
(2014) 11 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : C.W.P. Nos. 3764 and 9763 of 2012

Jaiparkash Associates Limited

APPELLANT

Vs

State of H.P

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 2, 2(18), 23, 24

Citation : (2015) 1 ShimLC 324

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : R. Venkataramani, K.D. Sood, Senior Advocates, V. Vijayalakshmi, Surender Kumar Gupta, Sanjeev Sood, Advocate for the Appellant; Shrawan Dogra, Advocate General, V.S. Chauhan, Romesh Verma, Additional Advocate Generals and J.K. Verma, Deputy Advocate General, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—The issue involved in these writ petitions is similar and, therefore, both the writ petitions are being disposed of together by this common judgment.

2. The petitioners, essentially, have invoked the jurisdiction of this Court for declaration to the effect that requirements of Rule 4 of the Land Acquisition (Companies) Rules, 1963, (for short, the Rules), stand substantially satisfied in view of the inquiry conducted under Section 5A of the Land Acquisition Act, 1894, (for short, the Act). The requirements which were to be satisfied in terms of Rule 4 of the Rules stand substantially satisfied and no separate inquiry is required under Rule 4 of the Rules *ibid*. The petitioner also sought writ of mandamus commanding the respondents to make an award within the stipulated period i.e. before the expiry of two years from the date of publication of the declaration under Sections 6 and 7 of the Act.

3. A brief reference may be made to the averments contained in both the writ petitions.

C.W.P. No. 3764 of 2012:

4. The petitioner is a Company and has installed a cement manufacturing unit at Darlaghat, District Solan, H.P. For expansion of the factory, the petitioner-Company, vide letter dated 27th August, 2008, (Annexure P-2), requested the Director of Industries for acquisition of land measuring 20-06 bigha, situated in villages Khatta, Bated, Dwaroo and Suli, Tehsil Arki, District Solan, H.P., which, request of the petitioner, was sent to the District Collector, Solan. Thereafter, the District Collector forwarded the same to the Tehsildar, Arki, who conducted the preliminary inquiry and made a report to the effect that there was no other Government land available, on which the District Collector, Solan issued Inescapability Certificate. Thereafter, respondent No. 1, after considering the request of the petitioners, issued notification, dated 27.5.2009, (Annexure P-3), under Section 4 of the Act, after conducting the preliminary inquiry.

5. Objections were invited from the landowners and the landowners were also heard personally by respondent No. 3, who, submitted the detailed report under Section 5-A of the Act (Annexure P-6) to respondent No. 1. It was further pleaded that vide notification, dated 26.5.2010, (Annexure P-8), declaration was issued under Sections 6 and 7 of the Act. Objections under Section 9 of the Act were invited from the landowners in respect of the land sought to be acquired. During the said proceedings under Section 9 of the Act, the petitioner-Company received a letter, dated 6.8.2011, (Annexure P-11), from respondent No. 3 calling upon the petitioner-Company to comply with the provisions of Rule-4 of the Rules, which, as pleaded, was duly replied to. However, the respondents have declined to make the award, hence the writ petition.

C.W.P. No. 9763 of 2012:

6. Brief facts, as pleaded, are that the petitioner-Company prepared a lay out plan to set up a water supply scheme for its cement manufacturing unit, for its employees and also for the local inhabitants of the area. The petitioner-Company entered into agreements with the landowners whose land was to be acquired and paid the price, 80% or more, to such landowners. Thereafter, on the request of the petitioner-Company, the District Collector, Solan issued inescapability certificate, vide letter dated 10.11.2008, (Annexure P-5), whereafter the petitioner-Company requested the State Government for issuing notification under Section 4 of the Act. The notification was issued on 20.1.2010, (Annexure P-6), by the State Government.

7. It was also pleaded that inquiry under Section 5-A(2) of the Act was conducted and Land Acquisition Collector recommended the acquisition of the land, (Annexure P-7), on the basis of which the State Government issued notification under Section 6 of the Act, (Annexure P-8). It is further alleged that the Land Acquisition Collector prepared the draft award, (Annexure P-13) and sent the same to the Government for approval. However, in the interregnum, the petitioner-Company received a copy of the letter, (Annexure P-10), from

respondent No. 1 that since the mandate of Rule 4 of the Rules has not been complied with, the award in question could not be approved.

8. It is further pleaded that thereafter inquiry was conducted under Rule 4 of the Rules and was submitted to respondent No. 1, for the approval of the draft award. However, the Additional Chief Secretary (Industries), to the Government of H.P., vide letter dated 18.9.2012, (Annexure P-11), conveyed that inquiry conducted under Rule 4 of the Rules, after issuance of notification under Sections 4 and 6 of the Act, is of no consequence and that fresh proceedings be initiated, hence the writ petition.

9. Respondents resisted the writ petitions on the ground that the inquiry under Rule 4 of the Rules was mandatory.

10. We have heard the learned Senior Advocate for the petitioners and the learned Advocate General for the respondents.

11. The learned Senior Advocate appearing for the petitioners argued that once the inquiry, as contemplated under Section 5A of the Act, was conducted by the competent Authority, no separate inquiry, as provided under Rule 4 of the Rules, is required. It was further submitted that when law enshrines for two mandatory procedures having overlapping facets and if it transpires that one procedure has been duly complied with and the other provision has been taken care of, compliance of one procedure should be treated as sufficient. Thus, it was submitted that when the substantial compliance is made, there is no need to follow the procedure again, which, in essence, is the same and is overlapping.

12. The learned Senior Counsel appearing for the petitioners, in support of his above submissions, has relied upon the decision of the Apex Court in *The State of Maharashtra Vs. Indian Medical Association and Others*, . It is apt to reproduce relevant portion of paragraph 15 of the said decision hereunder:

".....While the state government took decision to establish government run medical college at Kolhapur, it took decision to set up one government run medical college in Vidarbha region and the second government medical college in Marathawada region in conformity with the perspective plan. Shri Maninder Singh, learned counsel representing Medical Council of India stated before us that the medical council shall complete all the formalities within three months and send its report to the central government immediately thereafter. Learned solicitor general stated that as soon as the approval of the central government is received, the state government shall immediately take steps to open" government medical colleges in those regions. In view of the said statements, we do not find that there was any deviation from the perspective plan prepared by the university because, both the Vidarbha and Marathawada have been provided for government run medical college - one in each region. We, therefore, find that there was substantial compliance of the perspective plan prepared by the university."

13. The learned Senior Counsel for the petitioners also relied upon the decision in Attorney General's Reference (No. 3 of 1999), (2001) 1 All ER 577.

14. On the other hand, the learned Advocate General argued that in case a statute provides for a thing to be done in a particular manner, then the same has to be done in that manner and in no other manner. It was further submitted that though the land acquisition proceedings in both the cases had reached at the final stage, however, non-compliance of mandatory provisions of Rule 4 of the Rules has rendered the entire exercise redundant. The compliance of Rule 4 of the Rules is mandatory in nature and, by no stretch of imagination, it can be said that the inquiry conducted under Section 5A of the Act also substantially covered the inquiry required under Rule 4 of the Rules. Therefore, the learned Advocate General prayed for the dismissal of both the writ petitions.

15. In support of above submissions, the learned Advocate General relied upon the decisions of the Apex Court in Abdul Kader Laskar and Others Vs. State of West Bengal and Others, , Manohar Lal Chadha and Another Vs. The Himachal Pradesh Mineral and Industrial Development Corporation, etc., , Chandra Kishore Jha Vs. Mahavir Prasad and Others, , Shin-Etsu Chemical Co. Ltd. Vs. Aksh Optifibre Ltd. and Another, , Devinder Singh and Others Vs. State of Punjab and Others, , Harish Vhander and another vs. State of Himachal Pradesh and others, 2011 (Suppl.) Him L.R. (DB) 1928 and The Accountant General, M.P. Vs. S.K. Dubey and Another, .

16. In the facts of the cases and the submissions made by the learned counsel for the parties, the point which emerges for determination is ? Whether the respondents can refuse to pass an award despite the fact that the Authorities have conducted inquiry in terms of Section 5A of the Act and whether the action of the respondents is justified in asking the petitioners for satisfying the requirements of Rule 4 of the Rules, notwithstanding the fact that the concerned Authorities, while conducting the inquiry under Section 5A of the Act, have substantially complied with the requirements of Rule 4 of the Rules. The answer is in the negative for the following reasons.

17. Admittedly, in both the cases, the notifications were issued under Section 4 of the Act for acquisition of the land and inquiry, as contemplated under Section 5A of the Act was also conducted.

18. Section 5A of the Act provides that any person, interested in any land notified under Section 4 of the Act, may, in regard to the acquisition proceedings, file objection, in writing, to the Collector, who shall give an opportunity of being heard to the said person. It is apt to reproduce Section 5A of the Act hereunder:

"5A. Hearing of objections.

(1) Any person interested in any land which has been notified under section 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 under section 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 interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

19. Rule 4 of the Rules reads as under:

"4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.

(1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable price and such efforts have failed:

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall:-

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land:

(ii) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation:- For the purpose of this rule " good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under section 6- of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under section 5A of the Act; and

(ii) the agreement under section 41 of the Act has been executed by the company."

20. In C.W.P. No. 3764 of 2012, the Land Acquisition Collector, vide Annexure P-6, submitted its report under Section 5A of the Act and recommended the acquisition of the land notified under Section 4 of the Act. It is apt to reproduce paragraphs 4, 5 and 9 of the said report hereunder:

"4. That the acquisition of private land is accomplished as per provisions of the Land Acquisition Act, which does not distinguish between agricultural and non-agricultural lands. However, the Land Acquisition (Companies) Rules, 1963 provides that in the case of good agricultural lands, report of the Collector regarding unavailability of alternate suitable land is required to be given to the Govt. Rule 4 of the said Rules further explains that "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove. However, it is worth mentioning here that the notified land does not qualify to be called "good agricultural land", as during the spot visit of the revenue officers it has been found that only 2-5 bigha land is under cultivation at present and hence the relevant provisions regarding the same are not attracted. The revenue record available with this office reveals that most of the notified land is not cultivable and whatever land is shown as cultivable, either the same is not being cultivated at present or very small portion out of such land is actually being cultivated. Since no alternate

suitable site is available, which could be acquired in place of the notified land therefore, under these circumstances the objection is rejected.

5. That the Govt. of HP has formulated a comprehensive Resettlement and Rehabilitation Scheme for people affected by the acquisition for the company. The provisions of this Scheme stipulate that if any family is rendered landless/houseless, due to acquisition of its land for the said company, in that event such family would be eligible for the benefits provided under the said Scheme. Further, the company vide its reply, has also reiterated its commitment to provide every applicable benefits as per the said R & R Scheme in addition to the compensation determined by this office, as per the provisions of the Land Acquisition Act. This office will ensure that the benefits of the R & R Scheme reach to every eligible person without any delay. As far as the contention of objectors that they would be left without any source of income, it may be clarified that none of the families is totally dependent on the notified land for sustenance therefore, the objection needs no further consideration and is rejected.

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9. That although it is desirable that maximum landowners part their land with consent, as on one hand it facilitates peaceful transfer of possession and on the other hand the landowners get good compensation without indulging in lengthy and costly litigation. However, this does not mean that in the absence of consent of landowners land cannot be acquired at all. The Act was enacted for acquiring land even against the wishes of concerned landowners and provides for compulsory acquisition of land. The Act further provides that the related landowners get due opportunity to stake their objections/claims regarding acquisition and compensation of their land, which implies that the power to acquire land is not exercised without their participation or behind their backs. Since the objection is legally not tenable, therefore the same is rejected as well."

21. Thus, it is clear from the perusal of the above report under Section 5A of the Act that while conducting inquiry under Section 5A of the Act, mandate of Rule 4 of the Rules stands complied with.

22. In C.W.P. No. 9763 of 2012, the Land Acquisition Collector conducted inquiry under Section 5A of the Act and made recommendations for the acquisition of the land vide Annexure P-7. It is apt to reproduce relevant portion of the inquiry report hereunder:

"D. ENQUIRY U/S 5(A)(2) OF THE LAND ACQUISITION ACT, 1894

I have also held enquiry under Section 5(A)(2) of the Land Acquisition Act, 1894 and have gone through the revenue record minutely. In fact only small strips of their land about 3 karam in width are being acquired for laying the pipeline. No landowner is becoming landless or houseless. As a matter of fact no house or structure is being acquired. The Deputy Commissioner Solan had issued inescapability Certificate for the acquisition of this land on the basis of which said

notification has been issued by the Government. A list of landowners, their total holding the land under acquisition and the balance land remaining with the landowners is being attached (Annexure A and B). It would be evident from this list that no landowner is becoming landless or houseless after acquisition of the land. No public utility services are being affected. The land being acquired is not Forest land and the same has not vested into the Government under H.P. Village Common Lands Vesting and Utilization Act 1974 and H.P. Ceiling on Land Holdings Act, 1972. The provisions of Town and Country Planning Act are not applicable in this area.

E. RECOMMENDATIONS

M/s Jaypee Himachal Cement Plant (a unit of Jaiprakash Associates Ltd.) has established the Cement Plant at Baga, Tehsil Arki after signing the MOU with Government of Himachal Pradesh and after obtaining all statutory approvals and permissions. Water is the basic necessity for the Plant and the employees of the Company. The Government has assured the Company to provide all assistance to procure land for the Plant and related infrastructure activities of the company as per the terms of the MOU. The landowners and the other interested persons have not raised any objection for the acquisition of this land as discussed in the preceding paragraph. I, therefore, recommend that declaration under Section 6, Land Acquisition Act, 1894 may be issued for the acquisition of the above land so that further proceedings under the Act are initiated."

23. A separate inquiry was also conducted under Rule 4 of the Rules by the Land Acquisition Collector vide Annexure P-12, subsequent to the notification issued under Sections 4 and 6 of the Act, and after holding the inquiry, the said officer recommended the acquisition of the land in question.

24. It may be placed on record that the landowners have not questioned the action of the respondents initiated for acquisition of their land on any ground and thus, no prejudice can be said to have been caused to them. The landowners were given opportunity of being heard, during the course of proceedings under Section 5A of the Act.

25. The Apex Court in *Surinder Singh Brar and Ors. vs. Union of India and Ors.*, 2012 AIR SCW 5900, has held that hearing is required to be given to a person whose land is sought to be acquired. It is apt to reproduce paragraph 58 of the said decision hereunder:

"58. What needs to be emphasised is that hearing required to be given under Section 5A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and

submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5A(1) and submissions made at the hearing given under Section 5A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the concerned authorities or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5A(2) and 6(1). Therefore, question number (ii) is answered in affirmative and question numbers (iii) and (iv) are answered in negative."

26. The Apex Court in *Surinder Singh Brar*'s case (*supra*) also discussed the mandate of Section 5A of the Act, in paragraph 60, which is reproduced below:

60. In *Ganga Bishnu Swaika v. Calcutta Pinjrapole Society* (*supra*), the two-Judge Bench considered the amendment made in the Act in 1923 and observed:

"As sub-section (1) stood prior to 1923 the words were "subject to the provisions of Part VII of the Act, when it appears to the Local Government that any particular land is needed for a public purpose or for a Company, a declaration shall be made etc. The amendment of 1923 dropped these words and substituted the words "when the Local Government is satisfied after considering the report, if any, made under Section 5-A, sub-section (2)" etc. It seems that the amendment was considered necessary because the same Amendment Act inserted Section 5-A for the first time in the Act which gave a right to persons interested in the land to be acquired to file objections and of being heard thereon by the Collector. The new section enjoined upon the Collector to consider such objections and make a report to the Government, whose decision on such objections was made final. One reason why the word "satisfaction" was substituted for the word "appears" seems to be that since it was the Government who after considering the objections and the report of the Collector thereon was to arrive at its decision

and then make the declaration required by sub-section (2), the appropriate words would be "when the Local Government is satisfied" rather than the words "when it appears to the Local Government". The other reason which presumably led to the change in the language was to bring the words in sub-section (1) of Section 6 in line with the words used in Section 40 where the Government before granting its consent to the acquisition for a Company has to "be satisfied" on an inquiry held as provided thereafter. Since the Amendment Act 38 of 1923 provided an inquiry into the objections of persons interested in the land under Section 5-A, Section 40 also was amended by adding therein the words "either on the report of the Collector under Section 5-A or". Section 41 which requires the acquiring Company to enter into an agreement with the Government also required satisfaction of the Government after considering the report on the inquiry held under Section 40. The Amendment Act 38 of 1923 now added in Section 41 the report of the Collector under Section 5-A, if any. These amendments show that even prior to the 1923 Amendment Act, whenever the Government was required by the Act to consider a report, the legislature had used the word satisfaction on the part of the Government. Since the Amendment Act 1923 introduced Section 5-A requiring the Collector to hold an inquiry and to make a report and required the Government to consider that report and the objections dealt with in it, the legislature presumably thought it appropriate to use the same expression which it had used in Sections 40 and 41 where also an inquiry was provided for and the Government had to consider the report of the officer making such inquiry before giving its consent.

Sub-section (1) provides that when the Government is satisfied that a particular land is needed for a public purpose or for a Company, a declaration shall be made "to that effect". Satisfaction of the Government after consideration of the report, if any, made under Section 5-A 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. But there is nothing in sub-section (1) which requires that such satisfaction need be stated in the declaration. The only declaration as required by sub-section 1 is that the land to be acquired is needed for a public purpose or for a Company. Sub-section (2) makes this clear, for it clearly provides that the declaration "shall state" where such land is situate, "the purpose for which it is needed", its approximate area and the place. Where its plan, if made, can be inspected. It is such a declaration made under sub-section (1) and published under sub-section (2) which becomes conclusive evidence that the particular land is needed for a public purpose or for a Company as the case may be. The contention therefore that it is imperative that the satisfaction must be expressed in the declaration or that otherwise the notification would not be in accord with Section 6 is not correct.

(emphasis supplied)"

27. The Apex Court in *Tej Kaur and Others, etc. Vs. State of Punjab and Others*, ,

has also discussed the purpose of the inquiry under Section 5A of the Act and personal hearing to the objector.

28. The Apex Court in *Swasthya Raksha Samiti Rati Chowk Vs. Chaudhary Ram Harakh Chand (D) by LRs. and Others*, , has held as under in paragraphs 4, 5 and 6:

"4. It is in view of the above doubt entertained by the Division Bench the matter is referred to a larger Bench.

5. So far as the judgments of this Court cited herein above are concerned, they do hold that Rule (4) is not only mandatory but that the notice of the said enquiry has to be given to the land owners. The above judgments, however, have not taken into consideration an earlier 5-Judge Bench judgment of this Court in the case of *Babu Barkya Thakur Vs. The State of Bombay and Others*, wherein this Court indicated that all the requirements of Part VII of the Act especially Section 40 could be considered in Section 5A enquiry itself which would include all and any objection of the land owners including the objection in regard to the acquisition in favour of a company. This judgment of the 5-Judge Bench of this Court in our view seems to support the doubt entertained by the referring Bench.

6. We have heard the learned counsel for the parties and we are also of the opinion that since the objections that could possibly be raised in Rule (4) enquiry can also be raised in a Section 5A enquiry and in the absence of any specific requirement in Rule (4) as to the issuance of notice to the land owners of being heard in such an enquiry, hearing the land owners at the stage of Rule (4) enquiry would lead only to duplication and cause delay. Since the judgment of this Court in the case of *State of Gujarat vs. Patel Chaturbhai Narsibhai (supra)* and *State of Gujarat vs. Ambalal Haiderbhai (supra)* as also the judgment of *General Government (supra)* are judgments of 3-Judge Bench and the said Bench having not noticed the observations of this Court in the case of *Babu Barkya Thakur (supra)*. We think it appropriate to refer this matter to a larger Bench."

29. Coming to the facts of the present case, it is not known why the concerned Authorities have not accepted the recommendations made by the Collector, who in his wisdom, thought it proper, in view of the facts of the cases, not to conduct an inquiry under Rule 4 of the Rules, since the inquiry in terms of Section 5A of the Act had already been conducted. It was for the said Authority to see whether inquiry under Rule 4 of the Rules was required or otherwise and the said Authority made the recommendations and has not opted to go for inquiry under Rule 4 of the Rules.

30. It appears that the purpose of Rule 4 of the Rules was that all the interested persons should be heard and the Collector should record his satisfaction, in view of the fact that in some cases, the land acquisition proceedings are drawn/initiated, while invoking the mandate of Section 17 of the Act, in view of the urgency.

31. Keeping in view the above stated position, we are of the considered view that the scope of inquiry under both the provisions, i.e. under Section 5A of the Act and under Rule 4 of the Rules, is same, since the objections which could be taken during the inquiry under Rule 4 of the Rules, can always be raised during the inquiry proceedings under Section 5A of the Act. Thus, when the inquiry has already been conducted in terms of Section 5A of the Act, the inquiry under Rule 4 of the Rules may lead to delay the acquisition proceedings, thereby prejudicing the cause for which the acquisition is sought, and may also lead to duplication.

32. The Apex Court in *State of Gujarat and Others Vs. Ambalal Haiderbhai and Others*, , has held that while conducting inquiry, the Collector has to observe the principles of natural justice by affording a reasonable opportunity of being heard to the persons interested in the land. It is apt to reproduce paragraphs 6 and 8 of the said decision hereunder:

"6. A conjoint reading of sub-rules (1) and (2) leaves no room for doubt that the enquiry by the Collector, which is meant inter alia to find out whether all reasonable efforts have been made by the Company to get the land by negotiation on payment of reasonable price and such efforts have not fructified and to determine the approximate amount of compensation likely to be payable in respect of the land keeping in view the provisions of Secs. 23 and 24 of the Act, is of vital importance to the persons interested in the land.

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8. Although the above mentioned rule is silent regarding the mode and method of the enquiry to be held by the Collector and the report of the Collector is of a recommendatory character, yet regard being had to the legislative history and purpose of the rule, and the mischief sought to be prevented, we have no hesitation in holding that, in conducting the enquiry, the Collector has, in the interest of fair play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the company. The concept of natural justice as evident from the observations made in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, has undergone a great deal of change in recent years. The dividing line between an administrative and quasi-judicial function is often blurred."

33. The Apex Court in *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, , has held that when two same provisions of law co-exist and if per chance one is defective, the other can be pressed into service to satisfy the requirement of law. It is apt to reproduce paragraph 15 of the said decision hereunder:

"15. Now when we direct ourselves to the provisions of the Companies Act, Section 2(10) provides that a company means a company as defined in Section 3. Section 3 defines company to be a company formed and registered under the Companies Act or an existing company as defined therein. "Private company" has

been defined to mean a company by the articles of which the right to transfer its shares, if any, is restricted and the number of its members is limited to fifty, but not including some persons detailed therein, and prohibits any invitation to the public to subscribe for any shares in, or debentures of the company. In contrast, "Public Company" residually means a company which is not a private company. "Government Company" under Section 2(18) means government company within the meaning of Section 617, which in turn says that a government Company means any company in which not less than 51 per cent of the paid-up share capital is held by the central government or by any State government or governments or partly by the central government and partly by one or more State governments and includes a company which is a subsidiary of a government Company as thus defined. So understood, the society of which the appellants are members could never be a government Company for no government has subscribed to its share capital. The society could not also be a private company for it has more than 50 members, the figure of membership put at 400. Since the society is neither a government Company nor a private company, the impediment of Section 44-B towards confining the choice of acquisition for a private company for one purpose is out. Since the society is not a private company, by process of exclusion it becomes under Section 3 of the Companies Act, a "public company" even though not formed and registered under the said Act but only by the statutory inclusion in Section 3(e) of the Land Acquisition Act bringing in a cooperative society registered under a State law to be definitely a company as if a company registered under the Companies Act. All the same, the society as a public company would require to satisfy in an enquiry under Section 40 of the Act that it requires the land for any of the purposes mentioned in clauses (a), (aa) and (b) before it can obtain consent of the appropriate government on the basis thereof and enter into an agreement as envisaged under Section 41 before switching on to have the role of Section 6 onwards till Section 37 of the Act played. The importance of such enquiry and report as contemplated under Section 40, in the light of Section 41, is to serve a double purpose as it may steer an acquisition if Section 5-A was dispensed with because of urgency under Section 17 and secondly to provide a safe alternative should there be any fault in the conduct of enquiry under Section 5-A of the Act. So one or the other must be kept handy and if per chance one is defective, when both existing, the other can be deployed to satisfy the requirement of law."

emphasis supplied.

34. In view of the above discussion, the only conclusion which can be drawn is that the Authorities have complied with all the requirements of Section 5A of the Act. The landowners have not questioned the proceedings in any way, rather have consented for the acquisition of their respective land, thus it can be safely held that the substantial compliance of the said rule had already been made during the proceedings under Section 5A of the Act.

35. In view of the above discussion, the action on the part of the respondents in

not making the awards was unwarranted.

36. In the given circumstances, we allow both the writ petitions and direct the respondents to pass appropriate orders in terms of the recommendations made by the Collector, in terms of the mandate of the Act.

37. Perusal of the record shows that the land acquisition proceedings were stayed by this Court vide order dated 12th November, 2012 in C.W.P. No. 9673 of 2012, and vide order dated 24th May, 2012 passed in C.W.P. No. 3764 of 2012. Therefore, limitation shall not come in the way of the respondents while making the awards.

38. Both the writ petitions stand disposed of accordingly, alongwith pending CMPs, if any.