land owners is being taken away, there is no hesitation to hold that in the present case, respondent no. 2 wrongly dismissed the objections

filed by the petitioners as being time barred under Section 5-A of the Act. The substantial right of the petitioners was taken away who had a right to urge before the authorities and show before it that their land should not be acquired for the purposes so notified or there was a better alternative.

(Para 15)

Shailendra Jain, Advocate, *for the petitioners.*

Dr. Deepak Jindal, DAG, Haryana.

G.S. SANDHAWALIA, J.

(1) The present civil writ petition has been filed under Articles 226 & 227 of the Constitution of India challenging the notifications dated 10.01.2011 and 11.05.2011 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'The Act') vide which the land of the petitioners has been acquired on the ground that there has been violation of the mandatory provisions of Section 5-A of the Act.

(2) The pleaded case of the petitioners, who are 22 in number, is that they are owners in possession of land measuring 227 kanals 9 marlas situated in village Dharuhera, Tehsil and District Rewari as per the revenue record attached. Part of the land was owned by Rao Shamsher Singh, who was the owner in possession of some part of the said land prior to the notification under Section 4 of the Act and who died on 12.02.2011. The present petition is thus being filed by his L.Rs. namely petitioners no. 1 to 7, who inherited the same by natural succession. The notification dated 10.01.2011 was issued for the public purpose namely for construction of canal based water works in Dharunera town for acquiring 30 acres 6 kanals 17 marlas of land. The notification was published in the newspapers on 15.01.2011 namely Mail today (English) and Aaj Samaj (Hindi). The said newspapers had either no circulation or minimal circulation in the town where the notified land was situated. Certificate issued by M/s. Sharma News Agency, Dharuhera was annexed to plead that Mail Today has 0% circulation whereas Aaj Samaj sold 20 copies which were kept on the counter for retail sale out of which an average of 8 to 10 copies were sold daily. Therefore, the sale was less than 1% (0.57%) of all Hindi newspapers. Petitioners no. 1 to 7 had filed objections on 04.03.2011, petitioners no. 8 and 9 filed objections on 25.02.2011 whereas petitioners no. 10 to 23

filed their objections on 01.03.2011. It was alleged that in the said objections the petitioners have pleaded that the land falls in the commercial land use zone vide the Final Development Plan dated 14.12.2007 (Annexure P-2) and the area sought to be acquired was far excess than the total required land for the said public purpose. More than 22 acres of vacant land belonging to the Panchayat/Municipality was available just 800 meters south of the land of the petitioners which was of lesser economic value and could be well utilized for the said purpose. It was accordingly pleaded that no opportunity of hearing was granted to the petitioners since the petitioners did not receive notice for hearing from respondent no. 2. Information had been sought under the Right to Information Act, 2005 and respondent no. 2 vide letter dated 03.08.2011 had stated that since the objections had been received beyond limitation, therefore, no notice was issued for grant of personal hearing.

(3) In the reply filed on behalf of respondents no. 1 to 3, the defence taken by the respondents was that the Dharuhera town houses population of more than 1 lac persons and is an upcoming industrial hub and situated in the southern State of Haryana adjacent to the Rajasthan State. The town was suffering from chronic shortage of drinking water and in order to provide drinking water to the residents in the above town and the nearby area, the plan to acquire the land for construction of canal based water works was proposed. The construction was for the benefit and in the interest of public at large and the action of the respondents was neither arbitrary, illegal, unjust or ultra vires of the Statute. The plant would cater to the need of supply of drinking water for the next 30 years and is aimed at catering to the need for supply of drinking water. It was further stated that there existed only 4 tube-wells and the quality of water was deteriorating day by day. The water of tubewells would not remain fit for human consumption in the near future. A defence was also raised that the Government would also suffer a huge loss if the possession of this land is not granted for the construction of canal based water supply scheme since Ductile iron pipes of various sizes had been purchased and amount of 18 crores had been deposited with the Land Acquisition Collector for payment of compensation. The area was adjacent to Sabhi river and was most suitable for water works since it would facilitate the flow of water smoothly and without any heavy substantive cost. It was admitted that the publication was made in the Mail

(G. S. Sandhawalia, J.)

Today and Aaj Samaj on 15.01.2011 as per the provisions of the Act and there was no procedural lapse. The notification under Section 6 of the Act had also been published in Mail today on 11.05.2011, in Aaj Samaj on 17.05.2011 and the Pioneer (English) on 18.05.2011. It was submitted that it was wrong that the petitioners could not come to know the same and as such could not file the objections under Section 5-A of the Act within time. They had filed objections after expiry of the limitation period and the same were rejected as per law.

(4) In the reply filed on behalf of respondent no. 2, apart from the above pleas taken, it was also pleaded that the petitioners had never filed objections and they cannot be allowed to agitate those grounds in the instant writ petition. It was further alleged that the certificate regarding circulation of newspapers has no value and the same was neither proved nor admissible in evidence since the agency was not authorized by Government to draw such conclusion as alleged in this para. Subsequently, it has been admitted that the petitioners have filed objections after the expiry of the limitation period, hence the same were rejected as per law. It was also further pleaded that the objections received within time were duly considered and opportunity of hearing was afforded to the parties concerned.

(5) In replication, the petitioner placed on record copy of the recommendation report of respondent no. 2 as Annexure P-20 wherein, it has been recorded that the objections filed by the petitioners were received on 25.02.2011, 01.03.2011 and 04.03.2011. Reference was also made to the Rapat Roznamcha No. 367 dated 07.02.2011 where the proclamation of the impugned notification was made by way of beat of drum (munadi) under Section 4 of the Act. Accordingly, it was pleaded that the petitioners filed objections within 30 days of the entry of the said Rapat Roznamcha. If the period of 30 days was taken from the causing of the public notice of the substance of the subject notification in the locality where the land is situated, the said objections filed by the petitioners were well within limitation and since no opportunity of hearing had been granted, the entire proceedings were liable to be set aside. The official respondents chose not to file any counter to the replication wherein, the additional fact of the substance of notification being done by way of public notice by way of beat of drum (munadi) had been referred to.

(6) Keeping in view the above pleadings, counsel for the petitioners has restricted his claim and placed attack to the subsequent notification under Section 6 of the Act on the ground of the objections under Section 5-A of the Act being dismissed on the ground of limitation wrongly by respondent no. 2. Counsel for the petitioner has accordingly contended firstly that the publication in the newspapers was in the newspapers which were not having circulation in the area which were Mail today (English) and Aaj Samaj (Hindi). Accordingly, reliance was placed upon the certificate given by the news agency who was the sole distributor and vendor of newspapers and magazines at Dharuhera for the last 40 years. Secondly, it was urged that the dismissal of the objection under Section 5-A of the Act on the ground of limitation was not sustainable in view of the fact that they were filed within 30 days from the date of the substance of notification on 07.02.2011 which was by way of beat of drum (munadi).

(7) Counsel for the State, on the other hand, defended the acquisition on the ground that the objections had to be filed within a period of 30 days and the petitioners themselves had pleaded that they had filed the objections on 25.02.2011, 01.03.2011 and 04.03.2011 and thus submitted that respondent no. 2 was justified in dismissing the applications which were time barred and there was no question of issuing notice of the applications which were apparently time barred from the date of the notification on 10.01.2011 and date of publication 15.01.2011 in the newspaper.

(8) After hearing counsel for the parties, we are of the opinion that plea taken by the petitioners carries substance and is liable to be accepted. The acquisition of the land of the petitioners for the public purpose by the State, who has the right of eminent domain is not disputed. However, the owners of the land have a right to object and point out to the acquiring authority that the land sought to be acquired is not suitable for the purpose it is being acquired or that it is being acquired in contradiction or in violation of some scheme or master plan. The persons interested could also show that alternative land is available which is lying vacant whereas the land which was sought to be acquired was fertile land and they would be adversely affected. Section 4 of the Act provides that a notification has to be issued for the land which is required for any public purpose which is to be published in the official gazette and daily newspapers circulating in that locality. The

(G. S. Sandhawalia, J.)

Collector has also to cause public notice and the substance of such notifications which is to be given at convenient places in the said locality. The giving of such public notice is to be counted as the last date of such publication.

(9) Regarding the first issue that Section 4 specifically provides that the publication has to be in two newspapers circulating in the locality of which one should be in the regional language, the petitioners have been substantially able to demonstrate that the English newspaper "Mail Today" had 0% circulation in the area of Dharuhera. Apart from controverting and denying the specific allegations, respondent-State has not been able to rebut the said allegation in any manner by placing anything on record that Mail Today had some circulation in the locality. Similarly, the newspaper namely Aaj Samaj, in which the notification was published, is stated to have a sale of 8 to 10 copies which are also sold daily in retail sale and not having circulation in the locality vide which general public could be made aware regarding the acquisition from which the limitation could be counted. Such violation of Section 4(1) of the Act has been discussed by the Hon'ble Apex Court in *Special Deputy Collector, Land Acquisition CMDA versus J. Sivaprakasam and others (1)*. In the said case, definition of newspaper circulating in that locality was the subject matter of consideration and it was held that the purpose is to ensure adequate publicity to the persons interested to give them an opportunity to file the objections. It was accordingly held that there should be regular and speedy circulation among the general public of the locality irrespective of the number. The relevant paragraphs read as under:-

"17. By Amendment Act 68 of 1984, section 4(1) was amended introducing the additional requirement relating to publication of the notification in two daily newspapers circulating in the locality. The purpose of requiring such newspaper publication is to give as wide a publicity to the notification as possible, as the State Gazettes do not have a wide circulation and causing public notice of the substance of the notification at convenient places in the locality would give notice only in specific pockets in the locality. Legislature therefore provided for publication in two newspapers (of which at least one being in the regional language)

to have a wider reach. Having regard to the object and purpose of the provision, it is evident that publication should be in newspapers which have a reasonably good circulation in the locality. If the publication is to be made in obscure newspapers having only token or insignificant circulation, either to cut the cost of publication or by way of political or official patronage, that will defeat the very purpose of providing for publication in newspapers.

18. On the other hand, if the words 'newspapers circulating in that locality' are to be interpreted in a purely literal and normal sense, they would mean newspapers having a regular and steady circulation among the general public in the locality, irrespective of the number. In that sense even a newspaper having 2% to 3% market share out of the total circulation figures for regional newspapers sold in the locality, can be considered as a newspaper "circulating in the locality". Therefore, where there is compliance with the requirement relating to publication in two daily newspapers circulating in that locality (one which at least should be in the regional language) in a technical or literal sense, but it is found that those newspapers have only a circulation share of 2% to 3% of the total number of newspaper sold in the locality, it may not be possible to mechanically invalidate the entire acquisition, on the ground that the two regional newspapers in which the notification was published were not "circulating in that locality".

19. We have held that the object and purpose of the amended section 4(1) of the Act is to provide for publication of the preliminary notification in two daily newspapers having reasonably wide circulation in the locality so that people (persons interested) in that locality may become aware of the proposals for acquisition. We have also held that publications in two newspapers having regular and steady circulation, but having a market share of only 2% to 3% of the total newspapers can not invalidate the acquisition proceedings automatically, on the ground that such publication violates the requirement of section

(G. S. Sandhawalia, J.)

4(1) relating to newspaper publication. As the said two findings are slightly contradictory, it is necessary to harmonize the consequences.

(10) In the present case, as noticed above, the English newspaper Mail Today has no circulation whereas Aaj Samaj has only sale of 8 to 10 copies which is less than 0.57% of all Hindi newspapers in the said town. The official respondents have not placed anything on record to controvert the said allegations and, therefore, this Court is of the opinion that the petitioners have been successful to demonstrate that in view of poor circulation of the newspapers in which the Section 4 notification was published, they were prejudiced to file their objections within limitation from 15.01.2011.

(11) Admittedly, in the present case, the substance of notification was published on 07.02.2011 as per the Rapat Roznamcha No. 367 by way of beat of drum. The limitation thus had to be calculated from the said date for the purpose of filing objections under Section 5-A of the Act which is 30 days from the date of publication of the notification. Section 4(1) of the Act reads as under:-

“4. Publication of preliminary notification and power of officers thereupon.- Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.”

(12) Once the substance had been published only on 07.02.2011 in the locality, counsel for the petitioner is justified in contending that the 30 days' limitation period would commence from that date and continue till 06.03.2011 and the objections filed on 25.02.2011 by petitioners no. 8 and 9, on 01.03.2011 by petitioners no. 10 to 22 and on 04.03.2011

by petitioners no. 1 to 7 were within limitation and respondent no. 2 was in error in dismissing the same on the ground of limitation by calculating the limitation from 15.01.2011, which was the date of publication in the newspapers.

(13) The issue of hearing of the objections under Section 5-A of the Act has been time and again held to be very material right of the land owners whose property is sought to be compulsorily acquired in accordance with law. The substantial right could not have been brushed aside by respondent no. 2 on the ground that the objections were barred on the ground of limitation. A three judge Bench of Hon'ble Apex Court in **Munshi Singh and others** versus **Union of India and others**, (2) held 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. We may refer to the observation of this court in Mandeshwar Prasad & another v. The State of U.T. & others, (1964) 3 S.C.R. 440, 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. Subsection (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 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

(G. S. Sandhwalia, J.)

cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A : (See Section 17 (4) of the Acquisition Act)."

(14) Recently, in **Surinder Singh Brar and others** versus **Union of India and others (3)**, the Hon'ble Apex Court, while striking down the acquisition of land for purposes of I.T. Park in Chandigarh, held that the hearing under Section 5-A(2) of the Act is to be effective hearing and not an empty formality on the basis of which the Collector has to make a report in respect of the land which is to be notified and forward his recommendations to the Government. It was further held that any violation of this mandatory procedure would render the whole acquisition bad. The relevant portion reads as under:-

"58. What needs to be emphasised is that hearing required to be given under Section 5A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5A(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 5A(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 authorised 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 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 5A(1) and submissions made at the hearing given under Section 5A(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 concerned authorities or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5A(2) and 6(1). Therefore, question number (ii) is answered in affirmative."

(15) Thus, keeping in view the principles laid down above that the mandatory procedure has to be followed and the substantial right of the land owners is being taken away, there is no hesitation to hold that in the present case, respondent no. 2 wrongly dismissed the objections filed by the petitioners as being time barred under Section 5-A of the Act. The substantial right of the petitioners was taken away who had a right to urge before the authorities and show before it that their land should not be acquired for the purposes so notified or there was a better alternative.

(16) Accordingly, we allow the writ petition and set aside the notification dated 11.05.2011 issued under Section 6 of the Act qua the petitioners leaving the respondents free to proceed in accordance with law, as observed above.