

**(2015) 11 RAJ CK 0017**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4336/2011**

Ram Narayan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 27-11-2015

**Acts Referred:**

Constitution of India, 1950 — Article 300A  
Land Acquisition Act, 1894 — Section 49, 5A(2)  
Railways Act, 1989 — Section 20(E), 20A(1), 4(1), 6

**Citation :** (2015) 11 RAJ CK 0017

**Hon'ble Judges :** Kanwaljit Singh Ahluwalia, J.

**Bench :** Single Bench

**Advocate :** R.N. Mathur, Sr. Advocate and Rahul Kamwar, for the Appellant; P.C. Sharma, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Kanwaljit Singh Ahluwalia, J.—Denial of passage to remaining agricultural land of the petitioners after acquisition of the part of the land by the respondents for Dedicated Freight Corridor between Delhi-Mumbai has led to the present litigation. A grievance has been made in the present writ petition that the objections raised by the petitioners were not dealt with in right perspective by the Land Acquisition Officer and denial of access to agricultural fields of the petitioners has amounted to violation of right of property vested in the petitioners under Article 300A of the Constitution of India. A further grievance has been ventilated in the present petition that the respondents have not extended effective hearing as provided under Section 20(E) of the Railways Act, 1989 (hereinafter to be referred as the Act of 1989) and since the Land Acquisition Officer has performed a mere formality to dispose of the objections raised by the petitioners, therefore, in the present writ petition it has been prayed that notification (Annx.1) dated 6.11.2008 which was published in daily Rajasthan Patrika on 7.2.2009 under Section 20A(1) of the Act of 1989 be quashed alongwith notification dated 15.9.2009 (Annx.2) issued under Section

20(E) of the Act of 1989 alongwith award dated 10.9.2010 (Annx.3).

2. Before this court recapitulate the facts of the case, it will be necessary to highlight a significant development which has taken during the pendency of the writ petition. Respondents considering the importance of Dedicated Freight Corridor which is being built with the assistance of Japanese Government to overcome the stay granted by a coordinate Bench of this court on 13.9.2013 has come with an offer that for a time being, a passage can be provided to the petitioners to access their agricultural fields so that a project which is of national importance is not withheld. In the light of affidavit filed by the respondent Railways to this effect, this court shall proceed to decide the present writ petition by noticing the brief facts as under:

Indian Railways had drawn a blue print for linking four metropolitan cities of country namely Delhi, Mumbai, Chennai and Kolkata. They termed their dream concept to be "Golden Quadrilateral" and decided that two diagonal tracks on two existing trunk routes of Kolkata-Delhi on eastern corridor and Mumbai-Delhi on western corridor be laid for giving impetuous to freight movement. It is pleaded in the writ petition that to achieve above object while presenting Railway budget for financial year 2005-06, announcement was made in the Parliament. In April, 2005, in Japan-India summit both the Prime Ministers of India and Japan agreed for mutual cooperation for building Dedicated Freight Corridor. Japanese Government, according to the respondents, agreed to fund the project and to achieve above objective, a special purpose vehicle for construction, operation and maintenance of the dedicated freight corridor, called "Dedicated Freight Corridor Corporation of India Limited" was established. The Act of 1989 was amended on 28.3.2008 for the purpose to acquire land for construction of Dedicated Freight Corridor i.e. for specific project and the matters related thereto.

3. The western corridor covers a distance of 1483 km. of double electric line track from JNPT, Mumbai to Dadar, Delhi via Surat-Vadodara-Ahmadabad-Palanpur-Ajmer-Phulera-Ringus-Rewari. Part of the track was also to be laid in the State of Rajasthan and hence land for this purpose was also acquired. The petitioners to present writ petition are joint khatedars of land bearing Khasra Nos. 515, 517, 518 and they are also sole and joint khatedars of land falling within Khasra No. 520 situated in Village Samvatsar, Tehsil Kishangarh, District Ajmer. It is pleaded in the writ petition that since the petitioners are agriculturists, land is their only source to earn the livelihood. A grievance has been made in the present petition that by acquisition of land, petitioners have been denied passage/access to their remaining agricultural land and therefore, petitioners will be left with no source of income. It is a case of the petitioners that they submitted their objections to this effect before the Land Acquisition Officer-cum-Sub Divisional Officer, Kishangarh, District Ajmer under Section 20(E) of the Act of 1989, but the said objections in a very cursory manner have been overruled without any application of mind. It will be apposite here to reproduce the portion whereby objections of the petitioners have been

considered by the Land Acquisition Officer, as under:--

4. Since objections according to the petitioners were not considered in the right perspective, they made averments regarding their grievance in the present writ petition. It will be apposite here to reproduce the grievance projected by the petitioners, as under:--

"3. That by this writ petition, the petitioners are seeking appropriate writ, order or direction for quashing the acquisition Notification and to get a restrain order against respondent No. 1 to 2 for not to dispossess them from their land, inter alia on the following grounds amongst others:--

3(A). That the respondents while issuing the Notification did not consider the aspect of the matter that by way of impugned Notification the whole land of petitioners would not be remained in a position to cultivate the same; with the reason that no way would be available to the petitioner to enter for the rest of the land, which has not been acquired. The respondent had issued the notification for the front part of the land and the major part of the land, which is in backside for which there is no way is available. This issue was raised by the petitioner in their objections but learned land acquisition officer without applying its mind had held that for the purpose of providing the way to the petitioners, the acquisition would be made according to the direction of the State Govt. for which the government will bear the cost.

This observation of respondent shows that the entire acquisition has been done without application of mind. Therefore, it is the duty of the Govt. Railway to provide the way for the rest of the land. Despite this they have left it on the wisdom of State Government. Further, for such process there is no time schedule has been fixed that in which period the respondent would provide the way to the petitioners. If for the long time the way could not be provided to the petitioner to enter the land would remain vacant, which is the sole source of the livelihood. Hence, the impugned acquisition notification, impugned award and the report of land acquisition officer upon the objections of the petitioner are the example of non application of mind. Hence, deserves to be quashed and set-aside.

3(B). That the impugned acquisition of the respondent is not appropriate or reasonable on reason that its affects the whole land of he petitioners and for the rest of the land; which is not coming under acquisition, the petitioners are having no way. Therefore, the whole land of the petitioner should be acquisition. Even, in the Land Acquisition Act, 1894 there is a provision under section 49 , which provides that if the owner desires that the whole of such if house manufactured of building shall be acquired. The intention of the legislation keeping the aforesaid provision in the act was that in some of the circumstances, if on account of acquisition part of the property become waste then entire property should be acquired. However, in this case it is an admitted fact that for the rest of the land belongs to the petitioner there is no way to enter upon it. That is why it has become waste. Hence, the entire proceedings are vitiated on this ground

alone.

3(C). That the respondent prior to issuing the notification under section 20(E) , no such effective hearing has been provided to the petitioners. The only formality has been done by the respondents, while providing the opportunity of hearing to the petitioners on the objection filed by the petitioner. On there perusal of the report submitted by Land Acquisition Officer. It clearly reveals that the objection submitted by all the Khatedar was decided on the same date by a cyclostyle order."

5. To fortify above pleadings, Shri R.N. Mathur learned Senior Advocate has placed reliance upon Women Education Trust and Another Vs. State of Haryana and Others, to contend that hearing given to the person whose land is acquired must be effective one and not mere formality. It was further contended that in the case of Women Education Trust (supra), it was also held by the Supreme Court that the authority deciding objections must formulate opinion as regards to public purpose and also to the suitability thereof by applying mind to the objections raised. It is contended that since there has been no objective consideration of the objections raised by the petitioners, therefore, acquisition of petitioners" land is bad. Much emphasis has been laid on the Para-20 of the judgment rendered in Women Education Trust (supra), which reads as under:--

"20. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1) . The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act."

6. It is contended that even though there was recommendation by the local authorities in favour of petitioners, still the objections were not properly dealt with. To add force to the above argument, further reliance has been placed on Kamal Trading Private Limited (now known as Manav Investment and Trading Company Ltd.) Vs. State of West Bengal and Others, , Raghbir Singh Sehrawat Vs. State of Haryana and Others, .

7. Secondly, it is urged by Shri Mathur that land of the petitioners was acquired for setting up a Railway Track Sub Station (hereinafter called as TSS), but the same can be established in adjoining government land. Therefore, there is no necessity for the respondents to acquire the land of the petitioners and furthermore the Land Acquisition Officer had not considered this aspect raised

before him.

8. It is vehemently contended that denial of access and entry to the fields has led to arbitrary exercise of power and denial of right to livelihood. It is contended that easement of access and easement of necessity is not to be mixed-up with the principles relating to encumbrance. In support of this contention, a judgment rendered by the Single Judge of Kerala High Court in Vijayan Vs. State of Kerala, has been cited. A further reliance has been placed on the judgment rendered by the Single Judge of this court in Santushti Homes Pvt. Ltd. v. Union of India & Ors. [S.B. Civil Writ Petition No. 12234/2012] decided on 29.10.2015 to contend that the Land Acquisition Officer was bound to afford personal and effective hearing to the petitioners while deciding their objections.

9. To counter the arguments raised by the learned counsel for the petitioners, Shri P.C. Sharma learned counsel appearing for the Railways has contended that as per the expert survey the TSS is to be constructed only on the acquired land of the petitioners as the same is a technical necessity. The government land is too far from the track. The Land Acquisition Officer heard the objectors, thereafter had sent a report to the Central Government for publication of declaration under Section 20(E) of the Act of 1989. It is contended that the objectors were heard on 6.4.2009 and as per the situation at the site, which is evident from the map annexed, there is no hurdle in approaching the agricultural fields of the petitioners. The land is lying vacant and for agricultural purposes, no road is required. It is further contended that the respondent Railways has agreed, to provide pathway/passage in addition to the existing pathway out of the land acquired the purpose of establishing TSS. It has been further averred that part of land of Khasra No. 518 is falling under TSS and the total measurement of the TSS is 140x85 sq. mtr. and thus, it cannot be said that the petitioners will have no access or entry to their fields.

10. Learned counsel for the respondents has further submitted that the entire amount of compensation has been deposited by the respondents and possession of the acquired land has been taken. Railway has already erected pillars on both sides of the land. Construction work of railway track is under progress. It is further contended that because of stay granted by the coordinate Bench, a project of national importance has been withheld. Rejecting the proposal given by the learned counsel for the petitioners that the TSS can be constructed at alternative land which belong to government, it is submitted that railway track cannot be given a sharp curve. Therefore, only particular land of the petitioners is required by the Railways.

11. In the present case, the primary grievance of the petitioners is denial of access and entry to the agricultural fields. Continuation of stay was strongly objected by the learned counsel for the respondent Railways and thus, on 30.9.2015 this court had fixed the matter for hearing on 1.10.2015. On 1.10.2015, Shri P.C. Sharma learned counsel for the respondent Railway came out with an offer that a passage can be provided to the petitioners by way of

concession, to enable them to access their fields. The matter was posted for hearing on 6.10.2015. Thereafter, the matter came up for hearing on 7.10.2015. On 14.10.2015, this court had passed the following order:--

"Mr. P.C. Sharma, the learned counsel appearing for the respondents, has drawn attention of this Court towards Para 4 of the application bearing No. 35030 dated 03.08.2015, whereby documents were sought to be placed on record.

Para 4 of the above application reads as under:--

"4. That the petitioners have falsely stated that they have no access to their land if the TSS is established on the land in question. The submission of the petitioners is totally baseless and unfounded. Infact, the petitioners have their access even after construction of TSS which is evident from the map annexed herewith. This map and ground situation of the land has been shown with the attached map in which it is very clear that the access is available for the petitioners to approach to their land. Further till such time, an access road is constructed by the State Government at the cost of respondent No. 1 and 2 to facilitate additional access to the petitioner to their land, respondent No. 1 and 2 shall ensure the access to the petitioner, as marked in the map annexed with this application in addition to the present access available to the petitioner. The said map is annexed herewith and marked as Annexure-R/13."

In the light of above averments, this Court on 01.10.2015 had passed following order:--

"During the course of arguments, Mr. P.C. Sharma, the learned counsel for the respondent Railway has handed over a map to the learned counsel for the petitioners.

Mr. P.C. Sharma, the learned counsel for the respondent has contended that as per the map, Indian Railway is ready to provide a passage to the petitioners by way of concession.

Mr. R.N. Mathur, the learned Senior Counsel appearing for the petitioners prays for an adjournment to seek instructions.

List this case on 06.10.2015. Till then, the interim order already in favour of the petitioners shall continue."

Mr. R.N. Mathur, the learned Senior Counsel appearing for the petitioners, has submitted that in pursuance of above order dated 01.10.2015, Mr. Rahul Kamwar, the learned counsel appearing for the petitioners and Mr. P.C. Sharma, the learned counsel appearing for the respondents/railway had mutual consultations to the effect that the railway is ready and willing to provide ten feet passage to the petitioners by way of concession. Senior Counsel further submitted that as per State laws, passage to approach the remaining land of the petitioner should be thirty feet wide road.

A perusal of Para 4 of above said application reveals that no concrete proposal

has been furnished by the respondents and even said proposal is not on affidavit.

In these circumstances, Mr. P.C. Sharma, the learned counsel appearing for the respondents, is directed to file an affidavit of a responsible officer of the railways spelling out concrete proposal for providing passage to the petitioners so that they can have access to their agricultural land.

The said affidavit be filed on or before the next date.

List for arguments on 27.10.2015.

Till then, interim order dated 13.09.2013 passed by the Coordinate Bench shall continue."

12. In pursuance of order dated 14.10.2015, an additional affidavit was filed on behalf of respondents No. 1 and 2. In the affidavit dated 26.10.2015 sworn by Shri Damodar Lal Garg, Project Manager, it has been stated as under:--

"6. That in fact the petitioners have their access even after construction of TSS which is evident from the map annexed earlier as annexure-R/3/A. The ground situation of the land has been shown in that map (annexure-R/3/A) in which it is very clear that the access is available for the petitioners to approach their land. Further till such time, an access road is constructed by the State Government, to facilitate additional access to the petitioner for their land, the respondent No. 1 & 2 shall ensure 3 Meters (10 feet) access to the petitioners as marked in the map annexed as annexure-R/13.

7. That it is cite specific acquisition and the respondents have acute urgency in completion of work at earliest. Due to interim order on the small piece of the land in question, the entire work of the project is affected badly."

13. The above affidavit has been attacked by the learned counsel for the petitioners on the ground that the respondents are bound to provide a 30 ft. wide road so that the petitioners are able to carry their equipments to the agricultural field and transport their produce by using tractor.

14. The counter argument advanced is wholly untenable. For agricultural operations, path way/passage is required so that one is able to access their fields. Providing of 10 ft. passage by the respondents is appropriate and just. Therefore, the entire edifice built by the petitioners stand demolished by grant of passage by the respondents and the objections raised stand cured. The argument that objections have not been dealt with no longer survive as this court after applying its mind have taken note of the objections raised by the petitioners and the respondents by providing passage have readdressed the grievance of the petitioners by providing access to their fields. Need of 30 feet road as stressed by counsel for the petitioners is an objection which has no justification. Need to access agricultural fields is altogether different from the requirement to access showroom or shopping mall which require parking etc.

15. Hence, in the humble opinion of this court, the objections no longer survive

to forestall the project of national importance. Otherwise, this court is also in agreement with the judgments relied by the counsel for the respondents in Union of India (UOI) Vs. Dr. Kushala Shetty and Others, and Nand Kishore Gupta and Others Vs. State of U.P. and Others, that individual good must make way for public good and in the matter relating to project of national importance stay ought not to have been granted by the coordinate Bench.

16. As a result of above discussion, it is held that due hearing to the objections raised by the petitioners was granted by the Land Acquisition Officer and even otherwise also this court being a higher court has dealt with the objections and since the respondents have been provided passage, objections raised no longer exist.

17. Hence, the present writ petition is disposed of with a direction that till an alternative road is constructed, respondents shall remain bound by the pleading made in Para-6 of the additional affidavit dated 26.10.2015 (reproduced in this judgment) and till the road is constructed by the State Government, respondents shall facilitate additional access to the petitioners to their land by providing 10 ft. wide passage as per map annexed with this writ petition as Annexure-R/13. The order of status quo, passed by the coordinate Bench, due to the disposal of the writ petition in above terms stands vacated.