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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2727 OF 2022**

1. Manekbben Rama Tandel
Age. 72, Occ. Housewife,
R/o – House No. 8/260, Parkota
Sheri, Nani Daman, Daman – 396210

2. Dharmesh Sukkar Tandel,
Age. 44, Occ. NIL,
R/o. House No. 8/260, Parkota
Sheri, Nani Daman, Daman – 396210

....Petitioners

V/s.

1. The Collector,
Daman, Union territory of Dadra
& Nagar Haveli and Daman & Diu

2. Union territory of Dadra & Nagar
Haveli and Daman & Diu, through
its Administrator of Union territory
of Dadra & Nagar Haveli and Daman
and Diu.

3. Directorate of Medical Health Services,
Primary Health Centre, Fort Area, Moti
Daman 396 210, Union Territory of
Dadra & Nagar Haveli and Daman & Diu

4. Public Works Department, Daman,
Union Territory of Dadra & Nagar Haveli
and Daman & Diu

....Respondents

Mr. T. D. Deshmukh along with Mr. H. D. Chavan and Mr. Sagar Kursija and Ms. S. S. Mohanty for the Petitioner.

Mr. H. S. Venegaonkar along with Mr. Aayush Kedia for Respondent Nos. 1 to 4.

CORAM: R. D. DHANUKA &

GAURI GODSE, JJ.

RESERVED ON: 14TH MARCH 2023

FURTHER ARGUMENT ON: 20TH APRIL 2023

AND 27TH APRIL 2023

PRONOUNCED ON: 4TH MAY 2023

JUDGMENT: (PER: GAURI GODSE J)

1. Rule. Mr Venegaonkar waives service for Respondents. Rule is made returnable forthwith. By consent, the petition is taken up for final disposal.

2. This Petition challenges two separate preliminary notifications, both dated 17th November 2021, issued under Section 11 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013') and two separate declarations both dated 14th February 2022 under Section 19 of the Act of 2013. By way of amendment, Petitioners challenged two separate Awards declared under Section 23 of the Act of 2013, both dated 25th April 2022. Both these notifications and the Awards are affecting two separate areas of Petitioner's property.

CASE OF THE PETITIONERS:

3. Petitioners are the owners of the land bearing survey Nos. 8, 10/1, 11/2, 11/3 of village Kathiria, Daman, admeasuring 12917 square meters and 4091 square meters ("said property") which are the subject matter of the acquisition under the Act of 2013.

4. On 15th February 2019, a notification was issued under Section 4 of the Act of 2013 for the preparation of a Social Impact Assessment ("SIA") for the purpose of expansion of a government hospital, proposing to acquire lands bearing survey nos. 19/1, 19/2, 19/5, 19/6, 19/7 and 19/8 of village Kathiria, Nani Daman. The Petitioners are not concerned with these properties. The said property was not mentioned in the said notification dated 15th February 2019.

5. In the month of March 2019, the Petitioners received notice of eviction for their hotel structure as the same was affected by the proposed construction of a coastal road. Hence the Petitioners challenged the action of the Respondents by filing Writ Petition No. 3886 of 2019. By order dated 27th March 2019, interim protection was granted to the Petitioners.

6. It is the case of the Petitioners that without any SIA report with respect to the said property, two separate notifications under Section 11 of the Act of 2013 were issued on 12th September 2019, which included the

said property for the first time to the extent of 12917 square meters and 4091 square meters for the purpose of expansion of government hospital and nursing college hostel. On 5th November 2019, the Petitioners submitted objections to the said preliminary notifications. On 13th December 2019 report under Section 15 was submitted by Respondent No. 1. On 6th May 2020, a notification under Section 19 was issued. Petitioners received a notice dated 7th October 2020 issued under Section 21.

7. Hence the Petitioners filed Writ Petition Stamp No. 94689 of 2020 for challenging notifications dated 12th September 2019 issued under Section 11, report dated 13th December 2019 submitted under Section 15 and declaration dated 6th May 2020 issued under Section 19 of the Act of 2013. In the said Writ Petition, a statement was made on behalf of Respondents that acquisition proceedings in respect of the said property are dropped, and fresh acquisition proceedings are initiated. Hence said Writ Petition was disposed of as infructuous on 7th January 2021.

8. Consent terms dated 4th May 2021 were filed in the earlier Writ Petition No. 3886 of 2019, which was filed against an eviction notice for the construction of a coastal road. It is the case of the Petitioners that pursuant to the consent terms, the Petitioners were permitted to shift their hotel structure to the backside. In view of the consent terms, Petitioners had agreed to hand over their land for the purpose of the coastal road

without any monetary consideration, as the Petitioners were allowed to shift their hotel structure on the backside. Thus, the Petitioners handed over 30 meter stretch without any monetary consideration.

9. On 17th November 2021, without any SIA report, two separate notifications under Section 11 of the Act of 2013 were issued for acquiring the said property for the purpose of a nursing college hostel of the government hospital. There were two separate notifications issued under Section 11 of the same date for an area admeasuring 12917 square meters and for an area admeasuring 4091 square meters. Hence Petitioners submitted objections on 13th January 2022. On 14th February 2022, two separate declarations under Section 19 were issued. On 15th February 2022, a notice for possession was issued under Section 21. Hence the Petitioners filed the present Petition challenging the notifications under Section 11 as well as the declarations issued under Section 19 of the Act of 2013. During the pendency of the Petition, two separate Awards were declared on 25th April 2022. Hence by way of amendment, Petitioners also challenged the two separate Awards declared on 25th April 2022.

SUBMISSIONS ON BEHALF OF PETITIONERS:

10. The learned counsel for the Petitioners submitted that in the notification dated 15th February 2019 under Section 4, Petitioners' said property was not included. Hence the Petitioners had filed objections on

5th November 2019 to the aforesaid earlier notifications issued on 12th September 2019 under Section 11. It was the Petitioners' contention that though suitable lands were available adjoining the government hospital, including the government land being survey number 6/2, said property was arbitrarily included in the said notifications. It is the Petitioners' case that the said property has hundreds of coconut trees, and the land is not contiguous and is located on the opposite side of the road. During the pendency of the said Writ Petition Stamp No. 94689 of 2020, thereby challenging the change in site and inclusion of the said property in the notifications under Sections 11, 15 and 19, the Respondents had made a statement that the acquisition with respect to the said property was dropped and the fresh acquisition was initiated. Hence in view of the statement made, the said Writ Petition was disposed of on 7th January 2021, thereby granting liberty to the Petitioners to challenge the fresh acquisition.

11. The Petitioners contended that a notice dated 24th November 2020 was issued for withdrawing acquisition proceedings. However, a perusal of the said notice shows that only the SIA notification dated 15th February 2019 was withdrawn, which never included the said property. There was no separate notice issued for the withdrawal of the acquisition proceedings initiated by issuing notice dated 12th September 2019 under Section 11 in respect of the said property.

12. The learned counsel for the Petitioners submitted that the Petitioners had raised specific objections that though there was alternative land available adjacent to the government hospital, the said property, which is not adjacent to the government hospital, was sought to be acquired. It was the Petitioners' contention that they are running a hotel on the said property, and the said property also has about 100 coconut trees.

13. Learned counsel for the Petitioners submitted that Sub-Section 3 of Section 4 and Sub-Section 1 of Section 6 require that the SIA report should be made available to the land owner. He further submitted that under Sub-Section 3 of Section 11, the notification should contain a summary of the SIA report so as to enable the landowners to raise effective objections. However, neither the SIA report was published nor did the notification under Section 11 contain any summary of the SIA report. Thus, it was submitted on behalf of the Petitioners that the acquisition process violated the principles of natural justice.

14. Learned counsel for the Petitioners submitted that Section 15 of the Act of 2013, read with Rule 6 of the Rules of 2015 framed under the Act of 2013, mandates that the objections raised by the landowners should be considered and decided. He submitted that these objections are akin to the objections that are required to be decided under Section 5A of the Land Acquisition Act 1894. Therefore, non-consideration of the

objections raised by the Petitioners has also violated the principles of natural justice.

15. Learned counsel further submitted that pursuant to the consent terms, the Petitioners were permitted to shift their hotel structures to the backside. In the present acquisition proceedings, the land where the hotel structures were shifted on the backside is sought to be acquired. Learned counsel submitted that in view of the consent terms, Petitioners had agreed to hand over their land for the purpose of coastal Road without any monetary consideration as the Petitioners were allowed to shift their hotel structure on the backside. Thus, the Petitioners handed over 30 meter stretch without any monetary consideration.

16. Learned counsel for the Petitioners submitted that in the first round of acquisition, survey number 19 was shown affected in the notification under Section 4. However, in notifications issued under Sections 11 and 19, survey number 19 was deleted, and the said property was included without any justifiable reasons. He submitted that there is no reason why the lands adjacent to the government hospital, including government-owned land, are not considered for the nursing hostel. He further submitted that the SIA report is not provided to the Petitioners as is required under Sections 4 and 6 of the Act of 2013. Learned counsel submitted that a summary of the SIA report is conspicuously absent in the notification under Section 11, which is a mandatory requirement. He thus

submitted that the objection raised by the Petitioners is also decided without assigning any reasons. Section 15 of the Act of 2013 provides that a hearing is to be given to the landowners on the objections filed by them. Thus, it was submitted that the action on the part of the Respondents to acquire the said property is a clear case of malafide, as the action of the Respondents defeats the consent terms which were filed in Writ Petition No. 3886 of 2022.

17. It was also submitted that the said property is not contagious as there is a road between the government hospital and the nursing college hostel and the Petitioners' land proposed to be acquired. Thus, it was submitted that the whole process of the present acquisition is illegal, perverse and against the settled principles of law as the same is based on non-application of mind, as can be seen from the report under Section 15 of the Act of 2013.

18. Learned counsel submitted that the report prepared by the learned Collector under Section 15 is without assigning any reasons. He submitted that Rule 6 of 2015 Rules framed under the Act of 2013 provides for giving a reasonable opportunity of hearing for deciding the objections of interested parties. However, Respondent No. 2, without giving any opportunity for hearing and without assigning any reasons, has decided the objections filed by the Petitioners. Thus, the conduct of the Respondents shows the malafide action and colourable exercise of

power. Thus, the Petitioners submitted that notifications issued under Section 11 and the declarations issued under Section 19 of the Act of 2013 as well as two separate Awards passed on 25th April 2022, deserve to be quashed and set aside.

CASE OF THE RESPONDENTS:

19. There is an Affidavit-in-Reply filed on behalf of Respondents opposing the prayers in the Petition. The Respondents contended that the Petitioners had encroached on the Government land and hence there was no question of granting monetary compensation. Hence, the earlier Writ Petition No. 3886 of 2019 was disposed of by filing consent terms. The Petitioners stated that notification for the SIA was issued on 15th February 2019 and the SIA meeting was held on 5th March 2019 and all the concerned land holders were intimated regarding the same. It was thus contended that thereafter preliminary notification dated 12th September 2019 was issued and published under Section 11. It was also contended that another meeting of the SIA was convened on 24th May 2021 after issuing notice on 20th May 2021. The Respondents contended that on 3rd December 2019 the Petitioner was present before the Collector and thereafter a report was issued on 13th December 2019 under Section 15. Thus, the objections of the Petitioners were disposed of on merits. Notification under Section 19 dated 6th May 2020 was served on all the parties having interest in the land and also uploaded on the official

website. Thereafter notice dated 7th October 2020 was issued under Section 21 and was served on all the persons interested. It was contended that it was also uploaded on the official website. The Affidavit-in-Reply further referred to Notification dated 17th November 2021 inviting objections. Affidavit-in-Reply further referred to objections filed by the Petitioners on 13th January 2022 and hearing given to the Petitioners on 18th January 2022. The Affidavit-in-Reply further stated that after following due process of law, said property has been selected after proper examination and SIA report as per Section 8 of the Act of 2013. Thus, the prayers in the Writ Petition were opposed on the ground that the objections raised by the Petitioners were vague and had no merits.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

20. Mr. Venegaonkar, learned counsel for the Respondents, submitted that the proceedings were initiated after following the due process provided under the Act of 2013, and at every stage, the Petitioners were given a hearing. Learned counsel submitted that perusal of dates in a chronological manner would show that all the procedures as prescribed under the Act of 2013 are followed. Learned counsel invited our attention on the following dates by placing on record a list of dates and events as under:

15th February 2019: Notification under Section 4(3) of the Act of

2013 was issued for the purpose of the SIA study.

13th December 2019: The Collector submitted a report under Section 15 of the Act of 2013 for the acquisition of the land for the purpose of the nursing hostel.

7th October 2020: Notification under Section 21 of the Act of 2013 was issued.

24th November 2020: Notification was issued for the purpose of withdrawal of the land acquisition proceedings, which were initiated by notification dated 15th February 2019.

14th December 2020: Notification under Section 4 was issued for the purpose of an SIA study for the acquisition of 12917 square meters of land.

11th January 2021: Notification under Section 4 was issued for the SIA study for the acquisition of 4091 square meters of land.

4th May 2021: Writ Petition No. 3886 of 2019, filed by the Petitioners for challenging the eviction notice issued to the Petitioners, was disposed of in terms of the consent terms.

24th May 2021: A hearing was given on the objections filed by the Petitioners. The Petitioner's son-in-law was present for the hearing, being constituted attorney of the Petitioners. Hearing given to the

Petitioners through their constituted attorney is part of the record.

17th November 2021: Preliminary notification under Section 11 of the Act of 2013 was issued.

13th January 2022: Petitioners filed objections to notification under Section 11.

17th January 2022: The learned Collector had scheduled a hearing for Petitioners on the objections filed by them. However, an adjournment was sought by the Petitioners, and hence, the same was adjourned to 18th January 2022.

18th January 2022: Petitioner No. 2 appeared and was given a hearing by the learned Collector.

25th January 2022: The Petitioners had filed Writ Petition No. 2271 of 2022 for challenging the acquisition proceedings at the stage of notification under Section 15. However, the said Writ Petition was not pursued on behalf of the Petitioners.

4th February 2022: A report under Section 15 was published after considering the objections filed by the Petitioners for the acquisition of 4091 square meters.

7th February 2022: After considering the objections filed by the Petitioners, a report under Section 15 was published with regard to

the acquisition of 12917 square meters of land.

14th February 2022: Two separate declarations under Section 19 were issued with respect to two separate areas, which are the subject matter of acquisition.

15th February 2022: Notice indicating the hearing scheduled under Section 21 before taking possession of the land was fixed on 22nd March 2022.

4th March 2022: Present Petition was filed for challenging two separate notifications issued under Section 11 and two separate declarations under Section 19.

22nd March 2022: Though the Petitioners were served with a notice for the scheduled hearing, the Petitioners failed to appear. Hence, the hearing was rescheduled on 24th March 2022.

24th March 2022: Petitioner No. 1 appeared and submitted a letter to the learned Collector, thereby raising objections with respect to the quantum of compensation.

10th May 2022: As the Petitioners refused to accept the amount of compensation, the learned Collector filed a Reference under Section 64 of the Act of 2013.

16th May 2022: After filing the Reference, possession of lands

which were the subject matter of the acquisition was taken.

20th May 2022: The amount of compensation is deposited in the Reference Court.

21. Thus, it was submitted by Mr. Venegaonkar that all the mandatory provisions mentioned in Chapter IV of the Act of 2013 are followed. Learned counsel further submitted that the SIA report was also provided to the Petitioners, and thus the submissions made on behalf of the Petitioners with respect to the same have no merit. The learned counsel submitted that the allegations made by the Petitioners regarding not following the due procedure are baseless and vague. Learned counsel invited our attention to the provisions under Chapter IV of the Act of 2013 and submitted that the dates and events with respect to the present case would show that all the procedures were followed in the acquisition of the Petitioners' land after giving due opportunity of hearing at all the relevant stages. He submitted that objections raised by the Petitioners are only in the nature of suggestions. He, therefore, submitted that there is no valid ground raised in the Petition for challenging the acquisition proceedings with respect to the Petitioners' land. He thus submitted that the Writ Petition has no merit and the same be rejected. Mr Venegaonkar, in support of his submissions, relied upon the decision of this Court in the case of *Godrej & Boyce Manufacturing Co. Ltd Vs. State of Maharashtra*,

*through the Government Pleader and Others*¹.

CLARIFICATIONS AND FURTHER ARGUMENTS:

22. We heard both parties at length. The arguments were concluded, and the Petition was closed for Order. For clarification, on the aspect of issuance of notification under Section 4 and publication of the SIA report as contemplated under Section 6, the matter was listed for further hearing. Mr Venegaonkar, on instructions submitted that with respect to the said property, there was no notification published under Section 4, and the SIA study report, as contemplated under Section 6, was also not published. He, however, submitted that the summary of the SIA report formed part of the notification under Section 8 of the Act of 2013. He thus submitted that the Petitioners were aware of the contents of the SIA report before filing objections and hearing given on the objections conducted under Section 15.

23. Mr. Venagaonkar submitted that the Petitioners were given an opportunity of hearing at every stage. He submitted that much water had flown after the publication of the Award. He submitted that the contract is also executed for the commencement of work. The acquisition is for a project of public importance. Hence, any adverse order in this Petition will delay the work of public importance. He submitted that the objections raised by the Petitioners in this Petition are regarding technical lapses,

¹ 2023 SCC OnLine Bom 341

and no prejudice is caused to the Petitioners due to non-publication of notification under Section 4 and non-publication of the SIA report as contemplated under Section 6. He submitted that even otherwise, in the objections dated 24th March 2022, the Petitioners have only raised a grievance regarding the quantum of compensation. Hence, the objections of the Petitioners can be taken care of at the time of deciding the enhancement, if any, of the quantum of the compensation amount. He, therefore, submitted that no interference is warranted in this Petition.

24. Mr. Deshmukh submitted that the publication of the notification under Section 4 and the publication of the SIA study report as contemplated under Section 6 are not empty formalities. He submitted that no effective objections can be raised in the absence of an SIA study report. He submitted that even the notification under Section 11 did not contain the summary of the SIA report. He further submitted that the objections filed by the Petitioners are rejected with a one-line Order. He submitted that publication of the SIA report is a mandatory requirement under the Act of 2013. He submitted that exemption from undertaking an SIA study is provided under Section 9 only when the urgency clause is invoked. Mr Deshmukh thus submitted that the publication of the notification under Section 4 and the report under Section 6 are not mere technical compliances. He submitted that non-compliance with the mandatory procedures under the Act of 2013 vitiates the entire acquisition

proceedings. He submitted that in the objections dated 24th March 2022, the Petitioners have also intimated about the pendency of the present Petition and have reserved their right to raise objections. Hence the Writ Petition be allowed, and the impugned notifications and Awards be quashed and set aside.

CONSIDERATION OF SUBMISSIONS AND CONCLUSIONS:

25. We have considered the submissions made on behalf of both parties. The submissions made on behalf of the Petitioners are twofold. Firstly, regarding the suitability of the land proposed for acquisition and, secondly, regarding the hardships and prejudices caused to the Petitioners.

26. On perusal of the record, it is clear that earlier, there was an acquisition of the Petitioner's land for a coastal road. Pursuant to the consent terms filed in the writ petition challenging the eviction notice issued to the Petitioners for coastal road, consent terms were filed. As per the consent terms, the Petitioners were permitted to shift their hotel structure which was affected by the coastal road, to the backside. In view of the consent terms, the Petitioners handed over 30 meter stretch of their property without any monetary consideration. The Respondents have not disputed the Petitioner's contention that the land where the Petitioners were allowed to shift their hotel structure is now affected by the acquisition proceedings for the purpose of a proposed nursing college

hostel.

27. The Respondents have contended that due opportunity of hearing was given to the Petitioners at the relevant stages, and all the procedures under the Act of 2013 were followed. However, admittedly notification under Section 4 was not published, and the SIA report was also not published as contemplated under Section 6. A perusal of the notification under Section 11 of the Act of 2013 shows that it does not contain the summary of the SIA report.

28. A perusal of Sub-Section (1) of Section 4 shows that publication of a notification for a preliminary investigation for determination of the social impact and public purpose, as contemplated under Chapter II of the Act of 2013, is not a mere empty formality or a technical requirement. Sub-Section (2) of Section 4 provides that the notification issued under Sub-Section (1) for commencement of the SIA study is required to be made available in the local language to the concerned Panchayat, Municipality or Municipal Corporation as well as in the offices of the District Collector, Sub-Divisional Magistrate and the Tehsil and shall also be published in the affected areas in such a manner as may be prescribed and also uploaded on the website of the Appropriate Government. Sub-Section (5) of Section 4 provides that while undertaking an SIA study, various aspects are required to be taken into consideration, which includes the livelihood of affected families, public and community properties etc. Thereafter

Section 5 contemplates a public hearing for the SIA study. Section 5 provides for a mandatory requirement for giving a public hearing at the affected area after giving adequate publicity about the date, time and venue for the public hearing to ascertain the views of the affected families to be recorded and included in the SIA study report.

29. Though it is argued on behalf of the Respondents that the opportunity of hearing was given to the Petitioner at every stage, nothing is produced on record to show that notice was published as required under Section 4 before the public hearing as contemplated under Section 5 was conducted. As per the list of dates and events submitted by Mr Venegaonkar after the notification dated 24th November 2020, thereby withdrawing the earlier notification under Section 4, two notifications dated 14th December 2020 and 11th January 2021 were issued, and SIA hearing was conducted on 24th May 2021. However, when the matter was listed for further hearing for the purpose of clarifications regarding the issuance and publication of notification under Section 4 and publication of the SIA report under Section 6 regarding the said property, Mr. Venegaonkar, on instructions, admitted that no such notifications and SIA report were published.

30. Section 6 provides that the SIA report and the social impact management plan referred to in Sub-Section (6) of Section 4 are required to be prepared and made available in the local language to the concerned

Panchayat, Municipality or Municipal Corporation and the concerned Government offices and shall also be published in the affected areas and uploaded on the website of the Appropriate Government.

31. Section 7 provides for appraisal of the SIA report by an expert group. Thereafter Section 8 provides for the examination of proposals for land acquisition and SIA report by the Appropriate Government. Section 11 provides for the publication of preliminary notification and the powers of the officers thereupon. Sub-Section (3) of Section 11 provides that the notification under Sub-Section (1) of Section 11 shall contain a statement on the nature of the public purpose involved and a summary of the SIA report. Thereafter, Section 12 provides for a preliminary survey of land and the power of officers to carry out the survey. Section 14 provides that if preliminary notification under Section 11 is not issued within 12 months from the date of appraisal of the SIA study report submitted by the expert group under Section 7, then the such report shall be deemed to have lapsed, and a fresh SIA study is required to be undertaken.

32. Section 15 provides for a hearing of the objections submitted by interested persons. Sub-Section (2) of Section 15 provides that objection under Sub-Section (1) shall be made to the Collector, and the Collector would give the objector an opportunity of being heard and after hearing of such objections and after making such further inquiry, if necessary, make

a report in respect of the land which has been notified for acquisition.

33. In the present case, the notification under Section 4 for conducting the SIA study and SIA report as contemplated under Section 6 of the Act of 2013 regarding the said property is admittedly not published. Though the Affidavit-in-Reply on behalf of the Respondents refers to a notification under Section 4(1), admittedly, the said notification was not in respect of the present acquisition proceedings. Mr Venegaonkar has placed on record a report under Section 8 and submitted that the said report contained a summary of the SIA report. Thus, he submitted that the Petitioners were aware of the contents of the SIA report before they filed objections under Section 15. He further submitted that Petitioners were given a hearing on the objections filed under Section 15. Thus, according to him, in such circumstances, non-publication of Section 4(1) notification and non-publication of the SIA report is a technical lapse, and the same will not vitiate the entire acquisition proceedings.

34. We have perused the copy of the report under Section 8 placed on record at the time of further arguments. The said report does not contain summary of the SIA report. It only contains the reason for land acquisition and a brief reference to the observations and recommendations made by Appraisal Committee. In our view, the procedures contemplated from the stage of Section 4 are not empty formalities. Non-compliance with the procedures prescribed prior to the stage of Section 15 will make the

submission of objections by interested parties and hearing on such objections meaningless.

35. Thus, there is a substance in the submissions made by Mr Deshmukh that the acquisition proceedings are vitiated due to non-compliance with the necessary provisions of the Act of 2013. The objections raised by the Petitioners are twofold. Firstly, regarding the hardships and prejudices caused to the Petitioners. Secondly, on the suitability of the land proposed to be acquired. Considering the exhaustive procedure prescribed for the SIA study contemplated under the Act of 2013, the nature of objections filed by the Petitioners relates to the subjects for consideration in the SIA study as contemplated under Sub-Sections (4) and (5) of Section 4. On perusal of the objections raised by the Petitioners and the reasons assigned by the Collector for rejection of the objections as recorded in the report under Section 15(2), we find substance in the arguments made by Mr Deshmukh that the objections raised by the Petitioners are not taken into consideration.

36. Mr Venegaonkar pointed out that the hearing for the SIA study was conducted on 24th May 2021, and the Petitioner's son-in-law remained present during the hearing before the learned Collector. He pointed out that after the publication of the notification under Section 11, Petitioners were given a hearing on 18th January 2022. Thereafter a report was submitted under Section 15 on 4th February 2022. It is necessary to

mention here that on 7th January 2021, during the hearing of Writ Petition Stamp No. 94689 of 2020 (filed for challenging the earlier notifications under Sections 11, report under Section 15 and declaration under 19 issued regarding the said property), the Respondents had made a statement that acquisition proceedings with respect to said property was dropped and fresh acquisition proceedings were initiated. A perusal of the notification dated 24th November 2020 shows that only the notification dated 15th February 2019 under Section 4 is withdrawn. It is pertinent to note that admittedly this notification dated 15th February 2019 did not mention the said property, and this notification did not pertain to the present acquisition proceedings.

37. Thus, as per the statement made on 7th January 2021, if acquisition proceedings in respect of the said property were withdrawn and fresh acquisition proceedings were initiated, the same was required to be initiated from the stage of Section 4 by withdrawing all the earlier notifications. However, the Respondents have not done so and have bypassed the mandatory stage for preparation of the SIA as contemplated under Section 4 and publication of the SIA report as contemplated under Section 6. A plain reading of Section 15 shows that the purpose of hearing objections is to consider the objections filed by interested persons based on Section 11 notification. Section 11 mandates that the notification shall contain summary of SIA report. Section 15 reads as

under:

“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."

emphasis applied

38. A perusal of Section 11 shows that the notification should contain a summary of the SIA report. Publication of Section 11 notification precedes the provisions for the SIA study. As per Section 9, the only exception for the exemption from social impact assessment is the invocation of the urgency clause under Section 40. In the present case, there is no such urgency clause invoked. Thus, the procedure for acquisition is required to be initiated from the stage of publication of notification under Section 4.

39. The learned counsel for the Respondents has relied upon the decision of this Court in the case of ***Godrej & Boyce Manufacturing Co. Ltd.*** The issue with respect to any irregularities in the procedure followed by the concerned authorities in acquiring the land for the infrastructural project is dealt with in the said case. This Court was dealing with the irregularities, if any, in following the second part of Section 25 of the Act of 2013. This Court has taken the view that in the case of procedural difficulties, if any, the same would, at the most, affect the quantum of compensation and not the validity of acquisition. The observations made by this Court, in the case of ***Godrej Boyce***, are in the context of the facts of that case where the Bullet Train Project is an Infrastructural and Public

Project of national importance. Thus, the principles laid down by this Court in the case of *Godrej Boyce* are not applicable to the facts of the present case.

40. Mr Deshmukh has relied upon the decisions of the Hon'ble Supreme Court in the case of *Chairman, Indore Vikas Pradhikaran Vs Pure Industrial Coke and Chemical Ltd.*², *Gojer Brothers Pvt. Ltd. Vs State of West Bengal*³ and *Hindustan Petroleum Corporation Ltd Vs Darius Shapur Chenai*⁴.

41. The Hon'ble Supreme Court, in the case of *Chairman, Indore Vikas Pradhikaran*, was dealing with the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam concerning the compulsory acquisition of land required for the purpose connected with the matters in the said Act. Mr Deshmukh has relied upon paragraphs 56 to 58 of the said decision, which read as under:

"56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain

² (2007) 8 SCC 705

³ (2013) 16 SCC 660

⁴ (2005) 7 SCC 627

regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See Balram Kumawat v. Union of India [(2003) 7 SCC 628] ; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. [(2004) 1 SCC 391] and Union of India v. West Coast Paper Mills Ltd. [(2004) 2 SCC 747]) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction."

42. The Hon'ble Supreme Court, in the case of **Gojer Brothers Pvt. Ltd.**, was dealing with the challenge to the acquisition proceedings on the ground of non-consideration of objections of the land owner and scope of Section 5-A of the Land Acquisition Act 1894, regarding hearing of objections. The Hon'ble Supreme Court, after referring to the catena of Judgments on the scope of Section 5-A, has held in paragraphs 20 and 21 as under:

"20. If the report prepared by the Land Acquisition Collector is scrutinised in the light of the principles laid down in the aforementioned judgments, we do not find any difficulty in holding that the learned Single Judge and the Division Bench of the High Court committed serious error by approving the acquisition proceedings ignoring that the report was prepared in clear violation of mandate of Section 5-A and the State Government mechanically accepted the report leading to the issue of declaration issued under Section 6(1). In

the original and supplementary objections filed by it, the appellant had claimed that the entire exercise of acquisition was vitiated due to mala fides and colourable exercise of power. The history of litigation between the parties was also cited by the appellant to substantiate its plea that the acquisition proceedings were initiated only after the management of the School lost legal battle up to this Court. It was also pleaded that the acquisition was meant to bypass the direction given by this Court to the management of the School to hand over the possession of the School. Unfortunately, the Land Acquisition Collector did not deal with any of the objections and summarily rejected the same as if compliance with Section 5-A(2) was an empty formality. The State Government also did not apply mind and mechanically approved the one-line recommendation made by the Land Acquisition Collector.

21. In our view, non-consideration of the objections filed under Section 5-A(1) has resulted in denial of effective opportunity of hearing to the appellant. The manner in which the Joint Secretary to the Government approved the recommendation made by the Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by the Land Acquisition Collector and the report prepared by him."

emphasis applied

43. The Hon'ble Supreme Court, in the case of *Hindustan Petroleum Corporation Ltd*, has also taken a similar view on the scope of Section 5-A of the Land Acquisition Act 1894 and held in paragraphs 8, 9, 28 and 29 as under:

“8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

28. Although assignment of reasons is the part of principles of natural justice, necessity thereof may be taken away by a statute either expressly or by necessary implication. A declaration contained in a notification issued under Section 6 of the Act need not contain any reason but such a notification must precede the decision of the

appropriate Government. When a decision is required to be taken after giving an opportunity of hearing to a person who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing.

29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma [(1966) 3 SCR 557 : AIR 1966 SC 1593] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan [(1967) 1 SCR 120 : AIR 1967 SC 1074] and CCE v. Orient Fabrics (P) Ltd. [(2004) 1 SCC 597]]

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.”

emphasis applied

44. Mr Venegaonkar has relied upon the decision of the Hon'ble Supreme Court in the case of ***Ramniklal Bhutta Vs State of Maharashtra***⁵, and submitted that the Courts have to weigh the public interest vis-à-vis the private interest while exercising powers under Article 226 of the Constitution of India. He submitted that even if this Court find that the acquisition is vitiated on account of non-compliance with any statutory requirement, quashing of the acquisition proceedings is not the only remedy and that the Petitioners can be adequately compensated for the damages or loss.

45. In the present case, the Petitioners have raised objections

⁵ (1997) SCC 134

regarding procedural lapses committed by the Respondents and have also challenged the acquisition proceedings on the ground of arbitrariness by giving specific and cogent reasons. In our view, the powers of the Court under Article 226 of the Constitution of India are discretionary, and the Court can exercise the discretionary power in view of the fact that it can be exercised in furtherance of the interests of justice. It is always open to this Court to quash and set aside the acquisition proceedings on the ground that the acquisition was vitiated on account of non-compliance with mandatory requirements contemplated under the Act of 2013. The procedural requirements contemplated under Chapter II of the Act of 2013 are exhaustive in nature and are contemplated with a specific purpose, which has a direct bearing on the further procedure under Sections 11 to 15 of Chapter IV. Hence, the principles laid down by the Hon'ble Supreme Court in the case of *Ramniklal Bhutta* are not applicable to the facts of the present case.

46. We have already observed that the objections raised by the Petitioners were related to the subjects of consideration prescribed under Section 4 for the SIA study. Thus, the objections of the Petitioners would have been a matter of consideration in the SIA study. A perusal of the record shows that the procedure for the SIA study adopted by the Respondents is not in compliance with the mandatory requirements prescribed under the relevant provisions of the Act of 2013. There is no

explanation given by Mr Venegaonkar on behalf of the Respondents for the non-publication of notification under Section 4 and non-publication of the SIA report under Section 6. It is contented by the Respondents that no prejudice is caused to the Petitioners due to non-publication of notification under Section 4 and non-publication of the SIA report under Section 6 as the Petitioners were aware of the summary of the SIA report, as the report under Section 8 contained the summary of the SIA report. There is no merit in this submission for an obvious reason. A perusal of the report under Section 8 shows that it does not contain any summary of the SIA report. Even otherwise, any summary of the SIA report, if any, in the report under Section 8 cannot be termed as due compliance with the mandatory requirements of publication of the notification under Section 4 and publication of the SIA report as contemplated under Section 6.

47. The letter dated 9th December 2021 is relied upon by Mr. Venegaonkar in support of his submission that the contract is already executed for the commencement of work and the acquisition being for a project of public importance any adverse order in this Petition will delay the work of public importance. A perusal of the said letter and its date of issuance shows that much before giving the so-called hearing on 18th January 2022, under Section 15, the Respondents had already awarded the work contract. Such hurried action on the part of Respondents to award the contract even before completing the acquisition proceedings

shows that the public hearing and consideration of objections filed by the Petitioners was done only as an eye wash to show that statutory procedures were followed. The Respondents never intended to effectively follow the statutory procedures for completing the acquisition proceedings as contemplated under the Act of 2013. Thus, in the facts of the present case, the principles laid down by the Hon'ble Supreme Court in the cases of *Chairman, Indore Vikas Pradhikaran, Gojer Brothers Pvt. Ltd.* and *Hindustan Petroleum Corporation Ltd.*, squarely apply to the facts of the present case.

48. At this stage, we find it necessary to refer to the well-established principle that *if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, Other methods of performance are necessarily forbidden*. This principle squarely applies to the facts of the present case. This doctrine is applied in various cases commencing from *Taylor v. Taylor*⁶, *Nazir Ahmad v. King Emperor*⁷, *A.R. Antulay v. Ramdas Srinivas Nayak*⁸, upto *Municipal Corpn. of Greater Mumbai v. Abhilash Lal*⁹.

49. For the reasons recorded above, it is clear that the Respondents have failed to follow the mandatory requirements for the acquisition of the

6 (1876) 1 Ch D 426

7 1936 SCC OnLine PC 41

8 (1984) 2 SCC 500

9 (2020) 13 SCC 234

said property, as contemplated under the various provisions of the Act of 2013, which has vitiated the entire acquisition proceedings. The aforesaid facts and circumstances of the case also show that there is violation of the principles of natural justice. In a case of compulsory acquisition where the Petitioners are deprived of their valuable property, they are entitled to the opportunity of due hearing as contemplated under the various provisions of the Act of 2013. The Act of 2013 is a complete code in itself. Therefore, the acquisition process begins from the stage of publication of Section 4 notification. Sections 4 and 6 show that public participation, as well as the participation of local bodies, is expected before the appropriate Government takes a decision for the acquisition of a particular land. The stage under Sections 7 and 8 is also crucial, where a Government is expected to apply mind if the acquisition is required after taking into consideration the SIA report. Non-compliance with the mandatory procedures prior to the stage of the decision of the Government to acquire a particular land would vitiate the entire acquisition process. The object of the mandatory procedures prescribed under the provisions of the Act of 2013 ensures that the property of a citizen is not taken away without proper inquiry. There are various safeguards provided at various stages. Transparency is expected at every stage.

50. In the present case, the very process of preparation of the SIA

report is illegal, and the very object of Sections 4 and 6 is defeated. Public at large was not put to notice about the SIA study and the SIA report. Thus, the process of filing objections and the opportunity of giving a hearing was rendered meaningless. Thus, in our view, this is a fit case to exercise our discretionary powers under Article 226 of the Constitution of India. Thus, we are inclined to accept the submissions made on behalf of the Petitioners.

51. Hence, we pass the following order.

(I) Writ Petition is allowed in terms of prayer (b) and (b)(i), which reads thus:

(b) By grant of appropriate writ, order or direction, this Hon'ble Court may be pleased to quash and set aside following notifications -

a. Preliminary Notification No. 3/56/2019/LND-ACQ/2018-19/5417 dated 17.11.2021 (Under Section 11 of the Act).

b. Preliminary Notification No. 3/56/2019/LND-ACQ/2018-19/5419 dated 17.11.2021 (Under Section 11 of the Act).

c. Declaration dated 14.02.2022 bearing No. 3/93/LND-ACQ/2020-21/927 (under Section 19 of the Act).

d. Declaration dated 14.02.2022 bearing No. 3/93/LND-ACQ/2020-21/928.

and further be pleased to quash and set aside entire land acquisition proceedings so undertaken subsequent to these notification;

(b)(i) This Hon'ble Court may kindly be pleased to quash and set-aside impugned award bearing no. 3/93/LND-ACQ/2020-21/1917 and award bearing no. 3/93/LND-ACQ/2020-21/1918 both dated 25/04/2022 issued by Respondent.

(II) Respondents are at liberty to adopt appropriate proceedings for the purpose of acquiring the said property as reflected in the impugned Awards by following due procedure of law under the Act of 2013.

(III) Respondents will be at liberty to file appropriate Application for withdrawal of the amount which is deposited before the Competent Authority.

(IV) Rule is made absolute in the above terms. There will be no order as to costs.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)