

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO**

Writ Appeal Nos.885 of 2016 and 994 of 2017

COMMON JUDGMENT: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri P.Gangaiah Naidu, Learned Senior Counsel appearing on behalf of the appellants and the Learned Advocate-General for the State of Andhra Pradesh appearing on behalf of the respondents.

These two appeals are preferred against the common order passed by the Learned Single Judge in W.P.Nos.19151 and 650 of 2016. These two Writ Petitions formed part of a batch of three Writ Petitions which were heard together, and were disposed of by a common order dated 09.08.2016. In the aforesaid two Writ Petitions, the relief sought for was for a mandamus declaring rejection of the objections by the Joint Collector-cum-Land Acquisition Officer dated 02.04.2016, the notification published under Section 3-D of the National Highways Act, 1956 (for short "the Act"), and the Section 3-G notice dated 09.05.2015 published on 20.05.2016, including the Section 3-A notification dated 17.04.2015 issued for the purpose of the proposed Bangalore – Chennai Expressway, as contrary to law and in violation of Articles 21 and 300-A of the Constitution of India, besides being violative of principles of natural justice; and for a consequential direction to set aside the same.

Both Sri P. Gangaiah Naidu, Learned Senior Counsel appearing for the appellants and the Learned Advocate-General for the State of Andhra Pradesh appearing for the respondents, would agree that it would suffice, for the disposal of both the appeals, if

the facts in W.P.No.19151 of 2016 are noted. Parties to these proceedings shall, hereinafter, be referred to as they are arrayed in W.P.No.19151 of 2016.

The preliminary notification, under Section 3-A of the Act, was published on 16.07.2015. The petitioner filed his objections, under Section 3-C of the Act, on 03.08.2015. These objections were, summarily, rejected by proceedings dated 05.12.2015, without assigning any reasons. By his letter dated 29.02.2016, the petitioner requested the Competent Authority to send him the plans, and the connected material to enable him to file his further objections on the basis of the material made available to him. The Joint Collector, by his notice dated 10.03.2016, informed the petitioner that he had not approached the office of the Joint Collector either himself or by any of his representatives; all the records were available in the office; the notification clearly stated that the land plans, and other details of the land covered under the notification, were available, and could be inspected by the interested person at the office of the competent authority; and the petitioner could avail the opportunity of a personal hearing on 26.03.2016 at 10.30 A.M. before the Joint Collector.

In reply thereto the petitioner informed the Joint Collector, by his letter dated 22.03.2016, that he had never stated that he had come to the office of the Joint Collector personally; regarding his representative, it would be fair if the Joint Collector had enquired with the Clerk who received his objections through his representative, in addition to the representations sent by post; he would be out of the Country from 23.03.2016 to 31.03.2016, as he had booked tickets for his journey as long back as on 15.02.2016;

he would, therefore, not be able to attend the hearing on 26.03.2016; and he was enclosing photostat copies of his tickets. The petitioner requested that the hearing be postponed to any other date after 01.04.2016 and, in the meanwhile, the plans and other relevant material may be supplied to him to enable him to present his objections. The petitioner enclosed a demand draft for Rs.200/- for supply of the material, besides photostat copies of the tickets which show that he was to leave for Jeddah in Saudi Arabia on 23.03.2016, and return to Hyderabad on 01.04.2016.

The Joint Collector, however, sent a notice on 26.03.2016 to the petitioner's address at Saidabad Colony, Hyderabad calling upon him to appear for a personal hearing on 02.04.2016 at 10.30 A.M before the Joint Collector, Chittoor. On the ground that the petitioner failed to appear before him on 02.04.2016, the Joint Collector passed an order on the same day i.e. on 02.04.2016 rejecting the petitioner's objections in exercise of his power under Section 3-C(2) of the Act. Thereafter, a declaration under Section 3-D of the Act was issued on 12.04.2016.

The petitioner requested, vide his letter dated 23.04.2016, for information to be furnished. His request was acceded to, and the information sought for was furnished to him by the Joint Collector vide his letter dated 26.04.2016. A notice, under Section 3-G of the Act, was issued on 09.05.2016. By his letter dated 18.05.2016, the petitioner requested the Public Information Officer, in the office of the Joint Collector, to furnish a copy of the acknowledgment of the notice dated 26.03.2016 and, by proceedings dated 29.06.2016, the information sought for by the petitioner was furnished to him. The petitioner, thereafter, invoked

the jurisdiction of this Court. It is not in dispute that, while a notice under Section 3-G of the Act was issued to the petitioner, no enquiry was held pursuant thereto, and no award was passed thereafter till date.

Sri P.Gangaiah Naidu, Learned Senior Counsel appearing on behalf of the appellants, would question the validity of the declaration issued under Section 3-D of the Act, as also the failure of the respondents to give the petitioner an opportunity of an oral hearing under Section 3-C(2) of the Act. Learned Senior Counsel would submit that the preliminary notification, issued under Section 3-A of the Act, does not contain even the minimum necessary particulars required for the petitioner to submit his objections thereto; failure to give the petitioner an opportunity of a personal hearing, under Section 3-C(2) of the Act, vitiated the subsequent declaration issued under Section 3-D of the Act; and the order dated 02.04.2016, rejecting the petitioner's objections, is vitiated for non-consideration of all the objections, and for its mechanical rejection. Learned Senior Counsel would rely on **Competent Authority v. Barangore Jute Factory**¹ and **B.Gairidhar Kumar Reddy v. Union of India**² in this regard.

On the other hand the Learned Advocate-General for the State of Andhra Pradesh, appearing on behalf of the respondents, would submit that the preliminary notification, issued under Section 3-A of the Act, provides sufficient guidance as a specific reference is made therein to the fact that the plans were available for verification by all those whose lands were sought to be acquired; the petitioner cannot be heard to complain of being

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¹ (2005) 13 SCC 477

² 2012 (6) ALD 56 (DB)

denied an opportunity of a personal hearing as the notice sent to him on 26.03.2016, calling upon him to appear before the Joint Collector on 02.04.2016, was served on him on 30.03.2016; the order passed by the Joint-Collector, on 02.04.2016, dealt with the objections raised by the petitioner; the said order cannot either be equated to a judicial order or be subjected to a microscopic examination as to whether each and every objection raised by the petitioner has been elaborately dealt with or not; and, since the project is for construction of an express highway from Bangalore to Chennai, interference by this Court would needlessly delay the project.

In the order under appeal the Learned Single Judge has observed that the petitioner did not come forward and inspect the required documents to raise effective objections; neither did he make any request thereafter nor had any document in his possession; the provision of opportunity to him, for effective hearing, would defeat the purpose; and as stated in the notification, and by other correspondence made by the respondents, it was obvious that the plans and other documents were available in the office of the competent authority, but the petitioner did not approach the office. While taking notice of the contention, urged on behalf of the petitioner, that, even though he had sent a communication on 22.03.2016 requesting the Joint Collector to furnish land plans and other relevant material so as to enable him to file effective objections, the Joint Collector had rejected his objections without furnishing the necessary documents/records, the Learned Single Judge held that the object was for a public purpose; divergence of the same would cause

inconvenience as per the design of the High way; the proposed alignment had been fixed after detailed studies conducted by the consultant considering the geometry of the road alignment, ground terrain, avoiding the major built-up area, rivers/streams, reserve forest, hillock region; and any modification to change the alignment required a series of sharp curves to be inserted in the alignment, which was not safe for design speed of 120 kmph; and the IRC would also not recommend such alignments according to Road Safety requirements. The Learned Single Judge further observed that, if the petitioners had not received adequate compensation, they may approach the 3rd respondent-competent authority and put forth their grievances.

The petitioners contentions that the objections raised by them have not been considered or dealt with by the competent authority in his order dated 02.04.2016, and they were denied a reasonable opportunity of being given an oral hearing, have not been dealt with in the order under appeal.

We shall first deal with objections raised by Sri P. Gangaiah Naidu, Learned Senior Counsel appearing on behalf of the appellants, under Section 3-C of the Act. Section 3-C(1) stipulates that any person interested in the land may, within 21 days from the date of publication of the notification under sub-section (1) of Section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section. Section 3-C(2) stipulates that every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof, 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 enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Section 3-C(2) of the Act is in two parts. The first limb of Section 3(C)(2) requires the objections, by land owners under Section 3-C(1) of the Act, to be made in writing to the competent authority within twenty one days from the date of publication of the notification issued under Section 3-A(1) of the Act. The second limb of Section 3-C(2) requires the competent authority to give the land owner, who has filed the objections, an opportunity of being heard. Such an opportunity can be availed by the objector-land owner either in person or by a legal practitioner appearing on his behalf. The competent authority is obligated, under Section 3-C(2) of the Act, not only to hear the objections raised by the objector-land owner or the legal practitioner appearing on his behalf but also, if need be, to make such further enquiry as he thinks necessary and, thereafter, to pass an order either allowing or disallowing the objections.

In the present case, the petitioner submitted his objections, under Section 3-C(2) of the Act, to the competent authority in writing by his letter dated 03.08.2015. It is only because the petitioner had submitted his objections, did the Joint Collector issue a notice to him on 10.03.2016 fixing the date of oral/ personal hearing as 26.03.2016. The dispute, in the present case, is whether or not the petitioner was afforded a reasonable opportunity of an oral hearing by the Joint Collector. While a notice was initially issued by the Joint Collector on 10.03.2016, fixing the date of oral hearing on 26.03.2016, the petitioner, on

receiving the said notice on 22.03.2016, addressed a letter, on the very same day, requesting the Joint Collector to adjourn the hearing beyond 01.04.2016 as he was going abroad which, as is evident from the tickets enclosed to the said letter, was on a Hajj pilgrimage to Mecca in Saudi-Arabia. The tickets enclosed to the petitioner's letter dated 22.03.2016 disclose that he would be away from the Country from 23.03.2016 till 01.04.2016, and would be returning back to Hyderabad on the morning of the 1st of April, 2016. While the tracking statement, issued by the Postal Department, does indicate that the notice dated 26.03.2016 was delivered on 30.03.2016, Sri P. Gangaiah Naidu, Learned Senior Counsel, would submit, not without justification, that the documents subsequently furnished to the petitioner by the Joint Collector show that the letter dated 26.03.2016 was delivered to an unknown person whose signature is indecipherable. In the facts and circumstances of the present case, we are satisfied that the petitioner was not affording a reasonable opportunity of an oral hearing, as stipulated under the second limb of Section 3(C)(2) of the Act, as the notice was sent to him on 26.03.2016 though the Joint Collector was made aware by him that he would not be in the Country from 23.03.2016 to 01.04.2016.

The next question, which necessitates examination, is whether the objections raised by the petitioner have been considered and dealt with by the Joint Collector in his order dated 02.04.2016. As noted hereinabove, the requirement of Section 3(C)(2) is for the competent authority to either allow or disallow the objections. The power to allow or disallow objections to the acquisition of land, from the land owners, cannot be exercised

mechanically. Such an order must reflect the competent authority having considered the objections, and to have rejected them for just and valid reasons. It is only if reasons are assigned by the competent authority, for disallowing the objections put forth by a land owner, would it be possible for this Court, in the exercise of its powers of judicial review under Article 226 of the Constitution of India, to determine whether the consideration of the objections is valid or otherwise. The comparative table furnished to us by Sri P. Gangaiah Naidu, Learned Senior Counsel, contains, in separate columns, the objections raised; and whether such objections have been considered. It is useful, in this context, to reproduce them in its entirety, and they read as under:

Sl. No.	Objections Raised	Whether considered or not
1.	In acquiring Private Property under National Highways Act Section 3(A) to be strictly followed. Brief particulars are required to be stated to enable the land looser to know which part of land get affected and plans etc., to be furnished.	- No consideration -
2.	Already there is NH4 road in existence i.e, Bangalore to Chennai and the same is being widened into 4 lane road and there is no necessity of the proposed Expressway Road, for the same which involves huge expenditure.	-No consideration-
3.	Acquisition causes displacement of lands of several poor and marginal Farmers and acquiring private lands, without making available government lands is illegal.	-No consideration-
4.	Diverting the route from Thotakamma towards Byerreddipali and Palamaner, will not serve the purpose and the original plan towards Tamil Nadu Boarder will not only Shorten the distance but also saves 2000 acres from acquisition	The objection was said to be referred to Project director, NHAI, Krishnagiri, and he seems to opined that such objection may be rejected as it is not

		safe to change the alignment of road t this stage, and that the road has been designed to go to 120 KMPH in view of IRC Codal Regulations.
5.	In the subject land there are several fruit bearing trees such as Tamarind trees, Mango Garden etc., and acquisition of these lands is against law.	- No consideration -
6.	Notification is vague and does not answer the requirements of law and particularly section 3-A of the Act	The notification itself indicates that the details are available in the office of the Joint Collector and can be inspected by the interested person.
7.	Objector and his family would left with no land, if the subject land is acquired.	-No consideration-
8.	Plans to be furnished to his authorised representative, and DD was submitted towards costs.	Neither Objector nor his representative approached for supply of plans and records of the project
9.	Objections are tentative and reserved right to submit further objections on receipt of particulars sought for.	Not supplied and no consideration of request.
10.	Requested personal hearing as contemplated under Section 3(C) of the Act.	Notice under Section 3(C) dated 10.03.2016 was issued to appear on 26.03.2016 but objector sought time beyond 01.04.2016, in view of his pre arranged abroad trip. Another notice dated 26.03.2016 was said to be given to appear, on 02.04.2016 but not attended. Multiple opportunities were given but failed to attend the hearing.

It is evident, from the aforesaid table, that objections 1, 2, 3, 5 and 7 were not considered at all, and while the compliant of the petitioner, as put forth by the Learned Senior Counsel, is that, even with respect to the other objections, the consideration was superficial, it is unnecessary for us to dwell on the validity or otherwise of the consideration of those objections, as it is evident that not all the objections, raised by the petitioner under Section 3(C)(2) of the Act, have been considered and dealt with by the competent authority.

Section 3D of the Act relates to declaration of acquisition and, under sub-section (1) thereof, where no objection under Section 3(C)(1) has been made to the competent authority within the period specified therein, or where the competent authority has disallowed the objections under Section 3(C)(2), the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and, on receipt of such a report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose of or the purposes mentioned in Section 3(A)(1) of the Act. The obligation cast on the Joint Collector, under Section 3D(1), is to forward a report after considering and allowing the objections raised by a land owner under Section 3(C)(2) of the Act. As we are satisfied that consideration of the petitioners' objections by the Joint Collector, in his proceedings dated 02.04.2016, is wholly unsatisfactory, and the order dated 02.04.2016 should be set aside on this score, the report submitted by the Joint Collector, pursuant to disallowing the objections on 02.04.2016, cannot form the basis for the declaration made under Section 3D of the Act.

Consequently the declaration under Section 3D of the Act, in so far as the petitioners lands are concerned, is liable to be, and is accordingly, set aside.

The third objection raised by Sri P. Gangaiah Naidu, Learned Senior Counsel, is that the preliminary notification issued under Section 3(A)(1) of the Act is vague as it does not contain the minimum particulars required for a valid notification. According to the Learned Senior Counsel, while the survey numbers and the extent of land therein are mentioned in the notification, it is not clear therefrom as to which part of the lands, in these survey numbers, were being acquired; and, in view of the law declared by the Supreme Court in **Competent Authority**¹, the preliminary notification, issued under Section 3(A)(1) of the Act, necessitates being set aside.

On the other hand the Learned Advocate General would submit that the preliminary notification, issued under Section 3(A)(1) of the Act, specifically refers to the fact that the plans were available, for perusal of the land owners, in the office of the Joint Collector; and any land owner was free to come and peruse the plans which would clearly disclose which part of the survey numbers, notified in the preliminary notification under Section 3(A)(1) of the Act, were sought to be acquired. It is wholly unnecessary for us to dwell on this issue as, consequent to the impugned order dated 02.04.2016 being set aside, the Joint Collector would now be required to fix a fresh date of oral hearing, and intimate the petitioner in this regard. On such intimation, it is always open to the petitioners herein to raise all these objections before the competent authority. The objection regarding vagueness

of the preliminary notification, issued under Section 3(A)(1) of the Act, can also be urged before the competent authority during the course of oral hearing. We see no reason, therefore, to examine the validity of the preliminary notification, issued under Section 3(A)(1) of the Act, in the present writ proceedings.

Learned Advocate General, for the State of Andhra Pradesh, would submit that, in the light of the order of stay passed by this Court, the period of one year prescribed, for issuing a declaration under Section 3D(1), under Section 3D(3) of the Act would exclude this period, in view of the proviso thereto. Sri P. Gangaiah Naidu, Learned Senior Counsel appearing on behalf of the petitioner, would however contend that this Court did not pass any order of stay, and the order directing the Land Acquisition Officer not to dispossess the petitioners cannot be construed as an order of stay under the proviso to Section 3D(3) of the Act. This question does not also necessitate examination as these contentions can also be urged before the competent authority during the course of oral hearing under Section 3(C)(2) of the Act.

The declarations issued under Section 3D(1) dated 12.04.2016, and the earlier order dated 02.04.2016 rejecting the petitioners objections under Section 3(C)(2), are both set aside. The Joint Collector shall, after intimating the petitioners of the date fixed for oral hearing, give them an opportunity to be heard either in person or through a legal practitioner; and thereafter pass an order afresh, under Section 3(C)(2) of the Act, in accordance with law.

Both the Writ Appeals are, accordingly, disposed of. Miscellaneous Petitions, if any pending, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

Date: 31.01.2018.

CS/MRKR

