

(2010) 05 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No"s. 467 of 2009, 406, 699, 700, 701, 705, 811 and 813 of 2008

Bheru Lal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 11A, 3(c), 4, 4(1), 4(2)

Citation : (2011) 1 RLW 608

Hon'ble Judges : Jagdish Bhalla, C.J.;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant; G.R. Punia, A.A.G. and P.C. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—These intra-Court appeals, preferred against the set of common orders and involving identical issues on similar facts, have been heard together; and are taken up for disposal by this common judgment. For an outline, it could be noticed that the controversy relates to the proceedings for acquisition of the land situated at village Dhoinda, Tehsil and District Rajsamand, as taken up by the respondents under the Land Acquisition Act, 1894 [hereinafter referred to as the Act"/the Act of 1894"] for the alleged public purpose of a housing scheme of the Rajasthan Housing Board at Rajsamand. The appellants herein, allegedly having interest in the land sought to be acquired, preferred the writ petitions in challenge to these land acquisition proceedings essentially on the ground that their objections against the proposed acquisition had neither been properly considered nor appreciated by the authorities concerned. The learned Single Judge of this Court, while rejecting the contention urged on behalf of the petitioner-appellants, has dismissed all the writ petitions in limine, 7 of them (CWP Nos. 911/2008, 929-933/2008, and 895/2008) by the common order dated 26.3.2008; and another (CWP No. 6147/2008) by the order

dated 16.10.2008 with reference to the previous order dated 26.3.2008. Assailing the orders aforesaid, the writ petitioners have preferred these special appeals with the submissions that the learned Single Judge has proceeded on irrelevant considerations and the acquisition proceedings deserve to be annulled with quashing of the declaration u/s 6 of the Act that remains illegal for the reason of having been issued beyond one year from the date of publication of the notification u/s 4 of the Act; and further for the reason of the respondents having not extended them the requisite opportunity of personal hearing as envisaged by Section 5A of the Act. Per contra, it is contended on behalf of the respondents that the declaration has validly been made within the prescribed time; that the appellants have been afforded adequate opportunity to state their objections; and that the State Government, while issuing the declaration u/s 6 of the Act, has duly considered all the relevant reports and the records.

2. In relation to the issues involved, the relevant background aspects and the material facts appearing from the pleadings, from the material as placed on record and from the material as placed for perusal during the course of hearing, could be noticed, in brief and in their feasible chronology, as follows.

3. On 24.7.2006, the State Government in its Urban Development Department proceeded to issue the notification u/s 4(1) of the Act of 1894 for the intended acquisition of the land in question for the housing scheme of the Rajasthan Housing Board at Rajsamand while authorising its Officer on Special Duty, Urban Development and Housing Department, having officer at Rajasthan Housing Board, Jaipur [hereinafter referred to as "the OSD"], to carry out the functions stated in the notification per Section 4(2) of the Act.

4. The notification aforesaid was published in the Official Gazette on 1.8.2006; and in the newspaper son 12.10.2006.

5. On 1.11.2006, the persons interested in the land sought to be acquired proceeded to state their protest against the intended acquisition while alleging that the land earlier available with them came to be acquired for the purpose of a company J.K. Industries and they were given the land in question in lieu thereof; that they had, with efforts, made the land arable and were cultivating the same for their livelihood; and that only a little portion of the land in the vicinity could be sold by the Municipal Board and about 200 bighas of land was lying vacant thereat. This representation dated 1.11.2006 was addressed to Her Excellency the Governor of the State of Rajasthan and was endorsed to the various State functionary/authorities including the Collector of the District Rajsamand and so also the Chief Engineer of the Rajasthan Housing Board.

6. On 22.11.2006, the aforesaid OSD proceeded to issue public notice of such notification inviting objections within 30 days from the date of such notice from the persons having interest in the land in question. It appears that thereafter, specific objections against the proposed acquisition, in the same terms as aforesaid, were made to the Rajasthan Housing Board, Jaipur by the petitioner-

appellant Bherulal (SAW No. 467/2009) and the memo of these objections was sent to the OSD by registered post on 9.12.2006, as is available in the original record of the OSD at pages 15-17.

7. From the record placed for perusal, it appears that various reports were obtained by the OSD regarding the situation at site, the DLC rates, the position of revenue record etc. and thereafter, on 27.2.2007, the OSD proceeded to forward a report, u/s 5A of the Act, to the Deputy Secretary, Urban Development and Housing Department, Government of Rajasthan, Jaipur while making recommendations for acquisition of the land in question. The said report dated 27.2.2007 reads as under:-

8. On the other hand, it appears that on 26/27.2.2007, the concerned Patwari visited the site and forwarded a report to the Tehsildar who, in turn, forwarded such report on 1.3.2007 to the Sub-Divisional Officer, Rajsamand who further forwarded the same to the District Collector, Rajsamand under the communication dated 5.3.2007. Thereupon, the District Collector, Rajsamand proceeded to address the communication dated 24.4.2007 to the Deputy Secretary, Urban Development and Housing Department, Jaipur pointing out the objections raised by the khatedars, the report made by the Sub-Divisional Officer, and the position of the revenue record. The learned District Collector, Rajsamand stated in said communication dated 24.4.2007 as under:-

9. The State Government, on its part, after receipt of the aforesaid report dated 27.2.2007 from the OSD, took up the proceedings for making declaration under Sec. 6 of the Act and while processing the matter, received the aforesaid communication dated 24.4.2007 from the District Collector, Rajsamand. The comments were taken in relation to such communication also and ultimately, on 5.10.2007, the State Government proceeded to make the declaration per Sec. 6 of the Act of 1894 that the land in question was needed for public purpose. This declaration under Sec. 6 of the Act was published in the Official Gazette on 15.10.2007 and in the newspapers on 23.12.2007.

10. The aforesaid declaration dated 5.10.2007 and so also the notification dated 24.7.2006 were put to challenge in the writ petitions wherefrom have arisen these intra-court appeals.

11. In the principal impugned order dated 26.3.2008, the learned Single Judge of this Court noticed the submissions on behalf of the writ petitioners to the effect that they had submitted written objections u/s 5A *ibid* but without hearing them, the public notice came to be issued. The learned Judge further noticed the submissions that the District Collector had forwarded the report based on the reports received from Patwari, Tehsildar and Sub-Divisional Officer making recommendations in favour of the writ petitioners but the said report was not even considered by the State Government and the impugned declaration came to be issued u/s 6 *ibid*. The learned Single Judge yet further noticed the submissions that u/s 5A of the Act of 1894, the objections raised by the

petitioners were to be decided after providing them an opportunity of hearing but that had not been done by the respondent No. 1 (the Dy. Secretary, Urban Development and Housing Department).

12. The learned Single Judge observed that the petitioners had been extended the opportunity to raise their objections within 30 days from the date of public notice i.e. 22.11.2006 and admittedly, they did file the objections, and after obtaining requisite information, the District Collector proceeded to make the recommendations to the State Government. While noticing the contents of the so-called recommendations by the District Collector, the provisions of Section 5A *ibid*, and the averments as taken in the petitions, the learned Single Judge observed that every objection u/s 5A is required to be made to the District Collector in writing who after providing opportunity of hearing and making such further inquiry as considered necessary, is required to make a report to the Government who would be taking the final decision. The learned Judge observed that there was no requirement that the State Government shall be extending opportunity of hearing but, of course, at the initial stage, the Collector is required to provide such opportunity. The learned Judge said,

It is nowhere provided that the State Government is also required to grant opportunity of hearing while taking final decision. Of course, at initial stage, the Collector is required to provide opportunity of hearing.

13. The learned Single Judge observed with reference to the averments taken in the petitions that it was not the case of the petitioners if the Collector had not provided them opportunity of hearing and they were only raising objection against the decision taken by the State Government but then, it was not mandatory for the State Government to accept the report and recommendations made by the District Collector. The learned Judge said,-

....The petitioners have not contended that the Collector has not provided any opportunity of hearing. More so, they are taking shelter of the report submitted by the Collector. The whole basis of the claim and relief of the petitioners is based on report of the District Collector. Meaning thereby, the petitioners are not challenging the action of the respondents upto the sending of report by the District Collector to the State Government but they are raising voice against the State Government that the State Government did not decide their objections according to law. In my opinion, it is not mandatory for the State Government to accept the report and recommendations made by the District Collector. After sending report by the Collector upon the objections raised by the persons concerned, whose land is being acquired; it is for the State Government to take final decision in the public interest.

14. The learned Single Judge referred to the cited decisions and found them of no assistance for the submissions sought to be made on behalf of the petitioners; and proceeded to sum up the findings that no case for interference was made out in the following:-

On the basis of above discussions, it is obvious that there are no allegations levelled by the petitioners against the respondents that the acquisition proceedings are result of any malafide. The only grievance raised by the petitioners is that they were not provided any opportunity of hearing by the State Government. The requirement of Section 5A of the Act of 1894 is that objections are required to be considered by the District Collector after providing an opportunity of being heard and he is required to send his report and recommendations to the State Government and thereafter, the State Government after application of its mind is required to take final decision for acquisition of land. The case of the petitioners is that the District Collector, Rajsamand has sent report supporting their claim, meaning thereby, there is no grievance with regard to action of the District Collector. Admittedly, in the case, final decision has been taken by the State Government for acquiring the land of the petitioners for the purpose of establishment of Housing Board Colony, which is obviously in the public interest. Thus, it is clear that for the welfare of the public at large, the Government has taken decision for acquiring the land of the petitioners, which is adjoining to Housing Board of Rajsamand and expansion of city is required.

Therefore, in my opinion the decision of the Government for acquiring the land of the petitioner is totally in accordance with the provisions of law, which cannot be termed as illegal action or in any contravention of provisions of any law.

15. Accordingly, the learned Single Judge dismissed the writ petitions but then, left the petitioners free to file representation before the Government for providing them alternative agricultural land within one month; and expected the Government to decide the representation expeditiously in accordance with law.

16. Questioning the orders passed by the learned Single Judge and assailing the acquisition proceedings, the learned counsel for the petitions-appellants has essentially put forth two-fold contentions. The learned counsel submitted in the first place that the declaration u/s 6 of the Act was entirely illegal for having been issued beyond the period of one year from the first date of publication of the notification u/s 4 of the Act and on this count alone, the proceedings deserve to be quashed. In this regard, the learned counsel has referred to and relied upon the decisions of the Hon"ble Supreme Court in *Eugenio Misquita and Others Vs. State of Goa and Others*, , *Ashok Kumar and Others Vs. State of Haryana and Another*, , and AIR 2002 187 (SC) . In the second limb of submissions, the learned counsel submitted that the declaration u/s 6 has been issued in this case without compliance of the requirements of Section 5A of the Act inasmuch as the petitioners-appellants were not afforded the requisite opportunity of hearing and hence, the entire proceedings stand vitiated. In this regard, the learned counsel has relied upon the decisions in *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, , *Raj Export and Another Vs. State of Rajasthan and Others*, , *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, , and *Jagrup Singh & 3 Ors. vs. State of Rajasthan & Ors.*, 2002 WLC (UC) 776.

Further, with reference to the decisions in *Munshi Singh and Others Vs. Union of India (UOI)*, and *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, , the learned counsel contended that public purpose is required to be stated with sufficient particularity, and that non-application of mind vitiates the proceedings.

17. Per contra the learned counsel for the respondents has contended that the declaration u/s 6 of the Act was indeed made, as per the requirements of law, within one year of the last date of publication of the notification u/s 4 of the Act and hence, the same cannot be said to have been issued after the expiry of the period envisaged by the proviso to Section 6(1) of the Act, In support, the learned counsel has relied upon the above referred decision of the Hon''ble Supreme Court in AIR 2002 187 (SC) ; and has further relied upon the decisions of the Hon''ble Supreme Court in *Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others*, and *S.H. Rangappa Vs. State of Karnataka and Another*, . The learned counsel further submitted that the objections never demanded any opportunity of personal hearing and merely sent the objections that were duly considered in accordance with law; and before issuing declaration, the State Government took into consideration all the reports made to it, the objections made by the khatedars, and the entire relevant record. The learned counsel contended that there being adequate compliance of the requirements of law, the acquisition proceedings deserve to be upheld; and has relied upon the decision in *Navnath Biradar and Others Vs. The State of Maharashtra and Others*, The learned counsel yet further submitted, with reference to the decisions in *Chameli Singh and others etc. Vs. State of U.P. and another*, and *State of Gujarat Vs. Musamigan Imam Haider Bux Razvi and Another*, that acquisition of land for providing housing sites to the homeless is definitely a public purpose, and a housing scheme for even a limited number of persons may be a public purpose.

18. It may be pointed out that during the course of hearing of these appeals, looking to the questions involved and want of all the necessary particulars in relation to the proceedings u/s 5A of the Act, we requested the learned counsel for the respondents to place before us the relevant records in original; and, accordingly, the records of the proceedings as maintained by the OSD and by the State Government have been placed by the counsel for perusal. The learned counsel for the respondents, while maintaining that the proceedings had been in accordance with law, also made an alternative submission that in any case, for there being no illegality in the proceedings u/s 4 of the Act, the entire of the acquisition proceedings deserve not to be quashed; and has referred to the decisions in *Kanpur Development Authority vs. Mahabir Sahkari Awas Samiti Ltd. & Ors.*, (2005) 10 SCC 320, *Musamigan Imam Haider Bux (supra)*, and *Ram Charan Gupta vs. State of Rajasthan & Ors.*, AIR 2007 (NOC) 1515 (Raj.). The learned counsel for the petitioners-appellants has, of course, opposed such submissions too.

19. We have given anxious consideration to the rival submissions and have scanned through the material, as placed on record and as placed for perusal,

with reference to the law applicable to the case.

20. So far the first limb of submissions is concerned, where it has been contended on behalf of the appellants that the declaration u/s 6 of the Act has been issued beyond the statutory period, we find the same totally baseless and untenable. It is no more *res integra* that the period of one year for the purpose of proviso to Section 6(1) of the Act of 1894 is to be counted from the last date of publication of notification u/s 4 of the Act and until the date of making declaration. The date of publication of declaration u/s 6 being only a ministerial act, the same has been held irrelevant. In the case of Ashok Kumar (*supra*), as relied upon by the learned counsel for the appellant, the Hon"ble Apex Court has made it clear that any declaration made after the expiry of one year from the date of publication of the notification u/s 4(1) would be void and of no effect; however, the matter is issue therein was essentially on the effect of the operation, and of non-extension, of the interim order passed by the civil Court on the period for making declaration. The said decision is otherwise of no direct application to the facts of the present case. The principles that apply in the present case are as expounded in the case of Srinivas Ramnath Khatod (*supra*), wherein the Hon"ble Supreme Court has stated the law in no uncertain terms thus:

13. In our view the wording of Sections 4, 6 and 11A leave no room for doubt that the Land Acquisition Act made a distinction between a "declaration" and "publication". To be noted that u/s 4 of the notification has to be published. Again u/s 11A the period of two years has to be commuted from the date of "publication of the declaration". As distinct from this under the first proviso to Section 6(1) a "declaration" cannot be made after the expiry of one year from the date of "publication of the notification u/s 4". The words "published" in clauses (i) and (ii) of the first proviso to Section 6(1) refer to the publication of notification u/s 4. A plain reading of Section 6 shows that a distinction is made between a "declaration" and a "publication". Viewed from this angle the wordings of the first proviso to Sec. 6(1) become important. The proviso lays down that no declaration (under Section 6) shall be made after expiry of three years [under clause (i)] where the notification under Sec. 4 is published before the commencement of the Land Acquisition Act, 1894 and after expiry of one year [under clause (ii)] where notification under Sec. 4 was published after commencement of Land Acquisition Act, 1894. Thus the proviso clearly talks of "Publication" in respect of notification u/s 4 and then provide a time for "making of declaration" under Sec. 6. The legislature is purposely omitting to use the words "Publication of declaration" in the proviso to Section 6.

21. In S.H. Rangappa (*supra*), the Hon"ble Supreme Court said,-

7. It is pertinent to note that sub-sec. (2) of Sec. 6 does not prescribe any time limit within which the declaration made u/s 6(1) is to be published. It is well known that after an order or declaration is made there can be a time gap between the making of the order or a declaration and its publication in the

Official Gazette. Whereas the time limit for the making of an order is provided u/s 6(1), the legislature advisedly did not provide for any time limit in respect of the steps required to be taken under sub-section (2) of Section 6. If the contention of Mr. G.L. Sanghi, the learned senior counsel for the appellant is correct, the effect would be that not only the declaration would have to be published within the time prescribed under the proviso to Section 6(1) but all other steps, like publication in the daily newspaper and the Collector causing public notice of the declaration to be given at a convenient places in the locality, must also be completed within a period of one year of Section 4 notification. This could certainly not be a consequence contemplated by the legislature. As already observed, the purpose of Section 6 Notification being to give a final declaration with regard to the need of the land for public purpose, the interest of the land owners was sufficiently safeguarded with the requirement of the making of the declaration u/s 6(1) within a prescribed period. It is difficult for us to read into sub-section (2) the provisions of the proviso to Section 6(1) which relate to the time limit for issuance of the notification u/s 6(1).

22. The Hon"ble Apex Court pointed out in Rangappa (supra) that the view being expressed therein was supported by the principles stated in the case of Khadim Hussain Vs. State of U.P. and Others, . The decision as referred by the learned counsel for the appellants in the case of Eugenio Misquita has been explained and distinguished by the Hon"ble Supreme Court in Shriniwas and Rangappa (supra). In Rangappa, the Hon"ble Supreme Court pointed out,-

...In Krishi Utpadan"s case and Eugenio"s case there was no reference made to the binding decision of this Court in Khadim Hussain"s case, even otherwise, in both these cases, declaration u/s 6 had been published within one year of the notification u/s 4 and the question in the form in which it has arisen for consideration in the instant case did not arise there.

23. In view of the principles enunciated and settled by the decisions aforesaid there remains hardly any doubt that the last date of publication of the notification u/s 4 and the date of making declaration u/s 6 that are relevant for the purpose of the period of year envisaged by the proviso to Section 6(1) of the Act; and the date of publication of declaration u/s 6(2) is not at all relevant for the purpose.

24. From the chronology of facts and events; and from the documents/records placed before us, it is but apparent that in this case, the notification u/s 4 ibid came to be issued by the State Government on 24.7.2006, the same was published in the Official Gazette on 1.8.2006; then, was published in the newspapers on 12.10.2006; and then, its public notice was given on 22.11.2006. The declaration u/s 6(1) of the Act had indeed been made on 5.10.2007 though the same was published in the Official Gazette on 15.10.2007 and then, in the newspapers on 23.12.2007. The declaration as made in this case u/s 6(1) ibid on 5.10.2007 cannot be said to have been made beyond the prescribed period. The submissions on limitation as suggested before us had been totally unnecessary;

and it is noticed that the same had not even been urged before the learned Single Judge. Be that as it may, the same being entirely baseless, stand rejected.

25. However, and even after finding that the declaration under Sec. 6 was made within the prescribed time, we are unable to uphold the same for the other but significant reason that after examining the records, we find correct the grievances of the appellants about denial of opportunity of personal hearing on their objections, as required by Sec. 5A of the Act of 1894.

26. Before dilating further, we may observed that in these matters, the petitioners-appellants appear to have not placed the submissions before the learned Single Judge in precise conformity with the relevant facts and in consonance with the law applicable; and rather, the submissions appear to have been made as if the State Government acted illegally in denying them opportunity of hearing and in failing to take in to account the report of the Collector of the Revenue District Rajsamand, In view of such nature submissions on behalf of the appellants, the learned Single Judge also appears to have, with respect, overlooked the facts emanating from the documents placed on record; and the essential requirements of Section 5A read with the other relevant provisions of the Act of 1894. From the observations as made in the impugned order, material portions whereof have been referred and reproduced hereinbefore, it appears that the learned Single Judge considered the report made by the Collector of the Revenue District Rajsamand (referred in the impugned order as "the District Collector") to be the report for the purpose of Section 5A of the Act. While observing that it were not the case of the petitioners-appellants if they were denied the opportunity by the District Collector, rather they were relying on the report made by the said District Collector; and while further observing that the grievance was to the effect that the State Government did not decide their objections according to law and did not extend them opportunity of hearing, the learned Single Judge expressed the opinion that it is not mandatory for the State Government to accept the report and recommendations made by the District Collector; and that as per Section 5A of the Act, the "objections are required to be considered by the District Collector after providing an opportunity of being heard and he is required to send his report and recommendations to the State Government and thereafter, the State Government after application of its mind is required to take final decision for acquisition of land. While the observations made by the learned Single Judge in relation to the role and duty of the State Government are in conformity with the provisions of the Act of 1894, we are afraid, the same cannot be said in relation to the observations regarding the report envisaged by Section 5A of the Act of 1894.

27. In the present case, the Collector of the Revenue District Rajsamand was not the authority concerned who had caused to be given the public notice of the substance of the notification issued by the State Government u/s 4 ibid or had invited objections or to whom the objections were to be made and who was to

give an opportunity of hearing and then to state the report to the Government with his recommendation per Section 5A of the Act. In the fact situation of the present case and in terms of the authorisation stated in the notification u/s 4 itself, it is clear that the said OSD was the officer specially appointed by the State Government for the purpose of the acquisition in question, was performing the functions of the Collector under the Act [vide Section 3(c) of the Act of 1894], and had issued the public notice and invited objections. The record placed before us also makes it clear that on 27.2.2007, the report u/s 5A of the Act was made by the said OSD alone; and the declaration u/s 6 of the Act was also made by the State Government only with reference to the report so made by the OSD.

28. In fact, the Collector of the Revenue District Rajsamand never dealt with the matter for the purpose of Section 5A of the Act nor made any report thereunder. The District Collector's communication dated 24.4.2007 (as reproduced hereinabove) makes it more than apparent that only the objection as stated by the petitioners and the report as stated by the subordinate revenue authorities were forwarded by him to the Deputy Secretary to the Government for appropriate proceedings. Even when the objections stated by the appellants were summarized in the said communication, it was not the report for the purpose of Section 5A of the Act; in fact, it carried no recommendation at all.

29. It appears that the petitioners-appellants, while stating their case before the writ Court, went astray in suggesting that the District Collector had made recommendation in their favour and that the State Government did not extend them opportunity of hearing. However, and even when the pleadings and the submissions were suffering from want of felicity and specification, the submissions were nevertheless made to the effect that the petitioners were not heard per Section 5A of the Act. The grievance of the petitioners-appellants, to this extent, was indeed justified; and, in our view, the learned Single Judge has erred in not examining this grievance in the correct perspective and on its substance. The learned Single Judge with respect, appear to have proceeded on the assumption that the communication dated 24.4.2007, as addressed by the Collector of the Revenue District Rajsamand was the report u/s 5A of the Act; and, because of this assumption and because of the suggestions on behalf of the petitioners-appellants that they were relying on such communication by the District Collector, the learned Single Judge appears to have overlooked the fundamental lacuna in the case that the petitioners-appellants were never afforded the opportunity of personal hearing as required by Section 5A of the Act.

30. The OSD, though had the objections against acquisition before him and though had invited comments from the Rajasthan Housing Board but then, proceeded to forward the report, purportedly u/s 5A of the Act, without extending any opportunity of being heard to the appellants in person or by any person authorised by them or by pleader. This omission renders the report made by the OSD entirely invalid; and, as a natural consequence, the declaration u/s 6 of the Act, when made on the basis of such an invalid report, falls to the ground.

31. Even if, for the sake of arguments, the said communication dated 24.4.2007 as made by the District Collector be also taken into consideration (though as aforesaid, the same cannot be construed to be a report u/s 5A of the Act), an opportunity of personal hearing was not extended to the petitioner-appellants by the said District Collector either. The clinching aspect of the matter is that indisputably, the appellants were never heard in person by any of the authorities, whether by the OSD or by the District Collector. This lacuna knocks the bottom out of the declaration u/s 6 of the Act; and the same cannot sustain itself.

32. Not much of dilation appears necessary on the basic requirements that the report and recommendation u/s 5A of the Act could only be made after giving the objector, an opportunity of personal hearing. The law in this respect, as available in the statute and as expounded by the Hon''ble Supreme Court, does not admit of any doubt whatsoever. Section 5A of the Act itself carries such requirement in explicit terms thus:

5-A. Hearing of objections.-(1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

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

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

33. The opportunity of hearing contemplated by Section 5A of the Act is not an empty formality and is that of valuable right that cannot be done away with. In the case of Hindustan Petroleum (supra), the Hon''ble Supreme Court said,-

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, 5A 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 5A 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 of 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 5A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution has been held to be akin to a fundamental right.

34. A Division Bench of this Court in *Raj. Export (supra)* after noticing the ratio in *Hindustan Petroleum* said,-

The above-quoted paras and the judgments cited in the aforesaid decision clearly demonstrate that Section 5A of the Act is akin to a fundamental right having regard to the provisions contained in Article 300A of the Constitution of India and in its compliance, the Court cannot violate it and refuse to grant relief. Admittedly, in the present case there is non-compliance of Section 5A of the Act by not giving opportunity of personal hearing to the petitioner-appellants through themselves or by their pleader or authorised agent. Thus, the mandatory requirement of Section 5A of the Act has not been complied with, which the State is bound to do so whatsoever may be the cause of acquisition.

35. In view of the aforesaid, the submission as made on behalf of the respondents that the objectors never asked for personal hearing does not carry any substance. It is noticed that the learned OSD never even posted the matter for the purpose of personal hearing. In fact, the learned OSD merely collected certain reports and comments; and abruptly concluded that in view of the reply stated by the Housing Board and for the khatedars having the option of receiving compensation or developed land, the objections were required to be rejected with the observations that the scheme proposed by the Housing Board shall be conducive to the development of the area while providing houses to the economically backward persons. The learned OSD appears to have proceeded oblivious of the requirements of the statute and the law declared by the Hon'ble Supreme Court that the objector is required to be extended an opportunity of personal hearing. In the fact situation of the present case, where the petitioners-appellants were never offered any opportunity of personal hearing, the decision of the Hon'ble Bombay High Court in the case of *Navnath Kashinathappa Biradar*

(supra) has no application.

36. In the present case, when the petitioner-appellants questions the decision making process in relation to the land acquisition proceedings, in our view, it would have been apt and correct if the writ court would have called for an examined the record rather than proceeding on the assumptions that the provisions of Section 5A have been complied with merely with reference to the communication of the Collector of the Revenue District that was nothing but a factual report on the representation made by the persons interested in the land under acquisition coupled with the position at the site and in the revenue records. Such a report had nothing to do with the real issue regarding objections against acquisition.

37. After examining the original records, we are clearly of the view that the report u/s 5A has to be treated invalid and non-est for want of opportunity of personal hearing to the appellants. As a necessary consequence, the declaration u/s 6 of the Act cannot be held to have been made in accordance with law and is required to be quashed. However, looking to the course adopted by the Hon''ble Supreme Court in Kanpur Development Authority and by this Court in Ram Charan Gupta (supra), we would leave it for the authorities to proceed in accordance with law particularly after affording opportunity of personal hearing to the appellants. In this view of the matter, the other submissions as suggested on the merits of the objections and on the public purpose for the acquisition in question do not require any comments from us; and are left at that.

38. Accordingly and as a result of the aforesaid, these appeals succeed and are allowed to the extent indicated above; the impugned order dated 26.3.2008 and 16.10.2008 as passed by the learned Single Judge are set aside; the writ petitions filed by the petitioners-appellants are allowed to the extent that the declaration u/s 6 of the Act as made on 5.10.2007 is quashed and set aside; and the report as made by OSD on 27.2.2007 is also quashed and set aside. The authorities are, however, left free to proceed in the matter but strictly in accordance with law and while keeping in view the observations foregoing. In the circumstances of the case, there shall be no order as to costs. The original records be returned to the counsel for the contesting respondents.