
(2019) 09 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13276 Of 2019

Shankra Ram And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-09-2019

Acts Referred:

National Highways Act, 1956 — Section 3A(1), 3C, 3C(1)
Land Acquisition Act, 1894 — Section 5A

Citation : (2019) 09 RAJ CK 0070

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : A.K. Choudhary

Final Decision : Dismissed

Judgement

I. A. No.01/2019 :

For the reasons stated, the amendment application is allowed.

The amended writ petition is taken on record.

By way of the present writ petition, the petitioners have laid a challenge to the order dated 05.07.2019, passed by the competent authority-cum-Land Acquisition Officer - respondent No.3, rejecting petitioners' objection against the proposed acquisition.

A perusal of the objection filed by the petitioners and corresponding decision dated 05.07.2019, which has been taken after considering the reply filed by the National Highway Authority, this Court does not find any error in the decision.

All the objections are technical in nature and fall outside the realm of enquiry, permissible under Section 3C of the National Highways Act, 1956. The scope of enquiry under Section 3C of National Highways Act, 1956 is entirely different than the enquiry envisaged under Land Acquisition Act, 1894, as held by a Division Bench of this Court in its judgment dated 26.02.2019 rendered in the

case of Kalu Vs. Union of India & Ors. (DB Special Appeal Writ No.199/2019), relevant part whereof is being reproduced hereunder :

" 13. Before delving upon the arguments advanced by Mr. Bhandari, we deem it appropriate to have a survey of the provisions contained in Section 3C of the Act of 1956 vis-a-vis Section 5A of the Land Acquisition Act, 1894, which provides for and deal with hearing of objections.

"3C. Hearing of objections.-(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section."

"5A. Hearing of objections.-(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(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 under section 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.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

14. A careful reading of sub-section (1) of Section 3C of the Act of 1956 reveals that the Act permits a person interested in the land to raise his objections only qua "the use of land for the purpose or purposes mentioned in sub-section (1) of Section 3A of the Act" whereas in case of acquisition under the Land Acquisition Act, 1894, the person interested in the land can object to the very acquisition.

15. In other words, the scope of objection under the National Highways Act, 1956 is confined to the use of land for the purpose enshrined in the notification, whereas in case of acquisition under the Act of 1894, a person can raise other objections in relations to the acquisition, including the objection about the use of land. Hence, the order of competent authority is required to be examined, while keeping in mind the scope permissible under Section 3C(1) of the Act of 1956. The para-meters laid down and principles enunciated for the purpose of enquiry under Section 5A of the Land Acquisition Act cannot be applied, when it comes to

an order passed by the competent authority/Land Acquisition Officer under Section 3C of the National Highways Act, 1956.

16. Our above referred view is fortified by the judgment rendered by Hon'ble the Supreme Court in case of Competent Authority Vs. Barangore Jute Factory & Ors., reported in (2005) 13 SCC 477; relevant paragraph whereof is reproduced hereunder :-

"8. The absence of plan also renders the right to file objections under Section 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this Court in Delhi Administration v. Gurdip Singh Uban and Ors. In our view, this judgment has no application in the facts of the present case where right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. De hors the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification under Section 3C, therefore, cannot non-suit the Writ Petitioners in this case."

17. On the bedrock of the provisions contained under Section 3C of the Act of 1956 and deliberation made hereinabove, if we test the arguments advanced by learned counsel for the appellant, we hardly find any merit therein."

In view of the aforesaid, this Court does not find any substance in the petitioners' writ petition.

The writ petition is thus, dismissed.

The stay application is also dismissed.