

(1971) 09 DEL CK 0017

In the Delhi High Court

Case No : Civil Writ Appeal No. 330 of 1970

Shree Mandir Sita Ramji, Pilani

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 28-09-1971

Acts Referred:

Citation : (1972) ILR Delhi 75(2)

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : B.R. Iyengar, K.L. Rathi, J.K. Jain, D.K. Kapur, Rishikesh, S. Pappu, M.S. Ganesh, Jitendra Lal and Janendra Lal, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The petitioner is Shree Mandir Sita Ramji, Pilani managed and maintained by Shree Sita Ram Bhandar, a society registered under the Societies Registration Act 21 of 1960 through its general attorney Shri Madan Lal Anand, having its registered office in New Delhi. The petitioner is said to be a religious institution owning properties including those in dispute in this "Writ Petition. On the 24th of October, 1935, the petitioner purchased through Seth Jugal Kishore Birla about 324 bighas of land in village Karkar Duma (Shahdara), Delhi for religious purposes, the ownership of which remained with the Shree Mandir Sita Ramji.

(2) After the purchase of the said land, a Hanuman Mandir was constructed thereon and subsequently a number of other buildings were constructed from time to time to meet with various religious requirements. The income from the said land is said to have always been utilised for religious purposes.

(3) On the 13th of November, 1959 a notification u/s 4 of the Land Acquisition Act, 1894 was made in respect of lands measuring about 34070 acres of Land marked as blocks Nos. A to T and X; maps were enclosed to the notification describing the properties thus sought to be acquired for a public purpose, namely, the planned development of Delhi. Exception, however, was made by

clause 2(d) thereof in respect of certain properties including "land under grave-yards, tombs, shrinks and the land attached to religious institutions and wakf property".

(4) Objections were filed u/s 5A to the proposed acquisition by Shri D. R. Rungta, said to be the then general attorney of Shree Sita Ram Bhandar. which is managing the Shree Mandir Sita Ramji and other temples. One of the objections was that the land proposed to be acquired was the property of a religious institution and, therefore, came within the exemption mentioned in the said notification itself. On 23-7-1962 notice was issued to Shri D. R. Rungta, the general attorney of Shree Mandir Sita Ramji, to appear before the Land Acquisition Collector on 27-7-1962 at 10 A.M. It may be noticed that the notice in respect of the hearing on 27-7-1962, was issued on the basis of the objections u/s 5A dated 10-12-1959. It is seen from the file of the Land Acquisition Collector, which was produced at the hearing, that on a copy of the said objections (not on the original) the Land Acquisition Collector had made the following note :

63v. Karkar Duma.

"PLEASE report if this property is that of Shree Mandir Sita Ramji, a charitable institution and is exempt from the notification".

(5) It does not appear from the file that any such report was received. The Land Acquisition Collector, however, without any further hearing. or even without any apparent consciousness of his having called for such a report, submitted his report dated 18-8-1962. The said report refers to 630 objections having been raised vis-a-vis the objections. Pertaining to the lands in dispute, the Land Acquisition Collector had stated as follows :-

"ONE objection was received from Shri D. R. Rungta, general attorney of Shree Sita Ram Bhaindar who stated that the objector had following land and houses etc. in the land in question:

- (1) Land measuring 324 Bighas.
- (2) Five Cattle sheds pacca built of vast dimensions.
- (3) Several servants quarters.
- (4) Wells five in number.
- (5) One fruit garden.
- (6) Several Godowns.
- (7) One Shri Hanuman Mandir.
- (8) One Pathshala.

OTHER objections raised by him are mostly of a general nature. Decision may

kindly be taken after the inspection of site."

(6) The file produced does not contain any further report of any inspection of the property now in dispute by any concerned official or any further enquiry having been made. It is not even stated that any personal or other kind of enquiry was made pertaining to the land in dispute subsequent to 27-7-1962 on which date the Land Acquisition Collector seems to have made the above said endorsement on a copy of the objections already filed on behalf of Shree Mandir Sita Ramji. The file which has been produced also contains three typed sheets summarizing the recommendations made in respect of various categories of land which were covered by the notification u/s 4 of the Act. The said Annexure has not been signed by any one and there is no information as to when, by whom and in what connection or for whose benefit the said recommendations were made. In so far as the property in dispute is concerned, it is seen to be Serial item 6 therein, mentioned as belonging to the miscellaneous category- of objections from "a Trust Shree Mandir Sita Ramji". The "contents of objections" are said to be that the land should not be acquired "as it belongs to the Trust". The recommendations therein are seen to be as follows, :-

"ACCORDING to our section 4 notification, only those lands are exempted from the purview of acquisition which are attached to

(A) Religious institution.

THIS exclusion is not applicable on (sic) the lands which are owned by the Trust of religious institutions. Moreover, a portion of the land belonging to a Trust comes in the road alignment and cannot be excluded on practical consideration. In the light of this, the objections filed by the Trust may be rejected".

(EMPHASIS added).

(7) The present Writ Petition challenges the validity of the notification dated 7th November, 1968, issued u/s 6 of the Act on the grounds:-

(1) that the said land was itself not covered by the notification u/s 4 dated 13-11-1959, and

(2) that the petitioner was not at all given opportunity of being heard u/s 5(A)(2) of the Act. Further notifications and proceedings taken by way of issue of notices under sections 9 and 10 of the Act etc. are all stated to be void.

(8) In opposition to this Writ Petition Shri K. N. Kashyap, Deputy Secretary (Land and Building), Delhi Administration filed an affidavit stating that the objections of the petitioner u/s 5(A) "were thoroughly considered and a detailed report was sent to the Delhi Administration and were rejected by the appropriate authority. Objections u/s 5(A) were filed by Shree Mandir Sita Ramji through their attorney Shri D. R. Rungta on 12-12-1959. A notice dated 23-7-1962 intimating that the objections would be heard on 27-7-1962 was sent to Shree Mandir Sita Ramji care of Shri D. R. Rungta, general attorney, Arya Niwas, I Doctor Lane, New Delhi

and in pursuance thereof the petitioner through his representative was present at the time of hearing. This is clear from a copy of the objections u/s 5(A) produced before the Land Acquisition Collector on 27-7-1962 by which Shri M. L. Mongia, the then Land Acquisition Collector, had passed orders on the same day i.e. which was the date fixed for hearing of the objections and called for a report in the matter. It is thus, evident that the petitioner through his representative was present on the date of hearing of objections and produced a copy of objections already filed u/s 5(A) and got the above referred orders passed from the Land Acquisition Collector on 27-7-1962".

(EMPHASIS added)

(9) It is necessary to notice at this stage that it was not mentioned by Shri Kashyap that even though a report was called for by Shri Mongia on 27-7-1962 no report was in fact actually received. The manner in which reference had been made in the said affidavit of Shri Kashyap to Shri Mongia's calling for a report in the matter, on 27-7-1962 when the petitioner's representative produced a copy of the objections already filed u/s 5(A), carries with it an implied suggestion that a report was in fact received as directed. The said feature of this affidavit by a responsible officer of the Administration is that while reference was made to the Land Acquisition Collector having called for a report it was not disclosed that no such report was received as directed by the Land Acquisition Collector. Anyone is entitled to assume from this that a report was received and the objections were dealt with therein. This is exactly the impression which the petitioner formed as could be seen from the affidavit of Shri Madan Lal Anand, general attorney of Shree Sita Ram Bhandar, filed by way of rejoinder to the affidavit of Shri K. N. Kashyap, it is stated therein that the petitioner was never informed as to what the so-called report was and that the petitioner was not given an opportunity of being heard.

(10) An application was made by the Ministry of Commerce and Industry, Cooperative House Building Society Limited, New Delhi that it should be added as a party-respondent to this Writ Petition since a major part of the land acquired by the impugned notification u/s 6 of the Act had been allotted to the said society and that they had paid the full amount of it to the Delhi Administration. T. v. R. Tatachari, I ordered the said society to be added as the fourth respondent. The society thereupon filed its return through its Honorary Secretary Shri R. C. Garg, who raised a further objection that the objections u/s 5(A) were filed by Shri D. R. Rungta, who is not the present petitioner. There is, however, no substance in this objection since it is seen from the objections filed that Shri S. R. Mongia had filed the same on behalf of Shree Mandir Sita Ramji, which owns the suit property.

(11) In the very nature of things the fourth respondent could not really add to what had been stated in the affidavit of Shri Kashyap in the matter of the kind of hearing which was given to the petitioner concerning the objections filed u/s 5(A) of the Act. The averments which have, Therefore, been made in paragraphs 21

and 22 pertaining to what happened at the hearing were, admittedly, not out of the personal knowledge of the dependent and hence have to be ignored. It is also needless to be concerned with any other allegations made in the said return, because the nature of the opportunity given to the petitioner and whether it was an effective opportunity has to be considered on the basis of the contentions raised by the concerned officials and the files.

SECTION 5(A)(2) of the Act reads as follows:

5(A)(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 either in person 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".

The inquiry u/s 5(A) is to help the Government decide whether a particular land is needed for a public purpose and to safeguard against any ill-informed action on the part of the Government. In this particular case having regard, to the terms of the notification u/s 4 itself the Government had to be further satisfied that the property was not one under shrines or which had been attached to any religious institution. On this question it was seen that the Collector had.. even according to the admission made in the affidavit of Shri Kashyap, received from Shri D. R. Rungta, the attorney of the petitioner. a copy of the objections, which had been already filed on 12-12-1959; it was handed over on 27-7-1962 and the Collector had asked for a report in the matter. From this it follows that the further hearing had to be only conducted in the light of what the report disclosed. It will be sufficient for the present purpose to merely notice that there was no real hearing on 27-7-1962 at all since nothing more took place on account of the Collector having made up this mind to ask for a report. Unfortunately since the said order of the Collector calling for a report, was. not written on the original objections but on a copy handed over to him this was obviously overlooked and no further report was at all called for. Having called for a report concerning whether the lands in question were attached to a religious institution (which the Collector mistakenly thought was a charitable institution) an effective or sufficient opportunity has not been given to the petitioner to make good its claim that the lands in dispute were attached to a religious institution. It is no doubt true that the decision whether any particular land is needed for a public purpose is an administrative decision but the power to hold an inquiry has been statutorily vested in the Collector which power has to be exercised by him in the manner contemplated by the statute itself, namely, after giving an opportunity to the affected party of being heard. This opportunity of being heard

must be a full, a fair and effective one. From the very situation, which we find in this case, it is clear that having regard to the specific objection that the land exempted by the notification u/s 4 of the Act itself, the Collector then, rightly, thought that this issue would be best settled by asking for a report concerning the same.

(12) The duty to afford an opportunity is squarely laid on the Collector, It cannot be, Therefore, contended that if any decision in this regard made by the Government later, that would be a legally acceptable substitute for the inquiry which the Collector had to do himself. Support for this proposition is to be had from the following observations of the Supreme Court in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, .

"By section 5A of the Land Acquisition Act, power to hear objections has to be exercised by the Collector as defined in section 2(c) of the Act. The power to hear objections is under the statute, not the power of the appropriate Government, but of the Collector".

(13) Mrs. Shyamla Pappu, learned counsel for the respondents 1 to 3 drew my attention to a decision of a Division Bench of this Court consisting of Hardayal Hardy, J. (as his lordship then was) and M. R. A. Ansari, J. in L.P.A. No. 11 of 1969-Hanuman Parshad Gupta & Ors. v. Lt. Governor & Ors., decided on 6-II-1970. After discussing the legal position the Division Bench held that since in that case the Collector had applied his mind to the objections of the petitioner and having done so came to the view that the objections were purely legal and Therefore refrained from expressing any opinion about the same, but left it to the Government to decide, there had been no failure to comply with the statutory requirements in that case. The net finding in that case was that there was no question of lack of application of mind or abdication of his functions by the Collector. The present case is different because there had been complete abdication of his functions by the Collector. Apart from merely summarizing the objections he has not applied his mind at all to the matter before him. The objections raised were factual rather than legal. He had heard the petitioner's objections and as the observations of the Supreme Court in the above-noted case (not cited before the Division Bench) show it was for the Collector and not for the appropriate authority to make the recommendation; per contra, the Collector had to recommend and the Government to act on that recommendation. It is true, no doubt, that even if the Collector made his recommendation it was not binding on the Government, the Government may choose either to accept the recommendation or not to accept the recommendation. But then the requirement of the statute is that when a person's property is proposed to be acquired he must be given an opportunity to show cause against the acquisition. The duty has been statutorily laid on the Collector to give an opportunity of hearing to the person whose property is proposed to be acquired. Merely because the Government may not choose to accept the recommendation of the Collector, even when he makes one. it cannot

be said that he need not make any recommendation at all but leave it to the Government itself to decide. After a careful perusal of the decision of the Division Bench it seems to me that the action of the Collector in that case was upheld merely because the issues in that case were purely legal and, Therefore, he refrained from expressing any opinion on those legal issues but left it to the Government, The present situation is totally different because the Collector was obliged to make his own recommendation concerning the factual matters raised in the objections filed by the petitioners. The Division Bench repelled the argument that the requirement of sub-section (2) of section 5A of the Act about the Collector making his report containing his recommendations concerning the objections, was not mandatory. The learned single Judge, against whose decision the said appeal was filed, thought that the above said requirement was not mandatory and sought to derive assistance for this position from the decision of the Supreme Court in Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, Hardayal Hardy, J. observed that the Supreme Court did not decide in that case that the expression of opinion by the collector and making a positive recommendation was not mandatory. The observations of Wanchoo, J. (as his lordship then was) who spoke for himself and for Madholkar, J. in *Slate of Madhya Pradesh v. Vishnu Pershad Sharma* 1966 S.C. 1593 emphasising the need to construe the provisions of the statute, which provided for acquisition of land of persons without their consent, strictly were referred to. Hardayal Hardy, J. has discussed the above view of learned single Judge at considerable length and I cannot do better than set out those observations in their entirety:

"THE learned Single Judge has held that the making of recommendation is not imperative and its absence would not vitiate the acquisition. Firstly, because the Collector is not the authority who decides the objections; Secondly, because sub-section (1) of section 6 contemplates a case in which no report of the Collector may be available to the Government at all and yet the Government can take a decision to acquire the land in a particular case; Thirdly, because section 5A shows that the purpose of the report of the Collector is merely to inform the Government. The Collector is not under any duty to show his report to the objectors and Fourthly, because the final decision as to whether a particular land should be acquired is of the Government which has before it the objections of the petitioners as well as the record of the inquiry made by the Collector and there is nothing to show that the absence of Collector's report with or without his recommendation can ever affect the validity of the decision of the Government in a particular case.

The argument of the learned counsel for the appellants is that none of the reasons given by the learned Judge warrant the conclusion reached by him. The fact that the Collector is not the authority who decides the objections and the report of the Collector is not to be shown to the objectors and the final decision as to whether a particular land should be acquired, rests with the Government, hardly furnish any justification for holding that the making of recommendation on the objections is not a mandatory requirement of section 5A.

WE find substance in this argument. The very object of appointing an officer of the status of Collector to hear objections and to make such further inquiry as he thinks necessary, is that he should make a report in respect of the land which has been notified in section 4(1), or make different reports in respect of different parcels of such land, to the appropriate Government. The section further provides that the report should contain his recommendation on the objections. If he is not to make a report or to make a report which does not contain his recommendation on the objections, we fail to see what purpose will be served by his hearing objections and holding an inquiry. It is no doubt true that the real purpose of the report and the recommendation made therein is to inform the mind of the Government and the Government has a right to reject the recommendation. But the very fact that the report and the recommendation made therein, are intended to help the Government in making up its mind shows the need for them.

IT has been laid down in Abdul Hussain Tavabali's case that the section does not contemplate a second inquiry. It Therefore follows that the only opportunity which the objectors have, is to appear and present their point of view before the Collector. It is not as if the Collector is merely to act as a post office for receiving objections and transmitting them to the appropriate Government. He has to apply his own mind to the objections and if necessary, to supplement the material placed before him by the objectors, by making his own inquiry and then to submit a report which must contain his recommendation on the objections. The submission of a report containing his recommendation on the objections is the culminating point of the process which began with the filing and hearing of the objections and is thus an integral part of the proceedings u/s 5A of the Act.

IT may be that after holding, the inquiry and hearing objections the Collector comes to the conclusion that the land proposed to be acquired is wholly unsuitable for the purpose for which it is to be acquired, or while some parcels of that land are suitable the others will not serve the purpose which the Government has in view. Since the owner of the land will have no further opportunity of objecting to the proposed acquisition a favorable report by the Collector may go a long way in influencing the decision of the Government and save his land from being acquired against his consent, just as an adverse report may tip the scales heavily against him. When the statute mentions the authority who shall hear objections against the action which the Government intends to take and lays down that the authority shall make his report containing his recommendations on the objections, the obvious intention is that the authority should perform his duty in the manner laid down by the statute. The failure of the Collector to send a report or to send a report without his recommendation on the objections, would in the circumstances, be sheer exercise in futility and will reduce the inquiry into a farce.

LEARNED Judge's reference to the words "after considering the report, if any, made u/s 5A, sub-section (2)" in sub-section (1) of section 6 also does not

appear to us to be helpful to the argument that has found favor with him. According to the learned Judge, section 6(1) contemplates a case in which no report of the Collector may be available to the Government at all and even then the Government can take a decision to acquire the land in a particular case. In our opinion, the use of the words "if any" in sub-section (1) of section 6, does not warrant the conclusion that the report need not be made at all or if made, need not contain what the section says it should. The words "if any" have been used in section 6(1) only with reference to a case which comes within the exception contained in section 17 of the Act. It is only when action is taken u/s 17(4) of the Act that it is not necessary to follow the procedure in section 5A and a notification u/s 6 can be issued without a report from the Collector u/s 5A. The usual procedure on the other hand, is that a notification u/s 6 can be issued only after the procedure u/s 5A has been followed.

For the view we are taking, we find support from the decision of the Supreme Court in *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, , it is said that compliance with the provisions of section 5A is necessary before a notification can be issued u/s 6 and that the words "if any" in the clause "after considering the report, if any, made u/s 5A" have been used only to cover the case of an exception u/s 17.

ON behalf of the respondents, our attention was invited to an un-reported decision of a Division Bench of the Supreme Court (K. S. Hegde and A. N. Ray, JJ.) in Civil Appeal No. 1637 of 1966 : *Chandar Bama Patil and others v. The State of Maharashtra and others* decided on 19th August, 1969 where it was said :

"SECTION 6 of the Act does not indicate that a report is imperative. The words used are "report, if any" and the implication is that there need not be a report in all cases."

THE above observations do not appear to us to be contrary to what was said in *Nandeshwar Prasad's* case as the learned Judges do not say that a declaration under S. 6 of the Act can be made in all cases without there being a report by the Collector. We are Therefore unable to agree with the learned Judge that while the holding of inquiry and the hearing of objections is obligatory on the Collector and that a part of section 5A of the Act is mandatory in character the provision regarding submission of a report or at any rate, a report containing the Collector's recommendations on the objections, is not and that the requirement of section 5A will be satisfied even if there are not such recommendations."

(14) The then Land Acquisition Collector, Shri M. L. Mongia has filed an affidavit dated 17-8-1971 stating that the petitioner appeared through his representative on 27-7-1962 and that he was given a hearing. Shri Mongia admitted that he had called for a report whether the land in question belonged to Shree Mandir Sitaramji, a charitable institution which was exempt from the notification. He added that he was informed without disclosing who informed him that it would be

a matter for the Government to decide. The report that he had called for was not made" to him. The petitioner had only raised two objections which related to the notification u/s 4 (dated 13-11-1959) being ultra virus of the Constitution and the land being the property of the religious institution. He urged that the objector did not say anything about the question of exemption in clause 2(d) of the notification; but this overlooks the fact that the above objections on which aspect he had called for a report was itself relevant .only in terms of the exemption u/s 2(d) of the notification; the very report called for by Shri Mongia was whether the property "is exempt from the notification."

(15) Shri D. R. Rungta, General Attorney of Shri Sita Ram Bhaudar has filed a rejoinder affidavit to that of Shri M. L. Mongia stating that on 27-7-1962 he was asked by Shri Mongia to furnish a copy of the D objections already filed on 1042-1959 which he did. He had submitted to Shri Mongia that the land belonged to Shree Mandir Sita Ramji, that the Hanuman Mandir and the various other ancillary buildings and institutions existed on the land, (this is summarised in the report of Shri Mongia u/s 5A, one of the objections) and that Shri Mongia stated that he was going to call for a report. Shri. Rungta was under the impression that after the report was called for he would be given a further hearing.

(16) Even in the affidavit now filed by Shri Mongia, there is no Explanation why he sent his report u/s 5A, without even adverting to the fact that he had called for a report earlier on 27-7-1962. Shri Rungta has characterised the statement of Shri Mongia, that he was informed that the exemption under clause 2(d) of the Notification would be a matter for the Government to decide, as an after-thought; he has commented that the source from which he got the information has not been disclosed. In these circumstances it is a fair inference that a really effective opportunity had not been given to the petitioner. There is force in the averment by Shri Rungta that he was expecting he would be heard further on behalf of the petitioner after the Collector got the report which he had called for on 27-7-1962. Nor is it possible to speculate now as to what report would have been sent to the Land Acquisition Collector by the officer from whom he had called for a report concerning whether the property was attached to Shree Mandir Sita Ramji, a charitable institution as he called it, and hence exempt from the Notification.

(17) None of the contentions raised by Shri R. C. Garg, Honorary Secretary of the 4th respondent would really take the matter further than what is seen from the files and from the affidavit of Shri Mongia concerning what transpired on 27-7-1962. The comment made that there had been no affidavit from Shri Rungta who had appeared before the Land Acquisition Collector on 27-7-1962 has now been rendered. forceless by the affidavit of Shri Rungta which has since been filed.

(18) Mrs. Shyamla Pappu relied upon the decision in Holy Law South Broughton Burial Board v. Failsworth Urban District Council 1928 1 K.B. 231 that the

property situate about 5 miles distant from the synagogues in that case could not be said to be "attached" to the synagogues, these lands in Delhi, she urged, could not be said to be "attached" to Shree Mandir Sita Ramji at Pillani. She further urged that the exemption under clause 2(d) of the Notification was only in respect of land "attached" to religious institutions. But then it has also been contended in the Writ Petition that after the purchase of the land under acquisition a Hanuman Mandir was constructed thereon and that a number of other buildings were constructed from time to time to meet with various religious requirements. Concerning this aspect it was stated in paragraph 6 of Shri K. N. Kashyap's affidavit filed in opposition to the Writ Petition that a small idol had been placed intentionally in the land after the Notification u/s 4 of the Act and that there was no so-called Hanuman temple on the land as contended in paragraph 6 of the Writ Petition. It was already noticed that Shri Kashyap had not indicated in his affidavit that the report called for by Shri Mongia had not been received. On the other hand the averments were such that it gives the impression that it was actually received. The petitioners were so misled by this that it proceeded (later) on the assumption that it was received. Even in the present affidavit of Shri Mongia he does not say that when he made the report u/s 5A he was even conscious of his having called for a report earlier and the same not having been received. It is worth recalling that the land was purchased on 24-10-1935 (as per copy of the Sale Deed as Annexure P.A.VI, filed along with the rejoinder affidavit). The Notification u/s 4 was issued only in 1959. The petitioner stated in paragraph 6 that the construction of the Hanuman temple was after the purchase of the land. There is no other support for the assertion made in the return about the temple having been built on the land in question subsequent to the notification u/s 4. The report which had been called for by Shri Mongia, after local inspection of the site, might have shed some light on this question. It was admitted in the affidavit of Shri K. N. Kashyap that the land in question measuring 278 Bighas stood in the name of Shree Mandir Sita Ramji in the revenue records; yet it was denied that the petitioner was a religious institution. It was further admitted that as per the entries in the revenue records the petitioner was a religious institution and that the land was purchased for religious purposes. The copy of the Sale Deed (Annexure P.A.VI) itself shows that the property was purchased on behalf of Shree Mandir Sita Ramji. These facts could have been easily ascertained during the inquiry u/s 5A of the Act. It is thus seen that a full opportunity was not accorded to the petitioner for nothing more happened on 27-7-1962, when Shri Rungta appeared before Shri Mongia, than merely calling for the above report. It seems an obvious inference that an endorsement having been made by the Collector on the copy, but not on the original of the objections or on the original file, the very fact of the report having been called for was subsequently lost sight of. It is not permissible at this stage to speculate as to what might have been the motive of the report which was called for by Shri Mongia if it had been submitted. The appropriate Government could not have made the declaration u/s 6 if the Report had disclosed that the Hanuman Mandir existed on the said land and had been constructed before the

date of notification u/s 4 and the land was attached to it. If this fact had been found in petitioner's favor the further declaration u/s 6, if made despite such finding, would be struck down on the ground that it fell within clause 2(d) of the notification itself, for the property then would be "attached" to the religious institution. Both the requirements of a hearing by, which is meant a full and adequate hearing, as well as a recommendation, by the Collector, which is mandatory u/s 5A of the Act. not having been complied with, the declaration u/s 6 made in this case (without complying with both those requirements) cannot obviously be upheld. It has, Therefore, become necessary to quash the declaration made u/s 6 of the Act on 7-11-1968 with reference to 324 Bighas of land in village Kakar Duma (Shahdara,), Delhi purchased and registered by Sale Deed dated 24-10-1935.

(19) The writ Petition is accepted accordingly. There will be no order as to costs.