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**(2003) 12 AP CK 0026**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 16012 of 1989**

Darius Shapur Chenai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 10-12-2003**

**Acts Referred:**

Land Acquisition Act, 1984 — Section 4, 4(I), 5A, 6

**Citation :** (2004) 1 ALD 8 : (2004) 1 ALT 439

**Hon'ble Judges :** K.C. Bhanu, J;B. Sudershan Reddy, J

**Bench :** Division Bench

**Advocate :** E. Manohar, for K. Raghuveer Reddy, for the Appellant; Government Pleader for Land Acquisition, Government Pleader for Revenue and P.V. Sanjay Kumar, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

B. Sudershan Reddy, J.—The owner of a piece of land, admeasuring 1220 square yards, situated at the Secretariat Road, Hyderabad, having parted away the same on lease to Caltex India Limited as early as in the year 1965 for a period of ten years, is still awaiting to recover the same. He is fighting the legal battle ever since 1984, when he for the first time requested the 4th respondent-Hindustan Petroleum Corporation Limited (for short "the Corporation") to vacate and handover the vacant possession of the land on 34-1984.

Factual matrix:

2. The petitioner invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by filing the present writ petition in the year 1989 challenging the draft notification issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") published in the A.P. Gazette Part-I, Extraordinary, Hyd. No. 16, dated 3-6-1989 as well as the declaration published u/s 6(1) of the Act in the A.P. Gazette Part-I Extraordinary, Hyd. No. 29 dated 23-10-1989.

3. The petitioner is, admittedly, the owner of the land admeasuring 1220 square yards situated at Secretariat Road, Hyderabad. The said land had been given on lease to Caltex India Limited in the year 1965 for a period of ten years, by lease deed dated 15-12-1965, for the purpose of running a petrol pump. The period of lease was extended from time to time.

4. Caltex India Limited was taken over by the Government of India and all its assets and liabilities, which vested in the Central Government, were subsequently transferred to the Hindustan Petroleum Corporation Limited - 4th respondent herein. The Corporation exercised right for renewal of the lease for a further period of five years by virtue of the power vested u/s 7(3) of the Caltex Act, 1977. The lease period came to an end on 1-8-1984. That by letter dated 3-4-1984 itself the petitioner intimated the Corporation that he would not be willing to grant any farther extension of lease and accordingly requested the Corporation to vacate and handover the vacant possession of the said land on expiration of lease. The Corporation refused to vacate the said premises. The petitioner, thereafter, initiated eviction proceedings against the Corporation by filing O.S. No. 737 of 1985 on the file of the learned VIII Assistant Judge, City Civil Court, Hyderabad.

5. Even while the said civil suit was pending, the Regional Manager of the Corporation, Secunderabad sent a requisition to the Special Deputy Collector, Land Acquisition (General) - respondent No. 3 herein for acquisition of the said land for the purpose of continuing the business of the Corporation. The third respondent after conducting joint inspection submitted draft notification u/s 4(1) of the Act to the Collector, Hyderabad for approval and onward transmission to the Government, for its approval. The Government of Andhra Pradesh, Industries and Commerce (INF) Department having approved the draft notification u/s 4(1) of the Act vide G.O. Rt. No. 934, dated 16-9-1985 issued orders for publication in A.P. Gazette. The notification was accordingly published in A.P. Gazette No. Hyd.36 dated 15-10-1985 and the substance of Section 4(1) notification was also published in two daily newspapers and in the locality as is required under the provisions of the Act. The Government had approved the draft declaration proposal u/s 6 of the Act vide G.O. Rt. No. 1269, dated 6-11-1986 and issued orders for publication in the Gazette. For some or other reason, the same was not gazetted and published as is required in law resulting in lapse of the very notification issued u/s 4(1) of the Act, dated 15-10-1985.

6. The Senior Regional Manager of the Corporation once again sent a fresh requisition to acquire the very same land. The Special Deputy Collector once again having prepared draft notification proposals u/s 4(1) of the Act submitted the same to the Collector, Hyderabad for approval and onward transmission to the Government, for its approval. The Government approved the draft notification and the same was published in the State Gazette dated 3-6-1989. u/s 3(c) of the Act, the Special Deputy Collector, Land Acquisition (General), Hyderabad has been appointed to perform the functions of the Collector u/s 5 of

the Act.

7. The writ petitioner submitted detailed objections dated 20-7-1989 opposing the very acquisition of the land on various grounds. It was inter alia contended that there is no public purpose involved in the proposed acquisition. Less than 20 yards away from the existing petrol pump, there is another petrol pump. On the other side of the road there are two petrol pumps at a distance of less than 100 yards from the existing site on the Liberty road. There are six petrol pumps situated within 1.5 K.Ms., from the land proposed for acquisition. There is huge extent of land belonging to the Government available just opposite to the site proposed for acquisition wherein the Municipal Corporation Office is situated, for the said purpose. The acquisition is a gross abuse and colourable exercise of power in order to deprive the petitioner of his valuable right in the property. The proposed acquisition is a mala fide one and has been initiated vindictively to teach a lesson to the petitioner for his filing a suit for eviction against the Corporation. There is no public purpose at all involved for acquiring the land in question.

8. The Collector concluded the enquiry u/s 5-A of the Act on 19-8-1989 and accordingly submitted a report dated 28-8-1989 to the Government through the District Collector, Hyderabad District. The Government having approved the draft declaration got it published in the A.P. Gazette dated 23rd October, 1989. The petitioner filed claim petition on 20-11-1989 in response to the notice dated 30th October, 1989 issued under Sections 9(1), 10, 9(3) and 10 of the Act. The Land Acquisition Officer passed award dated 22-11-1990. It is unnecessary to notice the further details in this regard.

9. This Court by order dated 27-3-1997 allowed the present writ petition filed by the petitioner on the ground that the acquisition proceedings were initiated to circumvent the orders of the Civil Court and to prevent the petitioner from getting back the property. "The reasons given by the authorities to acquire the land are quite irrelevant. There is no honest application of mind on their part to invoke the urgency clause. Hence, in our considered view the acquisition proceedings are illegal".

10. The Corporation carried the matter to the Supreme Court in Civil Appeal No. 910 of 1998. The Supreme Court vide the order dated 19-8-1998 having set aside the order passed by this Court remitted the matter for its fresh disposal in accordance with law without being influenced by any of the observations made in the order. The parties were permitted to file additional pleadings, if any, for deciding the writ petition. That is how the matter came up for fresh consideration by this Court once again.

11. Before we proceed further to consider the various contentions urged, we are required to notice that the suit filed by the petitioner herein for eviction was decreed on 2-6-1990, against which the Corporation preferred an appeal and the same was dismissed by the Additional Chief Judge, City Civil Court, Hyderabad

vide judgment dated 19-9-1991. Thus, the eviction proceedings initiated against the Corporation ended in favour of the petitioner.

12. The petitioner filed an application in WPMP No. 27633 of 2003 to raise additional grounds challenging the acquisition. One of the objections relates to non-compliance with the provisions of the Land Acquisition (Companies) Rules, 1963, but the same has not been pressed during the course of hearing of the writ petition.

13. The next additional ground raised is in the following manner:

"There was total non-application of mind by the State Government both before issuing the impugned notification u/s 4(1) and declaration u/s 6. Admittedly a notification u/s 4(1) of the Act was initially issued in the year 1985 in respect of the same land soon after the extended lease period come to an end on 1-8-1984. The said notification was, however, not pursued and hence lapsed. As the 4th respondent company was not interested in continuing the business in the land in issue, they did not pursue the matter. The suit for eviction was instituted in the year 1985 and it was decreed on 29-6-1990. Just before the suit was decreed on 29-6-1990, the Company has approached the Government for taking proceedings under the Land Acquisition Act and the Government without any application of mind to any of the facts and circumstances of the case have mechanically issued the impugned notification u/s 4(1) as well as declaration u/s 6 invoking the provisions of Section 17(1) of the Act, though enquiry u/s 5-A was not dispensed with."

14. Another additional ground raised by the petitioner is that there was no public purpose involved in the case in acquiring the land in question and there was no necessity to acquire the land.

15. The State of Andhra Pradesh, which is the acquiring authority, did not file any counter-affidavit and had not chosen to deny the allegations made in the affidavit or in the reply affidavit, and the counter-affidavits filed by the Corporation and the Land Acquisition Officer cannot speak for the Government.

16. Sri E. Manohar, learned Senior Counsel, appearing on behalf of the petitioner submitted that in the instant case the State Government did not consider the detailed objections made by the petitioner herein, but simply accepted the recommendations and the report submitted by the Collector. The Government is the authority to decide the objections and not the Collector. The Government failed in its duty in considering the objections filed by the petitioner before approval of the draft declaration. Therefore, the approval of draft declaration is not only vitiated by non-application of mind, but is ultra vires Section 5-A of the Act. The proceedings initiated for acquisition of the land are, therefore, vitiated. The learned Senior Counsel also contended that the power exercised by the Government is a colourable exercise of power. The acquisition was made in order to frustrate the eviction proceedings initiated by the petitioner in the Civil Court, which were ultimately ended in favour of the petitioner.

17. The learned Senior Counsel further contended that the Corporation did not make any application whatsoever to the Government, but followed a strange procedure by making and forwarding the requisition to the Special Deputy Collector, Land Acquisition (General).

18. The learned Government Pleader for Land Acquisition contended that it is usual practice that applications are filed either before the Collector or before the Special Deputy Collector and the proceedings always emanate from the Special Deputy Collector. This is the normal procedure followed in all acquisitions. Countering the submissions made by the learned Senior Counsel, the learned Government Pleader submitted that the record discloses intense application of mind by the Government in the matter of consideration of objections preferred by the petitioner. The objections have been considered by the Government and appropriate decision has been taken by the Government and the Government alone.

19. The learned Standing Counsel for the Corporation contended that the Regional Manager is the competent authority to make a request for and on behalf of the Corporation for acquisition of the land and the request made by him to the Special Deputy Collector, Land Acquisition (General) itself does not suffer from any legal infirmity. The question whether the Government applied its mind and considered the objections of the petitioner cannot be gone into in this writ petition since there is no specific substantial plea as such raised by the petitioner even in the additional grounds. The learned Standing Counsel further contended that the declaration issued u/s 6 of the Act that the land is required for a public purpose itself is the conclusive proof and it shall be deemed to have been issued in accordance with law.

20. The learned Senior Counsel appearing on behalf of the petitioner mainly concentrated on the point relating to non-compliance with the mandatory requirement u/s 5-A of the Act.

21. We are not impressed by the submissions made by the learned Senior Counsel that the Regional Manager of the Corporation is not the authority to requisition the land for the purpose of the Corporation. It is not possible to quash the very acquisition proceedings on that ground. We are equally unable to accede to the submission made by the learned Senior Counsel that the proceedings ought to have been emanated from the Government and not from the Land Acquisition Officer (General) for setting the law in motion for the purpose of acquisition of the land in question. We find no merit in the submission in view of the fact that the draft notification u/s 4(1) of the Act has been ultimately approved by the Government.

22. The main question that falls for consideration is whether the objections raised by the petitioner objecting to the acquisition of the land on various grounds have been considered by the Government? Whether any decision has been taken by the Government on the objections preferred by the petitioner?

Section 5-A of the Act reads as follows:

Section 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 of causing public notice under the said subsection, 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)-(5).....

23. A plain reading of the provision makes it clear that any person interested in any land which has been notified u/s 4, Sub-section (1) as being needed for a public purpose, is entitled to raise objections to the acquisition of the land. Every such objection is required to be made to the Collector in writing. The provision mandates the Collector to give the objector an opportunity of being heard in person or by any person authorised by him or by a pleader. He is duty bound to hear all such objections and after making such enquiry as he may consider necessary is required to submit a report in respect of the land which has been notified u/s 4, Sub-section (1) to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him. It means that after hearing the objections, the Collector is duty bound to make his own recommendations on the objections and submit the same together with the record of the proceedings for the ultimate decision of the Government. The decision of the Government on the objections shall be final. The Government is duty bound to consider the objections preferred by the objector. Mere consideration of the recommendations made by the Collector is not enough. The Government is under obligation to consider the report containing the recommendations made by the Collector for the purpose of taking an appropriate decision on the objections. The decision of the Government is on the objections and not on the report or recommendations of the Collector.

24. In the instant case, the second respondent-Government did not produce the records concerning approval of draft declaration and consideration of objections preferred by the petitioner. This Court having found that the records of the Government containing notification issued u/s 4(1) of the Act and the file containing hearing of objections u/s 5-A of the Act resulting in publication of

draft declaration u/s 6 of the Act were not made available for the perusal of the Court required the learned Government Pleader to produce the same. The learned Government Pleader submitted that the Secretary of the Department was making efforts to trace the records and the same shall be made available if they are traced. Since the records were not produced, this Court by its order dated 6-11-2003 passed the following order:

"It is needles to remind the State and its officers that once Rule Nisi has been issued in a case by this Court, it is their bounden duty to make available the entire records relating to the said case for the perusal of the Court.

Time as prayed for by the learned Government Pleader is accordingly granted.

Post on 10-11-2003."

25. In spite of the said directions, no records were made available for the perusal of the Court. However, the Principal Secretary to Government, Industries and Commerce Department filed a brief affidavit, in which it is inter alia stated:

"The objections filed by the owner u/s 5(A) of the Act and the reply submitted by the beneficiary corporation was considered by the Collector and rejected the objections and further forwarded for approval of the Government. Accordingly the recommendations of the District Collector, Hyderabad was accepted and Draft Declaration were issued by the Government. The entire record pertaining to the acquisition of land in question has been submitted by the Special Deputy Collector, General, Hyderabad in the High Court. Further I got searched the records relating to the acquisition of the land bearing Plot No. 5-9-22/1, situated at Shapurwadi, Hyderabad belongs to Sri Darius Shapur Chenai and the said records are not readily traceable in view of the shifting of Industries and Commerce Department within the premises of the Secretariat Buildings twice in 4 years, i.e., From "H" Block to "A" Block and from "A" Block to "D" Block. Non-production of records by this Respondent is neither wilful nor deliberate for which I tender my unconditional apology to this Honourable Court and the Honourable Court may be pleased to accept the same. (Emphasis is of ours).

26. The affidavit, though brief, makes an interesting reading and discloses that the Government record is not available. What has been produced in this Court is the record available with the Special Deputy Collector. Even according to the Principal Secretary to Government, the objections filed by the petitioner and reply submitted by the Corporation were considered by the Collector and the Collector having rejected the objections forwarded the same for approval of the Government. The recommendations of the District Collector, Hyderabad were accepted and draft declaration was issued by the Government. It is not known as to under what authority, the Collector could have rejected the objections submitted by the petitioner.

27. The Collector under the Act is required to hear the objections and make such further enquiry as he may think necessary and then make a report in respect of

the land, which has been notified u/s 4(1) to the appropriate Government, which should contain his recommendations on the objections. He is also required to send the complete record of the proceedings held by him. The ultimate decision is required to be taken by the Government on the objections. In the affidavit filed by the Principal Secretary, it is nowhere stated that the Government having considered the objections and recommendations of the Collector and having rejected the objections approved the draft declaration for its publication in the Gazette. According to the averments made in the affidavit filed by the Principal Secretary, the District Collector seems to have made some recommendations to the Government, which were accepted by the Government. It is nowhere stated in the affidavit that the Government having perused the objections as well as the recommendations on the objections of the Collector took final decision in the matter on the objections preferred by the petitioner.

28. It is thus a clear case where the Government did not take any decision in the matter. The duty of the Collector u/s 5-A of the Act is only to hear all the objections preferred in the matter and make such further enquiry as he may consider it necessary and submit report or reports to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the Government. The decision of the Government on the objections shall be final. The expression "decision" employed in Section 5-A of the Act is crucial. The "decision" of the appropriate Government, which is final, is a condition precedent for making a declaration of intended acquisition u/s 6 of the Act. The appropriate Government's satisfaction that any particular land is needed for a public purpose and a declaration is required to be made to that effect depends upon the decision of that appropriate Government u/s 5-A of the Act.

29. The word "decision" connotes the meaning as (1) "an act of deciding or settling a dispute or question by giving a judgment", (2) "an act of making up one's mind"; (3) "a judgment or conclusion reached or given"; (4) "determination; firmness of mind". (See Webster's New World Dictionary, Third College Edition).

30. "Decision" is not an empty formality, but involves application of mind. The record should indicate the application of mind by the appropriate Government. Obviously, any and every "decision" is required to be supported by reasons.

31. The Apex Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, , observed:

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached."

32. In a given case, the failure on the part of the statutory authority to give

adequate reasons with regard to the matter in issue may renders its conclusions arbitrary and capricious. The reasons should demonstrate that there is a logical and legal basis for the ultimate conclusions. In the absence of such reasons, this Court cannot perform its duty of judicial review of an administrative action in accordance with established legal principles and of protecting the parties and the public from arbitrary and capricious decisions.

33. In *Breen v. Amalgamated Engineering Union*, (1971) 2 QB 175 Lord Denning observed:

".... if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reasons is one of the fundamental of good administration."

34. In the absence of reasons, it is impossible to determine whether or not the "decision" is vitiated by any error of law. Failure to give reasons, therefore, amounts to denial of justice.

35. In the case on hand, no record is made available reflecting the decision making process by the appropriate Government as to in what manner it has considered the objections preferred by the petitioner and the report containing recommendations of the Collector.

36. It is very well settled and needs no restatement at our hands that the provisions of the Act must be strictly constructed as it deprives a person of his land without his consent

37. In *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, , the Supreme Court observed:

"Two things are plain when we come to consider the construction of Sections 4, 5-A and 6. The first is that the Act provides for acquisition of land of persons without their consent, and though compensation is paid for such acquisition; the fact however remains that land is acquired without the consent of the owner thereof and that is a circumstance which must be borne in mind when we come to consider the question raised before us. In such a case the provisions of the statute must be strictly constructed as it deprives a person of his land without his consent. Secondly, in interpreting these provisions the Court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent."

38. In *Abdul Husein Tayabali and Others Vs. State of Gujarat and Others*, , the Supreme Court while interpreting Section 5-A of the Act observed:

"Under Section 5-A, the Collector has to hear the objections of the owner, take them on record and then submit his report to the Government. The Section also requires him to send along with his report the entire record of his inquiry which would include the objections. The report has merely recommendatory value and is not binding on the Government. The record has to accompany the report as it is for the Government to form independently its satisfaction. Both are sent to enable the Government to form its satisfaction that the acquisition is necessary for a public purpose or for the Company. It is then that Section 6 notification which declares that particular land is needed for either of the two purposes is issued. The Government thus had before it not only the opinion of Master but also all that the appellants had to say by way of objections against the proposed acquisition." (Emphasis is of ours)

39. In the instant case, it is not known as to how the Government formed its satisfaction that the acquisition is necessary for a public purpose.

40. In *Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others*, , the Supreme Court observed:

"Satisfaction of the Government after consideration of the report, if any, made u/s 5A is undoubtedly a condition precedent to a valid declaration, for, there can be no valid acquisition under the Act unless the Government is satisfied that the land to be acquired is needed for a public purpose or for a Company."

It is further observed:

"Apart from the clear language of Section 6, it would seem that it is immaterial whether such satisfaction is stated or not in the notification. For, even if it is so stated a person interested in the land can always challenge as a matter of fact that the Government was not actually satisfied. In such a case the Government would have to satisfy the Court by leading evidence that it was satisfied as required by Section 6. (Emphasis is added).

41. We have already noted the details of one of the additional grounds raised by the petitioner that "the Government without any application of mind to any of the facts and circumstances of the case have mechanically issued the impugned notification u/s 4(1) as well as declaration u/s 6 of the Act." There was total non-application of mind by the State Government both before issuing the notification u/s 4(1) and declaration u/s 6 of the Act. Thus, there is a clear challenge to the draft declaration issued by the Government on the ground of non-application of mind.

42. It is interesting to notice that the second respondent-State Government, which is the appropriate Government, at no point of time filed any counter-affidavit disputing any of the allegations and averments made in the affidavit as well as in the additional affidavit filed by the petitioner challenging the acquisition proceedings. The only affidavit available on record is that of the Principal Secretary to Government, Industries and Commerce Department, to

which we have already made an elaborate reference, and the averments made therein indeed support the claim of the petitioner.

43. The learned Government Pleader, however, relied upon the note prepared and submitted to the Honourable Chief Minister with reference to the representation made by the petitioner for withdrawal of notification, in which it is inter alia observed that the objections of the land owner do not deserve any consideration. There is a reference to the approval of draft declaration in G.O. Rt. No. 1192, Industries and Commerce Department, dated 25-9-1989 for acquiring the above land in favour of the Corporation. Even that note, upon which reliance has been placed by the learned Government Pleader does not refer to any independent consideration of the objections preferred by the petitioner before issuing the draft declaration u/s 6 of the Act. It merely refers to the proposals submitted by the Special Deputy Collector and his report "that the land in question is already occupied by the petroleum pump of the Corporation by virtue of lease, is essential to cater to the needs of general public" and, therefore, the objections of the land owner do not merit consideration. While referring to the same in the note, it is observed, "the Government after detailed examination have issued orders in G.O. Rt. No. 1192, Industries and Commerce Department, dated 25-9-1989 approving the draft declaration to acquire the above land in favour of Hindustan Petroleum Corporation Limited."

44. The note is subsequent to the approval of the draft declaration. Even if the said note is required to be taken into consideration for the reason that it forms part of the record, it does not reflect as to in what manner the Government arrived at its satisfaction to overrule or reject the objections preferred by the petitioner. It merely refers to the report containing recommendations of the Special Deputy Collector. There is no whisper as to in what manner the Government had considered the objections and decided the objections of the petitioner. It is a clear case where the record does not support the contention urged by the learned Government Pleader that the Government had applied its mind and taken an independent decision to overrule the objections preferred by the petitioner. At any rate, we cannot rely upon the said note for whatever purposes to decide whether the satisfaction, if any, arrived at by the Government is in accordance with law in the absence of the relevant record.

45. It is interesting to note that ever since the date of filing of this writ petition in the year 1989 no counter-affidavit has been filed by the Government. It is not as if the records were not available even as on the date when the writ petition was admitted and Rule Nisi was issued by this Court.

46. It is a clear case where the Government did not consider the objections of the petitioner and precisely for that reason neither filed any counter nor produced any records. The Land Acquisition Officer alone has been opposing the writ petition. The averments made in the affidavit filed by him are totally irrelevant for the purpose of considering the issue relating to non-consideration of objections preferred by the petitioner. The averments made therein, in no

manner, reflect as to in what manner the Government after considering the objections and as well as the report had arrived at its satisfaction that the land in question is needed for a public purpose.

47. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , the Supreme Court observed:

"Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can, also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

48. In the instant case, no grounds are shown as to in what manner the Government arrived at its satisfaction requisite under the legislation that the land in question is needed for a public purpose and, therefore, the declaration of intended acquisition is required to be made. It is no doubt true that the formation of opinion leading to satisfaction of the Government is subjective, but the existence of circumstances relevant to the inference as the sine qua non for arriving at the satisfaction must be demonstrable and evident from the record. It is not necessary to state the reasons as to how and on what basis the Government had arrived at the satisfaction for the declaration to be issued and notified, but the record must disclose the same. Whenever the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the provision exists, the action might be exposed to interference unless the existence of the circumstances is clearly made out. It is not open to the Government to say that it has formed the requisite opinion on circumstances, which it thinks exist. Those circumstances leading to the satisfaction have to be proved at least prima facie. Mere assertion that the circumstances existed is not sufficient.

49. The observations made by the Supreme Court in *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, , upon which reliance has been placed by the learned Standing Counsel for the Corporation that "the Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers" cannot be torn out of the context. In the very same decision, it is observed that it is ultimately a matter of balancing the competing interests. The Supreme Court having noticed that stays and injunctions were being granted indiscriminately made those observations that while the Court passing such interlocutory orders

should keep larger public interest in mind while exercising its power under Article 226 of the Constitution of India. The said decision, in no manner, supports the case of the Corporation.

50. We are constrained to note that the Corporation itself is not running the petroleum pump but the same is being operated through its licensee. Yet, the Corporation had chosen to oppose the claim of the petitioner for recovery of his own property. The facts speak for themselves and we do not intend to make any further comments in this regard.

51. For all the aforesaid reasons, the proceedings initiated under the Act proposing to acquire the land in question are quashed. All consequences including the delivery of possession of the land shall follow.

52. The writ petition is accordingly allowed with costs, quantified at Rs. 5,000/- (Rupees five thousand only).