

(2015) 11 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition Nos. 9525, 9528 of 2004, Civil Application Nos. 2397, 1611 of 2015 in Writ Petition No. 9525 of 2004 and Civil Application No. 2550 of 2014 in Writ Petition No. 9528 of 2004

Pimpri Chinchwad new Town Development Authority, Nigadi and Others APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 21-11-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 3, 36, 4
Maharashtra Regional and Town Planning Act, 1966 — Section 113
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24

Citation : (2016) 1 ABR 224 : (2016) 1 BomCR 686

Hon'ble Judges : Abhay Shreeniwas Oka and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : Vijay D. Patil, for the Appellant; M.P. Thakur, AGP, for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—In Writ Petition No. 9525 of 2004, the challenge is to the order dated 21st September 2004 passed by the Second Respondent who was the then Hon"ble Minister of State of the Revenue Department of the State Government. The subject matter of the said Writ Petition is the land bearing Survey No. 17/6,25 and 31 (Part) at Village Rahatani, Taluka Haveli, District-Pune (for short "the said land"). By the impugned order passed in exercise of the powers under Sub-Section (1) of Section 48 of the Land Acquisition Act, 1894 (for short "the Land Acquisition Act"), the Second Respondent directed release of the said land from the acquisition. The acquisition was for the benefit of the Petitioner.

2. The Petitioner is a New Town Development Authority constituted under Sub-Section (2) of Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act").

3. In the year 1962, the State Government decided to develop an industrial area

in the limits of the erstwhile Pimpri Chinchwad Municipal Council. For that purpose, large agricultural lands were acquired. After development of the industrial area, it was decided to develop Pimpri Chinchwad as a new township area. The State Government designated an area of approximately 4323 Hectares as the site of the proposed new town. As stated earlier, the Petitioner was appointed as the New Town Development Authority for the said area in exercise of the powers under Sub-Section (2) of Section 113 of the MRTP Act by a Notification dated 14th March 1972. The Development Plan for the area for which the Petitioner was appointed as the New Town Development Authority was sanctioned on 8th September 1977. The said land subject matter of this Petition was notified for the purposes of acquisition under Sub-Section (1) of Section 4 of the Land Acquisition Act on 9th March 1970. The award under Section 11 of the Land Acquisition Act was made on 23rd September 1986. A notice was issued by the Special Land Acquisition Officer on 11th May 1999 for taking over possession of the said land. However, the possession could not be taken over due to the orders passed in a Civil Suit filed by the land owner. According to the case of the Petitioner, though the suit was dismissed in the year 1995, notwithstanding the requests made by the Petitioner, the Revenue Department did not take steps for placing the Petitioner in possession of the said land.

4. A letter dated 10th September 2004 issued by the Revenue Department of the State Government was received by the Petitioner by Fax calling upon the Petitioner to remain present on 13th September 2004 before the Second Respondent with regard to the Application filed by the Fifth Respondent under Sub-Section (1) of Section 48 of the Land Acquisition Act. Though a copy of the said Application was forwarded by Fax, it was not at all legible. The case made out in the Petition is that on 13th September 2004, a request was made by the representative of the Petitioner before the Second Respondent for grant of time to file a reply. It is stated that the Second Respondent did not grant time and heard the submissions of the Advocate for the Fifth Respondent. The Petitioner's representative was directed to submit a reply on 17th September 2004. Accordingly, a reply was filed on 16th September 2004. It is contended that though a rejoinder was filed to the said reply by the Fifth Respondent, a copy thereof was not supplied to the Petitioner. The case made out in the Petition is that a copy of the impugned order dated 21st September 2004 was forwarded to the Petitioner along with a letter dated 20th October 2004 which was received by the Petitioner on 26th October 2004. By the impugned order, the prayer made by the Fifth Respondent for deleting the said land from the acquisition was accepted. It is pointed out in the Petition that the programme for filing of nomination papers for the election of the Maharashtra Legislative Assembly commenced from 15th September 2004 and the election was scheduled to be held on 13th October 2004. It is pointed out that the Second Respondent was also contesting the said election and therefore, the Petitioner Authority was under an impression that the proceedings before the Second Respondent have been terminated. The challenge to the impugned order is on various grounds

including the ground of breach of the principles of natural justice.

5. A reply dated 10th December 2014 has been filed by the Fifth Respondent. In the reply, it was contended that when the Second Respondent heard the Fifth Respondent, a representative of the Petitioner was present. It is urged that the Petitioner was permitted to file a reply and after taking into consideration the reply and the rejoinder of the Fifth Respondent, the impugned order has been validly passed. There is a reply filed by Shri Kamalakar Y. Vanjare, Desk Officer, Revenue and Forests Department, Mantralaya, Mumbai, which is affirmed on 26th September 2005. It was contended that the Apex Court has deprecated the practice of one Government Authority approaching the High Court against another Authority. There is an affidavit-in-rejoinder filed by Shri Vishwas Jaywantrao Bohsale, the Chief Executive Officer of the Petitioner Authority. There is a sur-rejoinder filed by the Petitioner on 17th October 2005. There is another affidavit filed by the Fifth Respondent on 15th June 2015. It is contended in the said affidavit that the Pimpri Chinchwad Municipal Corporation has provided all civil amenities to the said land. It is contended that as the Pimpri Chinchwad Municipal Corporation has carried out necessary work by providing civil amenities such as road, sewerage lines, electricity lines etc., the present Petition filed by the Petitioner should not be entertained.

6. Civil Application No. 1611 of 2015 and Civil Application No. 2397 of 2015 have been filed by the Intervenor who are claiming right, title and interest in respect of the said lands. Apart from these two Civil Applications, there is another Civil Application No. 2550 of 2014 filed by an Intervenor.

FACTUAL MATRIX-Writ Petition No. 9528 of 2004

7. Writ Petition No. 9528 of 2004 has been preferred by the same Petitioner challenging another order passed by the same Hon"ble Minister who is also the Second Respondent in the said Petition. The said order was also passed on 21st September 2004 in relation to the lands bearing Survey No. 18/1, 18/2, 18/11, 18/12, 18/13, 19/1 and 19/2 at Village Rahatani, Taluka Haveli, District-Pune (for short "the said land"). The facts of this Petition are otherwise identical to the facts of Writ Petition No. 9525 of 2004. Even the impugned orders are more or less identical.

SUBMISSIONS OF THE PARTIES

8. The learned counsel appearing for the Petitioner urged that the Second Respondent has held that it was necessary for the Petitioner to prove the dire and desperate need for the acquisition of the said lands subject matter of these Petitions. He urged that for acquiring a land for the public purpose under the Land Acquisition Act, it is not necessary to establish dire or desperate need. He urged that this is the only ground on which the Second Respondent has purported to exercise the powers under Sub-Section (1) of Section 48 of the Land Acquisition Act. He urged that no opportunity of personal hearing was granted to the Petitioner and even on this ground, the impugned order is illegal.

He pointed out that the written argument filed by the Petitioner has not been correctly read by the Second Respondent. He pointed out that a copy of the rejoinder filed by the Fifth Respondent which is considered in the impugned order was never served to the Petitioner.

9. The learned senior counsel representing the Fifth Respondent who is claiming to be the owner of the said lands urged that while dealing with the Application under Sub-Section (1) of Section 48 of the Land Acquisition Act, the State Government or the Commissioner, as the case may be, exercise administrative function. Hence, the Second Respondent was under no obligation to record reasons for deleting the said lands from the acquisition. Moreover, he submitted that in both the impugned orders, the Second Respondent has assigned cogent reasons. He pointed out that it was contended before the Second Respondent by the Petitioner that the said acquired lands will be used for allotment of plots under the 12.5% scheme to the project affected persons. He pointed out that out of the total area of 1586 Hectares received by the Petitioner by way of compulsory acquisition, an area of only 397 Hectares could be used by the Petitioner and therefore, a large area was already available with the Petitioner for the implementation of the 12.5% scheme. He urged that on the basis of this finding of fact, the impugned orders have been passed. He urged that Writ Court cannot go into the issue of adequacy of reasons. He urged that the impugned orders show that the contentions of the parties have been considered in depth. He submitted that in any event, as the possession of the said lands is not taken over till 31st December 2014, in view of the provisions of Sub-Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the said Act of 2013"), the acquisition proceedings subject matter of these two Petitions have lapsed. He would, therefore, urged that even if the Petitioner succeeds in the Petitions, in any case, the acquisition proceedings under the Land Acquisition Act stand lapsed.

10. The Intervenor has supported the Fifth Respondent. The learned AGP supported the impugned orders.

CONSIDERATION OF SUBMISSIONS

11. We have given careful consideration to the submissions. Section 48 of the Land Acquisition Act as applicable to the State of Maharashtra reads thus:

"48.Completion of acquisition not compulsory, but compensation to be awarded when not completed.--(1) Except in the case provided for in Section 36 , the Government or the Commissioner shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government or the Commissioner withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested,

together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this Section."

12. In the present case, the Second Respondent has purported to exercise the powers under Sub-Section (1) of Section 48 of the Land Acquisition Act while passing the impugned orders.

13. We have perused the impugned orders which are more or less identical. Paragraph 2 of the said orders contains the facts. Paragraphs 3 to 8 record the contentions raised by the Fifth Respondent in the Application. Paragraph 9 records that on 16th September 2004, the Petitioner filed written statement/written argument. It also records that a rejoinder dated 20th September 2005 was filed by the Fifth Respondent. Paragraph 10 refers to the written submissions of the Petitioner. Paragraph 11 refers to the contents of the rejoinder of the Fifth Respondent. Five issues were framed by the Second Respondent in paragraph 12. English translation of the said five issues reads thus:-

"1. Whether the Applicant can file an application for deleting the lands from acquisition as per provisions sec. 48(1) of Land Acquisition Act 1894?

2. Whether actual possession of the suit land is given to the Authority as per sec. 16 of the Act?

3. Whether Government has power to pass an order u/sec. 48(1) of the said Act for deleting the lands?

4. Whether the lands in question are necessary to the Authority for the public purpose?

5. Whether it will be proper to release for said lands from the acquisition under the provisions of sec. 48(1) of the 1894 Act after considering the application submitted by the Applicants."

14. Thus, the real issue is the Issue No. 4. We have carefully perused the findings of the Second Respondent on the Issue No. 4. The findings on Issue No. 4 are in Paragraphs 16 and 17. Paragraphs 16 and 17 reproduce the submissions of the learned counsel appearing for the Fifth Respondent. It refers to the judgment of this Court in Writ Petition No. 1116 of 1994. Paragraph 17 refers to the contentions raised by the learned Advocate of the Petitioner. The only finding recorded is in the last two sub paragraphs of Paragraph 17. The English translation of the said sub paragraphs reads thus:

"It is submitted by the Authority that the lands in question are necessary for allotting to the agriculturist under 12.5% return scheme. This reason given by the Authority is false and only by way of after thought. Such a statement made at this stage is prima facie misguiding and only for supporting the action of taking possession the lands which were not taken in possession for last 17 years;

even though the Government has applied the scheme, the mentioned scheme for the Pimpri Chinchwad new town development area in the year 1993. So also out the 1586 H. land taken in possession by the Authority 25% i.e. (397 H.) land is till today available with the Authority and same can be used for 12.50 % return.

From all above discussion it is clear that the Authority has failed to prove that the land in question is desperately required for public purpose Authority could not submit a concrete proof of the need."

(emphasis added)

15. It must be noted here that the purpose of acquisition as notified under Sub-Section (1) of Section 4 of the Land Acquisition Act is not for allotment of the said lands under the 12.5% scheme. The purpose of acquisition as stated in the notification under under Sub-Section (1) of Section 4 of the Land Acquisition Act is "for the planned development and utilisation of the said lands in the Pimpri Chinchwad Township area for industrial, commercial and Residential use." Thus, the Second Respondent has not even adverted to the public purpose for which the said lands were acquired. We have perused the reply filed by the Petitioner to the Application under Sub-Section (1) of Section 48 of the Land Acquisition Act filed by the Fifth Respondent. It is pointed out in the reply that out of the acquired lands totally admeasuring 1839.25 Hectares, an area of 1586.75 Hectares has been already placed in possession of the Petitioner and the work of development of 75% of the said lands is already completed. It is stated in the reply that as the said lands (subject matter of these Petitions) were not placed in possession of the Petitioner, the work of development could not be undertaken. It is contended that the Petitioner badly needs the said lands. Thereafter, it is contended that the said lands can be used for allotment of plots under the 12.5% scheme to the persons whose lands have been acquired for the purpose of the Petitioner. It is contended that if the acquisition is cancelled, no lands will remain available to the Petitioner for the development and also for the allotment under the 12.50% scheme. It is contended that the object of the acquisition of the lands for the purpose of the Petitioner Authority has been established. It is contended that the Petitioner requires the said lands for the public purpose of residential use. It is contended that the estimated compensation of the lands has been long back deposited by the Petitioner.

16. From the findings recorded by the Second Respondent in Paragraph 17 which were quoted above, it appears that the Second Respondent was of the view that the lands should be released from the acquisition as the Petitioner has not established the desperate need or necessity of the said lands for the public purpose.

17. After the publication of the Notification under Sub-Section (1) of Section 4 of the Land Acquisition Act, a declaration under Section 6 of the Land Acquisition Act has been made long back in the year 1973. It is not the case of any party that before a declaration under Section 6 of the Land Acquisition Act was made,

an inquiry under Section 5A of the Land Acquisition Act was not made. It will be necessary to consider Sub-Section (3) of Section 6 of the Land Acquisition Act which reads thus:-

"6(3) The said declaration shall be conclusive that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

18. Thus, the declaration made in these cases under Section 6 of the Land Acquisition Act is the conclusive evidence of the fact that the said lands were needed for the public purpose. We have perused the definition of the public purpose under Clause (f) of Section 3 of the Land Acquisition Act. The definition of public purpose is not exhaustive. On the conjoint reading of the said definition along with Sections 4 and 6 of the Land Acquisition Act, it appears that for establishing the existence of a public purpose, it is not necessary to establish dire or desperate need/necessity. The Second Respondent was completely under a misconception that the dire or desperate need is an essential ingredient of the public purpose under the Land Acquisition Act. Moreover, in view of Sub-Section (3) of Section 6 of the Land Acquisition Act, a declaration already made under Section 6 of the Land Acquisition Act in relation to the said lands was a conclusive evidence of the fact that the said lands were needed for the public purpose. The declaration under Section 6 of the Land Acquisition Act has attained finality. While exercising the power under Sub-Section (1) of Section 48, the declaration under Section 6 of the Land Acquisition Act by the State Government binds the State. In view of Sub-Section (3) of Section 6, while exercising the power Sub-Section (1) of Section 48, the State Government cannot go into the issue whether public purpose was in existence on the day on which the declaration was issued under Section 6. However, the State Government can examine in a given case whether with the passage of time, the public purpose continues to exist. It is not the finding recorded that due to the events which have happened after the declaration under Section 6 of the Land Acquisition Act was made, the public purpose has ceased to exist.

19. As regards the implementation of 12.5% Scheme, the Second Respondent has observed that out of an area of 1586 Hectares which was placed in possession of the Petitioner, an area of 397 Hectares which is equivalent to 25% of the total land in possession of the Petitioner was available. This finding was recorded on the basis of the stand taken by the Petitioner. It is, therefore, necessary to consider the specific stand taken by the Petitioner on this aspect in the reply/ written statement filed by it before the Second Respondent. In Paragraph 6, it is stated that the awards under Section 11 of the Land Acquisition Act were made in respect of the area 1839.25 Hectares out of which an area of 1586.75 Hectares has been placed in possession of the Petitioner. It is further stated that the work of development of 75% of the lands placed in possession of the Petitioner has been completed. It is not at all the case of the Petitioner that

either the remaining area of 25% is not required by the Petitioner or that no development is to be carried out on the said remaining area. The contention raised in the reply is that 75% of the area of the acquired lands placed in possession of the Petitioner has been already developed. The conclusion drawn by the Second Respondent that 25% of the lands is available for making an allotment under the 12.5% scheme has no foundation at all. The stand in the reply is that the said lands are needed both for the public purpose for which the same were notified as well as for making allotments under 12.50% scheme. It is contended that if the acquisition is cancelled, no lands will remain available to the Petitioner for the development and also for making the allotments under the 12.50% scheme. It is not the stand taken that the said land are not needed for the purpose for which the same were acquired. Thus, the Second Respondent has proceeded on an erroneous assumption that the Petitioner needs the said lands only for making allotments under 12.50% scheme. Moreover, the Second Respondent has completely ignored that as per the 12.50% scheme, developed plots are to be allotted to the project affected persons.

20. In fact, the entire approach of the Second Respondent is completely erroneous as he has completely misunderstood the concept of public purpose. He was of the view that dire or desperate necessity is an essential ingredient of the public purpose within the meaning of the Land Acquisition Act. As held earlier, the said approach is completely erroneous.

21. The Apex Court has repeatedly held that the principles of natural justice are applicable to an application under Sub-Section (1) of Section 48 of the Land Acquisition Act. While dealing with the exercise of the said power, the Apex Court in the case of State Govt. Houseless Harijan Employees Association Vs. State of Karnataka and Others, held thus:

"33. The Section does not in terms exclude the principles of natural justice. However, the Section has been construed to exclude the owner's right to be heard before the acquisition is withdrawn. This is because the owner's grievances are redressable under Section 48(2). No irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be paid compensation thereof under Section 48(2) of the Act. (See Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others, ; also Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, .) But as far as the beneficiary of the acquisition is concerned there is no similar statutory provision. In contrast with the owner's 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 cost of the acquisition and the steps for 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

shortcoming and fill any lacuna. No reason has been put forward by the respondents to exclude the application of the principle of natural justice to Section 48(1) of the Act.

34. The decision in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, which relied upon an earlier decision in *Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others*, to hold that a beneficiary has a right to be heard before a notification under Section 48(1) is issued, does not appear to be limited to acquisition for companies under Part VII of the Act as is contended by the respondents although the acquisition in that case had been made for a company for the purpose of setting up a housing colony. Both cases have also drawn a distinction between the rights of an owner and the beneficiary of the acquisition to object to withdrawal from the acquisition for the reasons noted earlier."

(emphasis added)

22. The Apex Court in the case of *Mutha Associates and Others Vs. State of Maharashtra and Others*, reiterated the same view. In the case of *Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others*, , the Apex Court dealt with the requirement of recording reasons while passing administrative orders. In paragraph 20 to 23, the Apex Court held thus:

"20. Principles of natural justice are based on two basic pillars:

(i) Nobody shall be condemned unheard (*audi alteram partem*).

(ii) Nobody shall be judge of his own cause (*nemo debet esse judex in propria sua causa*).

21. Duty to assign reasons is, however, a judge-made law. There is dispute as to whether it comprises of a third pillar of natural justice. (See *S.N. Mukherjee Vs. Union of India*, and *Reliance Industries Ltd. Vs. Designated Authority and Others*,)

22. However, the other view is that the question as to whether reasons are required to be assigned is a matter of legislative policy which should be left to the decision of Parliament. In *Raipur Development Authority Vs. M/s. Chokhamal Contractors etc. etc.*, a Constitution Bench opined: (SCC pp. 751-52, para 35)

"35. It is no doubt true that in the decisions pertaining to administrative law, this Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rule. It would be in the interest of the world of commerce that the said rule is confined to the area of administrative law. We do appreciate the contention, urged on behalf of the parties who contend that it should be made obligatory on the part of the arbitrator to give reasons for the award, that there is no justification to leave the small area covered by the law of arbitration out of the general rule that the decision of every judicial and quasi-judicial body should be supported by

reasons. But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes. As stated elsewhere in the course of this judgment if the parties to the dispute feel that reasons should be given by the arbitrators for the awards it is within their power to insist upon such reasons being given at the time when they enter into arbitration agreement or sign the deed of submission. It is significant that although nearly a decade ago the Indian Law Commission submitted its report on the law of arbitration specifically mentioning therein that there was no necessity to amend the law of arbitration requiring the arbitrators to give reasons, Parliament has not chosen to take any step in the direction of the amendment of the law of arbitration. Even after the passing of the English Arbitration Act, 1979 unless a court requires the arbitrator to give reasons for the award [vide Sub-Sections (5) and (6) of Section 1 of the English Arbitration Act, 1979], an award is not liable to be set aside merely on the ground that no reasons have been given in support of it."

23. We, however, need not dilate on the said question being not very necessary for the purpose of this case. But it is beyond any cavil that ordinarily unless excluded by operation of a statute, the superior courts while exercising power of judicial review shall proceed on the basis that assignment of reasons is imperative in character. When an authority, be it administrative or quasi-judicial adjudicates on a dispute and if its order is appealable or subject to judicial review, it would be necessary to spell out the reasons therefor. While applying the principles of natural justice, however, the court must also bear in mind the theory of useless formality and the prejudice doctrine."

(emphasis added)

The Apex Court has repeatedly held that the order of releasing a land from acquisition by exercise of power under Sub-Section (1) of Section 48 is open to judicial review. In the case of Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others, , the Apex Court held thus:

"10. However, it is not necessary to go into this larger question whether in such a case the State Government can withdraw from acquisition without the consent of the company as the justification given by the Government is otherwise not sustainable. As stated earlier the reason given by the Government for withdrawing from the acquisition is that as no part of the cost of acquisition was to be borne by the Government the acquisition could not have been sustained as for a public purpose. We have already pointed out that in this case the acquisition was not for a public purpose but it was an acquisition for a company under Chapter VII of the Act. In respect of an acquisition for a company under Chapter VII of the Act law does not require that the State should also bear some cost of acquisition to make it an acquisition for public use. Thus the decision of the Government to withdraw from acquisition was based upon a 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 the other party is likely to be prejudicially affected, the 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 acquisition can be challenged on the ground that 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."

(emphasis added)

23. Hence, while deciding an application under Sub-Section (1) of Section 48 of the said Act, the State Government is under an obligation to record reasons as the said order can be always subjected to a challenge on the grounds of misconception of law, arbitrariness, mala fides. etc. Moreover, before the exercise of the said power, it is necessary to give an opportunity of being heard to the person who will be the beneficiaries of the acquisition.

24. We have already held that the impugned orders are based on the legal misconception and are also based on incorrect reading of the written submissions/reply of the Petitioner. Therefore, as the impugned orders are arbitrary, the same deserve to be set aside. Moreover, the averment in paragraph 8 of the Petition that a copy of the rejoinder of the Fifth Respondent was not served to the Petitioner is not disputed in the affidavits on record. In the impugned order, the rejoinder has been considered. This amounts to breach of the principles of natural justice.

25. As far as the applicability of Sub-Section (2) of Section 24 of the said Act of 2013 is concerned, the Fifth Respondent has filed a separate Writ Petition which is pending in this Court and, therefore, in these Petitions filed by the Petitioner, it will not be necessary to consider the effect of Sub-Section (2) of Section 24 of the said Act of 2013.

26. Though we are setting side the impugned orders, the same will not preclude the Fifth Respondent from making a fresh Application under Sub-Section (1) of Section 48 of the Land Acquisition Act provided any other ground is available for the exercise of the said power. The issue of the locus of the said Respondent for filing such application is kept open.

27. Therefore, the Petitions must succeed and we pass the following order:

ORDER :

(a) The impugned orders dated 21st September 2004 (Exhibit-E to both the Petitions) are hereby quashed and set aside and the Applications made by the Fifth Respondent on which the impugned orders were passed stand rejected;

(b) This order will not preclude the Fifth Respondent from filing fresh Applications under Sub-Section (1) of Section 48 of the Land Acquisition Act, 1894 provided any other ground is available for the exercise of the said power. The issue of the locus of the said Respondent for filing such application is kept open;

(c) The issue of applicability of Sub-Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to the acquisition of the lands subject matter of these Petitions is kept open;

(d) The Rule is partly made absolute on above terms;

(e) Civil Application Nos. 1611 of 2015, 2397 of 2015 and 2550 of 2014 do not survive and the same are disposed of. However, no adjudication has been made on the rights claimed by the Applicants.