

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT APPEAL NO.1586 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.17984 of 2017 dated 25.07.2017.

The appellant herein invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, seeking a mandamus to declare the notification, in S.O.4161(E) dated 16.12.2016, published in the Gazette of India No.3045 dated 23.12.2016 for acquisition of the petitioner's property of an extent of 0.146 hectares in Survey No.208 and 0.138 hectares in Survey No.207 situated at M.Nagulapalli Village, Dwaraka Tirumala Mandal, West Godavari District, and the notification in S.O.1137(E) dated 29.03.2017 issued under Section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of users in Land) Act, 1962 (hereinafter called "the Act") passed by the fifth respondent on 21.02.2017, as arbitrary and illegal.

Facts, to the limited extent necessary, are that a notification, under Section 3(1) of the Act, was issued on 16.12.2016 and was published in the Gazette of India on 23.12.2016. A notice was issued to the petitioner on 11.01.2017 to which they sent their objections through post on 24.01.2017. The petitioner's objections were considered and rejected by order dated 21.02.2017. Thereafter, the declaration under Section 6(1) of the Act was published in the Gazette of India on 11.04.2017, and the work of

laying pipelines commenced in the last week of May, 2017. The petitioner filed the present Writ Petition on 05.06.2017 which was disposed of by order dated 25.07.2017, and crop compensation of Rs.30,000/- is said to have been paid to the petitioner's tenant on 20.08.2017. The pipeline laying work commenced on 23.08.2017 and was completed on 28.08.2017.

In the order under appeal, the learned Single Judge held that the appellant-writ petitioner claims to have purchased the subject land with a view to shift their poultry farm existing elsewhere; a notice was issued by the competent authority calling upon the petitioner to appear in person or through advocate; the petitioner had filed their objections, and had appeared in person; they were not heard, and no further date of hearing was given; as they did not appear on the date fixed, but had sent their objections, an order was passed; the competent authority had called for a report of the ground reality, and the Tahsildar had submitted his report; there was no application for conversion of agricultural land to a non-agricultural purpose; it is not a case that the land is purchased recently, but a case where the land was purchased long ago; there was no material to show that the petitioner intended to set up a poultry farm, and it appeared to be a plea taken to prevent acquisition of the subject land for the purpose of a poultry; the authorities had considered the petitioner's request for change of alignment, and were satisfied that such a change of alignment was not possible; and it could not, therefore, be said that rejection of the petitioner's objection was without application of mind. The Learned Single Judge expressed his disinclination to interfere with the declaration issued under

Section 6 of the Act. The Writ Petition was disposed of directing the respondents, if need be, to pass a supplementary award or order fixing compensation in the form of an award, and it was left open to the petitioner to avail their remedy by approaching the District Judge seeking enhancement of compensation.

Before us, Sri G.Venkateswara Rao, learned counsel for the appellant, would submit that, in terms of Section 3(2) of the Act, the Land Acquisition Officer is required to inform the petitioner of the date and time on which he is entitled to be heard orally, either in person or through an advocate; failure to afford the petitioner such an opportunity of an oral hearing is not only in violation of Section 3(2) of the Act, but is also in violation of principles of natural justice; the petitioner had purchased the subject land with the intention of converting it into a poultry farm; the mere fact the land had not been converted as on the date of the notification would not disable the petitioner from doing so later; the appellant never received a copy of the order of rejection, and came to know of such an order having been passed only when the respondents filed their counter affidavit; the right of oral hearing, under Section 3(2) of the Act, cannot be denied to the petitioner as that would fall foul of Article 300-A of the Constitution of India; and, consequently, the declaration made under Section 6(1) of the Act necessitates being set aside. Learned counsel would rely on **Surinder Singh Brar v. Union of India**¹ and **Women's Education Trust v. State of Haryana**².

On the other hand Sri K.Venkata Rao, learned Standing Counsel for the respondent-Corporation, would submit that

¹ (2013) 1 SCC 403

² (2013) 8 SCC 99

Section 3(1) of the Act requires a land owner to submit his objections within 21 days of the notification; since the notification, in the present case, was issued on 16.12.2016, the petitioner was required to submit their objections by 06.01.2017; the obligation of providing them an oral hearing, under Section 3(2) of the Act, would arise only if the petitioner had submitted their objections, under Section 3(1) of the Act, within 21 days; the petitioner, having failed to submit their objections under Section 3(1) of the Act before 06.01.2017, cannot now be heard to contend that they were denied an oral hearing; it was wholly unnecessary for the respondent to put the appellant-writ petitioner on notice; the notice issued on 11.01.2017 is, therefore, of no consequence and must be ignored; both the Writ Petition and the Writ Appeal are liable to be dismissed on the ground of laches; and, in any event, this Court can mould the relief without interfering with the declaration under Section 6(1) of the Act. Learned Counsel would rely on **Rambhai Lakhbai Bhakt v. State of Gujarat**³ and **The Special Agricultural Produce Market Committee For Fruits and Vegetables v. N.Krishnappa**⁴.

The Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 ("the Act" for short) is an Act to provide for the acquisition of the right of user in land for laying pipelines for the transport of petroleum and minerals, and for matters connected therewith. Section 3 of the Act relates to publication of a notification for acquisition and, under sub-section (1) thereof, whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any

³ AIR 1995 SC 1549

⁴ 2017(4) Supreme 263

minerals, from one locality to another locality, pipelines may be laid by that Government or by any State Government or a Corporation, and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein. Section 3(2) of the Act stipulates that every notification, under sub-section (1), shall give a brief description of the land.

Section 5 of the Act relates to hearing of objections and, under sub-section (1) thereof, any person interested in the land may, within twenty-one days from the date of the notification under Sub-Section (1) of Section 3, object to the laying of the pipelines under the land. Section 5(2) of the Act stipulates that every objection, under sub-section (1), shall be made to the competent authority in writing, and shall set out the grounds thereof; and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.

Section 6 of the Act relates to declaration of acquisition of right of user and, under sub-section (1) thereof, where no objections under Sub-Section (1) of Section 5 have been made to the competent authority within the period specified therein, or where the competent authority has disallowed the objections under Sub-Section (2) of that Section, that authority shall, as soon as may be, either make a report in respect of the land described in the notification under Sub-Section (1) of Section 3, or make different

reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government; and, upon receipt of such report, the Central Government shall, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired. Section 6(2) of the Act stipulates that, on the publication of the declaration under sub-section (1), the right of user shall vest absolutely in the Central Government free from all encumbrances. Section 10 of the Act relates to compensation, and Section 10(2) of the Act enables the jurisdiction of the District Judge to be invoked if the amount of compensation, determined by the competent authority under Section 10(1) of the Act, is not acceptable to the party.

It is no doubt true that Section 5(1) of the Act requires objections to the laying of pipeline in the land to be made within 21 days of the notification issued under Section 3(1) of the Act, and no such objections were made before 06.01.2017. The fact, however, remains that the respondent had issued a notice on 11.01.2017, under Section 3(1) of the Act, calling upon the petitioner to submit their objections either in person or through counsel, within 21 days from the notice, to the competent authority. The notice further stipulated that objections would not be received and considered after the expiry of the period prescribed. The petitioner submitted their objections on 24.01.2017 well within the 21-day period stipulated in the notice issued by the respondent on 11.01.2017. As Section 5(2) of the Act obligates the competent

authority to give the objector an opportunity of being heard, either in person or through a legal practitioner, and this opportunity of an oral hearing is in addition to the opportunity to put forth objections under Section 5(1) of the Act, it is only after the petitioner has been put on notice, and informed of the date on which they could either appear in person or through legal practitioner, would the requirements of Section 5(2) of the Act be said to have been complied with.

The submission of Sri K.Venkata Rao, learned Standing Counsel for the respondent-Corporation, that the notice issued by the respondent on 11.01.2017 is of no consequence, does not merit acceptance. While it is no doubt true that neither Section 3 or Section 5(1) of the Act explicitly obligate the concerned authority to put the land owner on notice, of its being required to submit objections to the notification issued under Section 3(1) of the Act, the respondent cannot be heard to contend that, despite their having put the appellant on notice and having called upon them to submit their objections under Section 5(1) of the Act, the said notice issued by them should be ignored, and the time limit specified for submitting objections should be reckoned only from the date of the notification i.e. 16.12.2016. Having issued a notice on 11.01.2017, the respondent-Corporation cannot be heard to contend that, since the requirement of filing objections expired on 06.01.2017, the notice issued by them on 11.01.2017 was a meaningless exercise which this Court should ignore.

In **Surinder Singh Brar**¹, the Supreme Court, while dealing with a similar provision under Section 5-A(2) of the Land Acquisition Act, 1894, observed:

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

The proposition laid down in the aforementioned two judgments does not support the stance of the Chandigarh Administration that even though there is breach of the mandate of Section 5-A read with Section

6(1), the Court cannot, after the issue of declaration under Section 6(1), nullify the acquisition proceedings. **As a matter of fact, the ratio of both the judgments is that satisfaction of the appropriate Government envisaged in Section 6(1) must be preceded by consideration of the report prepared by the Collector after considering the objections filed under Section 5-A and hearing the objectors. This necessarily implies that the Government must objectively apply its mind to the report of the Collector and the objections filed by the landowners and then take a decision whether or not the land is needed for the specified public purpose.** A mechanical endorsement of the report of the Collector cannot be a substitute for the requirement of application of mind by the Government which must be clearly reflected in the record.....” (emphasis supplied)

As held by the Supreme Court in **Surinder Singh Brar¹**, the opportunity of an oral hearing under Section 5(2) of the Act is not an empty ritual or a needless formality. The opportunity provided thereby is to enable the petitioner or a legal practitioner to explain in person the nature of the objections taken by them, to the notification issued under Section 3(1) of the Act, under Section 5(1) of the Act, and to satisfy the competent authority that the pipeline should not be laid over their land. Failure to comply with the requirement of Section 5(2) of the Act is fatal, and would require the Section 6 declaration to be set at naught.

Reliance placed by Sri K. Venkata Rao, learned Standing Counsel for the respondent-Corporation, on **Rambhai Lakhabai Bhakt³** is of no avail, as the law declared therein has no application to the facts of the present case, where a notice was issued to the land owner that if they had any objections to the acquisition, they could personally, or through an advocate, make a representation within 30 days. The notice issued to the land owner, in **Rambhai Lakhabai Bhakt³**, was a composite notice both to file objections and to submit the objections either in person or

through their advocate; and the land owners were informed that they, or their advocate, would be heard when they produced their objections. It is in this context that the Supreme Court observed:

“.....Sub-section (2) of Section 5A requires filing of objections in writing and also casts mandatory duty on the Collector to give the objector an opportunity of being heard. In the instant case, vide a notice dated 18th July, 1991 the petitioner was informed of two things – firstly that objections should be filed by the petitioner within 30 days of the date of publication of the Notice and secondly, at the time of producing the objections, the objector or his Advocate shall be heard. The implication of this is very clear. **No specific date for the hearing of the objections was fixed, but what was stated was that the objections should be filed in person either by the objector himself or by the authorised person or through an Advocate and then hearing would be granted at that time. The said notice contemplated personal hearing being afforded at the time of production of the objections. The petitioner, however, chose to file his objection in writing and sent the same by post. It is not the case of the petitioner that any attempt was made to personally go to the office of the Collector with a copy of the objections. It is also not in dispute that the objections which were filed in writing were taken into consideration and the report made. In other words, it is not that the written objections were disregarded.**

The observation of the Land Acquisition Collector in the award has to be read in the context of the said notice dated 18th July, 1991. **Therefore, when the award it is stated that date was fixed for personal hearing and no one was present on behalf of the objector, the implication clearly is that though 30 days' time was given for the producing of objections and the hearing was to be granted at the time of production of the same, the petitioner was not personally present. In our opinion, the provisions of Section 5A(2) of the Land Acquisition Act were duly complied with in the present case.**

Notice in the present case did indicate that the petitioner was at liberty to file his objections within 30 days from the date of the publication of the notice and in case he wished to and at the time when he filed the objections, he was also asked to appear either in person or through authorised representative or advocate, and he would be heard on his objections. Admittedly, the petitioner had not appeared, either in person or through advocate but had chosen

to file his objections through post. It would be obvious he did not intend to avail the benefit of hearing while submitting objections....”

(emphasis supplied)

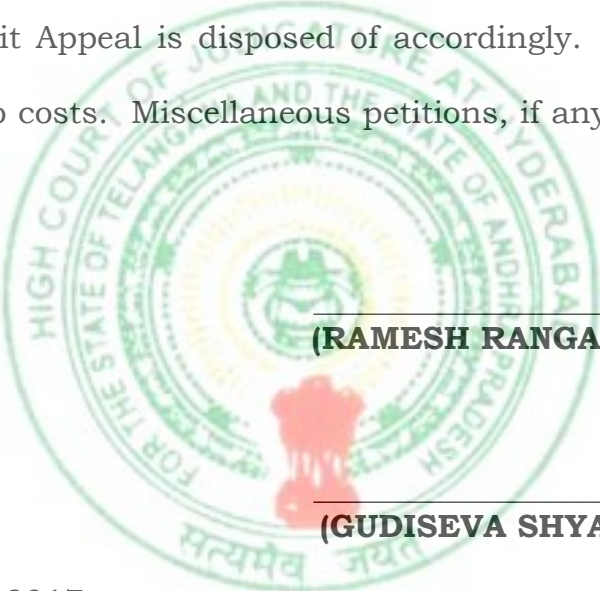
As noted hereinabove the notice issued, in the present case on 11.01.2017, is not a composite notice. It is a notice referable to Section 5(1) of the Act. All that the said notice dated 11.01.2017 states is that objections could be submitted either in person or through counsel within 21 days, and objections would not be received after expiry of the prescribed period. The notice dated 11.01.2017 explicitly refers to Section 3(1) of the Act and, unlike **Rambhai Lakhabai Bhakt**³, cannot be treated as a composite notice both under Section 5(1) and (2) of the Act.

The contention of Sri K.Venkata Rao, learned Standing Counsel for the respondent-Corporation, that both the Writ Petition and the Writ Appeals are belated, cannot also be accepted as the petitioner had invoked the jurisdiction of this Court within three months of the order of the rejection, and has preferred an appeal within one week of a copy, of the order of the learned Single Judge, having been made available to them.

Before a declaration is issued under Section 6 of the Act, it was obligatory for the respondent-Corporation to give the petitioner an opportunity to put forth their objections, during the course of oral hearing, in terms of Section 5(2) of the Act. The fact, however, remains that the pipeline has already been laid over the petitioner's land. In **The Special Agricultural Produce Market Committee For Fruits and Vegetables**⁴, the Supreme Court held that the High Court could mould the relief keeping in mind the larger public interest involved in the acquisition. We consider it appropriate, therefore, to set aside the declaration under Section 6

of the Act in so far as the petitioner is concerned, and direct the respondents to inform the petitioner of the date on which they can appear in person, or through advocate, to put forth their oral objections to the notification issued under Section 3(1) of the Act. With a view to obviate the possibility of the petitioner removing the pipeline in the interregnum, we direct the parties to maintain *status quo* as on today for a period of four (4) months, within which period the petitioner shall be afforded an opportunity of oral hearing under Section 5(2) of the Act. The respondents are, thereafter, entitled to take further action in accordance with law.

The Writ Appeal is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.



(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

6th December 2017
RRB