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**(2013) 07 RAJ CK 0083**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 13120 of 2010**

Jameel and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 23-07-2013

**Acts Referred:**

Land Acquisition Act, 1894 — Section 11, 4, 5A, 6

**Citation :** (2013) 07 RAJ CK 0083

**Hon'ble Judges :** Alok Sharma, J

**Bench :** Single Bench

**Advocate :** Tanveer Ahmed, for the Appellant; Ajeet Bhandari, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Alok Sharma, J.—All the writ petitions arise out of the same impugned notification dated 21.06.2010 whereby a declaration u/s 6 of the Land Acquisition Act, 1894 (hereinafter "the Act of 1894") has been issued for acquisition of the land ad measuring 39.51465 hectare in village Khirajpur, Billahedi, Kehrani & Mundanamev, Tehsil Tijara, Industrial Area Bhiwadi, District Alwar. The aforesaid notification includes the land of the petitioners. SBCWP No. 13120/2010 is the leading case for reference to the necessary facts. The case of the petitioners is that at an earlier point of time, part of the land in the khatedari of the petitioners was acquired in respect of which the petitioners were compensated in August 2008 following an award u/s 11 of the Act of 1894. It has been submitted that the land of the petitioners earlier having not been acquired and with the petitioners residing on the land, now sought to be acquired, the proceedings under the impugned notification are absolutely arbitrary, mala fide and liable to be quashed and set aside. It has been submitted that earlier in notification u/s 4 of the Act of 1894 dated 25.07.2006, the land ad measuring 483.84 hectare belonging to various khatedars including the petitioners had been sought to be acquired and on objections made thereto the Government had dropped the

acquisition proceedings in respect of the land now again sought to be acquired under the Act of 1894. Resulting from the earlier exclusion of their land from the acquisition, estoppel has been pleaded by the petitioners as a ground to challenge to the notification u/s 6 of the Act of 1894 dated 21.06.2010. It has been submitted that the petitioners submitted objections and representations against the acquisition of their land, now covered under the declaration u/s 6 of the Act of 1894 issued in 2010, yet no heed has been paid thereto.

2. On notice, similar replies to the petition have been filed both by the State and RIICO. In consonance therewith, it has been submitted by the counsel for the respondents that for land of the petitioners under acquisition Section 4 notification dated 23.06.2009 was published in the Rajasthan Rajpatra on 30.06.2009. Publication as mandated by the Act of 1894 was also made in two daily newspapers i.e. Arun Prabha and Rajasthan Patrika on 12.07.2009. The objections filed by the petitioners u/s 5A were considered and declaration u/s 6 of the Act of 1894, now impugned before this Court, made on 21.06.2010. It has been submitted that land under acquisition is fundamentally agricultural land. In the master plan the land now under the acquisition is required for roads and industrial plots in the course of essential extension of the Bhiwadi Industrial area and for this reason, the objections of the petitioners were considered and rejected as the acquisition of the land in issue is imperative for the integrity of the industrial area development in the Bhiwadi Industrial area being undertaken by the State through RIICO, a State owned Company. It has been submitted that the said industrial area is amongst the main hubs in Rajasthan for promotion of industrial growth in the State. It has not been disputed, say counsel, that the purpose of the acquisition is a public purpose whereby socio economic benefits to the population in the whole of the Rajasthan would accrue. It has been submitted that in the acquisition earlier made, the parcel of land in respect of which the present petition has been filed had to be left out as it was found by this Court under its order dated 02.04.2009 in SBCWP No. 7103/2007 that qua the said land the objections of the petitioners u/s 5A of the Act of 1894 had not been heard consequent to which the earlier declaration u/s 6 of the Act of 1894 following the notification u/s 4 of the Act of 1894 dated 25.07.2006 was set aside. This, it was submitted would not confer any indefeasible right in the petitioners to perpetual exclusion of their lands from land acquisition by the State Government in the exercise of its power of eminent domain. It was then submitted that the ground of estoppel agitated by the petitioners is wholly misdirected in law as the fact situation for the assertion of the said ground is not even remotely made out. It has been further submitted that it was not the petitioners' case that they have in any manner on a representation by the State Government altered their position owing to which the State Government should be held to its purported representation and under duty in equity to exclude the acquisition of the land of the petitioners in spite of the said acquisition being necessary for the integral development/extension of the Bhiwadi Industrial area. It has been finally submitted that aside of the aforesaid, there can be no

estoppel against statute and the acquisition of the petitioners' land is in pursuance of the State power of eminent domain in common law statutorily recognized in the Land Acquisition Act, 1894. In these circumstances, it has been prayed that the writ petition be dismissed.

3. Heard the counsel for the petitioners as also the respondents and perused the writ petition and reply thereto.

4. It is not in dispute that acquisition of land relates to the State power of eminent domain. The said power has been statutorily encapsulated in the Land Acquisition Act, 1894. No doubt the Land Acquisition Act, 1894 is an expropriative legislation and has to be strictly construed, ensuring procedural fidelity for the protection of the rights of the persons whose land is sought to be acquired. To balance the right of eminent domain vesting in the State on the one hand with the rights of the persons in respect of whose land such power is to be exercised is the key to acquisition proceedings. It is mandatory for the State to religiously adhere to the strict letter of law under the Act of 1894. Aside of that the State must not exercise its power to acquire land malafidely and the facts on record should disabuse the court's mind about the allegations of acquisition proceedings being an outcome of abuse of power by the State.

5. In the context of the aforesaid state of law with regard to acquisition of land, a bare look at the petition indicates that no infraction of any statutory provision has been pleaded or alleged. Malafides have similarly not been set up either in the pleadings and rightly so in the course of arguments by the counsel for the petitioners. It is also not the case of the petitioners that the resort to the acquisition proceedings under the Act of 1894 was for collateral purposes whereunder in the grab of acquisition of land for public purpose, the beneficiaries thereof were going to be any identifiable individual/corporates. The only ground set up by the petitioners in support of their petition lies in the purported earlier exclusion by the State of their parcel of land in a prior land proceeding under the Act of 1894 which is now sought to be acquired commencing with the notification u/s 4 of the Act of 1894 dated 23.06.2009 followed by a notification u/s 6 of the Act of 1894 dated 21.06.2010. Based on this factual assertion albeit without any material on record, a ground of estoppel has been pleaded. That would be the subject matter for the consideration of this Court in the present petition.

6. As detailed hereinabove, counsel for the respondent-State and RIICO stated that the exclusion of the petitioners' land in the course of land acquisition proceedings earlier commencing with the notification u/s 4 of the Act of 1894 issued on 25.07.2006 was not so much by the State, but a consequence of a judgment of this Court, passed on 02.04.2009 in SBCWP No. 7103/2007 and 23 other petitions, holding that notification u/s 6 of the Act of 1894 following Section 4 notification dated 25.07.2006 was vitiated on the ground of proper address to Section 5A objections filed by the petitioners therein not being made. It has been submitted that it is also on record of the reply of the State to which no rejoinder has been filed, that the land consequently left out in terms of the

judgment of this Court dated 02.04.2009 had to be reacquired as it is integral to the Bhiwadi Industrial area extension scheme and necessary for construction of roads and for carving out of industrial plots as per the master plan for Bhiwadi.

7. To my mind, the only ground set up in support of this writ petition aside of not being supported by any material, even otherwise has no legs to stand on. No order of the State u/s 5A of the Act of 1894 following Section 4 notification dated 25.07.2006 has been filed before this Court to establish that the State Government had earlier taken a conscious decision to exclude the petitioners land now sought to be acquired. It appears to this Court that the judgment of this Court in SBCWP No. 7103/2007 and 23 other petitions rendered on 02.04.2009 quashing and setting aside the proceedings qua the petitioners' land in view of the failure of the State Government at the relevant time to consider Section 5A objections is being misconstrued and agitated before this Court as a conscious decision of the State Government to exclude the acquisition of the petitioners' land. In this state of facts, this writ could have been dismissed at the threshold for misstatement of facts, without anything more.

8. Aside of the aforesaid, in my considered opinion, no estoppel against the resort to statutory processes under the Land Acquisition Act can be permissible on the principle that there can be no estoppel against statute. Further, in my considered opinion, from the un-controverted averments of the State Government that the said parcels of land are necessary for the full extension/development of the Bhiwadi Industrial area as per the approved master plan the public purpose for acquisition is completely made out. On facts on record, the contention that the impugned acquisition processes are an abuse of process by the Government is wholly without force and rejected.

9. As recorded earlier in this judgment, the objections u/s 5A of the Act of 1894 filed by the petitioners following Section 4 notification dated 23.06.2009 for acquisition of their agricultural land have been considered, addressed and rejected by the State Government. Following the rejection of the objections u/s 5A, the impugned notification u/s 6 of the Act of 1894 has been issued. No challenge to the rejection of the objections filed u/s 5A of the Act of

10. In the case of Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others, the Hon'ble Supreme Court has held that a declaration u/s 6 notification under the Act of 1894 can be challenged inter alia only on the ground of mala fides and colourable exercise of power. Nothing in the pleadings or the arguments of the counsel for the petitioners agitated before this Court makes out even remotely any ground of mala fide or of colourable exercise of power by the State. Further the Hon'ble Supreme Court in the case of Union of India (UOI) Vs. Dr. Kushala Shetty and Others, has held that it is not for the writ courts to consider the matters within the domain of experts. It is on record from the uncontroverted reply of the writ petition that in the master plan for Bhiwadi, the disputed land is required for roads, industrial plots and for the extension of industrial area. The master plan is a product of experts. It is not for this Court to

second guess the requirement of the land for industrial plots, construction of roads and extension of Bhiwadi industrial area. In any event no competing material has been placed before this Court to question the efficacy, validity and the conclusion of the master plan qua the land under consideration.

11. Consequently, all the writ petitions are without force and the same are dismissed. Stay applications need no address in view of the petition being dismissed. A copy of this order be placed on the case file of each of the connected writ petitions.