

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.6487 OF 2015

ORDER:

The petitioners pray for Mandamus declaring the Draft Notification Rc.No.G1/2653/2011 dated 11.11.2013 issued under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act'), decision in Rc.No.G1/2653/2011 dated 16.08.2014 under Section 5-A and the Draft Declaration dated 05.11.2014 published under the Act, as illegal, arbitrary, and in violation of Article 300-A of the Constitution of India.

The circumstances, in brief, are as follows:

The petitioners claim to be small farmers and dependant on agriculture and the income there from. The petitioners are owners of the following agricultural lands:

S.No.	Name	Extent/Sy.No	Name of the village where the land is situated
1.	Chintapalli Seetharamaiah	Ac.1-82 cents in Sy.No.146/2, Ac.0.44 cents in Sy.No.146/3	Ajjampudi Village, Gannavaram Mandal, Krishna District
2.	Gundavalli Mallikarjuna Vara Prasad	Ac.6.22 cents in Sy.No.148/1, Ac.0.71 cents in Sy.No.163/1	-do-
3.	Mukkamala Narasimha Rao	Ac.7.12 cents in Sy.No.143/1	-do-
4.	Pasupuleti Sitarama Rao	Ac.0.78 cents in Sy.No.141/3	-do-

Through proceedings Rc.G1/2653/2011 dated 11.11.2013, the Government of Andhra Pradesh issued draft notification under Section 4(1) of the Act proposing to acquire land for the proposed expansion of Vijayawada Airport. The petition lands are part of acquisition proceedings. On 14.11.2013, the Draft Notification was published in Saakshi Telugu (daily).

It is averred that the draft notification, however, was not published in the locality as required by Section 4(1) of the Act.

The 4th respondent/Sub-Collector, Nuzvid issued notice dated 17.12.2013 in Form 3 under Section 5-A of the Act. On 18.11.2013 and 30.12.2013, the petitioners submitted objections not to acquire the lands of petitioners for expansion of Vijayawada Airport.

The 4th respondent did not inform the further date of enquiry, much less afforded opportunity of personal hearing to the petitioners as required by Section 5-A of the Act. The 3rd respondent/District Collector Krishna passed order vide Rc.G1/2653/2011 dated 16.08.2014 overruling the objections raised against the acquisition of agricultural lands of petitioners. The order passed by the 3rd respondent is illegal, without jurisdiction, null and void, for the District Collector is not the competent authority to consider or pass order on the objections raised in Section 5-A enquiry of the Act. On 05.11.2014, the declaration under Section 6 of the Act was published in Praja Shakti newspaper.

The declaration is not published in two local newspapers having circulation in the locality and the publication of declaration is illegal and vitiates the acquisition proceedings.

The petitioners aver that the acquisition is for the benefit of Airports Authority of India, a Central Government Undertaking and Central Government is the appropriate Government to acquire the land under the Act. The draft notification has to be approved by the Union of India but not the State Government. This plea is recorded and the learned counsel appearing for the petitioners has not made any submissions on this point at the time of hearing.

The legal objections on the draft notification under Section 4(1) of the Act are that the draft notification was not published in the locality. The 3rd respondent has no jurisdiction under the Act to pass orders on the objections filed by the petitioners in the enquiry under Section 5-A of the Act. The orders dated 16.08.2014 purportedly made under Section 5-A(2) of the Act are *ex facie* illegal and liable to be set aside. The procedure or scheme under Section 5-A of the Act is that the 3rd respondent issues notice of enquiry under Section 5-A, receives objections and conducts enquiry, as he deems fit and thereafter the 3rd respondent is merely required to forward a report to the Government for consideration. The 3rd respondent is not authorized by the

Government or for that matter by Section 5-A of the Act to decide the objections raised

in the enquiry under Section 5-A of the Act. The orders dated 16.08.2014 are to be ignored as made by one without sanction of law. The petitioners pray for setting aside the impugned notification/declaration.

The 4th respondent filed counter affidavit. By way of introduction to the proposed acquisition, it is stated that a Memorandum of Understanding was signed between the Airports Authority of India, Government of India and the Government of Andhra Pradesh to expand the existing airport at Vijayawada. Through Memo No.11935/P3/2005 dated 24.07.2007, the Special Secretary to the Government of Andhra Pradesh requested

the District Collector, Krishna/3rd respondent to intimate the cost of land provided by the State of Andhra Pradesh to the Airports Authority of India for expansion of existing airport. The

4th respondent was appointed as Land Acquisition Officer by the Government. The Airport Director, Vijayawada through Memo Ref.No.AAI/BZ/OR/LA/ 2258-61 dated 20.12.2011 communicated the revised land plan schedule for expansion of airport at Vijayawada.

The Government vide G.O.Rt.No.235 Infrastructure and Investment (Airport) Department dated 04.11.2013 approved the draft notification under Section 4(1) of the Act. On 11.11.2013, the draft notification under Section 4(1) of the Act was published in A.P. State Gazette vide issue No.31/KST/2013. The requirements of Section 4(1) are complied with by publishing in newspapers on 14.11.2013 and in the vicinity on 16.11.2013. Notice dated 17.12.2013 under Section 5-A of the Act was issued to all the persons interested including the petitioners herein, scheduling the enquiry under Section 5-A of the Act on 03.01.2014. The owners/persons interested filed objections beyond the time stipulated in the notice. The 4th respondent conducted enquiry under Section 5-A of the Act and forwarded his remarks to 3rd respondent. The statements of petitioners dated 03.01.2014 are referred to contend that the petitioners did not object to acquisition but requested payment of compensation under the Right to Fair Compensation and Transparency

in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act 30/2013). The 3rd respondent through proceedings Rc.G1/2653/2011 dated 20.07.2014 forwarded the enquiry report with his recommendations to the Government of Andhra Pradesh for further decision in this behalf. On 06.08.2014, the Secretary to Government, Infrastructure and Investment (Airport) Department, approved the report and through Memo No.231/Airports/A1/2012 dated 06.08.2014 informed the 3rd respondent that the objections filed are overruled and the 3rd respondent was directed to proceed further in the land acquisition proceedings. On 25.11.2014, the draft declaration under Section 6 of the Act was published. The publication of draft declaration is compliant with statutory requirement and cannot be called in question on any ground.

It is specifically denied that the notification under Section 4(1) of the Act is not published in the locality. According to the respondent, on 16.11.2013 the draft notification was duly published in the vicinity. On 03.01.2014, the enquiry under Section 5-A of the Act was conducted and the procedure stipulated by the Act was followed. The petitioners participated in the enquiry and having participated in the enquiry held on 03.01.2014, the other allegations in this behalf are either invented for the purpose of the writ petition or incorrect. No exception can be taken to the order of 3rd respondent in file No.Rc.G1/2653/2011 dated 16.08.2014.

It is stated that through proceedings No.Rc.G1/2653/2011 dated 20.07.2014 the 3rd respondent forwarded the recommendations, report etc., to the Principal Secretary to Government, Infrastructure and Investment (Airport) Department, Andhra Pradesh.

The Secretary approved the report, overruled the objections and called upon the 3rd respondent to proceed further in the matter. The order passed on 16.08.2014 is not the basis for issuance of Draft Declaration. The Draft Declaration approved by the Government was published in two Telugu daily local newspapers and in the vicinity on 06.11.2014. The grounds urged in the writ petition are denied as without any merit and liable to be rejected.

The petitioners filed reply to the counter-affidavit of

4th respondent. By way of reply, it is stated that the Government did not apply its mind to the objections raised by the petitioners, much less considered the same. In the case on hand, the 3rd respondent has passed the orders under Section 5-A(2) of the Act without conducting enquiry into the objections raised by the petitioners. The failure to give personal hearing has vitiated the enquiry under Section 5-A of the Act. It is reiterated that the 3rd respondent has no jurisdiction to take a decision on the objections under Section 5-A(2) of the Act. The declaration under Section 6 is liable to be set aside for this reason alone. The petitioners complain against the manner of enquiry conducted on 03.01.2014 by stating that the

4th respondent in the enquiry scheduled on 03.01.2014 informed the petitioners that if the petitioners do not consent for acquisition, the petitioners will be paid compensation under the Act and if the petitioners consent to acquisition, the petitioners will be paid compensation at four times the market value under Act 30 of 2013. It is averred that the 4th respondent misled the petitioners.

The consent stated to have been given on 03.01.2014 cannot be treated as free consent but given under threat and coercion of

4th respondent. Through G.O.Ms.No.389, Revenue (Land Acquisition) Department dated 20.11.2014, compensation is fixed by applying multiplier of 1.25. It is the definite case of petitioners that *"therefore the statements taken on 03.01.2014 are illegal and not binding on us (petitioners)"*. There is no necessity to take such statements in the enquiry under Section 5-A of the Act. Therefore, it is contended that the consent cannot be presumed against the petitioners for acquisition of their lands.

Sri D.Krishna Murthy, learned counsel for the petitioners, raised a legal objection on the authority of 4th respondent even to conduct enquiry under Section 5-A of the Act. The objection is taken under Section 3(c) of the Act that no power is conferred.

The 4th respondent is not conferred or delegated any power under the Act to discharge the functions of Land Acquisition Officer and the alleged enquiry is illegal and without authority.

The learned Additional Advocate General has placed before the Court G.O.Ms.No.477 Revenue (Land Acquisition) Department dated 26.08.2013. With the placing on record the instant GO, the learned counsel for the petitioners has not seriously canvassed the legal objection raised under Section 3 (c) of the Act against the authority of 4th respondent to conduct enquiry. After taking note of G.O.Ms.No.477, Revenue (Land Acquisition) Department, dated 26.08.2013, this Court is of the view that the instant legal objection might have been made without knowledge of the issuance of GO and there is no need to consider the objection and record a finding.

Sri D.Krishna Murthy, learned counsel for the petitioners, vehemently contends that the procedure followed by the respondents is contrary to the mandatory requirements of Sections 4, 5 and 6 of the Act. According to the learned counsel, even assuming that the 4th respondent is competent to conduct enquiry under Section 5-A of the Act, the statutory duty discharged on the 4th respondent in the enquiry conducted under Section 5-A(2) of

the Act is to receive objections and that if he is of the opinion that the matter requires further enquiry, he can conduct such enquiry and forward a report with his recommendations through

3rd respondent to Government for a decision. It is stated that firstly no opportunity is afforded to the petitioners and secondly the

4th respondent failed to objectively consider the objections raised by the petitioners and forward a report to Government through the

3rd respondent. The substantive right under Section 5-A of the Act is infringed by conducting a laconic enquiry and at any rate for having regard to the allegations of threat and coercion made against the 4th respondent, the Government, or for that matter

the District Collector, cannot exclusively rely upon the recommendations made by the 4th respondent to decide the fate of objection on the acquisition of subject lands. The further submission is that there is no independent application of mind by the Government on the objections of the petitioners and on account of such non-consideration, the decision of either the 3rd respondent or the Government is vitiated and is liable to be set aside.

The learned counsel for the petitioners places strong reliance upon the principles laid down in **RAGHBIR SINGH SHEARWAT v. STATE OF HARYANA AND OTHERS** and **SURINDER SINGH BRAR AND OTHERS v. UNION OF INDIA AND OTHERS** in support of his contention that the enquiry under Section 5-A of the Act constitutes a valuable right and the enquiry, report/recommendation must conform to the requirements of law and slightest deviation vitiates the proceedings under the Act and shall be declared as illegal. The learned counsel also places reliance upon an unreported decision of this Court dated 31.12.2012 in W.P.No.34676 of 2012. For the above circumstances/ principles of law, the learned counsel prays for setting aside the proceedings assailed in the writ petition.

In **RAGHBIR SINGH SHEARWAT's** case, the Apex Court held as under:

“Similar view was expressed in *C. Padma v. Deputy Secretary to the Government of Tamil Nadu* (supra), [Star Wire \(India\) Ltd. v. State of Haryana](#) (supra), [Municipal Council, Ahmednagar v. Shah Hyder Beig](#) (supra) and [Swaika Properties \(P\) Ltd. v. State of Rajasthan](#) (supra). In all the cases, challenge to the acquisition proceedings was negated primarily on the ground of delay. An additional factor which influenced this Court was that physical possession of the acquired land had been taken by the concerned authorities. In none of these cases, the landowners appear to have questioned the legality of the mode adopted by the concerned authorities for taking possession of the acquired land. Therefore, these judgments cannot be relied upon for sustaining the High Court's negation of the appellant's challenge to the acquisition of his land.

The next issue which merits consideration is whether the acquisition of the appellant's land is vitiated due to violation of Section 5A(2) and the rules of natural justice. A careful scrutiny of record reveals that the Land Acquisition Collector had fixed 29.10.2006 as the date for hearing the objections. He issued notices dated 2.11.2006 to inform the objectors that hearing will take place on 29.11.2006 at 11 a.m. in P.W.D. Rest House, Rai and asked them to appear either in person or through their agent. The notices were delivered to some of the landowners, who acknowledged the receipt thereof. However, the notices issued to the appellant and his wife were not served upon them. This is evident from the fact that other objectors had acknowledged the receipt of notices by putting their signatures, the notices allegedly served upon the appellant and his wife do not bear

their signatures and no explanation has been offered by the respondents about this omission.

The Land Acquisition Collector proceeded to decide the objections by assuming that the notice has been delivered to all the objectors. Not only this, someone in the office of Land Acquisition Collector forged the appellant's signature to show his presence in P.W.D. Rest House, Rai on 29.11.2006. A bare comparison of the signatures appearing against the appellant's name at serial No.90 (page 184 of the paper book) and those appearing on the vakalatnama and affidavit filed in support of the special leave petitions shows that there is no similarity in the two signatures. Not only this, in the list, appended with Annexure R-3, the appellant's wife has been shown as widow of Raghbir Singh. It is impossible to believe that a woman who knows how to sign a document would put signatures against her name showing her as a widow despite the fact that her husband is alive.”

In **SURINDER SINGH BRAR**’s case, the Apex Court held as follows:

“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, the second question is answered in affirmative.”

Per contra, the learned Additional Advocate General contends that the purpose of acquisition in the case on hand is for expansion of the existing Airport at Vijayawada. The State of A.P., under a Memorandum of Understanding with the Government of India/Airports Authority of India agreed to provide land free of cost to AAI for the expansion of Airport at Vijayawada. The expansion of airport is necessary and can be undertaken at the present location. Further, keeping in mind the layout prepared for expansion, the land is acquired. Expansion by its nature is considered, for the

airport is in existence and operational. The expansion proposal is considered from this perspective and the expansion is taken up for implementation by entering into Memorandum of Understanding with the Airports Authority of India, Union of India and the State Government. Under the MOU, the State Government is under obligation to provide land required for expansion free of cost and without encumbrance to the executing agency. The proposal is taken up through Memo No.11935/P3/2005 dated 24.07.2007. According to the learned Additional Advocate General, after following the procedure and considering the extent of land required, cost of acquisition etc., on 11.11.2013, the draft notification under Section 4(1) of the Act was published in the Gazette. Notice dated 17.12.2013 in Form 3 of the Act was issued to all the land owners covered by the 4(1) Notification dated 11.11.2013. It is the case of learned Additional Advocate General that through G.O.Ms.No.477, Revenue (Land Acquisition) Department dated 26.08.2013, the 4th respondent has authority to conduct enquiry and forward a report with his recommendations on the enquiry under Section 5-A of the Act through the District Collector to the Government. By referring to the original file the submission of the learned Additional Advocate General is that on 03.01.2014, the petitioners did not object to the acquisition of their land and cannot now complain against the manner of enquiry

under Section 5-A of the Act. The petitioners wanted compensation under Act 30 of 2013. For all purposes, for want of objection to the proposed acquisition and statement dated 03.01.2014 in Section

5-A enquiry, the principle laid down by the Apex Court in the decisions relied upon by the petitioners are distinguishable and the principle laid down therein cannot be made applicable to the case on hand. It is contended that by record and conduct the petitioners are disentitled to challenge the enquiry under Section 5-A or the consequent decisions taken by Government, inasmuch as the enquiry, its scope and content are dependant upon the nature of objections raised by the applicants.

In the case on hand, the statements of the affected owners including petitioners demonstrate that no objection was made against acquisition of land for expansion of airport at Vijayawada. In other words, the petitioners on 03.01.2014 consented to acquisition and the enquiry under Section 5-A is required if there is objection for the proposed acquisition. In the case on hand, by drawing the attention of the Court to the report prepared by the 4th respondent, it is stated that whatever the petitioners have contended, the same is reflected in the report prepared by the 4th respondent and the Government has independently considered the matter by overruling the cases and where there are objections, directed 3rd respondent to proceed further in the matter. Therefore, he prays for dismissal of the writ petition.

From the pleadings and submissions of the learned counsel appearing for the parties, the following point arises for consideration:

“Whether the draft notification Rc.No.G1/2653/ 2011 dated 11.11.2013, orders in Rc.No.G1/2653/2011 dated 16.08.2014 of 3rd respondent and the resultant draft declaration dated 05.11.2014 are in accordance with law and whether the petitioners are entitled for grant of any relief?”

The case of petitioners against Section 4(1) draft notification dated 11.11.2013 is that the draft notification is not published in accordance with Section 4(1) of the Act for the respondents

failed to publish it in the locality and as well as IN local dailies.

The 4th respondent filed counter affidavit and by way of reply it is stated that the Gazette was published in issue No.31/KST/2013 dated 11.11.2013. On 14.11.2013,

Section 4(1) notification was published in the newspapers. Likewise, on 16.11.2013, Section 4(1) notification/gist thereof was published in the vicinity of the land proposed to be acquired. As already noted, the learned Additional Advocate General has produced the files of Government as well as the 4th respondent for inspection by the Court. The objection against the issue of Section 4(1) notification is untenable and is accordingly rejected.

The further case of petitioners is that the 3rd respondent is not competent to decide the objections filed by the petitioners under Section 5-A of the Act. The order of 3rd respondent in file No.G1/2653/2011 dated 16.08.2014 is illegal and without jurisdiction. The issuance of draft declaration dated 05.11.2014 basing upon such determination by the 3rd respondent through order dated 16.08.2014 is *ex facie* illegal and liable to be set aside.

The respondents have explained the decision making process preceding draft declaration dated 05.11.2014. Briefly stated, it is the case of respondents that notice dated 17.12.2013 under Section 5-A of the Act was issued to the persons affected. The petitioners though have objected to acquisition through their objections dated 18.12.2013 in the enquiry held between 03.01.2014 and 04.01.2014 the petitioners have not pressed the objections, consented to proposed acquisition and insisted payment of compensation under Act 30 of 2013. The 4th respondent has forwarded the summary of enquiry report with recommendation through communication dated 04.07.2014 to 3rd respondent. The report of 4th respondent was forwarded by the 3rd respondent through letter dated 20.07.2014 to Government. The issue was considered by the Government in Memo No.231/Airports/A1/2012. The Government considered the material available on record and noted as follows: (*excerpt from note file*)

“He has further stated that Airport Authorities vide their letter No.AAI.40/32.2010-AR-II(P)/190 dt.26.03.2014 have sent a report to the Principal Secretary to Government, Infrastructure & Investment Department, A.P., Hyderabad and copy marked to his office while stating that they have no objection to one time exemption of the following land from land acquisition:

1. 7.74 acres land in Block A

2. 6.09 acres land in Block B
3. 5.75 acres land in Block C
4. 10.32 acres land in Block E (for rehabilitation of house hold exists in the Block D) i.e. total 29.9 acres (in Block A, B, C & E)
5. 6.30 acres land in Block D cannot be exempted since this land is falling within the 'No construction zone' after the end of runway-26 required for various NAV aids and operation point of view.

He has also stated that an extent of Acs.5.75 cts in R.S.Nos.142/1A, 143/2A, 149/1A, 3A, 150/3A, 4B, 5B (Block-C) in Ajjampudi Village is exempted from acquisition, hence an extent of Acs.106.74 cts is enough for acquisition.

He has further stated that in this land acquisition case, as the draft notification U/s 4(1) of L.A. Act, was approved by the Government, 5A enquiry report also being submitted to the Government for issue of 5A(2) proceedings.

He has further stated that there are no valid grounds in the objections filed by the land owners/interested persons. He has requested to pass necessary orders Us 5A(2) of L.A., Act by overruling the objections.

In view of the above, the enquiry report of District Collector, Krishna District may be approved by overruling the objections filed by the owners U/s 5A(2) of L.A Act and he may be informed accordingly.

Sd/- 28.07.2014

A.S (Airports)

Sd/- 05.08.2014

J.S (Airports)

Sd/- 28.07.2014

Secretary ISI (FAC)"

It is, therefore, concluded that the decision on the report of 4th respondent is taken by the Government but not by the

3rd respondent as contended by the petitioners. The file on acquisition of lands for expansion is examined by this Court.

The 4th respondent through letter dated 20.07.2014 forwarded the report to the 3rd respondent for onward transmission to Government for a decision on the objections

raised by the land owners/persons interested. The 3rd respondent with his objections sent the report to Government. As already noted, the Government has considered the objections, recommendations as the case may be and accepted or overruled the objections. The Government further directed issuance of memo authorizing the 3rd respondent to proceed further on the acquisition proposals. The note file on the issue of draft memo reads as follows:

With reference to the orders of Secy.(ISI) (FAC) at para 47 above, a draft memo is submitted below for approval.

Sd/- 06.08.2014

A.S (Airports)

Sd/- 06.08.2014

J.S (Airports)

(Issued memo to Collector, Krishna District vide memo No.231/Airports/A/2012 dt.06.08.2014.”

Accordingly, the Memo dated 06.08.2014 was issued and the same reads as follows:

“In the circumstances reported by the Collector, Krishna District, Government hereby approve the enquiry report as furnished in the reference 2nd cited, pertaining to land acquisition to an extent of Acs.106.74 cts proposed for expansion of Vijayawada Airport in RS.No.1, 2, 3,140, 141 etc., relating to Ajjampudi Village, Gannavaram Mandal by overruling the objections filed by the owners, U/s 5 A(2) of L.A. Act.

He is requested to take necessary further action in the above matter.”

Therefore, in the considered view of this Court, the draft declaration dated 05.11.2014 is not as a result of the order dated 16.08.2014 of the District Collector, but is a consequence to the acceptance of report and overruling the objections by the Government on 06.08.2014. Therefore, this objection on draft declaration as well fails.

The further submission of the petitioners is that the right under Section 5-A of the Act is a substantive right. The 4th respondent has not considered the objections in the right perspective, no enquiry was conducted by him and the omissions in the conduct of enquiry go to the very root of report prepared by the 4th respondent.

The non-disclosure of mind by the Government is a serious flaw and vitiates the draft declaration dated 05.11.2014. As already noted, the petitioners place strong reliance upon the principles laid down by the Apex Court in the decisions reported in **RAGHBIR SINGH SHEARWAT**'s case and **SURINDER SINGH BRAR**'s case (supra).

On the other hand, the learned Additional Advocate General submits that the respondents are conscious of the nature of right conferred on the owner of land and the scope of enquiry under Section 5-A of the Act. The enquiry under Section 5-A of the Act is required to be focused on the public purpose for which the acquisition is made. The reasons for excluding the land claimed

by the objector from acquisition etc., and enquiry is dependant upon the nature of objections raised by the owner/person interested in the land proposed to be acquired. In this background, the learned Additional Advocate General relies upon the statements given by the petitioners on 03.01.2014. Illustratively

[image]



stated, a few

of the statements made on 03.01.2014 are as under:

[image]

It is further contended that the objection against enquiry, if any, should be contemporaneous and should not be an after thought. Had it been a case where the petitioners have objected to the acquisition of land for expansion of airport and at any of the stages i.e., respondents 4, 3 and 2 these objections are not considered or enquired into by the respondents, then the principles of law laid down by the Apex Court in the decisions relied upon by the petitioner are applicable. The very basis for enquiry is the objection. If there is no objection for acquisition and payment of compensation under the Act 30 of 2013 is the issue, non-conduct of enquiry or non-inclusion of objections does not vitiate the decision taken by the Government on 06.08.2014 and issuance of draft declaration on 05.11.2014. The learned counsel relies upon the material available on record viz., the report dated 20.07.2014 and the note file extracted supra. It is further shown that the report deals with the persons who have objected for acquisition and the

individuals who have consented to the acquisition.

The principles of law laid down by the Apex Court are binding precedents and are applied if the petitioners objected to acquisition in the enquiry under Section 5-A of the Act. Therefore, the legality of enquiry is primarily dependant on the issue taken up by a party against the acquisition. Had it been a case where the petitioners have objected to the acquisition of land for expansion of airport, this Court by reference to the ratio laid down in the decisions referred to above is required to examine the conduct of enquiry under Section 5-A of the Act. As already noted, the writ affidavit does not refer to the statements given by the petitioners on 03.01.2014. The respondents filed counter affidavit together with exhibits evidencing statements made by the petitioners on 03.01.2014. The petitioners have filed reply and by way of reply, it is stated that the statements of petitioners on 05.01.2014 are not legal and binding on the petitioners. The reply affidavit is filed on 24.03.2015. The explanation offered for the statements made in the enquiry held on 03.01.2014 is as under:

“It is submitted that on 03.01.2014 when we attended enquiry under Section 5-A of the Act, the fourth respondent informed us that if we don't consent for acquisition we will be paid compensation under the Land Acquisition Act, 1894 and if we agreed for acquisition we will be paid compensation four times under the new Act 30 of 2013. The fourth respondent has misled us and coerced us to sign the statements. Under the threat and coercion from the fourth respondent we were compelled to sign the said statements. Later on Rules were framed vide G.O.Ms.No.389 Revenue (Land Acquisition) Department dated 20.11.2014 fixing compensation with a multiplier of 1.25. Therefore, the statements taken on 3.1.2014 are illegal and not binding on us. It is submitted that such kind of statements will not be taken during enquiry under Section 5-A of the Act. These statements would be taken from the willing land owners during award enquiry only but not during enquiry under Section 5-A of the Act. It is submitted that the statements obtained from us by the fourth respondent by misleading and under coercion cannot be taken into consideration as if we have consented for acquisition. The statements obtained from us on 03.01.2014 are null and void and not binding on us and cannot be put against us in this writ petition.”

From the above stand, it is clear that the petitioners assail the enquiry not for any infirmity or illegality in the conduct of enquiry but by calling in question the manner of recording statements and consent for acquisition of property. The admitted position

makes the distinction between the reported cases and the requirements followed by 4th respondent in the enquiry under Section 5-A of the Act. The 4th respondent on 04.07.2014 forwarded the report of enquiry conducted by him on 03.01.2014. In view of the statements in award enquiry, the 4th respondent recorded the statements of consent for acquisition subject to payment of compensation under the Act 30 of 2013. If the acquisition is opposed in Section 5-A enquiry by the owners and not considered by the 4th respondent, then the objections against enquiry are available in the pending action. The owners cannot approbate and reprobate on their objections and complain against Section 5-A enquiry. Hence, no exception can be taken. A reference in the report on these lines is made by the 4th respondent and the competent authority has accepted the report. The persons who have objected to the Land Acquisition Act, their objections were overruled.

In the case on hand, the land acquired is for expansion of an existing airport. The expansion is considered for the existing airport at Vijayawada and not construction of a new facility. The petitioners are not questioning the acquisition as not for public purpose or any ground available in this behalf. As noted above, the enquiry under Section 5-A is taken up and concluded by recording the statements. It is not open to petitioners to raise objections on these statements taken under coercion etc., after the time limited prescribed under Section 6 of the Act is completed. The statements of petitioners dated 03.01.2014 obviated further enquiry into objections and the 4th respondent prepared the report/recommendations on the basis of statements of land owners and forwarded for onward consideration by Government. Had it been a case where the statement dated 03.01.2014, as alleged is taken under coercion, threat etc., nothing prevented the petitioners to object against the statements at the earliest point of time. Firstly, such objection is taken in the reply affidavit dated 24.10.2015 and secondly no reference to the statement dated 03.01.2014 is made in writ affidavit. The objection against Section 5-A enquiry is examined with the contemporaneous happenings in the enquiry, but not on the basis of fresh pleas. In the considered view of this Court, this objection is without merit and is accordingly rejected.

As already stated by the respondents, the compensation payable for acquisition of subject land is under Section 24(1) of Act 30 of 2013 but not under the Act. The expression 'compensation' is comprehensive enough to take within its fold various

benefits referred by Act 30 of 2013. The quantum, extent, rehabilitation benefit etc., to which the petitioners are entitled under Act 30 of 2013 are for the authorities to decide after issuing notice to the petitioners and by following the mandate of Act 30 of 2013.

The writ petition fails and is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V.BHATT, J

1st May, 2015

Lrkm