

(2010) 12 P&H CK 0490
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1048 of 2008

Deepak Aggarwal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 17, 4, 4(1), 45, 45(1)

Citation : (2011) 161 PLR 760

Hon'ble Judges : Jasbir Singh, J; Augustine George Masih, J

Bench : Division Bench

Judgement

Jasbir Singh, J.—This order will dispose of ten writ petitions bearing CWP Nos. 13, 1048, 2787, 6029, 19199, 19293, 19428 of 2008, 108, 1677, 3228 of 2009 involving similar questions of law and facts. For the purpose of dictating order, facts are being mentioned from CWP No. 1048 of 2008.

2. The Petitioners, who are 64 in number, have laid challenge to a notification, issued u/s 4 of the Land Acquisition Act, 1894 (in short, "the Act") on 23.12.2005, proposing to acquire land measuring 278 acres 1 kanal 1 marla situated in villages Dhakola, Saha, Tepla and Jawahargarh, for a public purpose, namely, for setting up of Growth Centre Saha Tehsil and district Ambala. Further challenge has been made to a declaration issued u/s 6 of the Act on 29.12.2006, notifying land measuring 274 acres 4 kanal 16 marla for final acquisition.

3. It is not in dispute that after issuance of a notification u/s 6 of the Act, land measuring 28 acres 1 kanal 10 marla was released from acquisition by invoking the provisions of Section 48 of the Act on 25.7.2008. Award was passed on 15.9.2008.

4. At the time of arguments, it was admitted that after filing of this writ petition in this Court, many Petitioners/land owners have accepted compensation offered by the Land Acquisition Collector.

5. It is case of the Petitioners that to set up an Industrial Growth Centre at Saha, the State of Haryana had already acquired a vast track of land, way back in the year 1996. It is further stated that after lapse of more than 13 years, land acquired earlier, is not fully developed and most of it, is lying vacant. Some writ petitions challenging that acquisition are still under consideration in this Court. It is averred by the Petitioners that qua the acquisition, in dispute, after issuance of notification u/s 4 of the Act on 23.12.2005, they had filed objections u/s 5A of the Act. A copy of one such objection, filed on 28.1.2006 has been placed on record as Annexure P3. It is specific case of the Petitioners that without issuance of any notice to any of the Petitioners, calling them for hearing of their objections, Respondent No. 2 unilaterally fixed 1.4.2006 as a date for hearing of the objections. It was also stated that some of the Petitioners have filed their objections through counsel, with a specific prayer that they be given personal hearing at the time of disposal of their objections. Despite that they failed to get any response from the Land Acquisition Collector. It was further stated that some of the Petitioners came to know about presence of the Land Acquisition Collector (Respondent No. 2) in the locality on 1.4.2006, they approached him with a prayer that their land be released from acquisition. Even at that time, none of them was made aware that date was fixed for disposal of objections filed by them u/s 5A of the Act. It is further stated that the staff accompanying Respondent No. 2 had obtained signatures of 8-9 persons, as a token of their presence, to make request to Respondent No. 2 to release their land/At no point of time, Respondent No. 2 heard any of the Petitioners regarding objections raised by them to the proposed acquisition.

6. As per admitted facts on record, more than 900 land owners had filed objections u/s 5A of the Act. It is case of the Petitioners that without looking into their request for release of their land and deciding their objections, notification u/s 6 of the Act was issued on 29.12.2006, declaring an intention to acquire land measuring 274 acres 4 kanal 16 marla. By making reference to a letter/order dated 25.7.2008 (P8), vide which, more than 28 acres of land was released from acquisition by invoking the provisions of Section 48 of the Act, it is propagated by the Petitioners that by not giving the same relief to them, the State has acted in a very discriminatory manner.

7. It is further case of the Petitioners that the impugned notifications have been issued without getting prior environmental clearance from the competent authority in terms of a notification dated 14.9.2006, issued by the Central Government under the provisions of Environment (Protection) Act, 1986 and the Rules framed there under. By making reference to the objections filed by them, the Petitioners urged that on their objections, no finding was given by the Land Acquisition Collector.

8. Upon notice, reply has been filed by Respondent No. 2, wherein averments made by the Petitioners have been refuted by stating that before giving opinion on objections, filed by the land owners u/s 5A of the Act, Respondent No. 2 has

given an opportunity of hearing to all the land owners and objections were disposed of on proper application of mind by him. It is further stated that Respondent No. 2 gave notice to all the land owners for hearing of their objections on 1.4.2006 by making a declaration (musthri munadi) in the villages through Chowkidars on 28.3.2006, copies of the entries made in Roznamcha Waqaiti have been brought on record as Annexure R7 to R10. To get the date of hearing notified, copy of a letter written by Respondent No. 2 to the Naib Tehsildar Saha on 24.3.2006 has been placed on record as Annexure R5 and report dated 1.6.2006 made by Respondent No. 2 on objections filed by the land owners has been brought on record as Annexure R6, wherein it is stated that as many as 913 objections were received u/s 5A of the Act, 13 objections do not relate to the area under acquisition, interested land owners (151 in number) were heard on 1.4.2006 and joint statement of all the objectors was recorded, who raised similar objections. Statements of those persons, who appeared personally on 1.4.2006, who had not filed written objections within the stipulated period, were not considered. It is further denied that any land was notified for release as alleged in the writ petition. It was further averred that before the land acquisition, prior environmental clearance was not required to be obtained.

9. In reply filed by Respondent No. 3, it is stated that the land which was acquired in the year 1996, is in possession of HSIIDC. The same stood developed except small pockets which are surrounded by the land under litigation.

10. In reply filed at the instance of Respondent No. 1, it is admitted that on recommendation made by a Committee and after site inspection on 11.4.2007, some portion of land (28 acres 1 kanal 10 marla) was released from acquisition by invoking the provisions of Section 48 of the Act.

11. By filing replication, averments made in the writ petition were reiterated.

12. At the time of hearing on 11.2.2010, it was noted by this Court that there are some discrepancies in the replies filed by the Respondents. Taking note of the same, following order was passed on that date:

During the course of hearing, Mr. M.L. Sarin, Sr. Advocate, has inter alia contended that there are apparent contradictions in the various paragraphs of written statement filed by Respondent No. 2. He has substantiated his argument by referring to the averments made in paragraph 13 of the written statement and report dated 1.8.2006 (R-6). In para 13, the number of objectors mentioned was 913 who have filed the objections and the number of persons who appeared on 1.4.2006 was 154. However, in the report dated 1.8.2006 (R-6) and the accompanying document show that the number of objectors is 901 and the number of persons who have appeared on 1.4.2006 is 6. Apart from the aforesaid apparent contradictions, Mr. Sarin has placed reliance on judgments of Hon"ble the Supreme Court in Hindustani Petroleum Corporation Ltd. v. Darius Shaper Chenai (2005) 7 S.C.C.10 of the judgment of Hon"ble the Supreme Court in Shyam Nandan Prasad and Others Vs. State of Bihar and Others, and argued

that the grant of personal hearing is not a mere formality and it is a right akin to fundamental right. He has further placed reliance on the judgment of this Court in *Surat Singh Engineer and Another Vs. State of Punjab and Another*, and argued that the service of personal notice on the land owners is mandatory u/s 5A(2) of the Land Acquisition Act, 1894. Mr. Serin has also submitted that the Petitioners who have accepted the amount of compensation after announcement of the award would not press their claim. Mr. Bhag Singh, Advocate has also made the same statement in the connected petition.

Heard counsel for the parties.

13. In all these writ petitions, it is common grievance of all the Petitioners that before deciding their objections u/s 5A of the Act, neither notices of hearing were given to them nor they were heard. It was argued by Mr. Sareen that disposal of objections filed u/s 5A of the Act is not a mere formality. Right given in the above said provision is akin to the fundamental rights of a land owner, whose land is going to be acquired by the State by invoking the principle of eminent domain. Detailed objections filed by the Petitioners were not considered. They were not cautioned about the date fixed for disposal of their objections.

14. The State counsel, by making reference to the averments made in the written statement, argued that Respondent No. 2 wrote a letter to Tehsildar of the area, asking him to notify date of hearing of objections filed u/s 5A of the Act on 1.4.2006, which was accordingly done by way of proclamation in the villages. To say so, reliance has been placed upon copies of entries made in *Roznamcha Waqaiti* of the Patwari (Annexure R7 to R10). State counsel prayed that the writ petitions having no substance be dismissed.

15. Besides as above, the Petitioners, to quash the impugned notifications, have raised a grouse of discrimination with them. It has been stated that more than 28 acres of land was released from acquisition after issuance of a notification u/s 6 of the Act on 25.7.2008. However, the said relief was not granted to the Petitioners despite objections raised by them. It was further urged that prior environmental clearance was not obtained before issuance of the impugned notifications, which runs contrary to a notification issued by the Central Government on 14.9.2006 (P8).

16. Above said arguments have also been controverted by the State counsel. However, we feel that before dealing with these two contentions, it will be desirable to decide first, an objection of the Petitioners regarding non-complying with the provisions of Section 5A of the Act by the Respondent No. 2.

17. As per Scheme of the Act, after issuance of a notification u/s 4 of the Act, a right has been given to a land owner, as per provisions of Section 5A of the Act, whose land is under acquisition, to raise objection to the same. Provisions read thus:

5A. 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 purposes of this section, a person shall be deemed to be in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

18. Section 5A contemplates that any person, who is interested in the land under acquisition, within a stipulated period, can object to the same by putting in a written representation before the Collector. A mandate has been issued to the Land Acquisition Collector to provide an opportunity of hearing to the concerned land owner and if need be after making further enquiry, the Land Acquisition Collector has been asked to submit his report recommending acquisition of land or otherwise.

19. As per established law, right given to a land owner u/s 5A of the Act, is very important and it has been held to have the flavour of the fundamental rights. Their Lordships of the Supreme Court in *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, when dealing with a similar situation, observed as under:

39. It is in exercise of power of eminent domain that a sovereign may acquire property which does not belong to him. In the circumstances as a general rule, before exercise of power of eminent domain, law must provide an opportunity of hearing against the proposed acquisition. Even without a specific provision to that effect, general law requires raising of objections by and affording opportunity of hearing to the owner of the property. The Land Acquisition (Amendment) Act, 1923 (Act 38 of 1923), however, expressly made such provision by inserting Section 5A in the Act.

20. Similarly, in the case of *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, it was observed by the Supreme Court that right given to a land owner u/s 5A of the Act is very valuable. It was stated thus:

7. It is not in dispute that Section 5A of the Act confers a valuable right in favour

of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution of India, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

21. It was further stated that hearing contemplated u/s 5A of the Act, is not a mere formality. It must be an effective one. Formation of opinion with regard to public purpose, as also, suitability of land thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. 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. When it is detected that there is a total non-compliance with the provisions of Section 5A of the Act, the Courts must give relief to the aggrieved land owner. No doubt, declaration u/s 6 is a conclusive evidence of a fact that land is required for a public purpose, however, when decision making process itself is in question, it is open to the Court to exercise its power of judicial review and if it is found that the order, under challenge, suffers from illegality, irrationality and procedural impropriety, it is must for a Court to interfere. Under the Land Acquisition Act, the state has vast powers to deprive the land owners of its property. Such enormous power is required to be exercised in a fair and reasonable manner. The Court, by making reference to the observations made by the Supreme Court in the case of Union of India (UOI) and Others Vs. Mukesh Hans etc., observed that a right given to a land owner/person interested, u/s 5A of the Act, to object to the acquisition proceedings is not empty formality. It is a substantive right which can be taken away only for good and valid reason after complying with the provisions of Section 5A of the Act.

22. Similarly, in the case of Munshi Singh and Others Vs. Union of India (UOI), , while discussing a similar matter, the Hon"ble Supreme Court observed thus:

7. Section 5A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A:

23. A Division Bench of this Court in Anil Garg v. State of Haryana and Ors. (2010)160 P.L.R. 591, decided on 7.4.2010, has stressed upon importance of the rights given to a land owner/interested person, u/s 5A of the Act, by observing as under:

12. It is equally well settled that the right of hearing contemplated by Section 5A

is akin to fundamental rights and it is not an empty formality, as has been held by Hon"ble the Supreme Court in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, . The filing of objection is one thing. Thereafter, issuance of notice of hearing and then affording of an opportunity of hearing either to the objector in person or through his counsel are mandatory stages implicit in Section 5A of the Act. It is admitted in the instant case that as the objections were time barred no notice of hearing could be issued to the Petitioner. The views of Hon"ble the Supreme Court are clear from judgments rendered in the cases of Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others, and Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, . The question regarding issuance of notice for hearing and affording of opportunity have been squarely answered in para 10 of the judgment in the case of Shyam Nandan Prasad and Others Vs. State of Bihar and Others, , which reads thus:

10. ...That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument. And lastly, since the decision of the Collector may turn out to be final, unless interfered with by the Government, suo motu or on application, the Collector's decision is that of a quasi judicial authority, arrived at by quasi-judicial methods.

(emphasis added)

24. As per established law, provisions of Section 5A of the Act are mandatory. Before disposal of objections u/s 5A of the Act filed by a land owner, it is incumbent for the Land Acquisition Collector to put the land owner to a notice who has a right to appear in person or through a pleader before the Land Acquisition Collector. Their Lordships of the Hon"ble Supreme Court in Shyam Nandan Prasad and Others Vs. State of Bihar and Others, , observed as under:

10. At the pre Section 6 stage, besides the mode of publications at various places where the land is situated, personal service of the copy of the notification is prominently required to be made on the person interested so that he can make objections in writing to the Collector, and on objections being made, the Collector is obliged to give to the objector opportunity of being heard either in person or by pleader. The Collector is further obliged to hear all such individual objections, make such further enquiries as necessary and then required to make an appropriate decision reporting the same to the Government. The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion mat the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of

objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument. And lastly, since the decision of the Collector may turn out to be final, unless interfered with by the Government, suo motu or on application, the Collector's decision is that of a quasi-judicial authority, arrived at by quasi-judicial methods.

11. That the compliance of provisions of Section 5A is mandatory, is beyond dispute. See in this connection, *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, and *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, . Affording of opportunity of being heard to the objector is a must. The provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. This right is not absolute, however, if the appropriate Government, in its discretion, chooses to dispense with its applicability by invoking urgency provisions of Section 17 of the Act. But once Section 5A is kept applicable, there is no cause to treat its provisions lightly or casually.

25. To state that before disposal of objections u/s 5A of the Act, the land owner is entitled to a notice, reliance has also been placed upon the provisions of para 19A of the Financial Commissioner's Standing Order No. 28. That provision reads thus:

(i) When the Collector receives an objection he shall fix a date for hearing it and give notice of the date to the objector and to the officer of the Department or the local body, on whose application the notification u/s 4 has been issued. It will generally be convenient to hear all objections after the limit of thirty days has expired.

(ii) On the date fixed for hearing, if the objector fails to appear in person or by pleader, the Collector may, if he thinks fit, make an ex parte enquiry regarding the objection, or he may at once report to the Local Government the fact of the objector's failure to appear. In either case he shall, without unnecessary delay, report his opinion as to the validity of each ground of the objection.

(iii) The Collector shall forward his report together with the record of his proceedings direct to the Home Secretary to Government if the acquisition appertains to a reserved subject, and to the Secretary concerned when it appertains to a transferred subject.

(iv) No costs shall be allowed.

(v) If the Local Government, after consideration of the report of the Collector,

decides to withdraw from the acquisition proceedings, the notification u/s 4 of the Act shall be cancelled without delay.

26. Reference has also been made to the provisions of Section 45 of the Act, which envisages that any notice under this Act, shall be made by delivering or tendering of a copy of the notice, signed by the officer concerned and an attempt shall be made to serve notice as may be practicable to the person named in the notice. If that person is not available, the service can be effected through adult male member of the family residing with him/her. If no such adult member is available service can be effected through affixation on the outer door of the house. A provision has also been made to send a notice by post.

27. Compliance with the provisions of Standing Order No. 28, Section 45 of the Act, was held mandatory in the case of Pt. Mehar Chand and Ors. v. The State of Haryana and Anr. 1983 P.L.J. 25. Noncompliance with the above said provision was under consideration in that case and it was observed as under:

This paragraph besides indicating the speed at which the Collector has to finalise the hearing of the objections and the completion of the acquisition proceedings as a whole well lays down that the Collector shall give a notice to the claimants about the date of hearing fixed by him for the consideration of the objections. There is no dispute that the action of the Government in acquiring the land may be administrative in character, but the enquiry to be held by the Collector u/s 5A of the Act has to be regarded as a quasi judicial enquiry as it has civil consequences of depriving a person of his property. As a matter of fact, Section 5A was inserted in the Act by Act No. 38 of 1923, to do away with the lacuna that a person having interest in the land sought to be acquired had no right or opportunity to object to such acquisition. The Statement of Objects and Reasons of the Bill of the above noted Act reveal that the object of adding this section to the Act was that "a Local Government shall not declare, u/s 6 of the Act, that any land is needed for a public purpose unless time is allowed after the notification u/s 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government." If that is the purpose of the introduction of this section to the statute, then obviously the opportunity to be granted to an objector is not a matter of form but of substance. I have already pointed out that Section 45 clearly lays down the mode and manner of the service of notices under the Act. This section reads as follows:

45. Service of notices.- (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of notice u/s 4, by the Officer therein mentioned, and, in the case of the other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member

can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or Carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at this last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1856, and service of it may be proved by the production of the addressee's receipt.

The implications of this section have already been examined and interpreted by the various High Courts in the following judgments:

(1) Ram Chand Vs. Union of India and Others, .

(2) Nirmala Bala Sen Vs. Jatindra Nath Sen, .

(3) M.D. Sahadat Ali Gazi and Ors. v. The State of West Bengal and Ors. 62 CWN 788.

This is what has been laid down in the first judgment in Ram Chand's case (supra):

5. On a reading of the above section it is clear that what is contemplated is service of notice through a process server. If the notice taken by the process server cannot for valid reason be served personally on the person concerned, it may be served on any adult male member of his family residing with him. If there is no adult male member or none can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court room etc. Therefore, the ordinary mode of service contemplated is provided by Sub-sections (1), (2) and (3) of Section 45. A Collector or a Judge, however, is empowered to direct that a notice may be sent by post in a letter addressed to the person named therein at his last known address etc. as mentioned in the proviso to Section 45. The Legislative intent is clear. Normally, notice should be served in the manner provided in Sub-sections (1), (2) and (3) of Section 45 but power is given to adopt an alternative method of service, i.e. by post. In order to adopt this alternative method a direction has to be given by the Collector or the Judge... When the legislature speaks of a direction or order to substitute a normal contingency or separate order or direction has to be given and, perhaps, even reasons have to be stated as to why the normal mode is not being adopted.

28. Now it is to be analyzed whether there is compliance with the provisions of Section 5-A, Section 45 of the Act, para 19-A of the Standing Order No. 28 in this case or not.

29. In the writ petition, in paragraph Nos. 10 to 13, it is specifically stated that no notice for 1.4.2006, allegedly the date fixed for disposal of objections u/s 5A of the Act, was ever received by any of the Petitioners. Averments made in the writ petition read thus:

10. That without issuing any notice to any of the Petitioners calling them for a hearing of their objections filed u/s 5A of the Act, Respondent No. 2 unilaterally fixed a purported hearing of the objections on 1.4.2006. Since none of the Petitioners were issued any notice calling them for the hearing, they were completely unaware about the program fixed by Respondent No. 2. It may be pointed out here that some of the Petitioners had filed their objections u/s 5A of the Act through counsel. Respondent No. 2 did not issue any notice of the purported hearing to such counsel also. As a result neither the landowners, including the Petitioners, nor their counsel was informed about the purported date of hearing of the objections filed u/s 5A of the Act.

11. That on 1.4.2006 some of the Petitioners learnt about the presence of Respondent No. 2 in the locality. Such Petitioners approached Respondent No. 2 with a request for release of their lands. Even at that point of time such Petitioners were not aware that 1.4.2006 was the date fixed for hearing of their objections filed u/s 5A of the Act. The staff accompanying Respondent No. 2 obtained the signatures of 8/9 Petitioners as a token of their request for release of their land having been heard by Respondent No. 2. Such Petitioners were not even informed that their objections were to be heard on 1.4.2006.

12. That since none of the Petitioners were aware or informed by Respondent No. 2 about any alleged hearing of their objections on 1.4.2006 they could not put in appearance before him nor could they lead any evidence to support and substantiate their objections.

13. That Respondent No. 2 acting illegally and arbitrarily prepared a report u/s 5A of the Act and submitted it to the State Government. It may be reiterated here that no hearing of the objections filed by the landowners u/s 5A of the Act actually took place. As per the report prepared by Respondent No. 2 and submitted to the State Government the only persons who appeared before him on 1.4.2006 were Shri Harbans Singh, Shri Gurbachan Singh, Shri Kuldeep Singh, Shri Waryam Singh, Shri Madhukar Aggarwal and Smt. Bharti Aggarwal. It may be kept in mind that Respondent No. 2 had received 901 objections filed u/s 5A of the Act and it is extraordinary and unbelievable that only six objectors would appear before him on 1.4.2006. Even otherwise it is humanly impossible for 901 objectors to be heard on a single day. It is thus patent that no steps were actually taken by Respondent No. 2 to issue any individual notices to the landowners informing them about the date fixed for hearing of their objections or to hear them personally. The entire proceedings of 1.4.2006 were an eyewash and a fraud on the statute. It may be mentioned here that in the report submitted by Respondent No. 2 to the State Government regarding the objections purportedly heard by him, there is no mention of any individual and

personal notice having been issued by him to the landowners: A copy of the covering letter vide which the report was sent by Respondent No. 2 to the State Government is attached herewith as Annexure P-4.

30. Corresponding paragraphs of the reply filed by Respondent No. 2 (the Land Acquisition Collector) read thus:

10. That the contents of para No. 10 of the writ petition are absolutely wrong hence denied. It is absolutely wrong that without issuing any notice to any of the Petitioners, Respondent No. 2 unilaterally fixed purported hearing of the objections on 1.4.2006. It is submitted that the answering Respondent directed the Naib Tehsildar, Saha to carry out by beat of drum, the Mushtari Munadi in village Saha, Dhakola, Tepla and Jawahargarh for the hearing u/s 5A on 1.4.2006 through memo No. 534/LAC dated 24.3.2006. The copy of the above letter is annexed as Annexure R-5. Thereafter, Mushtari Munadi was carried out by beat of drum by the Patwari Halqa of village Dhakola, Tepla and Jawahargarh on 28.3.2006 and at village Saha on 29.3.2006. It is further submitted that on the fixed date i.e. 1.4.2006, 154 persons/objectors/landowners were present and their statements were duly recorded.

11. That in reply to Para No. 11 of the writ petition, it is submitted that on 1.4.2006, opportunity of hearing was granted to the objectors and after hearing the objectors present over there and site inspection, a report u/s 5A in regard to all objections received was prepared objection-wise and was sent to the Financial Commissioner & Principal Secretary to Govt. of Haryana, Industries Department, Civil Secretariat, Chandigarh vide memo No. 1 112-14/LAC dated 1.8.2006. A copy of report u/s 5A is annexed herewith as Annexure R-6.

12. That the contents of para No. 12 of the writ petition are wrong hence denied. The public at large was informed through Mushtari Munadi, which was carried out by the Patwari Halqa of the concerned villages as referred above in reply of para No. 10 and copies of the Mushtari Munadis are annexed as Annexure R-7 to R-10. Hence, it is absolutely wrong to say that the Petitioners were not aware for the hearing of the objections on 1.4.2006 and they could not put in appearance before the answering Respondent. Rather the Petitioners have prompt knowledge and now making false stories just to make a cause of action.

13. That the contents of para No. 13 of the writ petition are absolutely wrong hence denied. It is submitted that total No. of 913 objections had been received in pursuance to notification u/s 4 of the Act. For hearing of the objections date 1.4.2006 was fixed and mushtari munadi in all the villages had been carried out 154 persons/objectors appeared on 1.4.2006 and their joint statements were recorded. After that the proceedings were over on 1.4.2006, no further date was required and then the site inspection was made. The detailed report in regard to 913 objections had been sent to the Financial Commissioner & Principal Secretary to Govt. of Haryana, Industries Department, Haryana Civil Secretariat vide memo No. 1 112-14/LAC dated 1.8.2006, a copy of which has been annexed

as Annexure R-6.

31. It is an admitted fact that more than 900 objections were received u/s 5A of the Act to the proposed acquisition. The Petitioners have specifically stated that no personal notice was sent to them for the date of hearing. Some of them when came to know about the presence of Respondent No. 2 at Saha, went to him to make a request for release of their land. Their signatures were obtained without telling them that Respondent No. 2 is going to decide their objections. From the report submitted by Respondent No. 2 regarding disposal of objection of the land owners, it is apparent that he has mentioned regarding presence of about 6 persons only. Concluding paragraph of that report reads thus:

Some of the persons namely Sh. Harbans Singh, Gurbachan Singh, Kuldeep Singh, Waryam Singh etc. appeared on 1.4.2006 for personal hearing and stated that land measuring 1080 acre has been earmarked for Growth Centre in village Dhakula, Rampur, Bihta, Chhapra and Shergarh and only 427 acre of land has been acquired. The land under notification is not falling with in the earmarked area and requested for recommending the case not to acquire the land as per notification. Similar plea has been raised by various person of the area and also by doctor Madhukar Aggarwal HUF and Dr. Mrs. Bharti Aggarwal, but on behalf of department Sh. P.K. Garg, Senior Manager (IA) stated that no land has been ear marked as such and there is no substance in the version. The joint statement by various persons does not have any weight in view of version of the senior manager (1A) and therefore their plea may be rejected.

32. In the written statement filed, it was stated that 154 persons appeared on 1.4.2006. This contradiction was noted by this Court in order dated 11.2.2010. Despite that Respondents have failed to show presence of 154 persons at the spot when objections were heard and decided. Furthermore, perusal of alleged entry in Roznamcha Waqaiti regarding proclamation (musthri munadi), in the villages indicates that right holders were asked to remain present in Anaz Mandi Saha at 10.00 AM on 1.4.2006 so far as villages Saha and Dhakola are concerned. As per Annexure P8 and P9, the land owners of villages Jawahargarh and Tepla were directed to remain present on that very date, at that very time in tehsil office Saha. It is very surprising as to how it was possible for the Land Acquisition Collector (Respondent No. 2) to remain present at both the places at the same time and on the same date.

33. It is true, that some of the land owners have put up their signatures in a list prepared by the officials of the Respondent No. 2 but their contention that they were not aware that their objections were going to be decided, appears to be correct and in the report submitted, names of only 5 persons have been given, how the same has risen to 154 is not coming out from the record.

34. Besides as above, in the objections filed by the Petitioners, they have raised various objections, including the availability of land which was acquired earlier, political bias in leaving out land from acquisition of adjoining villages, uprooting

of the land owners from the villages under acquisition. Desire was also expressed that before disposal of their objections, personal hearing be given to them.

35. In the report made by the Land Acquisition Collector to the Financial Commissioner and Principal Secretary to Government of Haryana, Industries Department dated 1.8.2006, it is nowhere stated that 154 land owners appeared on the date fixed i.e. on 1.4.2006. It is only stated that a joint statement of persons/objectors village-wise raising similar objections was recorded.

36. Perusal of recommendations made indicates that except mentioning "may be acquired and may be exempted", the Land Acquisition Collector has not dealt with any other objections raised by the land owners, which is a non-compliance with the provisions of Section 5A of the Act. Affidavit of Chowkidar through whom musthri munadi was conducted, was not brought on record. The very fact that out of more than 900 land owners, only few put in appearance on the date fixed, indicates that there was no proper notice to the land owners when their objections were going to be decided.

37. At the time of arguments, copy of proforma of the notice u/s 5A of the Act which the State generally issues to the land owners has been shown to this Court, which envisages the personal service of land owners. It is an admitted fact that except making alleged proclamation in the villages, no such notice was issued to any of the land owners.

38. As per the Act, the State has power to deprive a citizen of its property. This power has to be exercised very strictly, as and when there is non-compliance with any of the provisions of the Act, the proposed acquisition can be quashed. Section 5A of the Act gives an opportunity to a citizen to object to the acquisition on the ground that it is not for the public purpose or that the land is not suitable for the purpose for which it is being acquired. This right has been held akin to a fundamental right. The Land Acquisition Collector when hearing objections u/s 5A of the Act, is acting as a quasi judicial authority, as such, it is necessary and desirable that the objections u/s 5A of the Act be disposed of by giving reasons, may be brief one.

39. In this case, in view of facts narrated in earlier part of this judgment, we are satisfied that there was non-compliance with the provisions of Section 5A of the Act. Proper notices to the land owner, before deciding their objections were not issued and they were not provided proper hearing. Respondent No. 2 also failed to give valid reason for rejecting their objections. If that is so, acquisition under challenge cannot be sustained.

40. Some of the Petitioners have not filed objections u/s 5A of the Act. In view of ratio of judgment of a Division Bench of this Court in CWP No. 14673 of 2007 titled as Nishi Gupta and Anr. v. State of Haryana and Anr. decided on 8.7.2008, writ petitions at their instance are not maintainable.

41. It is also an admitted fact that some of the writ Petitioners have accepted

compensation for the land under acquisition before/after filing of the writ petitions. In view of ratio of two Division Bench judgments of this Court in CWP No. 19676 of 2005 titled as Jaswant Singh and Ors. v. The State of Haryana and Ors. decided on 23.7.2007 and CWP No. 7186 of 2010 titled as Darshan Lal and Ors. v. State of Haryana and Ors. decided on 13.10.2010, writ petitions at their instance are also not maintainable.

42. CWP No. 108 of 2009, having been filed after passing of an award is also not maintainable in terms of the ratio of the judgments of the Hon''ble Supreme Court in Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, ; The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, ; C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, ; Star Wire (India) Ltd. Vs. State of Haryana and Others, ; and Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, ; Sawaran Lata etc. Vs. State of Haryana and Others, .

43. In view of findings given by us, it is not necessary to go into other objections raised by the Petitioners to the acquisition, which are kept open.

44. Accordingly, we allow these writ petitions (except CWP No. 108 of 2009) qua the Petitioners in all the writ petitions, excluding those Petitioners who have not filed objections u/s 5A of the Act and also those who have accepted compensation for the land under acquisition and quash the impugned notifications. However, liberty shall remain with the State to acquire the land in question, if need be, as per law.