

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-10537-2021(O&M)  
Date of decision: 30.06.2021

**M/s Sharman Spinning Mills Pvt. Ltd. And others**

**.....Petitioners**

Versus

**Union of India and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL  
HON'BLE MRS JUSTICE ARCHANA PURI**

Present: Mr.Raman Sharma, Advocate, for the petitioners

Mr. Raghujeet Singh Madan, Advocate, for  
respondent no.2

**ANIL KSHETARPAL, J.**

1. The State's enabling power to acquire/expropriate the private property for public use is known as 'Eminent domain'. Such power of the State, provincial or national Government, is drawn from Entry No. 42 of List III of Seventh Schedule of the Constitution of India. Article 31A of the Constitution of India saves such laws, subject to adequately compensating the owner. In compulsory acquisition of the property by the State, no doubt, an owner stands deprived from property against his wishes but such enabling power has stood test of time on the basis of a well known concept that the public interest is required to be given precedence over the private interest. No doubt, even after deletion of the right to property from the chapter of fundamental rights in the Constitution of India, it nonetheless continues to be a constitutional

right under Article 300A. Hence, no one can be deprived of the property except in accordance with law. There is normal tendency to hold property close to chest while trying to repel the efforts to take it away, more particularly, when it is against wishes. However, the State is expected to exercise such enabling power only when the public interest is required to be given paramouncy over the rights of an individual or a group of individuals. Through this petition, the petitioners are making attempt to resist construction of a bypass/ring road, which once completed, shall become a part of an existing national highway.

**Issues:-**

2. In the considered view of this Bench, the following issues arise for adjudication:-

(i) Before issuance of a notification under Section 3A of the National Highway Act, 1956, (hereinafter referred to as the '1956 Act') intending to acquire a piece of land, is it mandatory to first declare the aforesaid land as a National Highway under Section 2 of the 1956 Act?

(ii) Whether the Competent Authority while deciding objections under Section 3C of the 1956 Act against the proposed acquisition is required to pass an order like a judicial order passed by a legally trained mind?

**3.Facts:-**

3.1 In short, the facts of the case are that the Central Government on being satisfied that some pieces of land would be required for building (Widening/two lane with paved shoulder/four laning etc.....) maintenance, management and operation of a National

Highway, issued a notification under Section 3A(1) of the 1956 Act. The petitioners claim to be owners of the land measuring 32 acres approximately, out of which a substantial part is sought to be acquired for building a national highway. They claim to have purchased the land for expansion of their existing manufacturing plant where export quality shawls, scarfs and suits etc are produced. On 22.12.2020, they filed objections contesting the compulsory acquisition before the competent authority. In the objection petition, it is contended that no notification u/s 3A of the 1956 Act could have been issued for constructing a ring road around Ludhiana City as it does not fall in the definition of a National Highway. It is further pointed out that the petitioners' land falls beyond the radius of 18 kms from Deputy Commissioner, Ludhiana's office and therefore, their land has been included by mistake. The objectors also drew the attention of the competent authority to various other alternative routes/possibilities. In the absence of the prior environmental clearance, no notification u/s 3A could have been issued. Undisputedly, on 5.12.2020 the Competent Authority, after granting an opportunity of hearing to the petitioners, dismissed the objections .

3.2 Through this writ petition, the writ petitioners have opted to challenge the notification dated 25.11.2020 (Section 3A of the 1956 Act) as also the order dated 05.02.2021. On 28.01.2021, learned counsel representing the National Highway Authority of India (hereafter for short NHAI), who had appeared pursuant to the supply of an advance copy of the writ petition, was requested to assist the Court.

4. With the consent of the learned counsel for the parties,

arguments have been heard at length and with their able assistance perused the paper book. On liberty being granted, learned counsel for the parties have filed their written arguments and synopsis. In the written arguments, Learned counsel representing the petitioners made a grievance that he has not been supplied a copy of the documents supplied to the court by Learned counsel of the NHAI on the day of hearing. Hence, he was provided with the copy of the documents with further liberty to send his additional submissions, if any. He has again forwarded revised submissions on the official e-mail of the Court.

#### **5. Contentions of the learned counsels:-**

##### **5.1 Learned counsel representing the petitioners has elaborated on the following contentions:-**

- (i) In absence of formal reply, the documents produced by the respondents cannot be looked into by the bench.
- (ii) Notification P-1 is with respect to acquisition of land for a Ring Road and not a bypass road.
- (iii) The petitioner NO.1 is running 40 years old industry employing 1000 employees.
- (iv) That no notification under Section 3A could be issued before declaration of the land/property to be a National Highway as per Section 2 of the 1956 Act.
- (v) Notification is w.r.t. existing road and the land proposed to be acquired has to be within 18 kms radius from Deputy Commissioner office and since the petitioner's land is at a distance of 21 kms thereof, therefore, the land of the petitioners has been wrongly included.

(vi) While extensively reading order on 05.12.2020 Annexure P-2 passed by competent authority, he contends that a non-speaking order has been passed by the authority without examining in detail the objections raised. (vii) The land was purchased for industrial purpose and therefore, it could not be acquired.

(viii) In absence of assessment of social impact, no acquisition could be made in view of provisions of the Right to Fair Compensation and Transparency of Land Acquisition, Re-habilitation and Re-settlement Act, 2013 (hereinafter referred to as the '2013 Act').

(ix) Before issuance of notification u/s 3A, the environment impact assessment has not been carried out and hence the notification is illegal.

(x) the proposed ring road should have been aligned in such a manner to allow it to pass through open un-constructed area.

5.2 Per contra, learned counsel representing the respondent while drawing the attention of the Court to the notification dated 04.04.2011 contend that the Government of India in supersession of previous notification notified new National Highway Numbers including National Highway No.44 which starts from near Srinagar and goes upto Kanyakumari (Cape COMORIN in the State of Tamil Nadu). Further while drawing the attention of the Court to the notification dated 03.12.2020, submits that National Highway no. 205K was declared as a National Highway starting from its junction with National Highway No.

205 near Buhura Village (Rupnagar) and terminating at its junction with NH 205 bypass near village Mamupur (Kharar) in the State of Punjab. Now, a link road is sought to be carved out connecting NH 205 K to NH 44 and the land is sought to be acquired for laying down the aforesaid link road. The link road is a part of already declared National Highway and therefore, the acquisition is for existing National Highway. The Competent Authority after grant of opportunity of hearing has duly considered the objections. The land is sought to be acquired in the public interest. The Government has followed the proper procedure and hence, prayed for the dismissal of the writ petition.

#### **6. Statutory Provisions:-**

Before this Bench proceeds to evaluate the arguments of the learned counsel for the parties, it is appropriate to note the relevant statutory provisions.

#### **The National Highway Act, 1956 ( hereinafter “the 1956 Act”)**

**2. Declaration of certain highways to be national highways.—**(1) Each of the highways specified in the Schedule is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.

**3-A. Power to acquire land, etc.—**(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a

brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.]

**3-J. Land Acquisition Act 1 of 1894 not to apply.**— Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.

**The Land Acquisition Act, 1894 ( hereinafter for short “the 1894 Act”)**

**5-A. Hearing of objections.**—(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, <sup>2</sup>[within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard <sup>1</sup>[in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, <sup>3</sup>[either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the <sup>4</sup>[appropriate Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

**The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ( hereinafter for Short “the 2013 Act”)**

**15. Hearing of objections.**—(1) Any person interested in any land which has been notified under sub-section (1) of Section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the

publication of the preliminary notification, object to—

- (a) the area and suitability of land proposed to be acquired;
- (b) justification offered for public purpose;
- (c) the findings of the Social Impact Assessment report.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.

**105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.**—(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of Section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if,

before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

THE FOURTH SCHEDULE

(See Section 105)

List of Enactments regulating Land Acquisition and Rehabilitation and Resettlement

1. to 6 xxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxx
7. The National Highways Act, 1956 (48 of 1956).
8. to 13 xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxx

The Railways Act, 1989. ( hereinafter for short “the 1989 Act”

**20-D. Hearing of objections, etc.**— (1) Any person interested in the land may, within a period of thirty days from the date of publication of the notification under sub-section (1) of Section 20-A, object to the acquisition of land for the purpose mentioned in that sub-section.

(2) 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 enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

*Explanation.*—For the purposes of this sub-section, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of Section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

The General Clauses Act, 1897

**8. Construction of references to repealed enactments.**

— (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any

Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then reference in any <sup>6</sup>[Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]

7. **Discussion by the bench:-**

7.1 With respect to the Ist argument, it may be noted that in the writ petition no notice has issued . When Learned counsel representing the NHAI entered appearance pursuant to the supply of an advance copy of the writ petition on the Ist date of hearing, he was requested to assist the bench. Still further, the respondent has only produced copies of 2 notifications issued by the Union of India which have been duly published in The Gazette of India and a copy of lay out plan of the proposed road. The correctness of these documents has not been disputed. On the request of the counsel representing the petitioner, a copy thereof has been supplied and the petitioner has forwarded his written arguments after examining these documents. In the considered view of this Bench, the petitioners have been given sufficient opportunity to respond. Still further, such matters are required to be disposed of expeditiously failing which the public interest is likely to suffer.

7.2. The next contention of the petition in para (ii) is that the notification Anx. P-1 is not with respect to bypass road but a ring road. At this stage, it would be appropriate to extract the relevant part of the notification dated 25.11.2020:-

“In exercise of powers conferred sub-section(1) of section 3A of the National Highways Act, 1956( 48 of 1956)

( hereinafter referred to the said Act), the Central Government, after being satisfied that for the public purpose, the land, the brief description of which is given in the Schedule below is required for building (Widening/two lane with paved shoulder/four laning etc.....) maintenance, management and operation of No. yet to be assigned in the stretch of land from Km.0 to km.18 ( DC Office Ludhiana) in the district of LUDHIANA in the state of Punjab, hereby declares its intention to acquire such land.”

A ring road is a bypass road. As per the Cambridge Dictionary, bypass road has been defined as “a main road that goes around the edge of a town, allowing traffic to avoid the town centre”. As per the Concise Oxford English Dictionary( Tenth Edition) bypass is “a road passing round a town to provide an alternative route for through traffic”. As per the Merriam-Webster.com, a ring road is defined as a highway skirting an urban area. The object of constructing a bypass or a ring road is to construct an alternative route for smooth flow of the vehicles which are not required to enter the town. In para 5 and 6 of the writ petition, the petitioners have themselves pleaded that the land is required for building a ring road. Hence, there is no difference between a bypass road or a ring road.

7.3 With respect to argument no. (iii), it may be noted here that the petitioners have themselves pleaded that they have purchased the land for expansion of their existing industry. The land is encircled by the boundary wall. Hence, except the boundary wall, the piece of land sought to be acquired, has no construction. As previously noted, convenience of the public at large has to be given precedence over the the rights of an individual. The compulsory acquisition of the property

may not be to the liking of the individuals, however, in the larger public interest, if such acquisition is being made, the Courts are not expected to come in the rescue of someone to secure the private interest in preference to the larger public interest. As per the provisions of the Act, the private individuals are required to be adequately compensated. As per the notification dated 28.12.2017, while determining compensation, provisions of Section 24, 26 to 30 of the 2013 Act have to be kept in mind. Thus, the Govt. has already taken adequate steps to secure the interest of the land owners who will stand deprived of the land. Still further, the scope of judicial review in such matters is limited and unless the process of acquisition is shown to be without application of mind or suffering from total arbitrariness or in violation of the enactment under which acquisition is being made, a Constitutional Court should be loathe to interfere. Hence, we find no substance in the petition. Still further, u/s 3C of the 1956 Act, an interested person can object to the acquisition only as per the provision which has been elaborately discussed in para 7.6.1.

7.4 With respect to argument No. (iv) it would be appropriate to carefully read Section 2 and 3A of 1956 Act. From a bare reading of the aforesaid two provisions, it becomes clear that both the provisions are independent. The Parliament has used the expression “any land is required for building, maintenance, management and operation of a National Highway or part thereof.” Hence, the argument of the learned counsel that it is mandatory that such land should be declared as a National Highway as provided under Section 2(2) before a notification under Section 3A can be issued, proposing to acquire the land, is

without substance. If such would have been the intention of the Parliament, the expression used 'any land' would have been substituted with land under the National Highways. Still further, the expression which has been used is "for the building, maintenance, management or operation of a national highway". In other words, any piece of land which is required for building or operation of a National Highway can be included in the notification under Section 3A of the Act. Even if, as projected by the learned counsel representing the petitioner, both the provisions are read together, still in the considered view of this Bench, it would not be appropriate to conclude that declaration of a piece of land as a National Highway is a sine-qua-non for issuance of a notification under Section 3A of the Act. While interpreting the provisions of the Act, effort must be made to assign a meaning to each word used by the legislature while keeping in mind the object sought to be achieved. On literal interpretation of Section 3A, it becomes apparent that any piece of land which is likely to be required for the building or operation of a National Highway can be included in the notification under section 3A. Same is the interpretation on plain reading of the provision. Still further, Section 3A does not refer to Section 2(2) of the 1956 Act. Learned counsel representing the petitioner relies upon certain observations made in para 48 of the judgment passed by the Hon'ble Supreme Court in **Project Director, Project Implementation vs. PV Krishnamurthy and others (2021) 3 SCC 572**, which are extracted as under:-

48 In the present case, we have to consider the sweep of the 1956 Act in light to the amended provisions, which came into force with effect from 24.1.1997. The 1956 Act extends to the whole of India and has come into force on 15.4.1957. Section 2(1) thereof is in the nature of

declaration by Parliament that each of the highways specified in the Schedule appended to the 1956 Act to be a national highway. The Schedule appended in the end given the description of such highways. Sub-section (2) of Section 2, however, empowers the Central Government to declare “any other highway” to be a national highway by publishing a notification in the Official Gazette in that behalf and upon such publication, the highway shall be deemed to be specified in the stated Schedule. This provision contains a legal fiction.”

On careful reading of the aforesaid judgment, it is apparent that the questions involved in the aforesaid case were entirely different. In that case, as noticed in para 6, a notification under Section 2(2) had already been issued.

7.4.1 On careful reading of the aforesaid judgment, with highest respect, it is not possible to deduce that no notification under Section 3A could be issued without first declaring a piece of land to be a National Highway by issuing a notification under Section 2(2) of the 1956 Act. In that case, the Court was primarily considering the issue of competence of the Central Govt. to notify open greenfield land as a National Highway. While reversing the judgment passed by the High Court, the Supreme Court upheld the notification issued under Section 3A of the Act. It is well settled that one sentence in a judgment cannot be read in isolation of the context in which it has been written and it is only ratio decidendi which is binding under Article 141 of the Constitution of India.

7.4.2 This contention can be examined from another angle. Sections 3A to 3J were inserted in the 1956 Act for the first time w.e.f. 24.1.1997. These newly inserted provisions enabled the Central Government to expeditiously acquire the land for building National Highways. If the Parliament intended that notification u/s 3A has to be

preceded by a notification U/s 2, it would have been specifically and explicitly provided therein. In the absence of any categoric provision, it shall not be appropriate to read the requirement of declaration of a piece of land as a National Highway before issuance of any notification under Section 3A(1) of the 1956 Act as it would amount to reading something which does not exist.

7.4.3 Further, this argument can be examined from yet another perspective. Once any other highway is declared as a national highway, the same vest in the Union Government u/s 4 and thereafter, the responsibility to develop and maintain the same rests with the Central Government u/s 5 . Thus, the object of declaration of national highway is with respect to its vesting and responsibility to develop and manage the road and not with regard to the acquisition of the land for the construction of a national highway. In the judgment passed by the Hon'ble Supreme Court in Project Manager( Supra), it has been held that even open greenfield land can also be declared as a National Highway.

7.4.4 This argument of learned counsel representing the petitioners can be examined from yet another perspective. On careful perusal of the notifications issued under Section 2(2) of the 1956 Act, it is apparent that the Central Govt. notifies a road to be national highway by denoting the cities/landmarks/milestones from where it starts and comes to an end. No elaborate notification is required to be issued by specifying all the cities, towns or villages through which such highway passes/moves. Even the exact length of the Highway is not required to be specified. In these circumstances, it can safely assumed that small or minuscule changes in the alignment of the national highway or

construction of a ring road or bypass or link road, wherever it is intended to, becomes part of the existing national highway and no separate notification is required to be issued. In this case, the petitioners have pleaded that a ring road around Ludhiana city is being built. In any case, such open land, after having been build and developed would become part of the existing national highway. Reference in this regard can be made to judgments passed by Gauhati & Rajasthan High Courts in Md.Zakir Hussain Vs. State of Assam (2003)2 Gauhati Law Reports 324 and Mahendra Pal Vs. Union of India & Ors. CWP 4675 of 2015 ( Decided on 26.09.2016) respectively.

7.5 With respect to argument no. (v) of the learned counsel, one is required to carefully examine the notification under Section 3A(1) issued on 25.11.2020. It is not in dispute that survey/block number alongwith the name of the village has been given in sufficient detail in the notification. The piece of land which is sought to be acquired has been identified, not only with survey/block number but even the area which is required to be acquired has been given from each survey or block number. No doubt, there is reference to Deputy Commissioner's office, Ludhiana, however, it is nowhere provided that the stretch of land sought to be acquired is located within the distance of 0 to 18 kms from the Deputy Commissioner office. Therefore, the Bench cannot countenance the argument of the learned counsel. It may be noted here that while filing objections, the petitioners did draw the attention of the competent authority to this fact, who after considering the aforesaid fact found that the objection has no substance. In fact, the petitioners are trying to suggest that there is a mistake whereas the respondents are

categoric that the land is required for a public purpose. In view thereof, there is no substance in the contention.

7.5.1 Next part of the contention also does not have any substance. From careful reading of the notification 'Annexure P-1' it is apparent that in the notification, the Central Government while issuing the notification has used the same language as is used by the Parliament while enacting the 1956 Act. Still further, it is not the case of the petitioners that there is an existing road. Further, the interested person is entitled to object to the acquisition on the grounds specified in Section 3C of 1956 Act which has been discussed in detail in para 7.6.1.

7.6 Next argument as noticed in para (vi) above is with regard to the correctness of the order passed by the competent authority. He contends that the competent authority has not passed a speaking order while examining each and every objection independently after analysing its merits. He relies upon the judgment in Nareshbhai Bhagubhai Vs. Union of India (2019) 15 SCC 1. It may be noted here that Section 3C of the 1956 Act enables a person who is interested in the land to file objections with respect to the use of the land for the purpose or purposes mentioned in the sub-section. The competent authority is required to give an opportunity of hearing to the objector, either in person or by a legal practitioner, before taking decision either to allow or disallow the objections. Such obligation to decide cannot be equated with a judicial order, passed by a legally trained mind. The competent authority is not required to be a person with legal knowledge. Hence, it would not be appropriate to expect that the competent authority would pass an order in the manner suggested by the learned counsel representing the

petitioners. In these cases, the court would form an opinion on a careful reading of the order as to whether the objections to the acquisition have been considered or not. Still further, the Writ Court does not sit in appeal over the order passed. The court is expected to examine its validity while exercising the power of judicial review. Once on reading of the order, the court comes to conclusion that the competent authority has considered the objections while applying its mind, it would not be appropriate to interfere. On careful reading of the order, the Competent Authority, after noting the various objections, found that the notification has been issued after prior approval of alignment of the road and the piece of land shall be required to be acquired for building the bypass road which will eventually become principal road (National Highway) after the previous one is abandoned and ceases to be a National Highway. This bench has carefully read the judgment of the Supreme Court in Nareshbhai Bhagubhai(Supra). In that case the acquisition of the land was under The Railways Act, 1989. The court noticed that after granting an opportunity of hearing to the objectors on 30.7.2011, no order has been passed by the competent authority although the Railways had taken a contradictory stand with respect to the order passed on the objections. It was further found that the personal hearing can not be reduced to empty formality or a mere eyewash. Hence, the Court held that the competent authority failed to comply with the statutory requirement. However, instead of quashing the land acquisition, on the statement of the counsel representing the land owners, the Court directed that the compensation for the land acquired shall be paid at the current rate. The Hon'ble Supreme Court in Union of India Vs. Kushala

Shetty & Ors. (2011)<sup>12</sup> SCC69 have held that the competent authority under the 1956 Act is not expected to be manned by a legally trained mind who can write an order like a judgment dealing with all the objection meticulously.

7.6.1 This argument can be examined from another perspective. The language of Section 5-A of the Land Acquisition Act 1894, Section 15 of the 2013 Act, Section 15 of the Railways Act 1989 and Section 3C of the 1956 Act are not *pari-materia*. Under Section 3C, interested person can object to the use of the land for the purpose or purposes mentioned in that sub-section. Section 5-A the 1894 Act enables the interested person to object to the acquisition of land. The right to object to the acquisition has been further elaborated in Section 13 of the 2013 Act. Similarly, Section 20-D of the Act 1989 also enables the interested person to object to the acquisition. However Section 3C only enable the person interested to object to use or the land for the purpose or purposes mentioned in that sub-section. The Hon'ble Supreme Court while noticing distinction in the language of the 1894 Act and the 1956 Act in *Competent Authority Vs. Bangalore Jute Factory & Ors.* (2005) 13 SCC 477 held that under the 1956 Act the interested persons have no right to object to acquisition of land except on the question of its user, in paragraph 8 which is extracted as under:-

“8. The absence of a plan also renders the right to file objections under Section 3-C(1), nugatory. In the absence of a plan, it is impossible to ascertain or know which part of the acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add

that unlike Section 5-A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3-C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under Section 3-A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for NHAI that failure to file objections disentitles the writ petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this Court in *Delhi Admn. v. Gurdip Singh Uban*<sup>1</sup>. In our view, this judgment has no application in the facts of the present case where the right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5-A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. Dehors the right to file objection, the validity of the notification has to be considered. Failure to file objection to the notification under Section 3-C, therefore, cannot non-suit the writ petitioners in this case.

In view of the above, we express our inability to accept the contention of the petitioners.

7.7 Next argument under (vii) does not need much discussion as it is not in dispute that the piece of land sought to be acquired has no construction except a boundary wall. Still further, the Parliament has used the expression “*Any Land*” which would obviously include any piece of land required for building the national highway. The acquisition of land for developing a colony cannot be equated with the acquisition of the land for building the national highway or laying a railway line. The developing authority cannot be expected to change its alignment merely because its owner is objecting to the acquisition.

7.8 Next argument under para (viii) is with respect to the effect

that the authorities have not carried out social impact assessment as required under part D of Chapter II of the 2013 Act. It may be noted here that there is no parallel provision in the National Highway Act 1956, requiring the Central Government to carry out social impact assessment. The Act of 1956 is an independent Act and on careful reading of Section 105 read with the IVth Schedule, it is apparent that the provisions of the 2013 Act will not apply to the acquisition under the 1956 Act. It is a different matter that the Govt. has for the benefit of the land owners made a provision for selective applicability of the 2013 Act with respect to determination of compensation. However, the attention of the Bench has not been drawn to any notification which may establish that even Part D of Chapter II of the 2013 Act has been made applicable.

7.8.1 From careful reading of Section 3(j) the 1956 Act, reproduced above, which was struck down by the court on the ground of discrimination, it is apparent that the Parliament never intended to apply the provisions of Land Acquisition Act, 1894, for the acquisition of the land under the 1956 Act. The land Acquisition Act, 1894, was repealed by the Act of 2013. In view of Section 8 of the General Clauses Act, 1897, while interpreting the provisions of a Central Act or Regulation made after commencement of this Act, if a former enactment is repealed by some other enactment then unless a different intention appears, it would be construed to be referring to the provisions of the new/successor or re-enacted Act. Hence, it is safe to conclude that the provisions of the 2013 Act except specifically provided cannot be read into the National Highway Act, 1956.

7.9 Next argument of the petitioner's counsel in para (ix) is with regards to failure of the Government to obtain environment clearance before issuance of notification under Section 3A of the 1956 Act. Answer to this argument lies in para 83 of the judgment relied upon by learned counsel for the petitioners in Project Manager ( Supra) which is extracted as under:-

“83. On plain and harmonious construction of the provisions of the two enactments (i.e. the 1956 Act and the 1988 Act), it is amply clear that at the stage of issuing notifications under Section 2(2) or for that matter, Section 3-A of the Act, there is no need to seek prior permission (by the Central Government) under environmental laws or the forest laws, as the case may be. Further, the purpose of public hearing in the enactments concerned (namely, the 1956 and the 1988 Acts on the one hand and the 1986 Act or forest laws, on the other) is qualitatively different and contextual to matters relevant under the enactment concerned. The competent authority in the former, may be satisfied that the acquisition of land in question is for public purpose, but if the competent authority under the latter legislations is of the view that the execution of the project in question (construction of a national highway) or any portion thereof may cause irretrievable comprehensive impact on the environment or the forests, as the case may be, would be competent to deny permission to such a project as a whole or part thereof. That decision must then prevail, being in public interest. This is not to say that one competent authority is superior to the other, but such balancing becomes essential to effectuate the public purposes under the stated enactments. It is quite possible that the executing agency (NHAI) may be able to convince the competent authority under the latter enactments that certain remedial steps can minimise or mitigate the environmental impact or to the forest, as the case may be, and commend it to accord conditional approval/permission to execute the project so as to conform to the tenets of sustainable development. If that suggestion commends to the competent authority under the environment/forest laws, such clearance/permission can be granted after the public hearing.”

7.10 The last argument of learned counsel in para (x) cannot be

accepted as members of this court do not have expertise in the field of laying roads. The alignment of the road is dependent on various factors which must have been examined by the authorities before taking the decision to acquire the land. Such decision must be left to the experts and does not fall within the scope of judicial review through a court unless the court finds the decision to be arbitrary or illegal.

8. In view of the aforesaid discussions, finding no merit, the writ is dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)**  
**JUDGE**

**30.06.2021**  
rekha

**(ARCHANA PURI)**  
**JUDGE**

|                           |          |
|---------------------------|----------|
| Whether speaking/reasoned | Yes / No |
| Whether Reportable        | Yes / No |