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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 28.08.2019

% W.P.(C) 1078/2015

VIPIN BHARDWAJ

..... Petitioner

Through: Ms. Smita Maan with Mr. Vishal
Maan, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal, adv. for PWD.
Mr. Yeeshu Jain with Ms. Jyoti
Tyagi, Advs. for R-1.

W.P.(C) 1332/2015

YOGENDRA NATH BHARDWAJ & ANR

..... Petitioner

Through: Mr. Anunaya Mehta with Mr. Akshay
Deep Singhal, Advs. with petitioner
in person.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Anuj Aggarwal, adv. for PWD.
Mr. Yeeshu Jain with Ms. Jyoti
Tyagi, Advs. for R-1

Mr. Vikas Mahajan with Mr. Aakash
Varma and Mr. Prajesh, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

1. We have heard learned counsels and proceed to dispose of the writ petitions with their consent. The reliefs sought in both the petitions is identical, hence they are being disposed of by this common order. For brevity and convenience, the relief sought in W.P. (C) 1078/2015 is reproduced hereunder:

“i. issue an appropriate writ (s), order (s) or direction(s) in the nature of certiorari striking down section 3A to 3I of the National Highways Act, 1956 and Section 105 of The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation, And Resettlement Act, 2013 being unconstitutional and unsustainable in law;
ii. Issue an appropriate writ (s), order (s) or direction(s) in the nature of certiorari quashing the notification NO.S.0.16(E) dated 02.01.2014 issued U/s 3A and declaration bearing notification no.S.0.2623(E) dated 14.10.2014 issued U/s 3D of the National Highways Act, 1956 in respect of the land of petitioner comprising in khasra no. 336 min and 338 min, admeasuring 3502sq. mtrs., situated in the Revenue Estate of Village Mehrauli, New Delhi.”

2. The land of the petitioners has been sought to be acquired by the respondents, by issuance of notification dated 02.01.2014 under Section 3A and declaration dated 14.10.2014 under Section 3D of the National

Highways Act, 1956 (hereinafter 'the Act), for the public purpose of building (widening/ sixlaning etc.), maintenance, management and operation of National Highway No. 236, in the State of National Capital Territory of Delhi.

3. At the outset, learned counsel for the petitioners submits that the writ petition can be disposed of at this stage upon examination of the petitioner's plea with regard to sufficient particulars not being disclosed in the notification issued under Section 3A of the Act. Learned counsel submitted that, other pleas raised by the petitioners need not be gone into at this stage, and the petitioners reserve their right to raise them as and when the occasion arises.

4. Accordingly, we proceeded to examine the only plea raised by the petitioners, and other pleas raised by the petitioners are left open to be raised in appropriate proceedings.

5. The respondents issued notification dated 02.01.2014 under Sub-Section (1) of Section 3A of the National Highways Act, 1956 – proposing to acquire certain lands including the land belonging to the petitioners. The brief description of the lands in respect of which the said notification under Section 3A of the Act was issued is contained in the Schedule to this notification, which reads as follows:

“

<i>Serial</i>	<i>Name of</i>	<i>Name</i>	<i>Name of</i>	<i>Survey</i>	<i>Type of</i>	<i>Nature of</i>	<i>Area in</i>
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<i>Number</i>	<i>the District</i>	<i>of the taluk</i>	<i>the village</i>	<i>number</i>	<i>Land</i>	<i>Land</i>	<i>Square metres Land</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
<i>1</i>	<i>South District</i>	<i>Hauz Khas</i>	<i>Mehrauli</i>	<i>336 min + 338 min</i>	<i>Private</i>	<i>Agriculture</i>	<i>3502</i>
				<i>819 min</i>	<i>Private</i>	<i>Agriculture</i>	<i>665</i>
					<i>Total</i>		<i>4167</i>

6. The petitioners are concerned with the land falling in Khasra Nos. 336 min and 338 min only. Learned counsel submits that the aforesaid Schedule only describes the cumulative extent of the land falling in Khasra/ Survey No. 336 min and 338 min, which was proposed to be acquired, as 3502 Sq. Mtrs.

7. Learned counsel submits that the area of Khasra No. 336 is 10 bighas 02 biswa and the area of Khasra No. 338 is 01 Bigha 18 biswa. The extent of the area, and the boundaries of the area sought to be acquired, falling within each of the said Khasra numbers are not specified. The notification also states that the land plan and other details of the land covered under the said notification are available and can be inspected by the interested persons at the office of the Competent Authority.

8. Learned counsel for the petitioners submits that the said land plan demarcates the proposed road to be constructed for the expansion of National Highway No. 236, which would show that the said road falls in several other Khasras and partially in Khasra No. 338 min but no part of the proposed road falls in Khasra No. 336 min.

9. Thus, the description of the land sought to be acquired is not only vague, but also inaccurate as there is discrepancy in the Schedule to the notification, and the land plan.

10. During pendency of the writ petition, Re-Joint Survey was carried out by the respondent on 18.09.2018. The said Joint Survey report has been placed on record by the respondent PWD with a short affidavit dated 26.09.2018. This report, in fact, discloses that the proposed road falls in Khasra Nos. 334 min to 338 min, admeasuring 3502 sq. mtrs. The said Re-Joint Survey reads as follows:

“Today on 18.09.2018, pursuant to orders of the ADM/LAC (South) for Re-joint survey of Kh. No. 334 to 336 and 338, Village Mehrauli vide letter No.ADM/LAC/South/2018/419.to 423 dated 17.09.2018, I along with Sh. Amit Yadav Kgo/LA reached on the spot. Sh. Rakesh Kumar, F.Kgo and Sh.Yogesh Kumar, Halqa Patwari were present there on the spot. Sh. Neelam Sudhir, Kgo from Land and Building Department, Sh. Shadiram Tehsildar, N.L.-I from DDA, Sh. Om Prakash, Tehsildar, L.M.-SWZ, Sh. Harshvardhan, Kgo, L.M.-SWZ were also present on the spot. Sh. Sanjeev Ranjan Kumar, J.E. from PWD was also present. Sh. Y.N. Bhardwaj and Sh. Vipin Bhardwaj, were present on behalf of the Petitioners.

Petitioners' land bearing Kh. No. 336 Min and 338 Min Rakba measuring 3502 square metre was acquired vide Order No. 1103 dated 21.08.2015, against which Petitions No. 1332/2015 and 1078/2015 were filed before the Hon'ble High Court, wherein the Respondent was directed to file Affidavit. A letter in this regard was sent to the Sub-Divisional Officer, District South by the Assistant Engineer, PWD, as per which orders for

resurvey of the above land were issued to the higher officials. Pursuant to this only, the survey on the land of the Petitioners measuring 3502 sq. mtrs. was started in the presence of all the above attendees. On the spot, the surveying company RITES marked points on the land of the Petitioners for determining Link Road. As per the points / said demarcation, the said Link Road is passing through Petitioners' land and approaching towards eastern side from south to north along the DDA's wall. This road will join Mehrauli – Mahipalpur. It was found in the survey that Petitioners' land measuring 3502 sq. mtrs. which was acquired, falls under Kh. No. 334 Min – 338 Min. As per the Masavi for the year 1981-82, Kh. No. 334 and 335 are joint and Kh. No. 337-338 have also been shown to be joint, out of which, as per the records, Kh. No. 335 pertains to Central Government and Kh. No. 337 pertains to Govt. Daulatamdar, which have already been bounded by wall raised by DDA.

As per the survey, Land bearing Kh. No. 334 Min - 338.Min Rakba measuring 3502 sq. mtrs. was found to be in the Link Road, which has been admitted by the Petitioners to be correct. The identification of Kh. No. was done on the spot by the Revenue Staff of Tehsil Mehrauli with the help of the available records. The identification of the above Kh. number was done with the help of Masavi for the year 1981-82 and available records. During the course of re-survey, no hurdles were faced."

(emphasis supplied)

11. Thus, the said joint survey report throws up yet another finding, as per which, the proposed road area of 3502 sq. Mtrs. falls in Khasra nos. 334 min to 338 min, and not just 336 min and 338 min as stated in the Schedule to the notification under Section 3A of the Act.

12. Counsel for the petitioners has sought to place reliance on the

decision of the Supreme Court in *Competent Authority v. Barangore Jute Factory and Others*, (2005) 13 SCC 477, wherein the Supreme Court considered a similar plea of the description of the land proposed to be acquired not being adequate and sufficient, and not qualifying as “brief description” under Section 3A(1) of the National Highways Act. In the said case, the notification under Section 3A described the land proposed to be acquired in the Schedule in the following manner:

"Vide sub-section (2) of Section 3-A of the National Highways Laws (Amendment) Act, 1997

<i>Sl. No.</i>	<i>Dag No.</i>	<i>Khaitan No.</i>		<i>Full area (Acre)</i>	<i>Land classification as per BL & LR record</i>	<i>Acquisition/Alienation proposed</i>	
		<i>Old</i>	<i>New</i>			<i>For</i>	<i>Area (Acre)</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
State — West Bengal, District — Howrah, Police Station Bally, Mouza Bally, JL 14, Sheet 2.							
1.	1020	1499	0	0.420	danga	Part	0.0150
2.	1021	1538	0	0.130	danga	Part	0.0900
3.	1448	7167	0	17.000	sunā	Part	2.7500
4.	1449	7115	0	10.550	sunā	Part	0.3800
5.	1659	3446	0	0.1800	danga	Part	0.1800
6.	1662	2162	0	0.070	bastu	Part	0.0250
7.	1682	7167	0	6.250	shali	Part	4.0500
							7.4900

13. We have set out only a part of the Schedule as taken note of by the Supreme Court to illustrate the situation. The Supreme Court held that the description of the field/ khasras could not be said to be sufficient merely because the area falling in each of the fields/ khasras are specifically set out. The Supreme Court observed as follows:

“So far as the question whether the impugned notification meets the requirement of Section 3-A(1) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of lands in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law.”

(emphasis supplied)

14. In this decision, the Supreme Court also held that further steps taken in pursuance of a defective notification under Section 3A of the Act would not cure the defect and the acquisition, even if concluded, would be of no avail. The Supreme Court observed:

“11. About the argument based on vesting of the land in the Central Government, it is to be seen that if the initial notification is bad, all steps taken in pursuance thereof will fall with it. Vesting under Section 3-D(2) arises on a declaration by the Central Government under Section 3-D(1). The declaration is the result of disposal of objections under

*Section 3-C. Each step is a consequence of earlier step and in that sense all the steps are linked to the initial notification for acquisition under Sections 3-A(1) and (2). **This initial notification has been held to be not in accordance with law. When the foundation goes, rest of the edifice falls. The invalid notification under Section 3-A renders all subsequent steps invalid.** Therefore, vesting of land in the Central Government in the present case cannot be said to be lawful and it does not advance the case of the competent authority or NHAI. Taking possession of the land is yet another step in the same sequence and is again subject to the initial notification being held valid. The initial notification having been invalidated, there can be no legal or valid vesting of land in favour of the Central Government.”*

(emphasis supplied)

15. On the same lines, reliance is placed on the decision of the Supreme Court in ***Madhya Pradesh Housing Board v. Mohd. Shafi and Others***, (1992) 2 SCC 168. This was a case relating to acquisition of land under the Land Acquisition Act, 1894. The Supreme Court in this decision observed as follows:

*“8. It is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. **Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts.** The object of issuing a notification under Section 4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be*

*needed by the government for the “public purpose” mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. **The notification is, thus, required to give with sufficient clarity not only the “public purpose” for which the acquisition proceedings are being commenced but also the “locality” where the land is situate with as full a description as possible of the land proposed to be acquired to enable the “interested” persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged “public purpose” also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.***

9. A reference to the schedule appended to the Section 4(1) notification, in the instant case, shows that the only description given about the particulars of 2.298 hectares of the land proposed to be acquired is that the same is situate in District Mandsaur, Tehsil Mandsaur, Village Mandsaur. In column (6) the “public purpose” for which the land is required is stated to be “residential”.

10. In the schedule to the notification issued under Section 6 of the Act, particulars of khasra numbers with the extent of land in each khasra number have been provided. The “public purpose” has been stated to be “for housing scheme of housing board” and it is also stated against column (3) that “the plan of the land may be inspected in the office of the Collector”. Why these particulars were not given in the Section 4 notification has not been explained.

17. That apart, this case also discloses non-application of mind by the authorities concerned and rather casual manner in dealing with the property of the citizens vitiating the acquisition proceedings.”

(emphasis supplied)

16. The submission of learned counsel for the petitioners is that the present is a much worse case than **Competent Authority** (supra) in as much as, the Schedule to the notification does not even indicate the actual extent of land falling in Khasras Nos. 336 min and 338 min separately. Even if, that had been done, it would not have been sufficient in view of the decision in **Competent Authority** (supra). Moreover, even that description is not accurate vis-à-vis the land plan and the joint survey report.

17. The aforesaid position is a matter of record and is not disputed by the respondents. In fact, the Joint Survey carried out by the respondents itself establishes the completely deficient and defective notification issued under Section 3A(1) of the National Highways Act, 1956. The description of the land sought to be acquired in the Schedule to the notification was not sufficient to enable the petitioners to exercise their rights to object to the acquisition, since only the area proposed to be acquired from Khasra Nos. 336 min and 338 min cumulatively were disclosed, without disclosing the actual boundaries of the area sought to be acquired in each of these Khasras. Even though a land plan is stated to form part of the notification, as noticed above, the position which emerges from the said land plan is altogether different from the description of the proposed area sought to be acquired, as

disclosed in the Schedule to the notification. It is also different from the description in the Joint Survey Plan.

18. The aforesaid being the position, in the light of the decisions of the Supreme Court taken note of hereinabove, in our view, the notification issued by the respondents – both under Section 3A(1), dated 02.01.2014 and Section 3D, dated 14.10.2014 cannot be sustained. We, accordingly, quash the same.

19. The petitions stand disposed of in the aforesaid terms.

VIPIN SANGHI, J.

SANJEEV NARULA, J.

AUGUST 28, 2019

N.Khanna