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**(1971) 03 RAJ CK 0005**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 169 of 1970**

Anandilal

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

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**Date of Decision :** 17-03-1971

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1971) RLW 569 : (1971) WLN 351

**Hon'ble Judges :** V.P. Tyagi, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

V.P. Tyagi, J.—Petitioner Anandilal has filed this writ application under Article 226 of the Constitution challenging the requisition of lands measuring 23 Bighas and 14 Biswas situate in the town of Hindaun. The description of this land has been given by the petitioner in para No. 2 of the petition.

2. The main ground of attack which has been made by the petitioner before this Court today is that the objections filed by the petitioner u/s 52(2) of the Rajasthan Urban Improvement Act, 1959, were heard by Prem Sukh Maheshwari who was appointed an officer on special duty, Town Planning Department, but the decision on those objections to acquire the said land was ultimately given by the Government. This procedure adopted by the Government, according to the petitioner, is violative of the fundamental principles of natural justice and the decision taken by the Government is thereby vitiated.

3. The petitioner has mentioned various other grounds to challenge the acquisition of the land, but he has argued only one point viz. the acquisition is bad in law because of the clear violation of the principles of natural justice. I need not, therefore, refer other grounds in this judgment as the writ petition can be disposed of only on the one ground pressed before me. The prayer of the petitioner is that the notification No. F.6(18)NA/68 issued by the State

Government on 5th of April, 1969, acquiring the petitioner's land be quashed and the respondents be restrained from taking any further action in the matter of acquisition of the said land.

4. Learned Counsel on behalf of the petitioner has urged that in pursuance of the notice issued under the provisions of Section 52(2) of the Act objections were filed by him before Shri Premsukh respondent No. 2. A personal hearing was given to the petitioner by the said officer who submitted his recommendation to the State Government for acquiring the said land. The Government, however, did not give any opportunity to the petitioner to place personally his case before it. His contention further is that the divided procedure of hearing the objection by one officer and taking the decision for acquiring the land by another officer in the Government vitiates the entire proceedings and the decision taken by the Government in pursuance of the recommendations made by the respondent No. 2, without giving any hearing to the petitioner by the Minister incharge who ultimately passed the order makes the order illegal as it was passed in clear violation of the principles of natural justice.

5. The facts alleged by the petitioner regarding the procedure adopted by the Government in this case are not in dispute. The only question that now remains to be decided is whether the procedure adopted by the Government for issuing a notification to acquire the land of the petitioner is vitiated for not giving a personal hearing to the petitioner by the Minister Incharge who ultimately decided to acquire the land in question from the petitioner for the purpose of the improvement of the town.

6. In order to correctly appreciate the contention raised by the petitioner, it will be convenient to look to the scheme of the Rajasthan Urban Improvement Act, 1959. Section 52 of the Act deals with the compulsory acquisition of land and it provides : "(1) where on a representation from the Trust it appears to the State Government that any land is required for the the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land by publishing in the official Gazette a notice specifying the particular purpose for which such land is required and stating that the State Government has decided to acquire the land in pursuance of this section. Sub-section (2) provides that "Before publishing a notice under Sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested there in to show cause, within such time as may be specified in the notice, why the land should not be acquired." Sub-section (3) of this section further provides that "after considering the cause, if any, shown by the owner of the land and by any other person interested the re in and after giving such owner and person an opportunity of being heard,, the State Government may pass such orders as it deems fit."

7. Unde the Business Rules of the Government it is not disputed now that the Ministry dealing with the town planning had the power to acquire the land for the improvement of a particular town. In pursuance of that power, the Secretary to

the Government Shri R.K. Saxena issued under Sub-section (1) of Section 52 a notice on April 5, 1969 (Annexure I) indicating that the Government required the land in question for public purpose under the Act. Before issuing this notice Annexure I, a notice under Sub-section (2) was given to the petitioner to show cause why the land belonging to the petitioner may not be acquired for the purpose of town planning. The petitioner submitted his objections before the respondent No. 2 who was empowered by a standing order issued by the Minister incharge of the Department of Town Planning to receive such objections and after hearing the parties concerned make his recommendation to the State Government. The Standing Order has been placed by the State Government on the record as Annexure R-1 and it is dated 16th of December, 1967. According to this Standing Order issued by the Minister incharge of the Town Planning, the said officer was empowered to sign the notices issued u/s 52(2) and to receive the cause shown by the owners or persons interested in the land and to give hearing to them and thereafter make his recommendation to the State Government. It is alleged by the petitioner that it is on the recommendations made by the respondent that the respondent No. 1, the Government of Rajasthan decided to acquire the petitioner's land but before doing so, the petitioner was not given any opportunity of being heard by the Government on the cause shown by him in pursuance to the notice issued to him under Sub-section (2) of Section 52 of the Act. The decision of the State Government, according to the petitioner, stands vitiated as it was passed in clear violation of the principles of natural justice in as much as no opportunity was given by the Government to the petitioner of being heard in compliance with Sub-section (3) of Section 62 of the Act.

8. Mr. Bhandari, appearing on behalf of the petitioner, in support of his argument has placed reliance on a Supreme Court case in Gullapalli Nageswara Rao and Ors. v. Andhra Pradesh State Road Transport Corporation and Anr. AIR 1953 S.C. 308 . He also cited certain decisions of this Court to lend strength to his argument. The cases of this Court are reported at Tickooram Vs. State of Rajasthan and Another, and Mrs. Leela Jain Vs. State of Rajasthan and Others,

9. In the case of Mrs. Leela Jain Vs. State of Rajasthan and Others, one Shri D.D. Goswami, who was the neighbour of Mrs. Leela Jain, raised certain dispute about the unauthorised constructions made by Mrs. Leela Jain. That dispute was, however, resolved by the Municipal Council by entering into a compromise and allowed the unauthorised construction to remain after realising a composition fee of Rs. 101/-. A revision application was then filed by Shri D.D. Goswami to the Govt. That revision petition was heard by the Deputy Minister for Local Self-Government who recommended to the Minister that the revision be dismissed and the compromise entered into between the Municipal Council and Mrs. Leela Jain be upheld. The learned Minister without further giving any of port unity to Mrs. Leela Jain did not accept the recommendation of the Deputy Minister and allowed the revision application of D.D. Goswami and ordered for the demolition of the unauthorised conduction. In the writ petition filed by Mrs. Leela Jain, it

was strenuously urged before this Court that the order was passed by the Minister allowing the revision application in flagrant violation of the principles of natural justice in as much as no hearing was given by the Minister who ultimately disposed of the revision application. This Court, after examining various authorities cited by the parties held that "the order passed by the Minister for Local Self Government violated a fundamental principle of natural justice in as much as he passed it without granting any opportunity of hearing to the party which was to be adversely affected by it. We feel bound to point out here that a procedure according to which the hearing in judicial or quasi-judicial matter is relegated to one authority while the power of final disposal is vested in another and the latter authority decides the case adversely to the party concerned without affording any opportunity of hearing to the party so affected, cannot be countenanced as correct and must be struck down, being substantially violative of a basic rule of natural justice. We should also like to point out that the mere fact that such a practice was current in the hearing of such matters at the time with which we are concerned or even afterwards or even that it was in accordance with some standing order passed by the Minister concerned, which has not been actually placed before us but the existence of which we may assume for the purposes of this argument, cannot be accepted as a sound ground for the acceptance or condonation of such illegal procedure. In our considered opinion the authority which hears a matter like this must be the one which is capable of deciding it and if that is not so, hearing becomes more or less a farce or in the language of their Lordships of the Supreme Court an empty formality."

10. In the case of *Tickooram v. State of Rajasthan* AIR 1960 Raj. 129, another Bench of this Court in a matter arising out of the provisions of the Rajasthan Minor Mineral Concession Rules held that the Minister incharge, who did not actually hear the appeal, could not decide it. While dealing with the provisions of Rule 45 of the said Rules, their Lordships observed:

The spirit of Rule 46 is that the appellate authority must be given an opportunity of hearing and that authority is of course to decide the case. It is not envisaged that one authority will hear the appeal and another authority will decide it on the recommendation of the authority who heard the appeal.

11. In the case of *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, the Supreme Court has also had the occasion to decide such a question in a case arising out of the provisions of the Motor Vehicles Act. In that case the objections were heard by the Secretary to the Government but they were finally disposed of by the Minister incharge of the Transport Department. Their lordships of the Supreme Court observed that "this divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade

the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. Therefore, the said procedure followed in this case also offends another beside principle of judicial procedure."

12. The standing order issued by the Minister incharge in this case (Annexure I) empowers the respondent No. 2 to give personal hearing to the objectors and then after considering the objections filed before him to make recommendations to the Government and it is on these recommendations that the Government has to be decide u/s 52 of the Act whether the land is required for the purpose of improvement under the provisions of the Act or not. This procedure, in my opinion, does not fulfil the requirements of Sub-section (3) of Section 52 of the Act which gives a clear mandate to the authority deciding to acquire the land for the purposes of this Act to give the owner or person interested in the land an opportunity of being heard. If the hearing is given by an officer who has been empowered under the standing order to receive the objections and make his recommendation to the Government, then that hearing would not be taken to be a compliance with the mandate of Sub-section (3) of Section 52 of the Act. In view of what has been observed by their Lordships of the Supreme Court and the learned Judges of this Court, the hearing of objections by a person who has not to take the decision to acquire the land becomes an empty formality and is definitely violative of the basic notions of natural justice.

13. Learned Deputy Government Advocate could not point out any authority of the Supreme Court or of any other Court which allow such a procedure to stand. I am, there are, constrained to hold that the procedure adopted in this case in pursuance of the standing order issued by the Minister incharge on 16th December, 1967 is violative of the principles of natural justice and, therefore, it vitiates the decision of the Government to acquire the land of the petitioner for the purposes of the Act.

14. For the reason mentioned above, the writ petition is allowed and the order passed by the Government acquiring the land of the petitioner is, therefore, quashed. Petitioner shall get his costs from the respondents.