

REPORTABLE
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
WP (C) No. 2352 OF 2002

% Judgment delivered on : July 5, 2010

SH. MURALIDHAR CHANDRAKANT BHANDARE . . . PETITIONER

THROUGH: Mr. Ravinder Sethi, Sr. Advocate
with Mr. Rajiv Kumar Ghawana,
Ms. Manali Singhal, Ms. Ruchi
Sharma, Mr. Kshatrashal Raj,
Advocates.

VERSUS

UNION OF INDIA & ORS. . . .RESPONDENTS

THROUGH: Mr. Sanjay Poddar, Advocate for
LAC
Ms. Sangeeta Chandra, Adv. for
DDA.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India for issuance of order or directions thereby declaring Notification No. F.10 (30)/96/L&B/LA/13417 dated 13-12-2000 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and Notification/Declaration No.F.10(3)/9D6/L&B/LA/14062 dated 7-12-2001 under Section 6 of the Act as violative of Article 14, 21 and 300-A of the Constitution of India. The subsequent Notification dated 21st March, 2002 issued under Section 17 (1) of the Act in respect of the petitioner's land is also challenged as unconstitutional, illegal and mala fide.

2. The petitioner is the owner of land and farm house built on the said land which comprises Khasra Nos. 27/20/2(1-10), 28/24/2(0.11), 29/4/1 (1-4), 28/24/1 (4-5), 28/25/1 (3-2), 28/16 (4-12) (total 19 Bighas & 16 Biswas) situated in revenue estate of village Pochanpur, District Delhi. According to the petitioner, he had applied for sanction of the plans for construction of farm house on the said land which was sanctioned vided letter no. 17/A/40/87 dated 30th June, 1987. After completion of the construction of the farm house, the petitioner had applied for occupancy certificate which was issued on 22nd October, 1993.

3. A Notification under Section 4 of the Act in respect of large number of villages including village Pochanpur was issued on 13th December, 2000 wherein it was proposed to acquire the areas mentioned in the said Notification and objections to the proposed action were invited under Section 5 of the Act. The petitioner has specifically averred in the petition that he filed the objections on 16th January, 2001. However, neither opportunity of personal hearing was allowed to the petitioner nor any reply was given by the respondents to the said objections. On the contrary, without complying the aforesaid mandatory procedure, the respondents issued declaration under Section 6 of the Act on 21st January, 2001 and thereafter Notification under Section 17 (1) of the Act on 21st March, 2002 thereby acquiring the land including that of the petitioner. At this stage, the petitioner approached this Court and filed the aforesaid writ petition challenging the aforesaid Notifications/declarations under Section 4/6/17 of the Act respectively. Though, the Notifications are challenged on many grounds, it is not necessary to go into all these contentions advanced in the writ petition. It is because of the reason that that the respondents in their additional affidavit dated 1st June, 2010 have accepted the factual position namely:-

- (i) The petitioner had in fact submitted his objections under Section 5 of the Act which are on the record of the respondents.
- (ii) The petitioner was not given any opportunity of being heard on the said objections.

4. It is trite law that when the objections are preferred by any land owner whose land is sought to be required, personal hearing is to be afforded by the Competent Authority under the Land Acquisition Act before final view is taken on those objections. It is also an accepted position in law that if no such hearing is given, it nullifies the entire action from the stage of declaration under Section 6 of the Act.

5. The submission of Mr. Poddar, in the light of aforesaid admitted position, however, is that the land which comprises of so many villages including village Pochanpur was sought to be acquired pursuant to the Notification under Section 4 of the Act, and as many as 77 persons had filed their objections in respect of village Pochanpur. It is pointed out that the then Land Acquisition Collector had accorded hearing to the various objectors. After hearing those objectors, the LAC has submitted his report to the Competent Authority alongwith the files containing the objections in original. It is also the contention of Mr. Poddar that the objectors who were given hearing had filed their objections on the same lines as that of the petitioner and, therefore whatever objections the petitioner had, were taken into consideration and dealt with by the LAC in his report. The LAC did not find favour with those objections and had recommended the acquisition of the land in his report. On this basis, Mr. Poddar argues that Lt. Governor being the Competent Authority had gone into the details of said report in the light of the objections made by various objectors and decided to acquire the land. In nutshell, his submission is that even if no hearing is given to the petitioner, it did not cause prejudice to the petitioner when the nature of objections made by the petitioner were duly considered by the LAC in his report and these were also considered by the Competent Authority before taking the final decision.

6. Mr. Sethi, learned Senior Counsel appearing on behalf of the petitioner counters the aforesaid arguments of Mr. Poddar by submitting that merely because hearing was given to other objectors would not meet the requirement of affording the

personal hearing to the petitioner as well, which is a mandatory requirement under the law. By relying upon various judgments, as would be noted hereinafter, Mr. Sethi argues that it is well settled principle of law that statutory requirement of Section 5 of the Act is mandatory in nature and not just a formality and akin to a fundamental right. His submission thus is that it was incumbent upon the Land Acquisition Collector to afford personal hearing to the petitioner and by affording hearing to other objectors, the respondents cannot argue that the requirement stands complied with in the case of the petitioner as well. It is also submitted by Mr. Sethi that even the contention of the respondents that the petitioner's objections were almost similar as that of other petitioners is factually incorrect.

7. We have considered the rival contentions. As already pointed out above, in so far as the case of the petitioner is concerned, the admitted position appearing on the face of record is that the petitioner had preferred objections under Section 5 of the Act but he was not afforded any personal hearing before the final decision was taken to acquire his land alongwith the land of other land owners. Mr. Sethi is right in his contention that statutory requirement of Section 5 of the Act is mandatory in nature and not just a mere formality. It has been so held by the Supreme Court in number of judgments. We may refer to one such judgments of the Supreme Court in the case of ***Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chennai & Ors.*** (2005) 7 SCC 627 wherein the Supreme Court held as under:-

“8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance of the provisions of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety.

Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.”

“9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.”

xxx xxx xxx

“19. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the Report which is submitted by the Collector upon making other and further enquiries therefore as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefore, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation production of records by the State is necessary.”

xxx xxx xxx

“28....When a decision is required to be taken after giving an opportunity of hearing to a person who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing.”

“29. The Act is an expropriatory legislation. This Court in *State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma and Ors.* (1966) 3SCR557 observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also *Khub Chand and Ors. v. State of Rajasthan* and (1967) 1SCR120 and *CCE v. Orient Fabrics (P) Ltd.* (2004) 1 SCC 597].”

8. The aforesaid principle was laid down even in earlier judgments and has been repeatedly reiterated and followed by the Supreme Court in number of cases, some of which are as under: -

- (i) ***Shri Farid Ahmed Abdul Samad & Anr. Vs. The Municipal Corporation of the City of Ahmedabad & Anr.*** (1976) 3 SCC 719.
- (ii) ***State of Punjab and Another Vs. Gurdial Singh and Others*** (1980) 2 SCC 471
- (iii) ***Om Prakash Vs. State of Uttar Pradesh***, (1998) 6 SCC 1

(iv) ***Babu Ram & Anr. Vs. State of Haryana***, (2009) 10 SCC 115

This Court in ***Chatro Devi Vs. Union of India & Ors.*** 137 (2007) DLT 14 made following pertinent observations:-

“There is in the light of the above pronouncements, no gainsaid that violation of Section 5A, which is mandatory in character, has the effect of vitiating any recommendation made by the Collector and consequent declaration made by the Government”

In ***R.D. Bhanot Vs. Union of India***, 2009 (162) DLT 111, this Court again held qua the aforesaid sentiments by specifically observing that utmost sanctity is to be attached to Section 5-A because it provides for a valued right given to land owners and if the provisions of Section 5-A of the Act are not strictly followed or there is any procedural lapse in the inquiry conducted into the objections, that would vitiate the acquisition of land. In the light of the aforesaid position contained in law, we proceed to examine the contentions of Mr. Poddar.

9. What is sought to be argued is that such a hearing would have served no purpose when similar hearings were afforded to other land owners who had filed their similar objections. This argument is clearly misconceived. It cannot be disputed that each and every land owner, whose land is sought to be acquired, has right to file the objections under Section 5 of the Act. When such objections are filed, right accrues to every such objector to plead his/her case when specifically afforded personal hearing in the matter. Such a mandatory requirement cannot be satisfied by showing that hearing was afforded to some objectors and that should bind others as well. If this kind of contention is accepted, that would mean that even when land of hundred persons is sought to be acquired, the procedure required stands satisfied after hearing is afforded to one or two persons. The right to be heard is given to individuals and these proceedings are not in representative capacity. Even if we presume that the

objections were of similar nature, that too, would not absolve the authorities from the mandatory requirement of affording hearing to each and every person. Furthermore, it is also possible that a particular person when given an opportunity may present his case in a better and forceful manner. Be as it may, fate of one person cannot be decided without hearing him by making a plea that other similarly situated persons were heard.

12. In *Nawabkhan Abbaskhan Vs. State of Gujarat*, AIR 1974 SC 1471 the Supreme Court in categorical terms laid down the rule that where the statute prescribes giving of hearing, non-adhering thereto would be fatal. The relevant observations from the said judgment are extracted below:-

“Where hearing is obligated by a statute which affects the fundamental right of a citizen, the duty to give the hearing sounds in constitutional requirement and failure to comply with such a duty is fatal. May be that in ordinary legislation or at common law a Tribunal, having jurisdiction and failing to hear the parties, may commit an illegality which may render the proceedings voidable when a direct attack is made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and ab initio of no legal efficacy. The duty to hear manacles his jurisdictional exercise and any act is, in its inception, void except when the alternative is travesty of conditions laid down in regard to hearing.....”

Though right to property is not a fundamental right, it still remains a constitutional right protected under Article 300A of the Constitution and, therefore, the aforesaid observations are valid in the present context as well.

13. Another case which we can refer to is the judgment of Supreme Court in ***Gokak Patel Volkart Ltd. Vs. Collector of Central Excise, Belgaum, AIR 1987 SC 1161***. In that case, notice of show cause as per provisions of Section 11 A of the Central Excise and Salt Act, 1944 was not issued, the Court quashed the demand as violative of natural justice by observing as under:-

“No notice seems to have been issued in this case in regard to the period in question. Instead thereof an outright demand had been served. The provisions of S. 11A (1) and (2) make it clear that the statutory scheme is that in the situations covered by sub. S (1), a notice of show cause has to be issued and sub-s. (2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. The scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made before making the order thereof. Notice is thus a condition precedent to a demand under sub-s.(2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision.”

In the reply affidavit filed by the petitioner to the aforesaid additional affidavit on behalf of respondent no.3 in which respondent no.3 has accepted that petitioner had filed the objections, under Section 5 of the Act, it is specifically averred that the petitioner had made a request for personal hearing. When such a request was made, it was incumbent upon the respondent to afford this hearing.

14. In view thereof, the arguments of Mr. Poddar that no prejudice is caused to the petitioner have no merit at all. The very fact that the land of the petitioner is

acquired without giving him any hearing itself demonstrate that the petitioner is prejudiced by the action of the respondents.

15. That apart, it is also specifically submitted by the petitioner that petitioner's case was different on facts than other cases inasmuch as there was no other case in Pochanpur where the farm house was constructed after obtaining the proper sanction and even the occupancy certificate was issued to the petitioner on 22nd October, 1993.

16. We are, therefore, of the opinion that by not complying with the mandatory requirement of affording the personal hearing to the petitioner, declaration under Section 6 as well as Notification under Section 17 (1) of the Act are bad in law. The rule is made absolute. We, therefore, allow the writ petition and set aside the declaration dated 21st January, 2001 issued under Section 6 of the Act and Notification dated 21.3.2002 passed under Section 17 (1) of the Act.

No order as to costs.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 5, 2010
skb