

(2009) 11 RAJ CK 0038
In the Rajasthan High Court

Raj Export and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Constitution of India, 1950 — Article 300A
Land Acquisition Act, 1894 — Section 5A, 6

Citation : (2010) 2 RLW 1638 : (2009) 4 WLN 512

Hon'ble Judges : Deo Narayan Thanvi, J;A.M. Kapadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deo Narayan Thanvi, J.—The core controversy involved for consideration in these three special appeals is as to whether a notification u/s 6 of the Land Acquisition Act, 1894 (for brevity, hereinafter referred to as " the Act") can be issued without affording opportunity of hearing to the land owner as required u/s 5A of the Act, therefore, all these special appeals are being disposed of by this common judgment.

2. The learned Single Judge vide his judgment dated 29.5.2009 passed in the respective writ petitions recorded a finding that it is true that opportunity of hearing for deciding the objections raised u/s 5A was not given to the petitioners, but the objections were considered by the competent authority thoroughly and objectively in the national interest as the land was required for establishment of reserve battalion of the Border Security Force, therefore, no justifiable interference is required to quash the notifications issued u/s 4 and 6 of the Act. Learned Single Judge recorded his finding while relying upon the decision of the Hon"ble Supreme Court in the case of Pratibha Nema and Others Vs. State of M.P. and Others, and dismissed the writ petitions by concluding that no prejudice has been demonstrated by the petitioners for not providing personal hearing prior to deciding the objections raised by the petitioners and moreover when in the earlier public interest litigation in respect of the same acquisition

proceedings, the Division Bench also did not choose to interfere for the significant cause that the land has been acquired for establishment of the BSF battalion.

3. The petitioners are said to be villagers of the converted Abadi land in the village Rathodon Ka Guda, Tehsil Girwa, District Udaipur, which has been mutated in their name by making necessary entries in the revenue record. The State Government issued notification u/s 4 of the Act on 1.10.2005 for acquiring the land for establishment of the headquarters of Reserve Battalion of BSF. The petitioners-appellants preferred objections before the Land Acquisition Officer/Collector u/s 5A of the Act against the proposed acquisition, but the Land Acquisition Officer without considering the objections and without providing opportunity of personal hearing as provided for u/s 5A of the Act recommended acquisition of land to the State Government, which issued notification u/s 6(1) of the Act and the same was published in the newspaper "Dainik Bhaskar" on 9.4.2006, whereby the land mentioned in the notification issued u/s 4(1) of the Act was sought to be acquired.

4. It has been contended by the learned Counsel for the petitioners-appellants that compliance of Section 5A of the Act is mandatory whereby opportunity of personal hearing at the time of deciding the objections is required to be given, which are at Annexure-4 of the writ petition. According to the learned Counsel for the petitioners-appellants, notification (Annexure-3) issued u/s 4 dated 1.10.2005 and subsequent notification for acquisition of the land (Annexure 5) u/s 6 of the Act issued on 31.3.2006 are per se illegal and deserve to be quashed by restraining the respondents from dispossessing the petitioners-appellants from the land in question. Reliance has been placed by the learned Counsel for the appellants on the decision of the Hon'ble Supreme Court in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others,

5. On behalf of the State, i.e. the acquisition authority and the respondent Union of India through the Inspector General, Border Security Force for which the land is acquired, have submitted that adequate opportunity was given to the petitioners-appellants for raising objections, but they have filed the objections after a period of 30 days from the date of publication of the notification issued u/s 4 of the Act, therefore, now these objections cannot be entertained by virtue of Section 5A(1) of the Act. It is further contended by the learned Additional Advocate General Mr. Jangid and learned Counsel for the Union of India Mr. Vinit Kumar Mathur that despite not filing the objections within time, the Land Acquisition Officer has considered the objections by referring the matter to the State Government for acquisition of the land for issuing notification u/s 6 of the Act in the larger interest of national security for establishing the headquarter of the Border Security Force. According to the learned Counsel for the respondents, the surrounding land has already been acquired and some middle portion of the land is yet to be taken possession of on account of this litigation. According to both the learned Counsel for the respondents, if a land is acquired for public

purpose, that too for national security by establishing the headquarter of the Border Security Force de hors the mandatory requirement of personal hearing as provided for u/s 5A of the Act and the Acquisition Authority can consider the objections objectively by dispensing with plea of personal hearing which has not been made in the objections (Annex.4) of the writ petition. In support of their contentions, they have relied upon the following citations:

(2) Rambhai Lakhabai Bhakt Vs. State of Gujarat and others,

(3) Pratibha Nema and Others Vs. State of M.P. and Others,

(4) Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. reported in 2006 AIR SCW 5879

(5) Urmila Roy and Others Vs. Bengal Peerless Housing Development Company Ltd. and Others,

6. We have given our anxious consideration on the rival contentions put forth by the learned Counsel for the parties and gone through the law cited by them.

7. Firstly, the contention raised in D.B. Civil Writ Petition No. 6635/2005 and 6681/2005, the reference of which has been given in the order of the learned Single judge, it transpires that the learned Single Judge has given undue weightage on the order passed in those public interest litigations. In those petitions, neither the petitioners appellants were party nor it was relating to the controversy involved in the present writ petitions which relates to the requirement of mandatory provisions of Section 5A of the Act. That apart, in those public interest litigations, it was submitted on behalf of the State that alternative pasture land in lieu of the pasture land diverted for the requirement of the BSF has been provided and upon that stand, the matter was dismissed vide judgment dated 6.9.2007 as observed by the learned Single Judge in the impugned judgment itself. In our view, this plea of the State Government cannot be termed as the petitioner appellants have acquiesced their right and are now estopped from raising the legal plea for the land for which they are Khatedars. Accordingly, we overrule the objection of the learned Counsel for the respondents that the petitioners appellants are restrained from filing the present writ petitions in the light of the earlier order of the Division Bench in the public interest litigation referred above.

8. The next contention of the learned Counsel for the respondents is that the objections were not filed within 30 days from the date of publication of the notification. It is true from the notification (Annexure 3) that this notification is dated 1.10.2005 and the objections (Annexure 4) have been filed on 7.11.2005, out from the letter (Annexure R-I) of the Land Acquisition Officer dated 20/22.12.2005, addressed to the Collector, Udaipur, it is clear that the notification dated 1.10.2005 was issued u/s 4 of the Act but it was published in the gazette on 5.10.2005 and in two local newspaper i.e. Dainik Bhaskar and Rajasthan Patrika on 21.10.2005. According to this letter, the objections were

filed by 45 Khatedars on 7.11.2005. When the notification was published in local newspapers on 21.10.2005, then it cannot be said that the objections were not filed within limitation. The language of Section 5A(1) of the Act, as amended by the Act 68 of 1984 w.e.f. 24.9.1984, clearly says that any person interested in the land may file objections to the acquisition of the land within 30 days from the date of publication of the notification. The word publication is not confined only to the publication in the gazette, but it denotes that it should have been published in the local newspapers as well. The last date of publication is to be counted for the purpose of limitation of inviting objections. When the publication in the local newspapers was made on 21.10.2005, then filing of objections by 45 Khatedars including the petitioners appellants on 7.11.2005 cannot be said to be beyond the period of limitation on 30 days. We accordingly also overrule this objection of the learned Counsel for the respondents.

9. The crucial controversy with regard to the requirement of personal hearing being mandatory or not has been provided for in Sub-section (2) of Section 5A of the Act, which reads as under:

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

10. The language of this Sub-section starts with the word "shall" and more so by virtue of amendment vide Act 68 of 1984 w.e.f. 24.9.1984 whereby the following words have been substituted :.[in person or by any person authorised by him in this behalf] for the purpose of being heard alongwith earlier word pleader, makes the provision mandatory. Admittedly, no personal hearing was given, the contention of the learned Counsel for the respondent that in the objections there was no prayer for personal hearing, is devoid of force. We have gone through the objections (Annexure 4 of the writ petition), in which it is stated that acquisition will result in pollution and stoppage of supply of water to the lakes of Udaipur, namely, Fatehsagar and Udaisagar as also drinking water to the city of Udaipur itself and it is prayed that the objection petition may kindly be allowed and further proceedings pursuant to the notification dated 1.10.2005 may kindly be stayed and recommendation may be made to the State Government not to issue declaration u/s 6 of the Act by advising the State Government that the land in question is not suitable for establishment of the headquarter of the battalion of Border i Security Force. In our view, by this prayer in the objections, it cannot be said that the petitioner appellants have waived or acquiesced their right of

personal hearing and are now estopped from taking the plea of mandatory requirement of Section 5A of the Act.

11. The statutory requirement under the law cannot be ignored from the) letters of drafting, as the statute is a symbol under the system of procedure established by law. Even in a system where there is a due process of law, principles of natural justice has to be followed and one of the basic ingredients of which is, not to decide a matter without affording a reasonable opportunity of hearing to the opposite party. Though the doctrine of due process of law is based on the principle of equity, justice and good conscience, but when there is a statutory requirement where a person's right is affected, that requirement becomes mandatory. Mere hypothetical considerations, howsoever they may be high, cannot override the letters of law. We are fortified from our view in the light of the decision rendered by the Hon"ble Supreme Court in the case of Hindustan Petroleum Corporation Ltd. (supra) to quote the relevant paras of which are as under:

(6) It is not in dispute that Section 5A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation there for must be paid.

(9) ...It is also not in dispute that Section 5A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been filed to be akin to a fundamental right.

(29) The Act is an expropriatory legislation. This Court is State of M.P. v. Vishnu Prasad Sharma observed that in such a case the provisions of the statute should be strictly constructed as it deprives a person of his land without consent. There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.

12. The above-quoted paras and the judgments cited in the aforesaid decision clearly demonstrate that Section 5A of the Act is akin to a fundamental right having regard to the provisions contained in Article 300-A of the Constitution of India and in its compliance, the Court cannot violate it and refuse to grant relief. Admittedly, in the present case there is non-compliance of Section 5A of the Act by not giving opportunity of personal hearing to the petitioner appellants through themselves or by their pleader or authorised agent. Thus, the mandatory requirement of Section 5A of the Act has not been complied with, which the State is bound to do so whatsoever may be the cause of acquisition.

13. The law cited by the learned Counsel for the respondents in the present appeals are altogether different.

14. In the case of Rambhai Lakhbai Bhakt v. State of Gujarat and Ors. (supra),

the land owner was given opportunity to file objections, if any, and so also asked to appear either in person or through authorised representative or advocate, but he preferred objections through post and it was held that there was no need to give further date of hearing.

15. Case of Pratibha Nema and Ors. v. State of M.P. and Ors. (supra), on which much stress has been laid by the learned Single Judge and learned Counsel for the respondents, stands on different footing. In the cited case acquisition was of course for public purpose, but the District Collector, Indore through his letter dated 24.1.1996 sought approval of the Commissioner Indore Division to invoke Section 17(1) of the Act in order to expedite the process of acquisition on the ground that prestigious exporters from India as well as foreign countries were likely to establish their units in the park which would generate good deal of foreign exchange and create good potential, the Commissioner accorded his approval, therefore, the requirement u/s 5A was dispensed with. Whereas in the present case, the respondents have not exercised their power u/s 17 of the Act which deals with special powers in cases of urgency for acquisition of the land and under Sub-section (4), added by Act 38 of 1923, empowers the State Government is empowered to direct that the provisions of Section 5A shall not apply and declaration may be made u/s 6 of the Act in respect of the land at any time after the date of publication of the notification u/s 4, Sub-section (1) of the Act.

16. In the case of Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. (supra), the objections were filed u/s 5 of the Act when a fresh notification was issued u/s 4 by the Government of West Bengal for acquisition of the land for the office of Dy. Commissioner of Police (Security Control) which had been in the possession of the State Government of West Bench since 1943, in pursuance to the directions issued in the earlier writ petition by the High Court. In this case, the appellants were heard by the competent authority and thereafter declaration u/s 6 of the Act was issued, whereas in the present case, no opportunity of hearing has been given.

17. Lastly in the case of Urmila Roy and Others Vs. Bengal Peerless Housing Development Company Ltd. and Others, the State Government issued a notification u/s 4 of the Act to acquire 12.67 acre land for housing scheme and thereafter the appellants accepted the acquisition of the land and showed willingness for negotiating the price by way of letter from their attorney, then it was held that now they cannot turn around to say that acquisition was bad in law as they have acquiesced their right. Therefore, the above judgments relied upon by the learned Counsel for the respondents are distinguishable on their face value.

18. In the present case there is neither any waiver or acquiescence from the side of the petitioner appellants to estop them from right of personal hearing nor the compliance of the mandatory provisions of Section 5A of the Act has been made by the competent authority, i.e. the Land Acquisition Officer, Udaipur therefore,

the notification Annexure-5 dated 31.3.2006 is bad in law and deserves to be set aside. However, the competent authority is free to give personal hearing to the petitioner appellants for deciding their objections (Annexure -4).

19. Accordingly, we allow these appeals by setting aside the judgments of the learned Single Judge dated 29.5.2009 passed in the respective writ petitions against which these appeals have been preferred and quash the notification Annexure-5 dated 31.3.2006 qua the petitioners-appellants. We leave the parties to bear their own costs.