

(2011) 04 CAL CK 0075
In the Calcutta High Court
Case No : Writ Petition No. 5419 (W) of 2005

Kaniska Engineering Industries Ltd. and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Companies Act, 1956 — Section 1, 3
Land Acquisition (Companies) Rules, 1963 — Rule 3, 4, 4(1), 4(2), 4(3)
Land Acquisition Act, 1894 — Section 4, 4(1), 40, 41, 5A
Societies Registration Act, 1860 — Section 17, 21, 4, 5A, 6

Citation : (2011) 3 CALLT 176

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Sakti Nath Mukherjee, Swapan Kumar Dutta, Anindya Lahiri and S. Dutta, for the Appellant; Sandip Srimani, Suchitra Saha and Dipanwita Ghosh Chaudhuri for State, Ashok Banerjee, Debasish Kundu, B.P. Banerjee, Joydev Ghorai and Imtiaz Lodhi for Respondent No. 10, for the Respondent

Judgement

Debasish Kar Gupta, J.—This writ application is directed against the land acquisition proceeding bearing L.A. case No. IV-10/2003-04(hereinafter referred to as the said land acquisition proceeding) initiated under the provisions of Land Acquisition Act, 1894 for acquisition of 20.70 acres of land lying and situated at Mouza Bangihati, P. S. Serampore, District Hooghly (hereinafter referred to as the said land).

2. The facts of this case in a nutshell are as follows:

3. The Petitioner No. 1 was a limited company having its registered office at 59 Netaji Subhash Road, Kolkata 700001. The Petitioner company had set up a factory on the said land in the year 1983. The Petitioner company had to close the above factory in or about September 1988.

4. On the basis of a proposal of the Respondent No. 10 for acquisition of the said land the Respondent No. 6 submitted his report dated January 1, 2003 to the

Joint Secretary to the Government of West Bengal, Land and Land Reforms Department recommending for acquisition of the said land containing the following informations:

1. The company has made its best endeavor to find out lands in the locality suitable for the purpose of the acquisition.
2. The company has made all reasonable efforts to get such land by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed.
3. The land proposed to be acquired is suitable for the purpose.
4. The land proposed to be acquired, i.e. 22.16 acres, is not excessive.
5. The company i.e. Bhusan Ltd is in a position to utilise the land expeditiously as soon as the land is in possession.
6. The land proposed to be acquired in Bangihati mouza, J.L. 21, P.S. Serampore, Dist Hooghly is not a good agricultural land and also no alternative suitable site can be found so as to avoid acquisition of that land.

5. On receipt of above communication, the Assistant Secretary to the Government of West Bengal, Land and Land Reforms Department directed the Respondent No. 1 to initiate land acquisition proceeding in respect of the said land by a communication dated March 4, 2003. Thereafter, a screening committee under the Chairmanship of the Respondent No. 6 took a decision in its meeting dated December 17, 2003 to acquire 20.78 acres of land instead of 22.16 acres of land. The Respondent No. 7 submitted its revised proposal dated February 16, 2004 on the basis of the above decision. The Respondent No. 6 submitted his preliminary investigation report dated April 5, 2004 in respect of the acquisition of the said land.

6. Thereafter, a notification dated June 7, 2004 was issued under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 in respect of the said land which was published in the official gazette dated June 7, 2004. The above notification was also published in daily newspapers on the same date. The Respondent No. 6 submitted his enquiry report dated July 20, 2004 under the provisions of Section 40 of the Land Acquisition Act, 1894.

6.1 The above report is set out bellow:

Enquiry report as per Section 40 of Act-I, 1894

Held a spot enquiry on 20-7-2004 in the land proposed to be acquired in Banghati mouza, J.L., P.S. Serampore, Dist. Hooghly. The P.W.D(Roads) Construction Department officials also accompanied me.

On enquiry it appears that:

1. [40(1) (a)]. The lands proposed to be acquired for extension of factory hold by

Bhusan Ltd. for manufacturing of steel goods viz.

C. R. Coil and G.P sheet etc. is in the larger interest of Industrialization.

2. [40(1) (aa)]. The acquisition is needed for the construction of some buildings/ work for the said company which is for a public purpose.

3. [40(b)]. The acquisition is needed for the construction of some work and that such work is likely to prove useful to be public providing employment of a good number of employees and the Bhusan Ltd. will invest immediately about worth Rs. 100 crore by which the economic condition of West Bengal Government will be strengthened.

7. The Petitioner company submitted its objection dated August 12, 2004 to the Respondent No. 5 raising objection against the acquisition of the said land. By an order dated September 13, 2004 the Respondent No. 6 rejected the objection raised by the Petitioner company for acquisition of the said land. The Respondent No. 5 submitted a report dated October 10, 2004 to the State Government under the provisions of Section 5(A) of the Land Acquisition Act, 1894 as follows:

The proposal under Act-I of 1894 from Vice-President of Bhusan Ltd. vide memo No. BL/WBIDC/2002/452 dt.08-04-2002, BL/DM/LACQ/2003-2004 dt. 01-07-2003 and DL/DM/LACQ/2004 dt. 16.02-2004 for acquisition of 22.44 acres of land for expansion of existing Industrial Unit located near NH2, Delhi Road, Hooghly in Bangihati Mouza, J.L. 21, P.S. Serampore, Dist. Hooghly was received.

An Approval of Govt. from L.& L.R. Department vide memo No. 506-LA(II)/5C-2/2002 dt. 04-03-2-003 was also received.

The screening committee meeting was held on 17-12-2003.

The P.I. report has been completed on 12.04.2004.

The notification u/s -4(1) of L.A. Act-I, 1894 was published as follows:

Sl No. Mode of publication Date

1. In the Calcutta Gazettee 07-06-2004
2. In the Bengali daily(Ganashkti) 10-06-2004
3. in the English daily(Asian Age) 10-06-2004
4. Substance of notification published in the locality 26-072004

As appears from the above, the last date of publication of notification is 26-07-2004.

Only 9 (nine) objections to acquisition of land, which was notified u/s -4(1), were received from the interested persons within the statutory time limit of 30 days from the date of publication of notification.

All the objections raised by the interested parties were heard on 03-09-2004.

After the hearing it has been observed that the proposed Land Acquisition in favour of R.B. may proceed further.

8. Thereafter, erratum dated December 20, 2004 was published in the official Gazette on the same date for some minor corrections. Thereafter the Government of West Bengal entered into an agreement dated February 9, 2005 with the Respondent No. 10 under the provisions of Section 41 of the Land Acquisition Act, 1894 and the same was published in the official gazette on the same date. By an order dated February 18, 2005 the government gave permission to the Respondent No. 5 to exercise the power of appropriate government for publishing declaration u/s 6 of the Land Acquisition Act, 1894 for acquisition of the said land. Thereafter, the declaration u/s 6 in respect of the said land was made on February 21, 2005 and the same was published in the official gazette on the same date. The above declaration was published in daily newspapers on February 23 and 25 respectively. The above declaration is quoted below:

GOVERNMENT OF WEST BENGAL DECLARATION

Hooghly No. 235-L.A./IV-10/2003-04

Dated 21.02.2005

Whereas the Governor is satisfied that land is needed for a public purpose, not being a purpose of the namely for Bhushan Limited (C.R. Coils & G.P. Sheet etc.), in the mouza Bangihati, Jurisdiction list No. 21, P.S. Serampore, District Hooghly, it is hereby declared that a piece of land comprising L.R. Plots as detailed below and measuring, more or less, 08.4093 hectares (20.78 acres), bounded as specified below is needed for the aforesaid public purpose, at the expense of Bhushan Limited within the aforesaid mouza;

2. The declaration is made, under provision of Section 6 of Act I of 1894 to all whom it may concern.

4. A plan of the land may be inspected in the office of the Collector, Hooghly (L.A. Deptt.).

LAND SCHEDULE

Mouza: Bangihati P.S.: Serampore

Jurisdiction List No. : 21 District: Hooghly

L.R. Plot Nos. in full: 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1291, 1295, 1296, 1297, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1254/1509, 1289/1556, 1292/1557.

L.R. Plot No. in part: 1321- Northern side- 0.28 acres (0.1133 hectares).

Total No. of Plots- 46 (Full + Part) Area in hectares: 08.4093 Area in acre: 20.78

By Order of the Governor (Roshni Sen) District Magistrate, Hooghly & Joint Secretary (Ex-Officio) to the Govt. of West Bengal in the Land & Land Reforms Department.

9. The Government passed an order u/s 7 of the Land Acquisition Act, 1894 authorising the Respondent No. 5 to take order for acquisition of the said land. The Respondent No. 5, thereafter, issued notice dated March 22, 2005 under Sub-sections (3) and (4) of Section 9 of the Land Acquisition Act, 1894 fixing the date of hearing on April 5, 2005 the above hearing took place on April 5, 2005.

10. Appearing on behalf of the Petitioners Mr. Sakti Nath Mukherjee Learned Senior Counsel, submitted that the said proceeding was conducted in gross violation of the provisions of the Land Acquisition Act, 1894. According to him though the acquisition of the said land related to acquisition for company, the reasons for acquisition of the said land was not for any purpose enumerated in different Sub-sections of Section 40 of the Land Acquisition Act. According to him no committee was constituted under the provisions of Rule 3 of Land Acquisition(Companies) Rules, 1963. It is submitted by him that though the provisions of Rule 4 of the Land Acquisition (companies) Rules, 1963 (hereinafter referred to as the said rules) were mandatory the same were not followed in the instant case. It is further submitted by him that though an objection dated August 11, 2004 was submitted before the Respondent No. 5, the same was not considered in accordance with law by the Respondent authority. It is further submitted by him that the State Government entered into an agreement dated February 9, 2005 in violation of the provisions of Section 41 of the Land Acquisition Act, 1894. It is further submitted by him that the declaration dated February 21, 2005 issued under the provisions of Section 6 of the Land Acquisition Act, 1894 cannot be sustained in law because the proceeding under reference was not initiated for acquisition of the said land for public purpose as defined in Sub-section(f) of Section 3 of the Land Acquisition Act, 1894.

11. The learned senior counsel appearing for the Petitioner relied upon the decisions of Shyam Behari and Others Vs. State of Madhya Pradesh and Others, , Travancore Rayon Ltd. Vs. Union of India (UOI), The General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, , Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, Pratibha Nema and Others Vs. State of M.P. and Others, , Devinder Singh and Others Vs. State of Punjab and Others, and Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, .

12. Appearing on behalf of the state Respondents Mr. Sandip Srimani, learned Additional Government Pleader, High Court, Calcutta, submitted that on receipt of the proposal from the Respondent No. 10, a screening committee was constituted for examining the proposal of acquisition of the said land. On receipt of the report from the above committee the land acquisition proceeding in

question was initiated by issuing notification dated June 7, 2004 under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894. It is further submitted by him that the acquisition proceeding was initiated for acquisition of the land for company purpose. According to him, the objections raised by the Petitioner company by its communication dated August 12, 2004 were duly considered by the Respondent No. 6 by passing an order dated September 13, 2004. There was no bar for entering into an agreement with the Respondent No. 10 under the provisions of Section 41 of the Land Acquisition Act, 1894. He further submitted that after entering into the above agreement dated February 9, 2005, the Respondent No. 5 was authorised to exercise the power of appropriate government for publishing declaration u/s 6 of the Land Acquisition Act, 1894 for acquisition of the said land. Thereafter, the declaration u/s 6 in respect of the said land was made on February 21, 2005.

13. He submitted that there was no procedural impropriety or violations of any provisions of the Land Acquisition Act, 1894. He relies upon the decision of Devinder Singh and Others Vs. State of Punjab and Others, in support of his above submissions.

14. Mr. Ashok Banerjee Learned Senior Counsel appearing on behalf of the Respondent No. 10 submitted that all efforts were made by the Respondent No. 10 to approach the Petitioner company for purchasing the land by negotiation. Since the factory of the Petitioner company was closed there was no scope for direct approach for such negotiation. It is further submitted by him that there was compliance of Section 40 of the Land Acquisition Act 1894. According to 10 him the State Government considered the letter of objection of the Petitioner company and passed an order in accordance with the provisions of Section 5A of the Land Acquisition Act, 1894. According to him, the government may or may not accept the advice of the committee to be constituted under Rule 3 of the said rules. No penal consequence for non-compliance of the above provisions was prescribed in the said rules. It is also submitted by him that the compliance of the provisions of Rule 4 of the said rules was also not mandatory for the same reasons that no penal provision was prescribed in the said rules for noncompliance of the above provisions. According to him, after compliance of the provisions of Section 5A of the Land Acquisition Act, 1894 there was no bar and or impediment on the part of the Government of West Bengal to enter into an agreement with the Respondent No. 10 under the provisions of Section 41 of the above Act or for making a declaration u/s 6 of the above Act.

15. Mr. Banerjee relies upon the decisions of Topline Shoes Ltd. Vs. Corporation Bank, Rubber House Vs. Excellsior Needle Industries Pvt. Ltd., Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, , Shyam Nandan Prasad and Others Vs. State of Bihar and Others, Atam Prakash Vs. State of Haryana and Others, B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another, , Jage Ram and Others Vs. State of Haryana and Others, , The General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab

Uddin and Others, , Sk. Maison and Ors., v. The State of West Bengal and Ors., reported in 2009(1) CLJ (Cal) 33.

16. I have heard the learned Counsels appearing for the respective parties and I have given my anxious considerations to the facts and circumstances of this case on the basis of the materials on record.

17. The questions raised by the Petitioners are to be considered in background discussed hereinabove. In doing so, it is necessary to look into the scheme of the Land Acquisition Act, 1894(hereinafter referred to as the said Act).

18. It is evident from the preamble of the said Act, 1894, that it was passed by the legislature for the purpose of compulsorily acquiring any land when it was required for a public purpose or for companies. The term "company" is defined in subsection(e) of Section 3 of the said Act as follows:

(e) the expression "company means-

(i) a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in Clause (cc);

(ii) a society registered under the Societies Registration Act, 1860(21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause(cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause(cc);

18.1 The terms "public purpose" is defined in Sub-section(f) of Section 3 of the said Act as follows:

[(f) the expression "public purpose" includes-(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or

slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860(21 of 1860), or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to cooperative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies;]

The provisions of Sections 4 to 17 of the said Act contained in Part- II prescribe the operative portions of Land acquisition proceeding leading up to acquisition by the collector.

19. Under the provisions of Sub-section(1) of Sections 6 of the said Act, when any land is needed for a public or for a company, a declaration has to be made to that effect. Second proviso to Sub-section(1) of Section 6 of the said Act contains a prohibition. No such declaration for acquisition of land for a public purpose can be made unless the compensation to be awarded for such land is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

20. Necessary to point out that Section 6 of the said Act, in terms, made subject to the provisions of part VII of the said Act. Part-VII deals with acquisition of land for companies. And in case of a declaration for acquisition of land for a company, the compensation to be awarded for the property is to be paid by a company. Reference may be made to the decision of Shyam Behari and Others Vs. State of Madhya Pradesh and Others, and relevant portions of the above decisions are quoted below:

3. The only question that has been urged before us on behalf of the Appellants is that the High Court was in error in reading the two notifications as in substance amounting to a declaration that the land was required for a company. Section 6(1) of the Act requires that whenever any land is needed for a public purpose or for a company, a declaration shall be made to that effect. Further the proviso to Section 6(1) provides that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. This clearly contemplates two kinds of declarations. In the first place, a declaration may be made that land is required for a public purpose, in which case in view of the proviso, the compensation to be awarded for the property to be acquired must come wholly or partly out of public revenues or some fund controlled or managed by a local authority. No declaration under

Section 6 for acquisition of land for a public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a local authority; see *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, In the second place, the declaration u/s 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. It is clear therefore that where the entire compensation is to be paid by a company, the notification u/s 6 must contain a declaration that the land is needed for a company. No notification u/s 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose, for such a declaration requires that either wholly or in part compensation must come out of public revenues or some fund controlled or managed by a local authority. In the present case it is not in dispute that no part of the compensation is to come out of public revenues or some fund controlled or managed by a local authority; on the other hand the whole compensation was to be paid by the company. Therefore the notification u/s 6 if it was to be valid in the circumstances of the present case had to declare that the land was needed for a company.

(Emphasis supplied)

21. In the instant case, it is evident from the declaration dated February 21, 2005 made under the provisions of Section 6 of the said Act that the compensation was to be paid wholly by the Respondent company. So, it was a case of acquisition of the said land for the Respondent company.

22. As discussed hereinabove, in a case of acquisition for company, declaration can be made subject to the compliance of the provisions of Part-VII of the said Act. Part-VII of the said Act contains Sections 38A to 44B.

23. According to the provisions of Section 39 read with the opening word of Section 6 of the said Act, the operative provisions of the said Act will only apply for acquiring land for a company when following two conditions precedent have been satisfied:

(i) the previous consent of the appropriate Government has been given to the acquisition;

(ii) the company has entered into an agreement as provided in the said Act.

24. The provisions of Section 40 of the said Act lays down when the consent of the appropriate Government can be given. Section 41 of the said Act provides for terms which must be incorporated in the agreement. Section 42 lays down that agreement shall be published in the official gazette.

25. Necessary to point out that the intention of the legislature for introducing Sections 40 and 41 of the said Act is that there should be restriction on the power to acquire land for companies. It can only be fulfilled by putting narrower meaning on the words used in the above sections. in the event utilization of the

land so acquired is not directly connected with public utility or use, compulsory acquisition of such land is not permitted. Further, in case of invoking Part VII for acquisition of the land, observance Sections 40 and 41 of the said Act are mandatory and the Government is not at liberty to waive any of the provisions contained in Part-VII of the said Act. Therefore, the Government cannot be made a general agent for companies to acquire lands to enable the owner of companies to earn profit by carrying on or by extension of their business activities.

26. Reference may be made to the decision of R.L. Arora Vs. State of U.P., and the relevant portions of the above decision are quoted below:

13. Turning now to the opposing contentions as to the meaning of the relevant words in Sections 40 and 41, we have already said that the two provisions of Sections 40 and 41 must be read together to find out the intention of the legislature when it provided for acquisition of land for a company through the agency of government. It seems to us that it could not be the intention of the legislature that the Government should be made a general agent for companies to acquire lands for them in order that the owners of companies may be able to carry on their activities for private profit. If that was the intention of the legislature, it was entirely unnecessary to provide for the restrictions contained in Ss.40 and 41 on the powers of the Government to acquire lands for companies. If we were to give the wide interpretation contended for on behalf of the Respondents on the relevant words in Sections 40 and 41 it would amount to holding that the legislature intended the Government to be a sort of general agent for companies to acquire lands for them, so that their owners may make profits. It can hardly be denied that a company which will satisfy the definition of that word in Section 3(e) will be producing something or other which will be useful to the public and which the public may need to purchase. So on the wide interpretation contended for on behalf of the Respondents, we must come to the conclusion that the intention of the legislature was that the Government should be an agent for acquiring land for all companies for such purposes as they might have provided the product intended to be produced is in a general manner useful to the public, and if that is so there would be clearly no point in providing the restrictive provisions in Sections 40 and 41. The very fact therefore that the power to use the machinery of the Act for the acquisition of land for a 17 company is conditioned by the restrictions in Sections 40 and 41 indicates that the legislature intended that land should be acquired through the coercive machinery of the Act only for the restricted purpose mentioned in Ss. 40 and 41, which would also be a public purpose for the purpose of Section 4. We find it impossible to accept the argument that the intention of the legislature could have been that individuals should be compelled to part with their lands for private profit of others who might be owners of companies through the Government, simply because the company might produce goods which would be useful to the public. If therefore the legislature intended by the Provisions of Sections 40 and 41 that there should be restrictions on the power to acquire land for companies it can only be given effect to by putting the narrower meaning on the words used

in Ss. 40 and 41, as contended for by the Appellant. Further, reading Section 40(1)(b) and the fifth terms of the agreement as provided in Section 41 together(as they must in our opinion be read together in order to find out the real intention of the legislature) there can be no doubt that the only meaning to be given to these provisions read together is, as contended for on behalf of the Appellant. In this connection we ought to add that as we shall presently point out the material words of the fifth term in the agreement provided in Section 41 are reasonably incapable of the construction suggested by the Respondents.

(Emphasis supplied)

27. After considering the enquiry report dated July 20, 2004 submitted under the provisions of Section 40 of the said Act, it is revealed that in the instant case the said land was proposed to be acquired for extension of factory of the Petitioner company for manufacturing Steel goods, namely C.R. Coil G.P. Sheet etc. According to the above report, the acquisition was needed for a public purpose in the larger interest of industrialisation and it would provide for employment of a good number of employees. In clause(8) of the agreement dated February 9, 2005, it was mentioned that the public should be entitled to use the steel goods.

28. Opportunity of employment and use of the product manufactured in a factory run by a company are implicit in every business, even if the land is not acquired through the coercive machinery of the said Act. A company cannot carry on its business without providing employment to different classes of people and without making its product available in the market. Therefore, the work to be constructed in the instant case was not directly useful to the public and the public would not be entitled to use the work as such for its own benefit in accordance with the terms of the agreement. Therefore, the decision of the appropriate Government in the instant case for entering into an agreement dated February 9, 2005 u/s 41 on the basis of the enquiry report dated July 20, 2004 u/s 40 of the said Act cannot be sustained in law.

29. The validity of the said land Acquisition proceeding is under challenge on another ground that though the acquisition was for a company, the notification u/s 6 of the said Act was issued without first complying with the provisions of Rules 3 and 4 of the Land Acquisition(companies) Rules, 1963 (hereinafter referred to as the said Rules).

30. According to the provisions of Sub-rule (1) of Rule 4 of the said Rules, the Collector is to submit a report, inter alia, that the company has made all reasonable efforts to get such land by negotiation with the person interested therein on payment of reasonable price and such efforts have failed. The owners of the land are the persons interested in the matter of acquisition of land. Therefore, those owners of the land are entitled to an opportunity of hearing at the enquiry for proving or disproving the reasonable efforts of the company to get such land by negotiation. Reference may be made to the decision of State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, and the relevant

portions of the above decision are quoted below:

15. The contention of the State that the enquiry under Rule 4 is administrative and that the owner of the land is not entitled to be given an opportunity to be heard at the enquiry cannot be accepted for these reasons. The enquiry under Rule 4 shows that the Collector is to submit a report among other matters that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. The persons interested therein are the owners of the land which is proposed to be acquired. The Company at such an enquiry has to show that the company made negotiations with the owners of the land. The owners of the land are, therefore, entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation. The contention on behalf of the State that the owners of the land will get an opportunity when an enquiry is made u/s 5-A of the Act is equally unsound. Section 17 of the Act provides that the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct a declaration may be made u/s 6 at any time after the publication of the notification u/s 4 of the Act. Therefore, the enquiry u/s 5-A may not be held.

(Emphasis supplied)

31. In the instant case no material is produced before this Court to show that an opportunity of hearing was given to the Petitioner company by the Respondent No. 6 before submitting his report dated January 1, 2003.

32. That apart, Sub-rule (3) of Rule 4 of the said Rules provided for forwarding of a copy of the aforesaid report of the Collector to the land Acquisition Committee. Sub-rule (4) of Rule 4 of the said Rules makes it condition precedent, amongst others, to consult the committee for its advice on the above report of the Collector and the report, if any, submitted u/s 5A of the said Act.

33. It is not in dispute in the instant case that no land Acquisition Committee was constituted under the provisions of Rule 3 of the said Rules. Therefore, there was no scope to sent the copy of the report dated January 1, 2003 of the Respondent No. 6 to the above committee by the Government for its advice. So, the provisions of Sub-rule (4) of Rule 4 of the said Rules were not complied with.

34. It is the settled principles of law that compliance of the provisions of Rule 4 of the said Rules is not idle formality. Unless the directions enjoined by Rule 4 of the said Rules are complied with, the declaration u/s 6 of the said Act would be invalid. Reference may be made to the decision of General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, and the relevant portions of the above decision are quoted below:

13. Sub-rule (1) requires the government to direct the Collector to submit a report to it on the matters enumerated in clauses(I) to (vi) of the Sub-rule (1) which is for the benefit of the company. The purpose is to avoid acquisition of

land not suitable for a company. Clause(ii) of Sub-rule (1) requires that the company has to make all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such efforts have failed. The purpose of Clause (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of Clause (iii), (iv) and (v) are obvious. The purpose of Clause (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. Sub-rule(2) of Rule 4 requires the Collector to give reasonable opportunity to the company so that the Collector may hold an inquiry into the matters referred in Sub-rule (1). The Collector has to comply with Clauses (i), (ii) and (iii) of Sub-rule (2) during the course of the inquiry under Sub-rule (1). The Collector under Sub-rule (3) then has to send a copy of his report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the Land Acquisition Committee constituted under Rule 3 for the purpose of advising the government in relation to acquisition of land under Part VII of the Act, the duty of the Committee being to advise the government on all matters relating to or arising out of acquisition of land under Part VII of the Act [sub-rule (5) of Rule 3]. No declaration shall be made by the appropriate Government u/s 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector u/s 5-A of the Act. In addition, under Clause (ii) of Sub-rule (4) of Rule 4, the company has to execute an agreement u/s 41 of the Act. The above consideration shows that Rule 4 is mandatory; its compliance is no idle formality; unless the directions enjoined by Rule 4 are complied with, the notification u/s 6 will be invalid. A consideration of Rule 4 also shows that its compliance precedes the notification u/s 4 as well as compliance of Section 6 of the Act.

(Emphasis supplied)

35. Therefore, the declaration dated February 21, 2005 made u/s 6 of the said Act in the instant case was invalid also on the ground of noncompliance of the provisions of Rule 4 of the said Rules also.

36. Though the learned Government Pleader, High Court, Calcutta relied upon the decision of Davinder Singh (supra), I do not find that the above decisions supports his submissions.

37. On behalf of the Respondent No. 10 reliance has been placed upon a few decisions. Reliance has been placed on the decision of Topline Shoes Ltd. (supra) to submit that in absence of any penal consequences to follow, it is not open for the Petitioner company to submit that the provisions of the said Rules are mandatory. The attention of this Court has also been drawn to the decisions of Rubber House (supra), and Ganesh Prasad Sah Kesari (supra) and B. P. Khemka (supra) to submit that the word "shall" need not be given obligatory connotation in each and every case. But in view of the decision of the Central Govt. Servants Co-operative Housing Society Ltd. (supra), the Respondent No. 10 cannot derive any help from the decision referred to above. For the same reasons, the

decisions of Atam Prakash (supra) does not help the Respondents. In view of the distinguishable facts and circumstances, the decisions of Shyam Nandan Prasad (supra), Jageram (supra) and S. K. Maison (supra) have no manner of application in this case. It has been held in the matter of The Central Government Servants Co-operative Housing Society Ltd, Agra (supra) that Rule 4 of the said Rules is mandatory, its compliance is no idle formality. So, the above decision goes against the Respondent No. 10.

38. In view of the discussions and observations made hereinabove the said land acquisition proceeding is quashed and set aside.

39. This writ application is disposed of accordingly.

40. There will be, however, no order as to costs.

41. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.