

(2002) 07 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 2587 of 1986

Murtizapur High School

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 4, 48, 6

Citation : (2002) 4 ALLMR 720 : (2003) 1 BomCR 114 : (2003) 2 MhLj 258

Hon'ble Judges : R.G. Deshpande, J;P.S. Brahme, J

Bench : Division Bench

Advocate : L.K. Khamborkar, for the Appellant; D.B. Patel, Assistant Government Pleader for respondent Nos. 1, 2 and 3, A. De, Priya Sharma, Dipti Bhonsale and Anil S. Mardikar for respondent No. 4 and Anil S. Mardikar, for respondent Nos. 4 to 10, 12 to 18, 21, 24 to 27, for the Respondent

Judgement

P.S. Brahme, J.—The petitioner has approached this Court to question the legality, correctness and propriety of the order passed by the Commissioner, Amravati Division, Amravati, whereunder the acquisition of the land in Survey No. 17/2 situated at Murtizapur came to be cancelled. The Commissioner, Amravati Division, Amravati by issuing notification dated 17-7-1986 has cancelled the notification No. A. K. S.L.A.O. (G) WS-704/84 dated 20-2-1984 published on 1-3-1984. Petitioner also sought for a writ of mandamus, and direction to Commissioner, Amravati Division, Amravati to acquire one hectare 42 rs of land out of survey No. 17/2 situated at Murtizapur and to restore the same to the petitioner society.

FACTUAL POSITION :--

2. The petitioner society is running the Murtizapur High School at Murtizapur since 1936 in the building owned by the then Madhya Pradesh Government on the rental of Rs. 329/- per month and this school building is on the land situated at Murtizapur adjoining to the land survey No. 17/2 which is adjacent to the school building was already reserved and earmarked for extension of the school

in Town Planning Plan sanctioned by the Government of Maharashtra vide Government Resolution No. TPS/2571/766/4 dated 2-7-1973, therefore, petitioner-society on 11-4-1982 passed a resolution to initiate proceedings for acquisition of the land by making application to the appropriate authority. Accordingly, petitioner approached the Collector, Akola - District; Akola who after receiving the clearance from the Assistant Director of Town Planning Akola to the effect that the land under reference was reserved for "Extension of Murtizapur High School", issued notifications under Sections 4 and 6 of the Land Acquisition Act for acquisition of the land. The notification u/s 6 was published in the weekly "Pragati" of Akola dated 1-3-1984.

3. This land bearing field survey No. 17/2 situated at Murtizapur was owned and possessed by one Mahavirprasad Santlal Agrawal. However, during the pendency of the acquisition proceedings said Mahavirprasad Santlal Agrawal had illegally sold some land out of the said field survey No. 17/2 to one Hasmukhlal - respondent No. 4. Respondent No. 4 after having purchased the land, approached the Sub-Divisional Officer, Murtizapur for conversion of land from Agricultural to non-agricultural one. The Sub Divisional Officer, Murtizapur without obtaining "no objection certificate" from the Town Planning Department and being fully aware of the fact that the said field survey has been reserved for extension of Murtizapur High School, granted the application for conversion of the land from agricultural to non-agricultural one. Respondent No. 4 intentionally converted two acres of the land into nonagricultural one out of the land reserved for the extension of Murtizapur High School. Thereafter, respondent No. 4 made out layout of 16 plots and sold most of the plots to rest of the respondents i.e. 5 to 28.

4. The petitioner-society, made a complaint to the Secretary, Urban Development Department, Government of Maharashtra on 12-6-1984. The Government of Maharashtra thereupon issued orders to the Collector, Akola vide No. TPS/2584/CR/192/840/84/U.D. dated 7-5-1985 that the said land should be kept reserved for extension of Murtizapur High School. By this order the conversion of the land from agricultural to nonagricultural one as ordered by the Sub Divisional Officer, Murtizapur stood cancelled. The Collector, Akola, by his order dated 7-6-1985 cancelled the said order of the Sub Divisional Officer, Murtizapur and remanded the case to the Sub Divisional Officer, Murtizapur for taking further appropriate action and on 18-10-1985 the Sub Divisional Officer, Murtizapur cancelled the conversion of the land.

5. Thereafter, the acquisition proceedings in respect of this land for petitioner-society, further proceeded inasmuch as the Special Land Acquisition Officer issued notices on 25-4-1986 u/s 9 of the Land Acquisition Act. During the pendency of this case at the stage of notification u/s 9 of the Land Acquisition Act, respondent No. 4 approached the concerned Minister making a grievance that the land in question was not reserved for extension of Murtizapur High School. The concerned Minister initially granted ex parte stay on 13-9-1985 for

the proceedings under the Land Acquisition Act. However, after hearing the petitioner-society the stay granted came to be vacated on 2-4-1986.

6. When the matter was pending before the concerned Minister, Special Land Acquisition Officer, Akola behind the back of the petitioner made a report on 12-5-1986 to the Collector recommending the withdrawal from the acquisition of the land. This recommendation was made mainly on the basis that the land on which the school building stands belonged to Zilla Parishad and the school building is in possession of the petitioner school as a tenant of the Zilla Parishad. It was therefore, recommended that the petitioner-society has no right to claim acquisition of this land and therefore it was specifically recommended that the notifications under Sections 4 and 6 in respect of this land out of survey No. 17/2 be cancelled.

7. The Commissioner, Amravati Division, Amravati by his order dated 17-7-1986 accepting the recommendations of the Special Land Acquisition Officer, cancelled the notifications in respect of the acquisition of the land in question. This order of the Commissioner, Amravati Division, Amravati is under challenge in the present petition.

RIVAL CONTENTIONS :--

8. Mr. Khamborkar, learned counsel appearing for the petitioner vehemently contended that the order passed by the Commissioner, Amravati Division, Amravati cancelling the acquisition of the land is illegal and contrary to law and is violative of Article 14 of the Constitution of India being arbitrary and violating the principles of natural justice as no hearing was given to the petitioner prior to passing of the order. He also submitted that the school building utilised by the petitioner school is owned by the State Government and it is situated on Sheet No. 21-D Plot No. 5 and there is a remark in the record of rights that the said plot is to be utilised for the school and for the educational purposes and that the ownership is that of the government. He also submitted that the Government of Maharashtra has revised the Town Planning Plan and therein reservation of the land in question in the name of the petitioner-society is continued and for that a notification dated 30-3-1989 published in Maharashtra Government Gazette dated 29-7-1989 has been issued. The learned counsel also placed reliance on the provisions contained in Section 129 of the Maharashtra Zilla Parishad and Panchayat Samiti Act 1961 wherein it is for the State Government to issue notification in the official gazette for transferring to any Zilla Parishad such property, movable or immovable as specified therein [being the property vested in the State Government]. It is submitted that the land in question though was situated at Murtizapur never vested in Zilla Parishad and it very much belonged to the State Government.

9. Mr. Khamborkar, submitted that the land in question was reserved for development plan for extension of the school which is being admittedly run by the petitioner-society. Therefore, petitioner-society is beneficiary for which the

land was to be acquired. The acquisition proceeding has been initiated at the instance of the petitioner-society, in pursuance of that, the notification under Sections 4 and 6 have been issued in which it has been clearly stated that the land was to be acquired for the petitioner-society as it was reserved for petitioner-society in the Development Plan. The Commissioner, Amravati Division, Amravati, however, cancelled the acquisition by his order without giving hearing to the petitioner-society and therefore, the said order of cancellation of acquisition is subject to judicial review by the High Court. Mr. Khamborkar learned counsel placed reliance on the decision of this Court in *Krishi Utpanna Bazar Samiti, Aurangabad Vs. State of Maharashtra and Others*, This Court has observed : "It is well established that the decision to withdraw from the acquisition by invoking powers u/s 45(1) of the Land Acquisition Act is justiciable and the reasons given in support of such decision are subject to the judicial review by this Court under Article 226 of the Constitution."

10. Reliance is also placed on the observations of the Supreme Court in the case of *Amarnath Ashram Trust Society v. Governor of Uttar Pradesh* reported in AIR 1998 SC 477 wherein it is held : "Thus, the decision of the Government to withdraw from acquisition was based upon misconception of the correct legal position. Such a decision has to be regarded as arbitrary and not bona fide. Particularly in a case where as a result of a decision taken by the Government other party is likely to be prejudicially affected, Government has to exercise its power bona fide and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it to act in an arbitrary manner. Though the State cannot be compelled to acquire land compulsorily for a company, its decision to withdraw from the acquisition can be challenged on the ground that the power has been exercised mala fide or in an arbitrary manner. Therefore, we cannot accept the submission of the learned counsel for the State that the discretion of the State Government in this behalf is absolute and not justiciable at all."

11. As regards the right of the beneficiary to be heard in the proceeding which are meant for cancellation of acquisition, it has been observed in the case of *State Government Houseless Harijan Employees Association v. State of Karnataka*, reported in AIR 2001 SC 437 that : "a plea was raised before the Apex Court that the decision rendered in the case of *Larsen and Toubro* was applicable only in the cases where the beneficiary of acquisition was a company and this contention was overruled by the Apex Court by holding that the law laid down in the case of *Larsen and Toubro* is applicable for all acquisitions and not only for the acquisitions made for the company. These enunciations of the Apex Court set out the law governing the State Government's powers u/s 48(1) of the Land Acquisition Act and the stages that are required to be followed right from receiving the application or request till the final decision is taken and communicated to the beneficiary. At the first instance, it is necessary that the power u/s 48(1) of the L. A. Act is sought to be invoked only when the possession of the subject land remained with the owners/possessors and it was

not taken over by the Land Acquisition Officer. When the Government decided to entertain such application submitted by the land owners, the second stage was to give a show cause notice to the beneficiary setting out the proposed reasons for deletion so that the beneficiary has an opportunity to put up its defence, opposing the deletion and sufficient time is provided to present its response in reply to the said show cause notice. Then, comes a stage of hearing to the respective parties and this hearing must reflect as proceedings recorded by the authority who has heard the respective parties. This cannot be by any stretch of imagination the notes or submissions made by some Desk Officer or any other officer in the ministry or the department concerned."

12. The learned counsel further submitted that this order passed by the Commissioner, Amravati Division, Amravati is not published as required and within the meaning of Article 166(1) of the Constitution of India. He therefore, urged that the order passed by the commissioner, Amravati Division, Amravati cannot be sustained. He therefore, urged that the impugned order be quashed and set aside and the matter be remitted back to the Commissioner, Amravati Division, Amravati to decide afresh, after giving opportunity to the petitioner in the matter.

13. Mr. Patel, learned A.G.P. submitted that the petitioner cannot insist for the acquisition of the land as the action on the part of respondent is perfectly justified. It is submitted that the petitioner school is in the building belonging to the Zilla Parishad. The premises are given to the petitioner school on the rental basis as the tenant, and as the land in question was not required for the Zilla Parishad, the government was justified in withdrawing from the acquisition. As such the petitioner society has no locus standi to claim any interest in the land. Therefore, the order passed by the Commissioner cancelling the acquisition of the land is legal. It is submitted that there is no violation of any fundamental right vis-a-vis the petitioner.

14. Mr. De, learned counsel appearing for respondent No. 4 repelled the claim of the petitioner. He submitted that no procedure is prescribed nor any format is provided for passing the order of withdrawal from acquisition and order of withdrawal from of acquisition is an administrative order and no personal hearing to the parties concerned, is contemplated u/s 48 of the Land Acquisition Act. He submitted with emphasis that the Zilla Parishad, Akola, in the meeting held on 16-2-1984 passed a resolution, that the land in survey No. 17/2 is not required for the extension of the school. The Special Land Acquisition Officer who submitted his report on 12-5-1986 to the Commissioner, Amravati Division, Amravati, has stated that the ownership of the building of the school is of Zilla Parishad and the society who is running the school in the building of Zilla Parishad has demanded the land for extension of the school. He has also stated that the petitioner-society, who is running the school in the building of the Zilla Parishad is a tenant and has no right to claim acquisition of the land for extension of the school. As the Zilla Parishad has passed a resolution which in

turn does not require the land, the Commissioner was justified in withdrawing from acquisition of the land. He further submitted that as Zilla Parishad has passed a resolution and petitioner has not challenged that resolution, it was not incumbent on the part of the Commissioner to hear the petitioner-society before the impugned order of cancellation of the acquisition was passed. The learned counsel further submitted that the land in dispute was reserved for the public purpose namely for extension of the school as noted in the Final Development Plan, however, that reservation was for a period of 10 years i.e. from 1973 to 1983. After the period expired, the Sub Divisional Officer granted permission for conversion of the land from agricultural to non agricultural. The petitioner is not challenging the order of Sub Divisional Officer granting permission for conversion of the land. In this background when there was no reservation of the land, the Commissioner was well within his powers u/s 48 of the Land Acquisition Act in withdrawing from the acquisition. The petitioner society being tenant of the school building has no right or interest to claim the land in question under acquisition.

15. We also permitted Miss Sharma, Advocate holding for Mr. De, the learned counsel for the respondent No. 4 to make submissions, when the learned counsel Mr. De was not available to complete his submissions. She submitted that the writ of mandamus cannot be issued as sought for by the petitioner for acquisition of the land for the petitioner. To substantiate her submissions she placed reliance on a decision of this Court in the case *Vitthaldas Gandhi Vs. The State of Maharashtra and Others*, . In that case the State Government has withdrawn from the acquisition u/s 48(1) of the Land Acquisition Act. That withdrawal from the acquisition came to be challenged by the petitioner and writ of mandamus was claimed and the petition came to be dismissed. The Court observed : "When there is an option to the State Government to withdraw from the acquisition either u/s 48(1) of the Act or by virtue of its power u/s 21 of the General Clauses Act by cancelling the notification under Sections 4 and 6 of the Act, a writ of mandamus cannot be issued in this regard so as to curtail the discretionary power of the Government to cancel the notification issued under Sections 4 and 6 of the Act or to withdraw from the acquisition."

16. Learned counsel reiterated the submission that the State Government was competent to withdraw from the acquisition by virtue of the provisions u/s 48 of the Land Acquisition Act, even after issuing the notification u/s 4 at any time before taking possession of the land, she further submitted with emphasis that the government, more precisely, the Commissioner, in the case at hand was neither required to afford opportunity of hearing to the petitioner before passing order for withdrawing from the acquisition, nor required to give reasons for such withdrawal. The learned counsel placed reliance on a decision of the Apex Court reported in *Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce*, . The Apex Court observed that - "So long as possession is not taken over, the mere fact of a notification u/s 4 or declaration u/s 6 having been made does not divest the owner of his right in respect of the land or relieve him of the

duty to take care of the land and protect it against encroachments. Again, such a notification does not either confer on the State Government any right to interfere with the ownership or other rights in the land or impose on it any duty to remove encroachments therefrom or in any other way safeguard the interests of the original owner of the land. It is in view of this position, Section 48 gives liberty to the State Government to withdraw from the acquisition at any stage before possession is taken. By such withdrawal no irreparable prejudice is caused to the owner of the land. It also follows that the State Government can be permitted to exercise its powers to withdraw unilaterally and no requirement that the owner of the land should be given an opportunity of being heard before doing so should be read into the provision. The State Government cannot also be compelled to give any cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land."

17. The learned counsel further submits that the petition is not filed by the petitioner society. The society is duly registered. The petition is filed by Secretary of the Society. Therefore, the petition is not maintainable and the petitioner is not entitled to any relief as sought for. The order passed by the Commissioner withdrawing from the acquisition ought to have been challenged by the petitioner-society.

18. We have heard Mr. Mardikar, learned counsel appearing for rest of the respondents. He submitted that the petitioner's claim as to the right of hearing him is based on the reservation of the land in final development plan for 10 years from 1973 to 1983. This reservation however lapsed in the year 1983. The learned counsel submitted that though notifications under Sections 4 and 6 were issued, possession of the land was not given to the petitioner society. The respondent No. 4 had objected to the reservation of the land in final development plan. So also, the proposed revised final development plan. The petitioner society is running the school in the school building belonging to the Zilla Parishad, as a tenant. The Zilla Parishad, Akola who is owner of the school building has passed a resolution for giving up the claim of acquisition of the land. In the background of this petitioner-society has no locus standi or interest for claiming acquisition of the land. As such it was not incumbent on the part of the Commissioner to give personal hearing to the petitioner-society before passing the order of withdrawing from the acquisition. The learned counsel further submitted that the petitioner has not alleged any mala fides and therefore, the petitioner has no right to challenge the order passed by the Commissioner, he therefore, urged that the petition should be dismissed.

18-A. Having regard to the submissions of the learned counsel for the parties and the rival contentions of the parties, the first question that arises for our consideration is - whether it was mandatory for the Commissioner, Amravati Division, Amravati to hear the petitioner-society before taking decision of withdrawal from the acquisition,? The next question that follows as a corollary to the first question is whether the order passed by the Commissioner withdrawing

from the acquisition is incorrect, illegal and arbitrary, being in violation of principles of natural justice?

FINDINGS AND CONCLUSIONS :--

19. The factual position as narrated in earlier part of the judgment is not disputed. The land comprised in Survey No. 17/2, situated at Murtizapur was reserved in the Final Development Plan for public purpose namely for extension of Murtizapur High School. This land originally belonged to one Mahavirprasad Agrawal. Petitioner-society was running Murtizapur High School since 1936 in a school building situated at Murtizapur adjacent to the land bearing survey No. 17/2. The said school building was initially owned by the then Madhya Pradesh Government and petitioner-society was running its school in the building as a tenant on the rental at the rate of Rs. 329/- p.m. As the land in survey No. 17/2 was reserved for extension of the school in Town Development Plan sanctioned by the Government of Maharashtra vide GR TPS/2571/766/4 dated 2-7-1973, petitioner society passed a resolution on 11-12-1982 to initiate the proceedings for acquisition of this land. As stated earlier admittedly the Collector, Akola District, Akola after having received clearance from the Assistant Director of Town Planning of Akola to the effect that the land under reference is reserved for "Extension of Murtizapur High School", issued notifications under Sections 4 and 6 of the Land Acquisition Act. The notification u/s 6 of the Land Acquisition Act came to be published in the news paper dated 1-3-1984. However during the pendency of the acquisition proceedings, the owner of the land Mahavir Prasad Agrawal sold some land out of the field survey No. 17/2 to respondent No. 4. The respondent No. 4 after having purchased the land approached the S.D.O. Murtizapur for conversion of the land from agricultural to non agricultural one and S.D.O. without obtaining no objection certificate from the Town Planning Department, granted permission for conversion of the land. The petitioner-society challenged the order of the S.D.O. by making complaint to the government of Maharashtra by order dated 7-5-1985, direction was given to the Collector, Akola that the land in question should get reserved for extension of Murtizapur High School and the order of conversion of the land passed by the S.D.O. stood cancelled. The matter was heard by the Collector, Akola and the order of the S.D.O. was set aside and the case was remanded back to the S.D.O., Murtizapur to pass appropriate orders. Thereafter, the government proceeded with the land acquisition proceedings and notice u/s 9 of the Land Acquisition Act came to be issued on 25-4-1986. During the pendency of these proceedings the respondent 4 made layout of 16 plots and sold the plots to others. The Special Land Acquisition Officer sent a report to the Commissioner, Amravati Division, Amravati recommending withdrawal from acquisition. The Commissioner by his order dated 12-5-1986 has withdrawn from the acquisition and consequently the notification under Sections 4 and 6 of the Land Acquisition Act came to be cancelled.

20. It is no doubt true that the Commissioner has passed the order of

withdrawing from acquisition exercising the powers u/s 48 of the Land Acquisition Act. Learned counsel for the respondents vehemently submitted about the competency of the Commissioner in passing order of withdrawal from the acquisition, in exercise of the powers u/s 48(1) of the Land Acquisition Act. Section 48 of the Land Acquisition Act in clear words empowers the government to withdraw from the acquisition of any land of which possession has not been taken. Therefore, in the case before hand the competency of the Commissioner cannot be doubted.

21. However, legality of the order passed by the Commissioner is under challenge by the petitioner on the ground that the order is arbitrary and contrary to law and it is violative of Article 14 of the Constitution of India since no hearing was given to the petitioner prior to passing of the order.

22. The learned counsel for the petitioner pointed from the material on record that the land under acquisition was reserved for public purpose in Final Development Plan namely for extension of Murtizapur School, Murtizapur. This reservation of the land for the petitioner society was not challenged by the original owner Mahavir Prasad as well as the respondent No. 4 who purchased the land subsequently during the pendency of the acquisition proceedings. Learned counsel for the petitioner also pointed out that the reservation of the land further continued in the proposed revised Development Plan. It is also not disputed that acquisition proceedings came to be initiated at the instance of the petitioner society and in pursuance of that notification under Sections 4 and 6 have been issued. In addition to that after the order of S.D.O. permitting conversion of the land was set aside, notices u/s 9 of the Land Acquisition Act were issued. It is very clear from the earlier notification that the land which was sought to be acquired, was reserved for petitioner society for extension of the school. Therefore, petitioner-society is beneficiary, rather sole beneficiary vis-a-vis land sought to be acquired.

23. It goes without saying that the Commissioner has passed the order purely on the recommendation by the Special Land Acquisition Officer in his report dated 12-5-1986. The copy of the report is at Annexure : D to the petition. In that report though the Land Acquisition Officer has recommended for withdrawal from the acquisition, has specifically mentioned that the acquisition of the land was initiated by the petitioner society and that the acquisition of the land was for the extension of the school of the society. But withdrawal from the acquisition was recommended only on the ground that the school building is in possession of the society as a tenant of the Zilla Parishad and that the Zilla Parishad did not need land for extension of the school. It is however, very eloquent to note that the Special Land Acquisition Officer while recommending for withdrawal from acquisition, has requested the Commissioner to give opportunity of hearing to the land holder and the Secretary of the society before passing the order. It is not disputed that the Commissioner before passing the order did not afford opportunity of hearing to the petitioner-society. That apart the Commissioner has

not assigned any reason for granting withdrawal from the acquisition.

24. The learned counsel appearing for the respondents contended that the petitioner society has no locus standi and any interest or semblance of right vis-a-vis the land sought to be acquired and therefore, it was not incumbent on the Commissioner to provide opportunity of hearing to the petitioner and therefore the order passed by the Commissioner withdrawing from acquisition does not suffer from any vice of arbitrariness as well as illegality being violative of principles of natural justice. This submission is based on the footing that the school of the petitioner-society is run in the school building owned by the Zilla Parishad, Akola and it is admitted that the occupation of the school building by the petitioner society is as a tenant on rental basis. It is true that Zilla Parishad Akola has passed resolution in the meeting hold on 16-2-1984 by which it was resolved that the land under acquisition was not required by the Zilla Parishad for the school. It appears that the Special Land Acquisition Officer sent the proposal to the Commissioner, Amravati Division, Amravati for withdrawal from the acquisition solely on the basis that the land under acquisition was reserved for Zilla Parishad and the Zilla Parishad did not require that the land for the purpose of extension of the school.

25. It is very difficult to accept the submission of the learned counsel for the respondents that the petitioner society has no locus standi or interest in respect of the land sought to be acquired. The learned counsel for the petitioner has rightly pointed out from the record that admittedly the premises where the petitioner-society is running the school, actually belongs to State Government and the said premises are in occupation of the petitioner society as a tenant. The learned counsel for the petitioner has rightly placed reliance on Section 129 of the Maharashtra Zilla Parishad and Panchayat Samiti Act 1961. As per Section 129(2) the State Government, may by notification in the Official Gazette transfer to any Zilla Parishad the said property movable or immovable, as is specified therein being the property vested in the State Government. In the case before hand, the learned counsel for the petitioner has submitted that there is no notification in the official gazette regarding transfer of the school building to Zilla Parishad, Akola by the State Government. Therefore, it is just misconception to say that the property namely the school building vests in Zilla Parishad, Akola. Merely because the petitioner-society was paying rent to Zilla Parishad, does not make the Zilla Parishad Akola as the owner of the school building. The property therefore, continues to vest in the State Government.

26. We have pointed out that the proceeding for acquisition of the land was initiated by the petitioner society. The land in question is admittedly reserved in Final Development Plan so also proposed revised Final Development Plan by notification dated 30-3-1989 published in Maharashtra Government Gazette dated 29-7-1989. It is not disputed that the right from the beginning the land has been reserved for public purpose namely for extension of the school of petitioner society. Therefore, the petitioner society has interest in the acquisition

of the land comprised in Field Survey No. 17/2. This land under acquisition is undisputedly adjoining the school building premises in occupation of the petitioner-society.

This interest of the petitioner society as a beneficiary is also spelt out from the report of the Special Land Acquisition Officer in which he candidly stated that the proceedings for land acquisition were initiated by the petitioner society, as the land was to be acquired for the petitioner society, as the same was reserved in final development plan for public purpose i.e. for the extension of school. This interest of the petitioner-society in acquisition of the land as a beneficiary is independent in the sense it has no concern with the ownership of the school building in which the petitioner-society is running the school. Therefore, there is no substance in the contention of the counsel for the respondents that the petitioner society has no locus standi to seek acquisition of the land for extension of the school which the petitioner society is running in the building which belongs to Zilla Parishad Akola.

27. The learned A.G.P. has also submitted that the petitioner-society is a private institution and as such the acquisition of the land for petitioner-society cannot be said to be for the public purpose. It is very difficult to accept this submission having regard to the expression "public interest" given in Section 3(f)(vi) of the Land Acquisition Act. It clearly shows that the expression "public purpose" was implied, the provision of the 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. In the case before hand, the petitioner is registered society and it is admittedly, the petitioner society which is running the educational school since 1936.

28. We have therefore, no hesitation in holding that the petitioner society is having interest in the acquisition of the land as a beneficiary. Therefore, petitioner society has a right of hearing before the Commissioner, Amravati Division, Amravati, in the matter, when the proposal for withdrawal from the acquisition was for consideration. This Court in *Krishi Utpanna Bazar Samiti, Aurangabad Vs. State of Maharashtra and Others*, has decided the legality of the order passed by the Government withdrawing from the acquisition in the background of not providing opportunity of being heard the beneficiary. It is observed : "On contrast with the owners position, the beneficiary of the acquisition may, by withdrawal from the acquisition, suffer substantial loss without redress particularly when it may have deposited compensation money towards the costs of the acquisition and the steps of the acquisition under the Act have substantially been proceeded with. An opportunity of being heard may allow the beneficiary not only to counter the basis for withdrawal but also if the circumstances permitted, to cure any defect or short coming and fill any lacuna. It is also held that the only mode for withdrawal of lands from acquisition is by

resorting to the powers u/s 48 of the Land Acquisition Act, and withdrawal in such cases is permissible only by publication of notification in the official gazette in that respect. A notification in the official gazette is required to be issued if the State Government decides to withdraw from the acquisition u/s 48 of the Land Acquisition Act.

29. This court also observed that when the government decided to entertain such an application submitted by the land owners, the second stage was to give a show cause notice to the beneficiary setting out the proposed reasons for deletion so that the beneficiary has an opportunity to put up its defence, opposing the deletion and sufficient time is provided to present its response in reply to the said show cause notice. Then comes the stage of hearing to the respective parties and this hearing must reflect in proceedings recorded by the authority who has heard the respective parties. This cannot be by any stretch of imagination the notes or submission made by some Desk Officer or any other officer in the ministry or the department concerned. These proceedings so recorded must reflect the contentions of the respective parties, the reasoning by the competent authority to accept or reject such contentions and the findings in support of the order of deletion or the order of rejecting the applications would demonstrate the application of mind by the competent authority alone. The next stage would be the publication of the said order and the publication within the meaning of Article 166(1) of the Constitution. A mere communication to the parties concerned that the application has been allowed or rejected would not satisfy the requirements of Article 166(2) of the Constitution.

30. It is well established that the decision to withdraw from the acquisition by invoking powers u/s 48(1) of the Land Acquisition Act is justiciable and the reasons given in support of such decision are subject to judicial review of this Court under Article 226 of the Constitution of India.

31. In the case before hand the order passed by the Commissioner was based on the recommendations made by the Special Land Acquisition Officer in his report. The Commissioner did not afford any opportunity to the petitioner-society before the order was passed. At the cost of repetition we may mention that the Special Land Acquisition Officer in his report while recommending for withdrawal from acquisition has specifically stated that opportunity of hearing be given to the interested persons including the petitioner-society. This statement in the report reinforces the fact that the petitioner society was interested in acquisition of the land as beneficiary. The Commissioner was made aware by the Special Land Acquisition Officer that the petitioner society being interested person should be given hearing before any order is passed. The fact remains that the Commissioner passed the order without providing any opportunity of hearing to the petitioner society. Therefore, the order passed by the Commissioner has to be set aside being arbitrary, as well as violative of principles of natural justice as enshrined under Article 14 of the Constitution of India.

32. It is very clear from the order passed by the Commissioner that no reasons

are assigned. It goes without saying that the Commissioner has passed the order straightway relying upon the recommendations made by the Special Land Acquisition Officer. Therefore, the order passed by Commissioner, Amravati Division, Amravati also, suffers from the view of non application of mind and as such the order passed by the Commissioner is arbitrary and illegal.

33. The decision of the Apex Court reported in Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, relied by the counsel for the respondents has no application so far as the facts in the present case before hand are concerned. In that case the government has passed the order of withdrawal from acquisition of the land as the purpose for which the land was sought to be acquired did not survive because of admitted encroachment on the land by slum-dwellers. It is in that context that the court has observed that "The Government is neither required to afford opportunity of hearing to the land owner before withdrawing from the acquisition, nor required to record reasons for such withdrawal from when the purpose of acquisition ceased to exist.

34. In the result we have found that the order passed by the Commissioner withdrawing from the acquisition of the land is illegal, being violative of principles of natural justice as no opportunity of hearing was given to the petitioner-society which is very much interested person as beneficiary. The order therefore, cannot sustain. The order is quashed and set aside. However, we remit the matter back to the Commissioner, Amravati Division, Amravati for deciding afresh after giving opportunity to the concerned parties of being heard. We expect that the Commissioner shall dispose of the matter as early as possible, within four months from the communication of this order by giving opportunity of hearing to parties concerned. In the circumstances, interim order passed by this court shall continue till the decision taken by the Commissioner. Rule is made absolute in the aforesaid terms with costs.