

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No. 26672 of 2020

An application under Articles 226 & 227 of the
Constitution of India.

M/s. Sunrise Eggs Firms Petitioner

-Versus-

Union of India & others Opp. Parties

For Petitioner: Mr. G. Mukherjee,
Senior Advocate

For Opp. Parties: Mr. U.C. Mohanty &
Mr. A. Das Advocate for
O.P. Nos. 2, 3 & 7.
Mr. H.M. Dhal,
Addl. Govt. Advocate
for O.P. Nos. 4 to 6

J U D G M E N T

P R E S E N T:

MR. JUSTICE BISWAJIT MOHANTY
MISS JUSTICE SAVITRI RATHO

Date of Hearing: 15.07.2022 Date of Judgment: 26.07.2022

B. Mohanty, J. This writ petition has been filed by the
petitioner challenging the notification dated 27.12.2019
published by the Government of India in Ministry of Road
Transport and Highways Department under sub-

section(1) of Section 3A of the National Highways Act, 1956, for short the 'Act' published in daily newspaper 'The Dharitri', regarding acquisition of lands of the petitioner for the purpose of construction of Raipur to Vishakhapatnam Economic Corridor and consequently prayer has been made for quashing of the said Notification which was published in the newspaper on 23.1.2020. The petitioner has also made an alternative prayer to direct the opposite parties more particularly opposite party Nos. 3 and 7 to modify the alignment of the proposed road in accordance with the enquiry report under Annexure-5 and to consider and dispose of the objection under Annexure-6 as per Section 3C of the 'Act'.

2. The case of the petitioner is that it is a registered farm and the said farm purchased Ac.24.00 cents land which was originally classified as 'Dongoro' i.e. dry land. Out of the said land Ac.14.00 cents has been converted to non-agricultural category under Section 8A of the Orissa Land Reforms Act, 1960 and the petitioner is

in uninterrupted possession of the same. The petitioner ventured to construct a mega poultry farm namely, 'Sunrise Egg Farm' over Plot Nos. 9 to 13 of Khata No. 108/477. The total project cost was estimated of Rs. 14.00 crores. The petitioner availed loan from the bank for establishing the said project. Accordingly the petitioner has constructed boundary wall and construction of ware house, office building, water tank, seven numbers of poultry shed, staff quarters and other ancillaries have already been completed by spending Rs.8.00 crores and electricity connection has been obtained to the farm site by spending Rs.17.00 lakhs and the project is ready to have its maiden production. Copies of the relevant R.O.Rs. have been filed under Annexure-1 series. While so, on 23.1.2020 the Land Acquisition Authorities published Notification in daily newspaper i.e. 'The Dharitri' regarding acquisition of land for construction of Raipur to Vishakhapatnam Economic Corridor/Express Highway under Section 3A of the 'Act', a copy of which has been annexed to the writ petition as

Annexure-2. According to the petitioner the Notification under Section 3A as indicated above violates sub-section 2 of Section 3A of the 'Act' as it does not give details of the properties along with the brief description of the land proposed to be acquired. Further the case of the petitioner is that the said Notification under Annexure-2 is otherwise illegal as the same does not indicate as to which portion of the land is going to be acquired. The petitioner only came to know about the exact area to be acquired when the staff of Land Acquisition Officer came to the spot on 16.8.2020 for conducting demarcation and put pillars over the land to mark the exact area. Only then the petitioner could realize that the proposed Highway is going to pass in the middle of the land of the petitioner as a result of which, one big patch of petitioner's land will be divided into small patches and partly constructed buildings have to be completely demolished and accordingly they would suffer huge financial loss of Rs. 14.00 crores. Accordingly, on 17.8.2020 the partner of the farm through whom the writ

petition has been filed namely, Mohammed Rafi preferred an objection against the proposed land acquisition with regard to the land situated at village Kamra under Annexure-4 to Tahasildar, Borigumma (opposite party No.6). The Tahasildar, Borigumma conducted an enquiry and recorded his observation that the petitioner is going to suffer a lot if the alignment of the proposed highway is not changed. This enquiry report which has been addressed to the Land Acquisition Officer, Collectorate, Koraput (opposite party No.7) has been annexed to the writ petition as Annexure-5. There he indicated that the project of the petitioner farm will suffer huge financial loss, if the separation takes place due to the division of the land. Thereafter, on 22.9.2020 the partner of the petitioner farm submitted a representation/objection under Annexure-6 to opposite party No.7 praying for change of alignment to the extreme corner of the farm so as to save the project from being destroyed. When there was no response from the side of the authorities, the

present writ petition was filed on 6.10.2020 making the above noted prayers.

3. A counter affidavit has been filed by opposite party Nos. 2, 3 & 7. They have taken a stand that the Notification vide Annexure-B/2 dated 18.7.2019 published in exercise of powers conferred by clause(a) of Section 3 of the 'Act', by the Central Government in Ministry of Road Transport and Highways authorized Tahasildar-cum-Land Acquisition Officer, Borigumma to act as the Competent Authority to perform the functions of such authorities under "the Act" in respect of the stretch of land from Km. 238.200 to Km. 363.320 of the newly proposed highway for building (widening/four-laning, etc.), maintenance management and operation in the State of Odisha. With regard to this stretch of land the earlier mentioned notification under Annexure-2 or Annexure-A/2 was issued later. The notification under sub-section(1) of Section 3A of the 'Act' which was published under Annexure-2 made it clear that any person interested in the lands indicated therein may

within 21 days from the date of publication of the notification can object to the use of such land for the aforesaid purpose under sub-section(1) of Section 3C of the 'Act'. It also made it clear that every objection shall be made to the Competent Authority namely, Tahasildar-cum-Land Acquisition Officer, Boriguma in writing and shall set out the grounds thereof and the Competent Authority would give the objector an opportunity of being heard, either in person or by a legal practitioner and may after hearing all such objections and making such further enquiry, if any, as the Competent Authority thinks necessary, by order, either allow or disallow the objections. The said notification while giving brief description of the land to be acquired also made it clear that the land plans and other details of the land to be acquired under the notification are available and can be inspected by the interested person in the Office of Competent Authority i.e. Tahasildar-cum-Land Acquisition Officer, Boriguma. Despite publication of this notification in the newspaper i.e. 'Times of India' and 'The

Dharitri' on 23.1.2020 under Annexure-2, the petitioner never cared to file its objection within time as indicated in the notification and since the land has already vested in the Central Government with publication of notification under Section 3D of the 'Act' on 10.9.2020 under Annexure-C/2 the petitioner has no legal right to challenge the notification under sub-section (1) of Section 3A of the 'Act' at this stage. They have also taken a stand that the public interest cannot be defeated to uphold the private interest of the petitioner as the project deals with Raipur to Visakhapatnam Economic Corridor. They have further taken a stand that the notification under Annexure-2 or Annexure-A/2 clearly contains a brief description of the land. Therefore, the impugned notification cannot be termed as illegal and by filing the present writ petition, an effort has been made by the petitioner to delay the project. With regard to the averments made relating to existence of boundary wall and construction of buildings and conversion of land from Dongoro to non-agricultural category, their stand is

that all these will be taken care of/assessed at the appropriate stage of proceeding as provided under Section 3G of the “Act”. With regard to map at Annexure-3 filed in the writ petition their stand is that this is a map prepared by the petitioner to satisfy its own vested interest to disturb the proposed national highway and the petitioner is estopped from raising all the issues as it never filed objection as provided under law when the notification under Annexure-2 was within his knowledge. With regard to the prayer of the petitioner for change of alignment, their stand is that the same is not tenable as prayed under Annexure-6. In this context they have relied upon the decision of the Supreme Court in the case of ***Union of India Vrs. Dr. Kushala Shetty and Others*** reported in ***AIR 2011 S.C. 3210***. Accordingly, their stand is that the writ petition being without any merit, should be dismissed.

4. The petitioner has filed a rejoinder affidavit reiterating that the authorities are bound to provide brief description of the land as required under sub-section(2)

of Section 3A of the 'Act' and since the details of the lands were not published, the notification under Annexure-2 or Annexure-A/2 is legally vulnerable. If the authorities would have submitted the details, the petitioner could have been able to file objection as per Section 3C of the 'Act'. It is also indicated in the rejoinder affidavit that though the notification under sub-section(1) of Section 3A of the 'Act' was published on 27.12.2019 however only on 2.1.2020 the Project Director, NHAI forwarded the same to the Tahasildar-cum-Land Acquisition Officer, Borigumma, which was received there as per Annexure-7 on 16.1.2020.

5. Mr. Goutam Mukherjee, learned Senior Counsel appearing for the petitioner at the outset submitted that the relevant plots for the purpose of the present case are Plot No. 9 falling under Khata No. 108/468 and plot Nos. 10 and 11 falling under Khata No. 108/447 of Mouza Kamara under Tahasil Borigumma whose R.O.Rs. have been filed under Annexure-1 series. He submitted that since the notification under sub-section(1) of Section 3A

of the 'Act' under Annexure-2 does not give a brief description of the land as required under sub-section(2) of Section 3A of the 'Act', such notification becomes legally vulnerable. He also submitted that the said notification does not contain the names of the owners and which part of the land is going to be acquired. According to him the notification under sub-section(1) of Section 3A of the 'Act' should have contained a clear cut identifiable description of the land including the things which are present over the said land. In this context, he relied on definition of land as contained in 3(a) of the "Act". Placing reliance on the decision of the Supreme Court in the case of **Competent Authority Vrs. Barangore Jute Factory and Others** reported in **(2005) 13 SCC 477**, he prayed that the notification under Annexure-2 should be quashed. He also submitted that there has been total non-application of mind in issuing the notification under sub-section(1) of Section 3A of the 'Act' under Annexure-2 in as much as by the time that notification was issued the kism of the lands have

already been changed from 'Dangar' to 'Gharabari' as would be clear from the R.O.Rs. under Annexure-1 series covering those plots. In such background also the notification under Annexure-2 is legally vulnerable. He also submitted that the gazette notification under sub-section(1) of Section 3A of the 'Act' was published on 27.12.2019. On 2.1.2020 vide Annexure-7 the Project Director, NHAI communicated the said notification to the Tahasildar-cum-Land Acquisition Officer, Boriguma which was received by him on 16.1.2020. By that time 21 days for submitting objection have already expired. Accordingly, the petitioner has committed no mistake in not filing the objection in time as such notification was even not known to the Tahasildar-cum-Land Acquisition Officer. In such background he submitted that the objection under Annexure-4 ought to be treated as objection to Annexure-2 under Section 3C of the 'Act' and letter under Annexure-5 should be treated as an order passed under Section 3C(2) of the 'Act'. He also submitted that the notification under Annexure-2 was

legally vulnerable as it violates sub-section(3) of Section 3A of the 'Act' as it was not published in a local newspaper having wide circulation in the area in which lands proposed to be acquired were situated. In this context with regard to the meaning of "Local Newspaper", Mr.Mukherjee relied upon the decision of the Supreme Court rendered in ***Diamond Sugar Mills Limited and Others Vrs. the State of Uttar Pradesh and Others*** reported in ***AIR 1961 SC 652*** and the case of ***Phoenix ARC Private Limited Vrs. Vishwa Bharti Vidya Mandir and others reported in AIR 2022 SC 1045***. Mr.Mukherjee submitted that the action of the authorities is malafide as though the petitioner has shifted seven structures after coming to know about Annexure-2 notification, again those lands to which such shifting has taken place, have been earmarked for acquisition in a fresh notification under Section 3A(1) of the 'Act'. With regard to the prayer for separate route/alignment, he stated that the prayer made under Annexure-6 should be treated as an objection under

Section 3C of the 'Act' in the background of the enquiry report under Annexure-5. Accordingly, the authorities in the alternative should be directed to take a decision on such objection.

6. Mr.U.C.Mohanty, learned counsel appearing for opposite party Nos. 2, 3 & 7 assisted by Mr.A.Das, learned counsel submitted that sub-section(2) of Section 3A of the 'Act' only reflects that the notification issued under sub-section(1) shall give a brief description of the land and nothing more and a perusal of Annexure-2/Annexure-A/2 would clearly show that the brief description of the land has been given. Further the said notification makes it clear that land plans and other details of the land to be acquired are available and can be inspected by the interested persons in the office of the Competent Authority. In such background he submits that the notification under Annexure-2 cannot be held to be in violation of sub-section(2) of Section 3A of the 'Act'.

With regard to submission of Mr.Mukherjee that 21 days have expired prior to receipt of the

communication under Annexure-7 enclosing a copy of notification under Annexure-2 by the Tahasildar-cum-Land Acquisition Officer, Boriguma, he submitted that the petitioner has itself averred at paragraph-5 of the writ petition about the paper publication of the notification being made on 23.1.2020 in 'Dharitri' newspaper, which is a well circulated vernacular newspaper of the State. Therefore the petitioner could have filed his objection as he knew about such publication under Annexure-2 within 21 days from 23.1.2020 which it never did. With regard to submissions of Mr.Mukherjee that the notification was not published in the local newspaper resulting in violation of sub-section(3) of Section 3A of the 'Act', he submitted that there exists no such pleading either in the writ petition or in the rejoinder and therefore, he should not be permitted to raise this issue at this stage of hearing. Even otherwise he submitted that the very fact that in paragraph-5 of the writ petition, the petitioner refers to notification published in the daily newspaper 'The Dharitri' on 23.1.2020, would make it

clear that the petitioner had knowledge about such notification. With regard to the allegations of malafide made by Mr.Mukherjee, he submitted that there exists no pleading whatsoever either in the writ petition or in the rejoinder filed by the petitioner on the same and accordingly, such argument should be ignored. Further with regard to submission of Mr.Mukherjee that the fact that Plot Nos. 9, 10 & 11 covered by R.O.Rs. under Annexure-1 series which are relevant for the purpose of case, falling under village Kamra, were shown to be of Dangara/2 kism under Annexure-2 though by the time of such notification, the kism of said land had already been changed to Gharabari shows non-application of mind while issuing the notification under Annexure-2, he submitted that such change as per the R.O.Rs under Annexure-1 series only occurred on 11.10.2019 and the impugned notification was published on 27.12.2019 and this has occurred due to non-correction of revenue records as collection of data with regard to land record must have started immediately after notification dated

18.7.2019 under Annexure-B/2 was issued. Therefore this should not be treated to be a serious issue. With regard to the submission of Mr.Mukherjee that Annexure-4 should be treated as the objection to Annexure-2 and Annexure-5 to be treated as an order under Section 3C(2) of the 'Act' as 21 days had expired on 17.1.2020, Mr.Mohanty submitted that 21 days expired on 13.2.2020 as the paper publication was made as admitted by the petitioner on 23.1.2020 in local vernacular newspaper 'The Dharitri' and Annexure-4 was submitted much after only on 17.8.2020 and therefore, the same cannot be treated as an objection filed under Section 3C of the 'Act' as the same was filed much beyond the time and accordingly he submitted that Annexure-5 cannot be treated as an order under Section 3C(2). Further according to him Section 3C(2) mandates that the Competent Authority shall give the objector an opportunity of being heard and should either allow or disallow the objections. A reading of Annexure-5 would show that it only makes some observations and the same

never allowed the prayer of the petitioner. He also submitted that much cannot be read to Annexures-4, 5 & 6 because Annexure-4 was never addressed to the Competent Authority and it was only addressed to the Tahasildar, Boriguma but not in his official designation as Competent Authority. Similarly even if for a moment Annexure-5 is accepted as an order under sub-section(2) of Section 3C of the 'Act' but the same was never communicated to the Central Government which issued the notification under Annexure-2. Further, the same was communicated to the Land Acquisition Officer, Koraput by Tahasildar, Borigumma only as Tahasildar, Bogirumma not as Competent Authority. With regard to Annexure-6 he submitted that the representation under Annexure-6 also cannot be treated as an objection as the same was never addressed to the Competent Authority. Therefore, the alternative prayer of the petitioner for a direction to consider the objection under Annexure-6 for realignment is without any merit. In this context he submitted that the project has been prepared by the

authorities keeping various relevant factors in mind and in larger public interest, prayer for realignment cannot be permitted. In this context he relied on the decision of the Supreme Court in ***Dr. Kushala Shetty and Others (supra)***. Lastly he submitted that the petitioner has not challenged the notification under Annexure-C/2 issued under Section 3D of the 'Act'. Accordingly, he prayed that the writ petition be dismissed. While concluding Mr.Mohanty submitted that since there has been no infraction of law in issuing notification under Annexure-2, in larger public interest this Court should not interfere in the matter and in this context he relied upon the decision of the Supreme Court in the case of ***Ramnijklal N.Bhutta and another Vrs. State of Maharashtra and others*** reported in ***AIR 1997 SC 1236*** and an unreported decision of the Court rendered by a Division Bench in ***M/s. Narayani Motors Private Limited Vrs. The National Highways Authority of India and another*** in W.P.(C) No. 19970 of 2010 disposed of on 3.12.2010.

7. Heard Mr.Mukherjee, learned Senior Counsel, Mr.U.C.Mohanty and Mr.A.Das, learned counsels representing opposite party Nos. 2, 3 and 7.

8. The undisputed facts of the case are as follows:-

On 18.7.2019 vide Annexure-B/2 the Central Government authorized the Tahasildar-cum-Land Acquisition, Officer, Boriguma to act as an Competent Authority in respect of village Kamra in which the relevant plots of the petitioner viz. Plot Nos. 9, 10 & 11 covered by the record of rights under Annexure-1 series are situated. These plots which earlier belonged to kisan Dangar/2 were converted to Gharabari kisan pursuant to the orders passed in cases filed under Section 8-A of the Orissa Land Reforms Act, 1960 and accordingly R.O.Rs. were issued in favour of the petitioner on 11.12.2019 by the Additional Tahasildar, Boriguma. On 23.1.2020, the notification dated 27.12.2019 under sub-section(1) of Section 3A of the Act was published in "Times of India" and vernacular daily "Dharitri". Vide

Annexure-7, the Project Director, National Highways Authority of India sent a copy of the above notification dated 27.12.2019 to the Tahasildar-cum-Land Acquisition Officer, Boriguma who happens to be the Competent Authority. As indicated earlier on 23.1.2020, the notification dated 27.12.2019 under sub-section(1) of Section 3A of the 'Act' was published in the newspaper i.e. "The Times of India" and "The Dharitri" under sub-section(3) of Section 3A of the 'Act'. A copy of such publication has been filed as Annexure-2 by the petitioner itself making it clear that such publication was made on 23.1.2020. The publication as under Annexure-2 made it clear that objection if any should be filed within 21 days, for the purposes under sub-section(1) of Section 3C of the 'Act'. 21 days expired on 13.2.2020 but the petitioner did not file any objection. The said notification further made it clear that the land plans and other details of the land to be acquired under the notification are available and can be inspected by the interested person at the aforesaid office of the Competent Authority.

Much after, on 16.8.2020 when the staff of the National Highways Authority came and demarcated the land of the petitioner, it realized that the proposed economic corridor is going to pass in the middle of its land by dividing the same into two parts. Accordingly, on 17.8.2020 the partner of the petitioner who is a resident of Gandhinagar at Nabarangpur i.e. the district Headquarter through whom the present writ petition has been filed, filed an objection under Annexure-4 before the Tahasildar, Boriguma much beyond 21 days. A perusal of Annexure-4, would show that the petitioner did not raise any objection with regard to description of the land under Annexure-2/Annexure-A/2 even at that late stage nor did it give any indication therein that the petitioner was not aware of Annexure-2 and the paper publication made on 23.1.2020. Thereafter, vide Annexure-C/2 the Central Government issued the notification under sub-section(2) of Section 3D whereby major portion of plot Nos. 9,10,11 belonging to the petitioner under village Kamra vested with the Central Government. It appears that pursuant to

the representation under Anneure-4, the Tahasildar made a field enquiry and sent a report of the same to the Land Acquisition Officer, Collectorate, Koraput on 21.9.2020 vide Annexure-5. It may be noted here that Tahasildar Boriguma only in the capacity of Tahasildar, Boriguma not in the capacity of Tahasildar-cum-Land Acquisition Officer, who has been declared as Competent Authority sent a letter under Annexure-5 to the Land Acquisition Officer, Collectorate, Koraput (opposite party No.7) who is another official distinct from Tahasildar. In Annexure-5, the Tahasildar, Boriguma (opposite party No.6) reflected his observations that major portion of construction of godown, large sheds, office building, big water tank, staff quarters are almost complete and the proposed road passes almost in the middle of the farm as a result of which the project is likely to be suffer huge financial loss. He also noted that the petitioner has already invested Rs.10 crores and he was requested by the petitioner to shift the road so that their project will be saved. Probably when nothing was done the petitioner

addressed another representation under Annexure-6 to opposite party No.7, who is not the Competent Authority praying for change of alignment. It is in such background the present writ petition has been filed by making the above noted prayers.

9. Mr.Mukherjee mainly attacked the notification issued under sub-section(1) of Section 3A of the 'Act' on the ground that the same does not give brief description of the land either by stating the name of the owner or by giving description of the exact portion of land which was proposed to be acquired by the authorities. In this context he relied upon the decision of the Supreme Court in the case of **Competent Authority Vrs. Barangore Jute Factory and Others(supra)** wherein the Supreme Court after coming to a conclusion that as the notification therein under sub-section(1) of Section 3A of the 'Act' did not clearly indicate as to which portion of the land was going to be acquired, held that the impugned notification failed to meet the requirement of sub-section(2) of Section 3A of the 'Act' and accordingly

declared the notification bad in law. The Supreme Court arrived at such a conclusion after scanning the notification itself where from it found that there is nothing in the notification which would make it clear that the authorities are going to acquire which portion of the land. While coming to such conclusion the Supreme Court also noted that in the impugned notification therein, there never existed any reference to any plan which would have clearly reflected the area which was intended to be acquired. In this context the discussions made by the Supreme Court in Paragraphs 6 and 7 of that judgment are quoted hereunder:-

“6 While dealing with the question of brief description of land in the acquisition notifications, reference was made to some judgments of this Court where acquisition Notifications under Section 4 of the Land Acquisition Act had come up for consideration on account of challenge being leveled on ground of vagueness of the Notifications. In most of these cases, Plan of the area under acquisition was made part of the notifications to show that the requirement of description of land was met. This leads us to inquire

whether there was any site plan forming part of the impugned Notification.

7. The availability of a Plan would have made all the difference. If there is a Plan, the area under acquisition becomes identifiable immediately. The question whether the impugned Notification meets the requirement of brief description of land under Section 3-A(2) goes to the root of the matter. The High Court rightly observed : "...It is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without preparation of a proper Plan." The Appendix to the impugned Notification shows that in many cases small parts of larger chunks of land have been notified for acquisition. This is not possible without preparing a Plan. But where is the Plan? The Notification in question makes no reference to any Plan. Our attention was drawn to averments in pleadings by the Writ Petitioners and replies thereto of the acquiring authority. The Writ Petitioners have pleaded that there was no Plan. Replies are vague and by way of rolled up answers. There is no specific reply. It is obvious that there was no Plan and therefore none was referred to in the pleadings nor any thing was produced before the Court at the hearing. Learned counsel for the Competent Authority tried to submit before us that there was a Plan at the time of issue of the notification and the Writ Petitioners ought to have inspected it, if they so desired. He further submitted that the Plan was produced before the High Court. We find that both these submissions are not sustainable

as they are not correct. A reference to the impugned Notification shows that there is no mention of any Plan. Without this how can anybody know that there was a Plan which could be inspected and inspected where? We are inclined to accept that there was no Plan accompanying the impugned Notification. During the course of hearing we were shown a Plan which we are unable to link with the impugned Notification. This was a 1996 P.W.D. Plan. P.W.D. is a department of the State Government. The impugned Notification is by the Central Government. NHAI is established under a Central Act. The Competent Authority under Section 3 of the Act is appointed by the Central Government. Therefore, this State Government Plan of 1996 (the impugned Notification is of 1998) is of no assistance. The impugned judgment of the High Court emphasises the need for a Plan. It is clear from the judgment of the High Court that no Plan was produced before it. The absence of any reference to a Plan in the impugned Notification and in fact non-availability of any Plan linked to the Notification, fortifies the argument that the description of the land under acquisition in the impugned Notification fails to meet the legal requirement of a brief description of the land which renders the Notification invalid.”

But in the present case a perusal of the notification under Annexure-2 clearly shows that the notification itself clearly refers to the land plan and

makes it clear that the land plans and other details of the land to be acquired are available and can be inspected by the interested person in the office of Competent Authority. Therefore, the facts of the present case are different from the fact of the case in **Competent Authority Vrs. Barangore Jute Factory and Others(supra)**. If the partner or any authorized agent of the petitioner would have perused the land plan and the details which were available with the Competent Authority, this Court is sure, he would have known the details of the proposed acquisition. Further the language of sub-section(2) of Section 3A of the 'Act' speaks of "brief description" not detailed description and on perusal of notification under Annexure-2, it is clear that there exists brief description of the lands which are going to be acquired and the petitioner despite having knowledge of the same being published on 23.1.2020 in the vernacular newspaper 'The Dharitri' never chose to inspect the land plan and the details nor filed any objection. In this context the submission of Mr.Mukherjee that the

notification under Annexure-2 is legally vulnerable as it did not point out the details of land which includes the benefits arising out of the land and things attached to the land permanently to the land as per the definition of the land at Section 3(a) of the 'Act' cannot be accepted as details of the land to be acquired along with the land plans were available in the office of Competent Authority. Even otherwise the petitioner never objected to such description even in his representations under Annexures-4 and 6 highlighting absence of brief description of land under Annexure-2. With regard to the submission of Mr.Mukherjee that there has been non-application of mind while issuing the notification under Annexure-2 as the relevant plots were indicated as Dangara/2 kism instead of Gharabari kism, it may be noted here that while the corrected record of rights were issued on 11.12.2019 and the impugned notification was published in the gazette on 17.12.2019 after a gap of 16 days. As Mr.Mohanty submitted the process of collection of data relating to land records must have been initiated after

publication of notification dated 18.7.2019 under Annexure-B/2. Therefore, it will be reasonable to come to a conclusion that since the required information relating to the land must have been collected much prior to the issuance of R.O.Rs. on 11.12.2019 under Annexure-1 series after issuance of notification of Competent Authority under Annexure-B/2 on 18.7.2019, the incorrect description of land cannot be accepted as a serious error in issuance of the notification so as to attract violation of sub-section(2) of Section 3A of the 'Act'. Further if the petitioner would have checked the details of land and the land plans as indicated under Annexure-2 in the Office of Competent Authority, there was every possibility that these informations may have been available in that office relating to change in kisam. For all these reasons the first submission of Mr.Mukherjee fails.

With regard to his second submission that since the copy of gazette notification dated 27.12.2019 under sub-section(1) of Section 3A of the 'Act' was

forwarded to the Tahasildar-cum-Land Acquisition Officer, Boriguma vide Annexure-7 by the Project Director, National Highways Authority of India on 2.1.2020 which was received by the said officer on 16.1.2020 and since by that time, the time period for filing objection vis-à-vis the notification had already expired, the petitioner was deprived of an opportunity to file his objection, the said submission also cannot be accepted for the following reasons. The petitioner itself has admitted that the paper publication of the notification was made in local newspaper i.e. "The Dharitri" on 23.1.2020 under Annexure-2 and has not disputed about such publication in Times of India of same date. Thus, the paper publication was made much after receipt of gazette notification under sub-section(1) of Section 3A of the 'Act' by the Tahasildar-cum-Land Acquisition Officer on 16.1.2020. Accordingly, the petitioner could have easily filed its objection by 13.2.2020, which it did not do.

With regard to the third submission of Mr.Mukherjee that there has been violation of sub-section(3) of Section 3A of the 'Act' as the notification was not published in locally circulated newspaper, this Court is of the view that such submission cannot be accepted as there exists no pleading in the writ petition on this issue. Further the petitioner itself has indicated at paragraph-5 of the writ petition that the notification under sub-section(1) of Section 3A was published in daily newspaper i.e. 'The Dharitri' on 23.1.2020 and it is common knowledge that the said vernacular newspaper enjoys a good circulation in the State. More over from the affidavit portion of the writ petition it is clear that the partner through whom the writ petition has been filed lives at Gandhinagar of Nabarangpur, which itself is the district headquarter. Further it is no where the requirement of law that a newspaper in order to be a 'local newspaper' should have circulation in the area in which the plots are situated. This Court cannot give such a narrow interpretation to the phrase "local newspapers"

used in sub-section(3) of Section 3A of the 'Act'. In this context, Mr.Mukherjee has relied upon two decisions of the Supreme Court, both of which according to us are not relevant and are factually distinguishable. In **Phoenix ARC Private Limited Vrs. Bishwa Bharati Vidya Mandir & Others (supra)** there does not exist any discussion relating to the interpretation of the phrase "local newspaper". It deals mainly with the maintainability of the writ petition with regard to action taken under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest At, 2002. With regard to **Diamond Sugar Mills Limited and Others Vrs. the State of Uttar Pradesh and Others (supra)**, there the question involved was around the interpretation of the phrase "local area" appearing in Entry 52 of the State list of the 7th Schedule of the Constitution of India and there the question was whether the premises of a factory would come within the definition of "local area" and it was held there that such premises will not come within the "local area" as appearing in

Entry 52 of the list II. There the Supreme Court made it clear that the proper meaning attached to the words “local area” of entry 52 of the State list of the Constitution would be an area administered by a local body like municipality, a district board, a local board, a union board, a Panchayat and the premises of a factory cannot therefore be a local area. Thus the said case nowhere deals with the meaning of the phrase “local newspaper” which has been used in sub-section(3) of Section 3A of the ‘Act’ and its circulation. In such background submission of Mr.Mukherjee relating to the violation of sub-section(3) of Section 3A of the ‘Act’ cannot be accepted.

With regard to his submission of malafide activities of the authorities, it has been rightly pointed out by Mr.Mohanty that there exists no averment either in the writ petition or in the rejoinder affidavit filed by the petitioner on this. Therefore, we are not inclined to accept the submission of Mr.Mukherjee on this score.

Mr.Mukherjee further submitted that Annexure-4 should be treated as an objection to Annexure-2 under sub-section(1) of Section 3C of the 'Act' and Annexure-5 should be treated as an order under Section 3C(2) of the 'Act'. Again we are constrained to point out that there exists no pleading on such submission. Be that as it may, even otherwise we cannot accept such submission because sub-section(1) of Section 3C of the 'Act' makes it clear that the objection will have to be filed within 21 days from the date of publication of notification under sub-section(1) of Section 3A of the 'Act'. Here the notification as admitted by the petitioner itself at paragraph five of the writ petition was published in vernacular daily newspaper i.e. "The Dharitri" on 23.1.2020 and the so called objection under Annexure-4 was filed much after on 17.8.2020 even without taking the plea that the petitioner was not aware of Annexure-2. There also, as indicated earlier the petitioner has not raised any objection relating to the description of the land. With regard to his submission

that Annexure-5 should be treated as an order under Section 3C(2) of the 'Act', the same cannot be accepted because sub-section(2) of Section 3C of the 'Act' presupposes that the objection should be filed in tune with sub-section(1) of Section 3C of the 'Act' and under the said sub-section, the Competent Authority is required to give an opportunity of being heard and thereafter either allow or disallow the objection. Here admittedly the objection was not filed in tune with sub-section(1) of Section 3C of the 'Act' and vide Annexure-5 the Competent Authority has neither allowed nor dismissed the objection. Further under Annexure-5 the Tahasildar, Boriguma has not passed any order in his capacity as Competent Authority. He has only recorded his observation in Annexure-5 and in fact by no stretch of imagination Annexure-5 can be described as an order. From the subject matter it is clear that it is a report. Therefore, the said submission of Mr.Mukherjee also fails.

The last submission of Mr.Mukherjee that since the report of the Tahasildar, Borigumma under Annexure-5 clearly pointed out the difficulties of the petitioner, therefore the representation/objection filed by the petitioner under Annexure-6 on 22.9.2020 praying for realignment of Highway should be directed to be disposed of by the Land Acquisition Officer, Collectorate, Koraput, cannot be accepted because the Land Acquisition Officer, Koraput has no authority in such matter. Further as per the decision of the Supreme Court in the case of **Union of India Vrs. Kushala Shetty and Others (supra)** it has been made clear that the National Highways Authority of India prepare and implement the project relating to developments and maintenance of highway after thorough study by experts in different fields. The detailed project reports are prepared keeping in view the various relevant factors including intensity of heavy vehicular traffic and public interest at large. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular

alignment would sub-serve the larger public interest. In such background also the prayer for a direction to the authorities to consider the prayer for realignment of highway cannot be acceded to. Further in ***M/s. Narayani Motors Private Limited (supra)*** this Court has made it clear that when the case is of right of an individual versus public interest, individual right must yield to public interest.

10. For the reasons indicated above, we do not find any reason whatsoever to interfere with the impugned notification under Annexure-2 or to issue a direction to the authority to dispose of the representation under Annexure-6 praying for realignment. Accordingly, the writ petition is dismissed. There would be no order as to costs.

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Biswajit Mohanty, J.

I agree

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Savitri Ratho, J.