

(1998) 07 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 6549 of 1997

Shri Madhav Ramchandra Nanivadekar and another

APPELLANT

Vs

Special Land Acquisition Officer No. 12 and others

RESPONDENT

Date of Decision : 13-07-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5
Maharashtra Resettlement of Project Displaced Persons Act, 1976 — Section 11, 12,
16, 9(3)

Citation : (1998) 3 ALLMR 465 : (1998) 4 BomCR 171 : (1998) 3 BOMLR 25 :
(1998) 3 MhLj 349

Hon'ble Judges : S. Radhakrishnan, J; A.V. Savant, J

Bench : Division Bench

Advocate : R.S. Apte, for the Appellant; V.S. Gokhale, A.G.P., for the Respondent

Judgement

A.V. Savant, J.—Rule. By consent, rule made returnable forthwith and heard both the learned Counsel; Shri Apte for the petitioners and Shri Gokhale, Assistant Government Pleader for the respondents.

2. The short point which arises for our consideration is whether, in an inquiry u/s 5-A of the Land Acquisition Act, 1894 is it obligatory on the Land Acquisition Officer to give personal hearing to the citizen, without the citizen having prayed for such a personal hearing. In other words, when in pursuance of the Notice u/s 4(1) of the Land Acquisition Act, a citizen only files his objections and does not demand a personal hearing though such an opportunity was given to him in writing, is it still necessary to give him personal hearing? A few facts may be stated first.

3. What is sought to be challenged in this petition is the acquisition of lands for a public purpose viz. resettlement of persons displaced on account of Kumbhi Project in taluka Gaganbawda, District Kolhapur. The acquisition is under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (for short "the 1976 Act"). u/s 11 of the 1976 Act, the relevant notification was issued, as far

back as, on 14th February, 1983 declaring that the State Government was of the opinion that it was necessary in the public interest, for the resettlement of the displaced persons, to apply the provisions of the 1976 Act to the said Kumbhi Project. Thereafter, notification u/s 4 of the Land Acquisition Act, 1984 (for short "the 1894 Act") was issued on 31st October, 1994. It was published in the local news papers on 30th November, 1994 in the Government Gazette on 15th December, 1994, at the village Chawdi on 25th January, 1995 and at the Tahsil Office on 27th January, 1995. There is no dispute regarding publication of section 4 Notification on the dates mentioned above as stated in the affidavit dated 26th June, 1998 filed by the Special Land Acquisition Officer No. 12, Kolhapur.

4. The Notice dated 13th January 1995 issued to the petitioners u/s 4(1), which is at Exhibit "B" specifically states that the petitioners or their lawyer can make their/his oral submissions at the time of submitting their objections. However, the petitioners only filed their written objections but did not demand any personal hearing. In the written objections filed on 18th February, 1995, it was contended, inter alia, that their holding was less than the minimum of 8 acres as provided u/s 16 of the 1976 Act and, hence, no land should be acquired from them.

5. Though the Land Acquisition Act, 1894 gives wide power of compulsory acquisition to the State Government on payment of compensation to the citizen, sub-section (4) of section 16 of the 1976 Act provides as under :-

"16. (4) For the purpose of resettling displaced persons on land, the State Government may, subject to any rules made in this behalf, acquire land from holdings in the benefited zone or from any village or area specified u/s 10 as far as practicable according to the provisions of part II of Schedule A hereto."

When we turn to Part II of Schedule A, the size of the holding and the area to be acquired has been stipulated. If the holding is not more than 8 acres, as far as practicable, no land should be acquired. If the holding is between 8 and 12 acres, 2 acres of land may be acquired. If the holding is between 12 and 16 acres, 3 acres of land may be acquired and so on.

6. In the objections that were filed u/s 5-A of the 1894 Act, the petitioners did not dispute the fact that their lands fell within the benefited zone of Kumbhi Project nor did they demand personal hearing in the enquiry u/s 5-A. Once the declaration u/s 11 of the 1976 Act was made on 14th February, 1983, section 12 of the said 1976 Act would come into force and there would be restrictions on transfer, sub-division or partition of land in the benefited zone. The only contention raised by the petitioners was that their holding was less than the minimum of 8 acres and that there were other lands available in Gaganbawda Taluka for resettlement of persons displaced by the Kumbhi Project.

7. The affidavit in reply filed by the Special Land Acquisition Officer shows that, upon consideration of the petitioner's objection, it was found that the holding of each of the petitioners was more than 8 acres as on the relevant date viz;

14th February, 1983. Declaration u/s 6 of the 1894 Act was made on 1st January, 1996. It was published in the Government Gazette on 18th January, 1996; in the local news paper on 14th February, 1996; at the village Chawdi on 30th March, 1996 and at the Tahsil office on 2nd April, 1996. Notice u/s 9(3) and (4) of the 1894 Act was issued on 22nd March, 1993. The petitioners raised their objections and contended that their lands should be deleted from acquisition. Award u/s 11 of the 1894 Act was made on 25th March, 1997: Notice u/s 12(2) of the 1894 Act was issued on 29th September, 1997 and possession of the lands was obtained on 16th October, 1997. The lands acquired are Gat No. 43/2 - 2 hectares 55 areas, Gat No. 66-7 hectares 94 areas and Gat No. 69 8 hectares 45 areas. All the lands are situated at village Sangashi, taluka Gaganbawda.

8. Despite the above factual position, the present petition has been filed as late as on 19th December, 1997 and the only challenge that is raised before us is that there was no proper enquiry u/s 5-A of the Land Acquisition Act, 1894 in the sense that no personal hearing was given though, admittedly an opportunity of personal hearing was given in the notice dated 13th January, 1995 issued u/s 4(1) of the 1894 Act. As mentioned above, section 5-A enquiry was held during the year 1995 issued u/s 4(1) of the 1894 Act. As mentioned above, 5-A enquiry was held during the year 1995 pursuant to the Notification u/s 4 of the 1894 Act issued on 31st October, 1994. Section 6 declaration was made as far back as on the 1st of January, 1996. It was duly published in the Government Gazette, in the local newspaper, at the village Chawdi and the Tahsil office on the dates mentioned above. There is no explanation in the petition about the delay in approaching this Court as late as on 19th December, 1997 against the declaration made u/s 6 of the Land Acquisition Act, 1894. It is true that the petitioners have challenged the Award made on 25th March, 1997 but what was pressed before us was the absence of a proper enquiry u/s 5-A, which issue was concluded once the declaration u/s 6 of the Act was made on 1st January, 1996. There is, thus, unexplained delay of nearly two years from January 1996 to December 1997.

9. Shri Apte for the petitioner placed reliance on the decisions of the Apex Court in (i) Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, and (ii) Shyam Nandan Prasad and Others Vs. State of Bihar and Others, . Relying upon the said decisions, his contention is that it is obligatory on the Land Acquisition Officer to give personal hearing to the citizen in the enquiry u/s 5-A of the Land Acquisition Act. On the other hand Shri Gokhale, A.G.P. has invited our attention to a later decision of the Apex Court in Rambhai Lakhbai Bhakt Vs. State of Gujarat and others, and contended that it was not necessary to give personal hearing after an opportunity of personal hearing was given to the petitioners and they did not demand it. On a consideration of the above mentioned two decisions on which Shri Apte sought to rely, the Apex Court has held in Rambhai Lakhbai's case that in a case where the citizen files his objection to a notice u/s 4 and does not ask for a personal hearing it would be obvious that he did not intend to avail the

benefit of personal hearing while submitting the objections. If personal hearing was asked for and was not given, it would be a different matter.

10. In para 5 of the judgment in Rambhai Lakhabai's case it has been observed that the procedure for enquiry u/s 5-A is not like an elaborate trial and it is open to the claimant to avail of the remedy of personal hearing. If, however, he did not so demand, it would not be necessary to insist on personal hearing in every case. In some cases arising under the Maharashtra Resettlement of Project Displaced Persons Act, 1976, we find that the only objection raised is that there is no public purpose. In some cases the only objection is that the holding is less than 8 acres. It would be unnecessary to insist on personal hearing being given in every case without the citizen having demanded such hearing. We may reproduce the observations in para 6 of the Rambhai Lakhabai's case appearing at page 1551 as under :---

"6. Notice in the present case did indicate that the petitioner was at liberty to file his objections within 30 days from the date of the publication of the notice and in case he wished to and at the time when he filed the objections, he was also asked to appear either in person or through authorised representative or advocate, and he would be heard on his objections. Admittedly, the petitioner had not appeared, either in person or through advocate but had chosen to file his objections through post. It would be obvious he did not intend to avail the benefit of hearing while submitting objections. If it were a case that he personally appeared and filed objections and requested for hearing, but for one reason or other he was not heard, then time should be granted and perhaps it may be requested to be adjourned to a next short date to be heard. That would be a different circumstance to consider whether failure to give such a date for hearing violates section 5(2). The petitioner having chosen to send the objection through post and when the notice does indicate that he was to appear either in person or through advocate or authorised representative along with objections but failed, then there would be no need to give any further date of hearing."

11. It is relevant to note that the ratio of the earlier decision in Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, has been specifically considered and distinguished in para 5 of the decision in Rambhai Lakhabai's case. Similarly the ratio of the decision in Shyam Nandan Prasad and Others Vs. State of Bihar and Others, has also been specifically considered by the Apex Court in para 7 of its judgment in Rambhai Lakhabai's case and it has been observed as under :-

"7. Flight of hearing is mandatory u/s 5-A(2) and the Land Acquisition Officer is enjoined to give the opportunity of hearing to the owner or person known to be interested in the land. The ratio laid down by this Court in Shyam Nandan Prasad and Others Vs. State of Bihar and Others, , also referred by Sri Diwan, is unexceptional and has to be complied with. Accordingly, the Land Acquisition Officer has not taken it lightly or casually in issuing the notice but the parties had not chosen to appear either in person or through Counsel. No fault could be laid

at the door of Land Acquisition Officer for not giving opportunity of hearing."

12. In the light of the ratio of the later decision in Rambhai Lakhbai's case, in the facts of the present case, when there was no demand for personal hearing, we do not think that the enquiry u/s 5-A of the Land Acquisition Act was vitiated as a result of failure to give personal hearing to the petitioners. No personal hearing was demanded by the petitioners though such an opportunity was offered to them.

13. In the circumstances mentioned above, our answer to the question mentioned in para 2 is that it is not obligatory on the Land Acquisition Officer to give personal hearing to the citizen in an inquiry u/s 5-A of the Land Acquisition Act when the citizen does not demand such a personal hearing though such an opportunity was offered to him. Petitioners' contention is, therefore rejected.

14. On merits, we have already indicated that there is no substance in the objections raised by the petitioners. Apart from the question of delay and laches, possession has already been obtained on 16th October, 1997 under the Award which was made on 25th March, 1997.

15. Rule is accordingly discharged. In the circumstances of the case, however, there will be no order as to costs. The interim order granted on 23rd February 1998 stands vacated.

16. Issuance of certified copy expedited.

17. Rule accordingly discharged.