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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP(C) 2099/2008

MOTHER GARJIYA EDUCATIONAL AND CULTURAL SOCIETY

....Petitioner

Through: Mr.R.K.Anand, Sr.Adv.
with Mr.Manu Nayar, Adv. and
Mr.Hameed S.Shaikh, Adv.

VERSUS

UNION OF INDIA & ORS. Respondents

Through: Mr.Sanjay Poddar, Adv.

RESERVED ON:
18.08.2008

DATE OF DECISION:
27.08.2008

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CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Whether a statutory right of the petitioner stands violated? If yes, what are the consequences thereof? These 2 questions arise for consideration in the instant petition.

2. On 7.4.2006 a notification (Annexure P-8) was issued

under Section 4 of the Land Acquisition Act 1894 detailing lands which were proposed to be acquired. The affected land owners were called upon to exercise their right under Section 5A of the said Act, namely if they desire, to file objections to the proposed acquisition within 30 days of publication of the notification.

3. The petitioner is a society registered under the Societies Registration Act. On its behalf, 2 of its office bearers namely Shri Ashok Kumar Tiwari and Smt.Manju Tiwari preferred objections on 2.5.2006.

4. 3 bigha and 1 biswa of land of the petitioner was proposed to be acquired. In the objections filed it was pointed out that after obtaining due sanction the society erected a school building at site and a recognized school was being run therefrom. It was pointed out that no public purpose would be served to destroy the school for the purposes of constructing a road, the stated purpose of the acquisition.

5. A declaration under Section 6 of the Land Acquisition Act 1894 was issued on 4.4.2007.

6. Grievance of the petitioner is that in compliance with the mandate of sub-section 2 of Section 5A of the Land Acquisition Act 1894 the Collector did not afford opportunity of being heard with respect to the objections filed to the proposed acquisition.

7. It is the case of the respondent that an intimation was

sent to Ashok Kumar Tiwari and Ms.Manu Tiwari on 20.9.2006 as also to all other persons who had filed objections to the proposed acquisition notifying that the objections would be considered on 30.9.2006. It is stated that neither Shri Ashok Kumar Tiwari nor Ms.Manu Tiwari appeared when the objections were considered by the Collector. It is stated that 20 objectors appeared and after considering the objections post grant of hearing to the persons who had appeared before the Collector, a report, along with the record of proceedings was submitted to the competent authority on 4.12.2006. It is further stated that a report dated 9.5.2006 submitted by the Deputy Commissioner Revenue (South-West) submitted to the Special Secretary to the Hon'ble Chief Minister was also submitted, for consideration of the competent authority.

8. With respect to the report dated 9.5.2006 it was urged that the petitioner and other persons had made representations to the Chief Minister of Union Territory of Delhi praying that their lands be not acquired for constructing a road and had made suggestions regarding change of alignment of the road. That the objections were the subject matter of the report dated 9.5.2006 as on same grounds an appeal was made to the Chief Minister to intervene and have the acquisition dropped. Contention urged was that in substance, objections filed by the petitioner were duly considered.

9. The manner in which the notice issued by the Collector

to the persons who had filed objections to the proposed acquisition, being not disclosed in the counter affidavit, the relevant record of the Collector was summoned by this Court vide order dated 12.8.2008. The record was produced at the hearing on 18.8.2006. The same revealed that the stated notices were sent by post. However, no dispatch register was produced. In the record a report by the tehsildar's office finds a place recording that the letters of intimation were posted to the objectors. Sh.Sanjay Poddar, learned counsel for the respondents stated that intimation dated 20.9.2006 was sent by ordinary post.

10. Learned counsel for the petitioner, with reference to Section 45 of the Land Acquisition Act 1894, urged that the mandate of law is to serve notices required to be served under the Land Acquisition Act 1894 by personal delivery, failing which by serving an adult male member of the family residing with the objector, failing which by affixation at the address of the objector and lastly by dispatching the notice to the noticee under Regd.A.D.Post. Counsel urged that it is settled law that where a statute prescribes a manner in which an act has to be performed the same has to be performed as per the statute and in no other manner.

11. Section 5A of the Land Acquisition Act 1894 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 purposes 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.”

12. Section 45 of the Land Acquisition Act 1894 reads as under:-

“45. Service of notices.- (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by an order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; if no such adult male member can be found, the notice may be served by fixing the copy

on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898), and service of it may be proved by the production of, the addressee's receipt."

13. That Section 5A requires a personal hearing to be afforded to be objector and is mandatory in character has been recognized in a catena of authorities. One of the earliest decision is reported as AIR 1964 SC 1217 Nandeshwar Prasad & Ors. vs. U.P. Govt. & Ors. It was held in the said decision that Section 5A confers a valuable right on the land owner to object to the proposed acquisition of his property. The said view was reiterated with an explanation in the decision reported as 1973 (2) SCC 337 Munshi Singh vs. Union of India where the Hon'ble Supreme Court declared that Section 5A embodies a just and a wholesome principle that a person, whose property is sought to be acquired, should have a proper and a reasonable opportunity by persuading the authorities concerned to give up the acquisition of the property belonging to that person. In the decision reported as 1975 (4) SCC 298 Shrimandir Sita Ramji vs. Lt.Governor of Delhi & Ors. the Hon'ble Supreme Court declared

that the duty to afford a personal hearing to the land owner was mandatory in character. In the decision reported as 1976 (3) SCC 719 Shri Farid Ahmed Abdul Samad & Anr. vs. Municipal Corporation of the City of Ahmedabad & Anr. holding that the denial of an opportunity of being heard under Section 5A was not just a matter of failure of rules of natural justice but was a mandatory requirement of law, in para 24 of the said report it was observed as under:-

“24. We are clearly of opinion that Section 5A of the Land Acquisition Act is applicable in the matter of acquisition of land in this case and since no personal hearing had been given to the appellants by the Commissioner with regard to their written objections the order of acquisition and the resultant confirmation order of the State Government with respect to the land of the appellant are invalid under the law and the same are quashed. It should be pointed out, it is not a case of failure of the rules of natural justice as such as appeared to be the only concern of the High Court and also of the City Civil Court. It is a case of absolute non-compliance with a mandatory provision under Section 5A of the Land Acquisition Act which is clearly applicable in the matter of acquisition under the Bombay Act.”

14. The afore-noted decisions were followed by the Hon'ble Supreme Court in the decision reported as 1993 (4) SCC 255 Shyamnandan Prasad & Ors. vs. State of Bihar & Ors.

Reiterating the legal position it was held as under:-

“11. That the compliance of provisions of Section 5-A is mandatory, is beyond dispute. See in this connection, *Shri Mandir Sita Ramji v. Lt. Governor of Delhi and Farid Ahmed Abdul Samad v. Municipal Corporation of the City of Ahmedabad*. Affording of opportunity of being heard to the objector is a must.

The provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. This right is not absolute, however, if the appropriate Government, in its discretion, chooses to dispense with its applicability by invoking urgency provisions of Section 17 of the Act. But once Section 5-A is kept applicable, there is no cause to treat its provisions lightly or casually."

15. More recently, the significance of the inquiry under Section 5A of the Land Acquisition Act 1894 and a hearing to the person affected was re-stated by the Hon'ble Supreme Court in the decision reported as 2004 SLT 712 Union of India & Ors. vs. Mukul Hans wherein it was held that an inquiry under Section 5A was not an idle formality but was a substantive right which can be taken away only on the proof of valid reason.

16. Pertaining to Section 45 of the Land Acquisition Act 1894, a learned Single Judge of the Madras High Court in the decision reported as AIR 1987 Madras 237 Muthu vs. Court of Tamil Nadu held that the service of any notice under the Land Acquisition Act 1894 in the manner provided therein is a mandate of law and the due procedure and modalities having been evolved, there cannot be a bypassing of the same by the officers, and if they do so, they do it on their own peril. It was held that it is not up to the officials to chose means of service as suited them. It was held that as contemplated in sub-sections 1 and 2 of Section 45, service on the concerned person by delivering or

tendering a copy of the notice has to be first attempted and only when service in said manner is not feasible can other means of service contemplated by sub-section 3 be resorted to. Similar view was taken by a learned Single Judge of this Court in the decision reported as AIR 1976 Delhi 188 Ram Chand vs. Union of India. It was held that when resort was made to sub-section 3 of Section 45 of the Land Acquisition Act 1894 and the post office was used as a agency to transmit the notice, the same had to be by Regd.A.D.Post and service proved by producing the A.D. card.

17. Thus, ex-facie, there has been a violation of the statutory provisions of the Land Acquisition Act 1894. That some land owners who received the notices appeared before the Collector is neither here nor there. It hardly be re-emphasized that the petitioner denies that its office bearers who had filed the objections received an intimation from the Collector of the date on which the Collector proceeded to make an inquiry and consider the objections.

18. The contention of learned counsel for the respondent that the land owners affected by the acquisition had made representation to the Chief Minister who had sought a report which was furnished by the tehsildar on 9.5.2006 and submitted to the Chief Minsiter through the Deputy Commissioner Revenue (South-West) and that the said report was placed before the competent authority i.e. the Lt.Governor of Delhi is neither here

nor there for the reason firstly there is no evidence that the Lt.Governor considered the said report submitted by the tehsildar and secondly, which is a more firmer ground, is the fact that the said report was outside the scope of the Land Acquisition Act 1894. As noted above, the crux of the matter is that the report has to be submitted by the Collector after holding an inquiry contemplated by Section 5A of the Land Acquisition Act 1894; grant of personal hearing to the objectors is a mandatory statutory provision of the law.

19. We would be failing if we do not note a decision cited by Shri Sanjay Poddar, learned counsel for the respondents, being (2003) 4 SCC 485 Tej Kaur & Ors. vs. State of Punjab & Ors. In said case, the appellants before the Hon'ble Supreme Court who had filed objections to the notification issued under Section 4 of the Land Acquisition Act 1894 were admittedly not given personal hearing pertaining to the objections filed by them. The High Court had refused to quash the declaration issued under Section 6 of the Land Acquisition Act 1894. The said decision was upheld by the Hon'ble Supreme Court.

20. A perusal of para 6 of the decision in Tej Kaur's case (supra) shows that the Hon'ble Supreme Court reiterated that law requires a personal hearing to be granted to an objector and if not so done, it would be a violation of the procedure prescribed under Section 5A of the Land Acquisition Act 1894 causing

serious prejudice to the rights of the owner of the property whose land is sought to be acquired. Thus, the said decision does not lay down a rule of law contrary to what was enumerated and settled in the earlier decisions pronounced by the Hon'ble Supreme Court. However, on facts it was noted that out of 6 acres of land which was proposed to be acquired only 1½ acres was actually acquired revealing thereby that the objections were considered by the Collector. But, more fundamentally, it was noted that the declaration under Section 6 was made on 18.3.1992. The appellant allowed the acquisition proceedings to continue till the award was passed and only thereafter the writ petition was filed on 12.4.1994 praying that the declaration under Section 6 of the Land Acquisition Act 1894 and the resultant award be quashed. From said conduct of the appellants the Hon'ble Supreme Court drew an inference that the appellants were not serious in pursuing their statutory remedy. It was additionally noted in para 7 of the decision that possession of the acquired land had been given to third parties for the purposes of starting an industry.

21. A reading of the decision in Tej Kaur's case (supra) would reveal that the Hon'ble Supreme Court had not quashed the proceedings, not because the owners had failed to demonstrate the prejudice resulting from the denial of an opportunity of a personal hearing, but because of the

circumstances noted herein above. Once, their Lordships of the Hon'ble Supreme Court took the view that the appellants therein did not have a genuine grievance and that the writ petition had been filed long after the declaration under Section 6 of the Land Acquisition Act 1894 was issued, the Court declined to grant relief. Thus, the decision cannot therefore be an authority for the proposition that violation of the requirements of Section 5A is inconsequential.

22. The contention urged by Shri Sanjay Poddar, learned counsel for the respondents that the entire acquisition was for laying a road and that objections similar to the ones filed by the petitioner were considered and hence no prejudice was caused to the petitioners; alternatively that grant of a hearing would be an idle formality, is an argument which needs to be noted and rejected for the reason the line of authorities which have held that if the Court finds that grant of a hearing is an idle formality, on account of non-grant of a hearing the administrative action need not be quashed, are relatable to actions taken pursuant to an exercise of administrative powers or where the statute does not mandate grant of a hearing and right to be heard has been interwoven as a due process of law based on the principles of natural justice.

23. But, where the statute mandates grant of a hearing, said right flows not from the principles of natural justice i.e. *audi*

alteram partem but because of the mandate of the statute. In said circumstances consistent view taken is that right of a hearing is a statutory right and violation thereof is by itself a prejudice.

24. In view of the decisions of the Hon'ble Supreme Court, noted herein above emphasizing the significance of Section 5A, we see no room to hold that the mandatory nature of Section 5A can be diluted on the theory of idle formality.

25. That apart, in the instant case, the theory of idle formality would not be applicable for the simple reason, the objections filed by the office bearers of the petitioner raised issues which were personal to the petitioner, namely, that after obtaining sanction from the statutory authorities the petitioner had erected a school building on the land in question and that a secondary school, duly recognized, was being run from the said building. It was further sought to be urged that right to education for children being a fundamental right recognized by the Constitution the same cannot be subservient to a public right to have a road on the land in question. Surely, the petitioner has a right to make good the said stand. Who knows, the competent authority may be convinced.

26. We thus allow the writ petition and quash the declaration dated 4.4.2007 issued under Section 6 of the Land Acquisition Act 1894. But, we clarify that the same would relate

only to the land of the petitioner. It would be open to the authorities under the Land Acquisition Act 1894 to proceed ahead in accordance with law but after rectifying the taint which we have noted herein above.

27. No costs.

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

August 27, 2008
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