

(1983) 05 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4094 of 1982

Dharam Dev Raj Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 04-05-1983

Acts Referred:

Citation : (1983) ILR (P&H) 491 : (1983) PLJ 307 : (1984) RRR 140

Hon'ble Judges : S.S.Kang, J

Advocate : S.S. Jain, Advocate, N.C. Jain, Senior Advocate, Advocates for appearing Parties

Judgement

S.S. Kang, J.

1. M/s. Dharam Dev Raj Kumar, a partnership concern, has filed this writ petition for issuance of a writ of Certiorari quashing notification dated August 6, 1982, issued by the State of Haryana under section 6 of the Land Acquisition Act (for short, the Act).

2. The petitionerfirm owns some land in Gharaunda town situated on the G.T.Road. The State of Haryana issued a notification under section 4 of the Act on July 30, 1980, indicating its intention to acquire, along with other lands, the abovementioned land of the petitionerfirm. Emergency provisions of section 17 had been invoked. The petitionerfirm challenged the acquisition proceedings by filing C.W.P. No. 1270 of 1980. During the pendency of the writ petition, the State Government withdrew that notification and the writ was dismissed as infructuous.

3. The State of Haryana issued a notification under section 4 of the Act which was published in Haryana Government Gazette on August 14, 1981. The petitioner "s land was included in the lands which were proposed to be acquired by this notification. The purpose of the notification was mentioned to be the establishment of a new grain market, rest house and Gadda stand by the market committee, Gharaunda, tehsil and district Karnal.

4. The petitionerfirm filed objections under section 5A of the Act against this proposed acquisition on September 9, 1981, urging several grounds in support thereof. It was contended inter alia that the petitioner's land could be adjusted in the layout plan; buildings in the form of shops and godown had been constructed in the land in dispute; the land of the petitionerfirm was sought to be acquired for the purpose of providing a thoroughfare from the G.T. Road to the proposed grain market. Similar vacant land belonging to the Municipal Committee was lying at a short distance from the petitioner's land and there was still another plot of land nearby either of the two could be used for the avowed purpose. The petitioner was informed that the Land Acquisition Collector was convinced about the genuineness of the claims made by the petitioner and that he had made a recommendation to the State Government that the petitioner's land should not be acquired.

5. The petitioner was shocked to know that the State Government rejected the objections filed by the landowners, issued a notification under section 6 of the Act which was published in the Haryana Government Gazette dated August, 6, 1982. Aggrieved, the petitionerfirm has filed this writ petition.

6. On a request by the learned counsel for the petitioner, I have perused the report of the Land Acquisition Collector. The Land Acquisition Collector has recommended that so far as the lands of the petitioner is concerned, the State Government should take a decision at its level after obtaining technical advice.

7. The learned counsel for the petitioner has raised two points before me (i) that the Collector has failed to perform his statutory duties enjoined upon him by section 5A of the Act. It was his duty to give his opinion on the objections raised by the petitioner under section 5A of the Act. He could either agree or disagree with the petitioner. However, he could not refuse to form his own opinion and convey it to the State Government in his report and (ii) the State Government had not obtained any technical advice before reaching the conclusion that the petitioner's land was required for the public purpose.

8. Elaborating his first submission, learned counsel for the petitioner argued that the object of making objections and an enquiry by the Land Acquisition Collector is to inform the State Government of the true state of facts. The Land Acquisition Collector has been authorised to entertain the objections; to visit the spot, examine the witnesses and then make a report. It is after the receipt of this report that the State Government make up its mind as to the suitability of the land for the public purpose for which it is sought to be acquired. Apart from the report of the Collector, there is no material before the Government to decide this issue. In these circumstances, the importance of the report of the Land Acquisition Collector cannot be over emphasised. The landowner has only one right i.e. to represent against the impending acquisition. He has been allowed to make objection to the Collector. The Statute does not allow him to make objections to the State Government. The Collector is in a position to investigate the needs of the public purpose and to find out whether the land covered by the

notification is really suitable for the purposes in view. Since, in the present case, the Collector had not made any recommendation qua the land of the petitioner, the State Government had been deprived of the objective assessment regarding the suitability of the land in dispute for the purpose for which it was proposed to be acquired. The decision of the Government is not based on any material before it. There is no other provision in the Act which may provide a second opportunity to the petitionerfirm to place their view point before the State Government. The decision of the State Government is wholly arbitrary, whimsical and unsustainable and in violation of the provisions of Sections 5A and 6 of the Act. In support of his contention he has relied upon a decision of the final Court in *Abdul Hussain v. State of Gujarat*, A.I.R. 1968 S.C. 432.

9. There is no doubt that the right to make representation against the proposed acquisition is a valuable right conferred by section 5A on the landowner whose land is proposed to be acquired. However, in the present case, the petitionerfirm has exercised this right and filed objections. The Land Acquisition Collector gave it full opportunity to project its view point and adduce material in support thereof. He recorded the statement of Raj Kumar, a partner of the petitionerfirm. The petitionerfirm has not ventilated any grievance that it was not provided full opportunity by the Land Acquisition Collector to adduce evidence. The Collector went into the matter thoroughly and considered the objections raised by the petitionerfirm in detail. He has reproduced all the salient points made out in the statement of Raj Kumar. He, however, came to the conclusion that keeping in view the entire position explained by him, it was proper that the State Government may take a decision at its leave, after obtaining technical advice, whether this land should be acquired or not. It is manifest from the above observations that the Land Acquisition Collector did make a recommendation. It is another thing that he has neither accepted nor rejected the objections filed by the petitioner. However, it cannot be said that the Collector has not complied with the provision of Section 5A of the Act. All that section 5A requires is that the Land Acquisition Collector, after making such enquiry as he may deem fit, shall submit a report containing his recommendations on the objections together with the record of the proceedings held by him. It cannot be spelled out from the language employed in this provision that the Collector has to give a definite and firm finding accepting or rejecting each and every objection. The enquiry conducted by the Land Acquisition Collector is administrative in nature. The report submitted by him is not binding on the Government. The State Government can reject this report and take altogether contrary view. The report is in the nature of a recommendation only. So, the recommendation made by the Land Acquisition Collector that the State Government may take a decision after taking technical opinion, fully satisfies the requirements of Section 5A of the Act. It is not necessary to dilate upon this aspect further because it already stands concluded by a decision of a Division Bench of Delhi High Court in *Hanuman Prasad Gupta and others v. Lt. Governor Union Territory of Delhi*, 1972 P.L.R. 272, wherein it has been observed as under :

"It is not necessary that the Collector's recommendations on the objections should take the form of either agreeing or disagreeing with them. The recommendation may as well take the shape of a suggestion to the appropriate Government that the objections raise certain issues, in this case issues of law, which may be examined. Even if the Collector's own opinion on the legal issues is not there it will nonetheless be a recommendation, nothing more and nothing less."

This view was reiterated by another D.B. in *Lt. Governor Delhi v. Mandir Sita Ramji*, A.I.R. 1973 Delhi 218. In that case, the report made by Land Acquisition Collector read as under :

"One objection was received from Shri D.R. Rungta, General Attorney of Shree Sita Ram Bhandar who stated that the objector had following land and houses etc. in the land in question : (1) Land measuring 324 Bighas, (2) Five cattle sheds pacca built of vast dimensions, (3) Several servants quarters, (4) Wells five in number, (5) One Fruit garden, (6) Several godowns, (7) One Shri Hanuman Mandir, (8) One Pathshala. Other objections raised by him are mostly of a general nature. Decision may kindly be taken after inspection of site."

In the context of this report, it was observed :

"The Collector had summarised the objections which indicates application and not abdication of mind by him, leaving the decision on the question of law to the Government. It was not necessary in the circumstances of the case that the Collector's recommendations on the objections should have taken the form of other agreeing or disagreeing with the same. The recommendation contemplated by Section 5A of the Act may (to quote from the Bench decision in *Shri Hanuman Prasad Gupta*'s case) as well take the shape of suggestion to the appropriate Government that the objections raise certain issues but even if the Collector's own opinion on the legal issues is not there, it will nonetheless be a recommendation, nothing more and nothing less."

The recommendation of the Land Acquisition Collector that the decision may be taken by the State Government is fully in consonance with the postulates of section 5A of the Act. The report submitted by the Land Acquisition Collector fully meets the requirements of law.

10. It is interesting to notice that the Collector after deciding the objections under section 5A sends his report together with the proceedings held by him to the State Government. Before deciding the matter, the State Government has not only the report of the Collector but it has also the objections filed by the landowners, the evidence or other material adduced, by the landowners in support of the objection. Considering all these things, the State Government makes up its mind. The report being recommendatory in nature is not binding on the State Government and it has to take a decision independently. It has been so held by the apex Court in *Abdul Hussain*'s case (*supra*). It was observed as under :

"Under section 5A 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 enquiry 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 declare that particular land is needed for either of the two purposes is issued. Neither Section 5A nor any other provisions of the Act lays down that a second opportunity has to be given before the issuance of section 6 notification."

11. In this case, there is ample material to show that the Government has fully applied its mind to the facts of the case and then formed opinion that the petitioner's land was suitable for establishing the grain market. It transpires from the records produced before me that after receipt of the report from the Land Acquisition Collector, the Collector addressed a letter to the Haryana State Agricultural Marketing Board, Chandigarh, seeking its opinion about the suitability of the land in dispute. The report of the Land Acquisition Collector was also sent along with this letter. The Board replied that the grain market was being developed under the World Bank Project in public interest. The developed land had already been approved by them which was necessary for the establishment of grain market. It may be mentioned that the Haryana State Agricultural Marketing Board is the apex body which in turn control and regulate the marketing of agricultural produce in the grain markets. The grain market in the present case is being established under the aegis of Market Committee, Gharaunda. The State Government, therefore, obtained the opinion of the body which was best qualified to advise it on the suitability of the land in dispute for the purpose of establishing the grain market.

12. For the foregoing reasons, I find no merits in this writ petition and dismiss the same. No costs.