

(2013) 05 MP CK 0083

In the Madhya Pradesh High Court

Case No : Writ Petition No. 20241 of 2011

Siyalal Kachi and Others

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Electricity Act, 2003 — Section 165

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : (2013) ILR (MP) 1883 : (2013) 3 MPJR 37

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Vivek Rusia, for the Appellant; R.D. Jain, Advocate General alongwith Shri Rajesh Tiwari, Government Advocate for Respondents 1, 2 and 3 and Shri Naman Nagrath and Shri Himanshu Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Petitioners, who are land-owners and are residents of Village Bujbuja and Dokaria situated in Gram Post Dokaria, District Vijayraghavgarh, District Katni, have filed this writ petition challenging the acquisition of land being undertaken by respondent No. 4 for the purpose of setting up a 660x3 Mega Watt Thermal Power Station in the District of Katni. Particulars of the land held by the petitioners and other details are mentioned in the body of the petition and, therefore, it is not reproduced in this order.

Challenge is made to the acquisition initiated and the memorandum of understanding entered into between the State Government and respondent No. 4 Company in the matter of acquisition. According to the petitioners, in Gram Bujbuja, land measuring 237.22 Hectares is being acquired; whereas in Village Dokaria land measuring 24.04 Hectares is being acquired. Petitioners claim to be permanent residents of the area in question and it is stated that initially a memorandum of understanding was entered into between the State Government

and respondent No. 4 Company on 24.11.2009, for setting up of a Thermal Power Plant in District Betul, but subsequently vide Annexure P/1, a second memorandum of understanding was executed on 24.11.2009, whereby the Thermal Power Plant was being established in the District of Katni. It is further stated that for the purpose of establishment of the Power Plant in District Katni, total 593.64 Hectares of land is being acquired, out of which 107.02 Hectares is Government Land and 486.62 Hectares is private land, belonging to the petitioners and various other persons, situated in the villages as indicated hereinabove. It is pointed out that an application - Annexure P/2 was submitted by the representative of the Company in question to the Collector, Katni on 4.10.2010, alongwith the list of private land and government land annexed as Annexure P/3, to the said application. On the same being done, the Collector forwarded the matter to the Tehsildar, Vijayraghavgarh, who vide letter dated 11.10.2010 directed the Revenue Inspector to submit a report on the nine points as are indicated in the letter - Annexure P/4. The Collector accordingly registered a Revenue Case bearing No. 01/A-19/2010-11, on 5.10.2010 and the proceeding for acquisition was initiated. It is stated that the Collector received the report and thereafter the Additional Collector on 19.11.2010 vide Annexure P/6, directed the Deputy Director of Agriculture to also submit his report. Accordingly, a report - Annexure P/7 has been submitted on 27.11.2010, and another report was submitted by the Tehsildar, Vijayraghavgarh on 4.11.2010, vide Annexure P/8. Thereafter, the matter was proceeded with and the Deputy Director, Agriculture also submitted his report, which was forwarded to the Collector vide Annexure P/10, on 14.12.2010. Based on all these material, the Collector prepared his final report - Annexure P/11 on 19.1.2011, which was forwarded to the State Government and on the basis of the report of the Collector, the matter was placed before the Land Acquisition Committee on 22.2.2011, which granted its approval to the acquisition proceedings and the revenue authorities vide Notification dated 11.3.2011 - Annexure P/12, gave permission as required under law and thereafter the agreement was executed between the State Government and the Company on 8.7.2011, vide Annexure P/13. It is pointed out that report was also called for from the Forest Department and on 28.3.2011, the Forest Department communicated to the authorities that the land in question is not within the forest or core area, but it is about 2 Kms away from buffer zone of Bandhavgarh National Park. Thereafter, the Tehsildar, Vijayraghavgarh is said to have issued advertisement inviting objections with regard to the allotment of government land and certain objections with regard to this allotment was submitted by the villagers and the Gram Sabha. Inter-alia contending that without taking note of these objections and in an arbitrary manner the impugned action is taken and a final Notification u/s 9(1) of the Act has been issued on 18.7.2011 vide Annexure P/25. This writ petition has been filed challenging the acquisition proceedings.

Shri Vivek Rusia, learned counsel for the petitioner, took me through the memorandum of agreement entered into initially between the State Government

and the Company in question; the letter - Annexure P/2 written by the Company to the Collector, Katni seeking allocation of land, by pointing out that efforts to purchase the land from the land owners have not yielded fruitful result; thereafter he referred to the report submitted by the Company; action taken by the Revenue Authorities and the SDO; and, the final report prepared by the Collector and emphasized that merely on the basis of the report submitted by the Company, without conducting any proper inquiry, without application of mind, in a very casual manner the verbatim report submitted by the Company is considered by the Revenue Authorities and finally by the Collector and in a mechanical manner the permission is granted. Accordingly contending that no proper inquiry in the matter is conducted as required u/s 5-A of the Act or u/s 40 of the Land Acquisition Act, Shri Rusia submits that the action taken in the manner in a mechanical way by the Collector is unsustainable. Learned counsel for the petitioner thereafter took me through the provisions of Section 4, Section 5-A; and, section 6 of the Land Acquisition Act, and submitted that without conducting any inquiry and without deciding the objection of the aggrieved persons u/s 5-A directly the Notification is issued u/s 6, without following the procedure contemplated u/s 5-A. By taking me through various documents, it was tried to be emphasized by Shri Rusia, vehemently that the entire statutory procedure contemplated u/s 5-A has been given a go-by and the action is taken without complying with the requirement of section 5-A. That apart, it is stated that no public purpose is involved in the matter of acquisition. Referring to the definition of "public purpose" as contained in section 3(f) and the agreement in question, wherein liberty is granted to the Company to sell the electricity and only 5% of the power generated is to be used for government purpose, learned counsel argued that the requirement of law has not been complied with.

2. That apart, it is pointed out by Shri Vivek Rusia that respondents in the return have stated that action is taken under Chapter VII of the Land Acquisition Act, but the procedure contemplated under Chapter VII has not been followed. Accordingly, it is his case that the entire action taken in the matter is not proper, without application of mind and without taking note of the requirement of law, particularly the requirement of section 5-A, therefore, the entire action taken is unsustainable.

3. Placing reliance on the following two judgments of the Supreme Court State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, and, Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, , it is argued by Shri Vivek Rusia that complying with the requirement of section 5-A is a mandatory requirement and if the provisions of section 5-A have not been complied with, the entire action stands vitiated. Thereafter, referring to an unreported judgment of the Chhattisgarh High Court in W.P. No. 781/2011 (Rakesh Kumar Vs. State of Chhattisgarh) decided on 4.9.2012, Shri Rusia tried to indicate that violation of section 5-A is fatal to the entire acquisition proceedings and in the absence of proper inquiry being conducted and "public purpose" being established, the entire action stands vitiated.

4. Accordingly, in sum and substance, the objection raised by Shri Vivek Rusia reads as follows:

- (a) That, no "public purpose" is involved in the matter of acquisition;
- (b) The procedure u/s 5-A of the Land Acquisition Act has not been followed;
- (c) The Collector and the Revenue Authorities have not conducted a proper inquiry, in a mechanical manner the report of the Company is accepted and action taken without proper inquiry; and,
- (d) Finally, it was said that the requirement of the procedure contemplated under Chapter VII has not been followed.

5. Shri Naman Nagrath, learned Senior Advocate appearing for respondent Company, refuted the aforesaid contentions put forth by Shri Vivek Rusia and at the very outset emphasized that the main thrust of the arguments advanced by Shri Rusia was to the effect that the provisions of section 5-A has not been followed. Learned Senior Advocate inviting my attention to the provisions of Chapter VII of the Land Acquisition Act; and, the requirement contemplated u/s 39 thereof, argued that when acquisition of land is undertaken for a Company then the procedure contemplated under Chapter VII has to be followed, and if the provision of Section 39 is taken note of, it would be clear that for acquisition of land by a Company, the provision of section 5-A is not made applicable, if an inquiry u/s 40(1)(a) or (aa) is conducted. Reading section 39 and 40 together, Shri Naman Nagrath, learned Senior Advocate, tried to emphasize that when the acquisition is being undertaken for a Company, the requirement of law is to conduct inquiry and submission of report by the Collector either by following the procedure contemplated u/s 5-A or an inquiry to be held in accordance to the stipulations contained in Section 40(1)(a), (aa), (b) as is indicated in the statute. Accordingly, he submits at the very outset that the main thrust of arguments of Shri Vivek Rusia to the effect that provision of Section 5-A is not correct, because in this case the inquiry as contemplated under sub-sections (1)(a), (aa) and (b) of section 40 has been complied with and by referring to the requirement of the statutory rule namely the Land Acquisition (Companies) Rules, 1963, learned Senior Advocate argued that in this case the State Government has already constituted the Land Acquisition Committee as required under Rule 3 i.e. vide Notification dated 24.1.1996, filed by the petitioner as Annexure P/6. The requirement of the conditions stipulated in Rule 4 have been taken note of and the entire inquiry is conducted in accordance to the said requirement of the Rules and thereafter the action is taken.

6. By taking me through the Report of the Collector; the Report of the SDO; and the reasons given by the Collector for according approval, Shri Naman Nagrath, learned Senior Advocate, argued that the action taken is after following the mandate of section 40 of the Land Acquisition Act read with the statutory provisions contemplated in the Rules of 1963, and by mere vague allegations it cannot be said that the inquiry is not properly conducted. Learned Senior

Advocate referred to the report - Annexure P/8, submitted by the Committee; the report - Annexure P/9, submitted by the SDO; the report - Annexure P/10 of the Agriculture Department; and, the final proposal sent by the Collector in his report - Annexure P/11, and argued that a detailed inquiry meeting all the statutory requirement as contemplated under the Land Acquisition Act and the Rules of 1963 have been followed and Learned Senior Advocate demonstrated by referring to pages 93, 94 and 95 of the Report of the Tehsildar; and, pages 101, 102 and 103 of the Report of the Collector to demonstrate as to how application of mind has been done and a decision taken. Accordingly, learned Senior Advocate argued that in this case after following the due procedure action has been taken and, therefore, the petitioner cannot have any grievance in the matter.

7. Shri Naman Nagrath, learned Senior Advocate, thereafter submitted that when acquisition of land is for a Company and when the requirement of Chapter VII is being followed and when inquiry is conducted in accordance to the requirement of Section 40, compliance with the requirement of section 5-A is not called for. Referring to the judgment in the case of Surinder Singh Brar (*supra*) relied upon by Shri Vivek Rusia, learned Senior Advocate argued that in these cases the applicability of Chapter VII was not taken note of and as the acquisition was under the General provisions contemplated under Part II, where compliance of Section 5-A was necessary, therefore, these judgments will not apply in the facts and circumstances of the present case. Similarly, learned Senior Advocate points out that in the case of Smt. Ritu Kedia (*supra*), rendered by the Chhattisgarh High Court, the facts and circumstances are entirely different and will not apply to this case. It was also submitted that in the said case the matter is sub Judice before the Division Bench in a pending writ appeal..

8. Referring to an unreported judgment of the Supreme Court in the matter of acquisition of land for establishment of solar power or power stations and a judgment in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , Shri Naman Nagrath, learned Senior Advocate, argued that when land is acquired for projects pertaining to infra-structural development like establishment of power stations, interference should not be made until and unless statutory breach is established. Learned Senior Advocate emphasized that in this case except for making certain vague allegations with regard to non-compliance with regard to statutory provisions, no material or evidence is filed to show actual breach of rules or regulations statutory in nature and, therefore, it is emphasized by learned Senior Advocate that the petition be dismissed.

9. Finally, referring to the agreement in question and the criticism made by Shri Vivek Rusia with regard to liberty granted to the Company to sell the electricity generated by only giving 5% or 7% of the production to the State Government, learned Senior Advocate argued that nowhere in the country nor in the State of MP, electricity is supplied free to the public. Even the Government Electricity Transmission and Generating Companies are selling electricity on a tariff fixed

statutorily by the Electricity Regulatory Committee and in this case also the memorandum of agreement contemplates sale of electricity in accordance to the tariff fixed by the statutory regulatory committee. It is argued that electricity is a commodity which is scarce, there is shortage of power, Madhya Pradesh is facing acute power shortage because of which Farmers and agriculturists are suffering and, therefore, if land is being acquired for establishment of a power project, which helps in electricity generation, the same is a "public purpose" and the contention that "public purpose" is not served because electricity is being sold cannot be accepted because the law itself contemplates sale of electricity in a statutorily regulated manner.

10. That apart, Shri Naman Nagrath, learned Senior Advocate, refers to the fact that in this case award has already been passed, the writ petition was filed after the award was passed and learned Senior Advocate argued that the petitioners have deliberately filed this petition only to stall the acquisition proceedings on unjustified grounds, for their vested self-interest.

11. Shri R.D. Jain, learned Advocate General, also emphasized and argued on similar lines and submitted that once the award is passed, filing of the writ petition challenging the acquisition after the award was passed is not correct. It was submitted by him that the award in question with regard to acquisition proceedings were passed on 6.9.2012 and 9.9.2012, most of the persons accepted the award and this writ petition was filed after two months of the passing of the award, therefore, it is stated that challenge to the acquisition proceedings after passing of the award is unsustainable. In support of the aforesaid contention, attention of this Court is invited to the law laid down in the cases of *Swaiika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, ; *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, ; and, *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, . Accordingly, learned Advocate General also prays for dismissal of this writ petition.

12. In reply to the arguments advanced by learned counsel for the respondents, Shri Vivek Rusia advanced two more contentions. His first contention was that in the matter of taking steps for purchase of land from the land owners by private negotiation, no opportunity of hearing has been granted to the petitioners as required under Rule 4(1) of the Land Acquisition Companies Rules, 1963. It is stated that petitioners were never heard with regard to the purchase of land by private negotiation, which is the requirement of Rule 4, and as this statutory provision is violated, the action stands vitiated. Reliance in this regard is placed on the judgment rendered in the case of *Chaturbhai (supra)*. Thereafter, it was argued by Shri Vivek Rusia, learned counsel, that Part VII of the Land Acquisition Act, the purpose of acquisition is to obtain the land for erection of dwelling houses for workmen employed by the company or for building or work for a company and the acquisition for establishment of a power plant does not fall within the purview of the purpose stipulated in Section 40(1)(a)(aa). Accordingly,

it is argued by him that the entire proceedings stand vitiated.

13. In reply to the aforesaid submissions made by learned counsel for the petitioner Shri R.D. Jain, learned Advocate General, and Shri Naman Nagrath, learned Senior Advocate, submitted their explanation and rebuttal arguments and argued that in the petition no objection with regard to hearing on the question of purchase by negotiation is raised. Referring to paragraph 6(c) of the writ petition, learned counsel for the respondents submit that the only ground raised is that the requirement of Rule 4 has not been complied with and that respondent No. 4 did not make efforts for purchase of the land by direct negotiation. It was never the case of the petitioners at any point of time that they were never heard in this regard. It is stated that this is a question of fact warranting inquiry and in the absence of pleadings or evidence in this regard at this stage of final hearing, such a question cannot be gone into. As far as the question of "public purpose" or the purpose of acquisition u/s 40(1)(a)(aa) is concerned, learned Advocate General and learned Senior Advocate invited my attention to section 165 of the Electricity Act, 2003 and the amendment to section 40 made by virtue of this provision, to say that the meaning of the term "work" as contemplated u/s 40 and section 41 of the Land Acquisition Act is deemed to include any work in connection with electricity to be supplied or work connected with generation and supply of electricity. That apart, inviting my attention to the judgment rendered by the Supreme Court in the case of Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, and the law laid down in paragraph 26 onwards; so also the principle laid down in the case of R.L. Arora Vs. State of U.P., and, various other judgments referred to in paragraphs 28 and 29, in the case of Fomento Resorts (supra), it is submitted that this contention of the petitioners cannot be accepted.

14. Having heard learned counsel for the parties and on a perusal of the records it is clear that the land in question is being acquired for the purpose of setting up of 660 x 3 MW Thermal Power Station and the entire proceedings for acquisition of the land is undertaken under Chapter VII of the Land Acquisition Act. During the course of hearing of this writ petition, the main thrust of arguments advanced by Shri Vivek Rusia was with regard to Point No. (b) i.e. non-compliance with the mandatory requirement of Section 5-A. As this point was given due emphasis and stress at the time of hearing, it is thought appropriate to consider this question at the very outset.

15. If the Scheme of Land Acquisition Act is taken note of, it would be seen that Part VII of the Land Acquisition Act contemplates a detailed procedure to be followed for acquisition of land for the companies. The Land Acquisition Act provides for the sequence which is to be followed and the proceedings to be undertaken in the matter of acquisition of land. At the very outset, a Notification u/s 4 has to be made for which the procedure for conducting preliminary investigation commences. After a Notification is issued u/s 4(a), the Government has to take a decision as to whether it is a case of emergency and, therefore, a

special procedure contemplated is to be followed or not and thereafter action is to be taken in accordance to the requirement of Section 39 and thereafter under sections 40 and 41, in case of acquisition by the Company.

16. A perusal of section 39 would clearly show that before proceeding with the acquisition proceedings and before embarking upon taking action u/s 6 to section 37, both inclusive, certain inquiry has to be conducted, consent of the Government is to be obtained and proceeding u/s 40 of the Act has to be undertaken and then an agreement entered into. If the provisions of section 40 are taken note of, it would be seen that this section lays down that consent shall not be given by the Government unless it is satisfied either on a report submitted by the Collector after inquiry u/s 5-A or by an inquiry held as provided under matters covered u/s 40, clauses (a), (aa), (b) etc, and it further contemplates that the inquiry shall be held by such officer and at such time as the Government may appoint. It is, therefore, clear from this provision that the appropriate government is given an option to conduct the inquiry either by following the requirement of Section 5-A or Part VII i.e. section 40(1)(a), (aa), (b) etc and then take a decision for giving consent. That being so, the subjective satisfaction to be arrived at by the government with regard to grant of consent or not is to be undertaken by conducting the inquiry as contemplated u/s 40 and this clearly gives an option either to hold the inquiry as required u/s 5-A, or as required under the provisions of section 40(1)(a), (aa), (b) etc. It is also clear from a complete reading of this Chapter that the provisions of section 6 to 37 cannot be applied unless consent is given by the State Government and thereafter an agreement in accordance to the requirement of section 41 is executed. From the aforesaid legal provision, it is clear that if action is proposed to be taken in accordance to the requirement of Chapter VII, it is not necessary always that the inquiry should be conducted u/s 5-A. Section 5-A can be given a go-by, if the inquiry is conducted as per the requirement of the second option available u/s 40. This aspect of the matter has been considered by the Privy Council way back in the year 1932, in the case of Ezra Vs. Secretary of State, ILR 1932 Collector Page 605, and the Hon"ble Privy Council in the said case has made the following observations:

Now, upon the face of this enactment, there is no provision requiring or implying the presence or the knowledge of the owner of the land. The theory of the section would seem to be that the Government through its officer is to direct its attention to public interests, and it is significant that neither promoter on the one hand, nor possible objector on the other, is mentioned in the section. This does not imply that the officer is to disregard the existence of adverse rights, and the Government is given control of the enquiry, for this is all that is meant by its being empowered to appoint time and place; and all this derives the more significance from the fact that the Act, both in this stage and in the subsequent enquiry into value, takes the initiate out of the hands of the company and puts it in the hands of the Government. That the nature of first enquiry is in no sense litigious, and that the owners of the land are purposely ignored as parties, is

strongly shown by the anxious provisions made as regards the second enquiry, for which (see 9) "public notice" is to be given calling for claims for compensation and requiring all persons interested in the land to appear at a time and place specified. Hence their Lordships disallowed the owner's objections, holding that, in view of the true nature of the section, no exception could be taken to the adequacy of the proceedings at the first enquiry.

17. If the aforesaid provisions are taken note of, it would be clear that the inquiry under the second part of Section 40 is undertaken by the Government and the Government takes care of "public interest" involved in the matter and when acquisition is being done for a Company, the procedure contemplated u/s 5-A is given a go-by. In view of the above, the first ground raised by Shri Vivek Rusia with regard to non-compliance of the provisions of section 5-A is found to be wholly unsustainable and cannot be accepted and in that view of the matter, the judgments relied upon by Shri Vivek Rusia also will not be applicable.

18. The next question canvassed is that no "public interest" is being served. It was only stated that land is acquired by a Company, which is said to be a power project and memorandum of understanding gives no right to sell electricity. Merely because electricity is being sold and Company is granted liberty to make some profit, Shri Rusia argued that there is no "public interest" involved.

19. Determination of "public interest" for the purpose of acquisition has to be considered in the light of the fact as to whether general interest of the community at large is being taken note of and the purpose of acquisition is such that the public at large would be benefited?

20. In the present case, it is common knowledge that there is acute shortage of electricity in the State of Madhya Pradesh and in remote villages, for 8 to 10 hours everyday, power supply is not made. The State Government is making an endeavour for establishing power project with participation of private enterprises and it is in furtherance to this policy of the State Government that the project in question is being established. Electricity generation and distribution is governed by statutory provisions as are contained in the Electricity Act of 2003 and sale of electricity is also statutorily controlled and the tariff is fixed by the statutory authority so created namely the Electricity Regulatory Commission. Supply of electricity after its generation to the general public is not done free of cost, but it is done on recovery of certain dues i.e. the electricity tariff, and the tariff is fixed in accordance to the statutory provisions. In the agreement also, the provision contemplated is that the electricity duty shall be charged by the Company in accordance to the tariff fixed by the Electricity Regulatory Committee. That being so, when the law itself contemplates fixing of tariff in a particular manner and charging of the same by the generating or transmitting Company, in accordance to the tariff fixed, merely because in the memo of agreement a provision in accordance to the statutory scheme is incorporated that does not mean that the "public service" is not existing in the matter. It is a case where if the report of the Collector - Annexure P/11 is taken note of, it would be seen that he has

adverted to consider the question of existence of "public purpose" and has recorded a finding that the purpose of generation of electricity, establishment of the power project is in the interest of public and has given certain reasons for the same. Except for contending that no "public purpose" would be served, no material or evidence is put forth or brought to the notice of this Court to show that "public purpose" is not involved in the matter. Accordingly, I am not inclined to hold that in the matter of acquisition of the land in question, no "public purpose" is involved. That apart, when the land is being acquired for a Company and when the requirement of Chapter VII is being fully complied with, no interference is called for.

21. The next question canvassed was that the requirement of Chapter VII has not been complied with and the report submitted by the Collector and the Revenue Authorities is without application of mind. Both these questions are being taken up together for consideration.

22. For the purpose of acquisition of land for a Company, as already indicated hereinabove, the requirement of Chapter VII has to be followed and in exercise of the powers conferred u/s 55 of the Land Acquisition Act, statutory rules for acquisition of land for Companies under Part VII is formulated. This Rule lays down a detailed procedure to be followed and if the procedure contemplated in these rules are taken note of, it would be seen that a Land Acquisition Committee is constituted under Rule 3, consisting of Members as contemplated under sub-rule (2) of Rule 3 and thereafter the material and information required for recording suggestion of the appropriate Government for acquisition is contemplated under Chapter IV and the seven criterion are laid down, with regard to which information is required to be collected. The criterion laid down are: efforts made by the Company to acquire land from the local area by negotiation etc; suitability of the land; proposed land should not be excess to the position of the Company to utilize the land expeditiously; and, the land should not be good agricultural land. Sub-rule (2) of Rule 4 contemplates that the Collector shall give the Company a reasonable opportunity of making representation and certain inquiry has to be conducted in the manner contemplated. If the procedure followed in the present case is evaluated in the back drop of the aforesaid rules, it would be seen that the Company in its communication made vide Annexure P/2 on 4.10.2010 gave the specifications and details of the land required; it also indicated that the Company tried to purchase the land, but as most of the land situated in the village belongs to Adivasi persons, purchase of the land from these persons without permission of the statutory authority like the Collector is not permissible and it is also stated that most of the land is uncultivated barren land and is not irrigated. Based on the details submitted by the Company, the Collector called for reports from the Revenue Department and the Tehsildar - Annexures P/4, P/5 and P/6 would go to show that the reports submitted were with regard to various statutory requirement and information that are contained in Rule 4(1) and Rule 4(2), of the Rules of 1963, and before proceeding in the matter, the opinion of the Land

Acquisition Committee appointed u/s 3 was also taken and based on the entire material, the Collector prepared his report - Annexure P/11 and forwarded it to the State Government. If the report of the SDO and the Agricultural Officer, submitted to the Collector and the findings recorded by the Collector in his final opinion forwarded to the State Government as contained in Annexures P/10 and P/11 are taken note of, it would be seen that the Collector has adverted to consider various question and in a detailed manner the requirement of Rule 4 has been complied with.

23. Shri Naman Nagrath, learned Senior Advocate, has demonstrated before this Court as to how and in what manner the action is taken. Except for contending that the report is prepared mechanically and in verbatim submissions made by the Company is accepted, Shri Vivek Rusia is unable to point out to this Court as to how and in what manner illegality has been committed. If the requirement of Rule 4 is taken note of, the requirement itself contemplates submission of the representation by the Company with regard to various aspects of the matter and inquiry into these aspects of the matter by the Collector. Once on going through the documents it is clear that the requirement of the rule has been complied with, and when nothing is brought to the notice of this Court on the basis of which non-compliance of the statutory provisions can be made out, merely on the basis of vague and unspecified allegations, it is not necessary for this Court to go and conduct any further inquiry in this aspect of the matter. Even though Shri Naman Nagrath, learned Senior Advocate, during the course of hearing by taking me through the various points in the report of the SDO, the Collector and the Agriculture Department tried to emphasize that the Collector has taken note of various aspects of the matter and has given his own opinion, which shows application of mind. In the absence of anything being shown to this Court that what has been stated by Shri Naman Nagrath is not correct, I am not inclined to go into these details, except to say that the report does show application of mind and they are in conformity with the requirement of the statutory rules as indicated hereinabove.

24. It may be taken note of that when arguments were advanced at length at the initial stage, Shri Vivek Rusia had raised only three main contentions. They were - that the requirement of section 5-A has not been complied with; there is no "public purpose"; and, the Collector has acted in a mechanical manner. All these questions have been considered as indicated hereinabove and this Court has already arrived at a conclusion that the same does not warrant any consideration. That apart, in the judgments relied upon by Shri Naman Nagrath, learned Senior Advocate, particularly in the cases of Ramniklal N. Bhutta and another (supra); M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, and, Laxmi Narayan Mishra Vs. State of M.P. and Others, the requirement of law for the purpose of acquisition for a company and the requirement of inquiry to be conducted under Rule 4 of the Land Acquisition Rules, have been elaborately dealt with and the law crystallized in this regard clearly shows that it is not necessary for the Collector to personally examine all the details himself. The

Collector can call for report from his subordinate officers and can take action on being subjectively satisfied with regard to the requirement being fulfilled. In this regard, the observations made by the Supreme Court in paragraph 10, in the case of *Larsen & Toubro (supra)*, may be taken note of. The judgments indicate that if substantive compliance of the requirement of law has been established, interference into such matters should not be made. That being the legal position and in the light of the findings as are recorded hereinabove, *prima facie* the grounds initially canvassed by Shri Vivek Rusia in the matter are found to be unsustainable.

25. However, as two more additional grounds were raised by Shri Vivek Rusia after submissions were made by the respondents, the same are to be looked into.

26. Placing heavy reliance on the judgment rendered by the Supreme Court in the case of *Chaturbhai (supra)*, it was argued by learned counsel for the petitioners that opportunity of personal hearing to the petitioners with regard to the efforts made by the Company for purchase of land at a reasonable price by mutual/private negotiation has not been done and, therefore, the entire action is vitiated.

27. In the entire writ petition, neither in the factual assertions or the grounds raised, there is any whisper by the petitioners with regard to personal hearing on this count. The question as to whether a personal hearing in this regard was granted or not is a question of fact and normally without there being a pleading in this regard, proper inquiry into the matter would not be possible. However, if the documents produced by the respondents and the records are perused, it would be seen that it was the specific case of the company that efforts were made for purchase of the property by direct negotiation with the land owners, but it did not materialize and it was also indicated that out of the total area of 486.620 Hectares, more than 12% of the land belongs to tribals and Adivasis, and under the law of transfer of property applicable in the State of Madhya Pradesh purchase of land from these persons directly without permission of the Collector or Revenue Officers is not permissible. Reports available in this regard, from page 73 onwards, indicate that the Company in its reply and throughout the representation made to the Collector, have come out with a case that they made efforts for acquisition of the land through personal negotiation, but the same failed. Now, at the time of hearing of this writ petition, petitioners say that they were not heard, but in none of the representations or objections submitted by the petitioners is there anything to show that such an objection was ever raised. That being so, it has to be assumed by this Court that in the reports submitted to the Collector and various other authorities, the assertion made to the effect that the Company took steps for purchase of land through personal negotiation and the same failed is a correct fact and there is no reason for disbelieving the same. Contention of the petitioners that they were not heard on this question is a statement made without any basis and without any material to substantiate the same. In this regard, the State has also filed a detailed reply and paragraphs 16

and 19 of the same also goes to show that negotiations were made and the same failed. In the report - Annexure R/5 dated 27.11.2010 and various other documents, indications in this regard are available and, therefore, I am of the considered view that now the petitioners cannot raise these grounds and the law laid down in the case of Chaturbhai (supra) would not apply in the peculiar facts and circumstances of the present case.

28. In this regard, the observations made by the Supreme Court in the case of Larsen & Toubro (supra) may be taken note of, in which the aforesaid principle laid down is squarely applicable in the present case also with regard to violation of the requirement of Rule 4, as canvassed by Shri Vivek Rusia, learned counsel appearing for the petitioners.

29. Similarly, a Division Bench of this Court in the case of Laxmi Narayan Mishra (supra) has also taken note of the requirement of Rule 4. If the principle laid down in the said judgment are taken note of, I find no error in the procedure followed in the present case with regard to the inquiry conducted u/s 40 read with Rule 4.

30. As far as the second ground with regard to the provisions of section 40(1) (a), (aa) and (b) being not applicable for the purpose of present acquisition is concerned, I find the aforesaid contention to be wholly misconceived. This question has already been considered by the Supreme Court in the case of Fomento Resorts (supra) and after considering the law laid down by the Supreme Court in various cases, including R.L. Arora (supra), in paragraphs 26, 27, 28 and 29, the matter has been dealt with and similar contentions rejected:

26. In this case, we are not concerned with Clause (a) of Section 40(1) because the land in survey Nos. 803 (new No. 246/2) and 8042 (new No. 245/2) was not acquired for erection of dwelling houses for workmen employed by appellant No. 1 or for provision of amenities directly connected therewith. The dispute between the parties centers round the remaining two clauses of Section 40(1). According to the appellants, the acquisition was under Clause (aa), whereas writ-petitioners (private respondents herein) pleaded that the acquisition was under Clause (b). A careful reading of the two clauses shows that while Clause (aa) envisages acquisition for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, Clause (b) refers to acquisition for construction of some work which is likely to prove useful to the public. The difference in the language of the two clauses clearly brings out this distinction. In the second part of Clause (aa), the legislature has used the expression "in any industry or work which is for a public purpose". This means that the particular acquisition can be treated to have been made under that clause if it is for construction of some building or work for a company which is engaged or is likely to engage itself in any industry or work which may not necessarily be useful to the public in general. As against this, usefulness of the construction of some work to the general public is sine qua non for acquisition under Clause (b).

27. The expression "public purpose" used in Clause (aa) was interpreted in R.L. Arora Vs. State of Uttar Pradesh and Others, (herein after referred to "second R.L. Arora's case") which was instituted by the land owner for striking down the amendment made in 1961 for validating the acquisition, which was quashed in the first R.L. Arora's case. It was argued on behalf of the petitioner that even if the amendment was not treated ultra vires the provisions of the Constitution, the disputed acquisition is liable to be annulled because the condition prescribed in Clause (aa) of Section 40(1) was not fulfilled, inasmuch as the acquisition was not for a public purpose. It was submitted that unless there was any direct connection or close nexus between the articles produced by the company and general good of the public, the impugned acquisition cannot be treated as covered by Clause (aa). The majority of the Constitution Bench rejected this argument and held :[R.L. Arora (2) Case, AIR pp. 1236-38, para 9].

9. In approaching the question of construction of this clause, it cannot be forgotten that the amendment was made in consequence of the decision of this Court in R.L. Arora (1) case and the intention of Parliament was to fill the lacuna, which, according to that decision, existed in the Act in the matter of acquisitions for a company; Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. Therefore, we have to see whether the provision in clause (aa) bears another construction also in the setting in which it appears and in the circumstances in which it was put on the statute book and also in view of the language used in the clause. The circumstances in which the amendment came to be made have already been mentioned by us and the intention of Parliament clearly was to fill up the lacuna in the Act which became evident on the decision of this Court in R.L. Arora case (1).... It was only for such a company that land was to be acquired compulsorily and the acquisition was for the construction of some building or work for such a company i.e. a company engaged or about to be engaged in some industry or work which is for a public purpose. In this setting it seems to us reasonable to hold that the intention of Parliament could only have been that land should be acquired for such building or work for a company as would subserve the public purpose of the company; it could not have been intended, considering the setting in which clause (aa) was introduced, that land could be acquired for a building or work which would not subserve the public purpose of the company Further, acquisition is for the construction of some building or work for a company and the nature of that company is that it is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. When therefore the building or work is for such a company it seems to us that it is reasonable to hold that the nature of the building or work to be constructed takes colour from the nature of the company for which it is to be constructed. We are therefore of opinion that the literal and mechanical

construction for which the petitioner contends is neither the only nor the true construction of clause (aa) and that when clause (aa) provides for acquisition of land needed for construction of some building or work it implicitly intends that the building or work which is to be constructed must be such as to subserve the public purpose of the industry or work in which the company is engaged or is about to be engaged. In short, the words "building or work" used in clause (aa) take their colour from the adjectival clause which governs the company for which the building; or work is being constructed.... It is only in these cases where the company is engaged in an industry or work of that kind and where the building or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under clause (aa). As we read the clause we are of opinion that the public purpose of the company for which acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under clause (aa) for a building or work which will not subserve the public purpose of the company.

(Emphasis supplied)

28. The same question was again considered in *State of West Bengal and Another Vs. Surendra Nath Bhattacharya and Another*, In that case, acquisition was made on behalf of a company which was carrying on the business of manufacturing of sodium silicate, plaster of paris etc. The manufactured goods of the company were widely used all over India, saving large amount of foreign exchange which was earlier used for importing similar goods. The Division Bench of Calcutta High Court quashed the acquisition on the ground that it was not for a public purpose. After noticing the majority judgment in second R.L. Arora's (2) case, the Court held:

10. The effect of the observations made above leads to the irresistible conclusion that the words "public purpose" are not to be interpreted in a restricted sense but takes colour from the nature of the industry itself, the articles that it manufactures and the benefit to the people that it subserves. This Court clearly indicated that the land should be acquired for building or work which would serve the public purpose of the company and not public purpose as it is generally understood. In the instant case, we have also set out the nature of the products of the company and have stressed the fact that the articles produced by the company are used for the benefit of the people and as it saves lot of foreign exchange, it is unmistakably for the general good of the country particularly from the economic point of view. In these circumstances, it cannot be said that the object of the company in extending its operations by enlarging the area of its production was not for the public purpose of the company. Taking an overall picture of the nature of the products of the company, its various activities, the general public good that it seeks to achieve and the great benefit that the people derive, it cannot be said that the acquisition, in the present case, was not for a public purpose. According to the test laid down by this Court, it is sufficient if it is shown that the building sought to be built or the work undertaken subserves the

public purpose of the company which is completely fulfilled in this case.

29. In *Pratibha Nema and Others Vs. State of M.P. and Others*, this Court analysed the provisions of Part II and VII of the 1894 Act, referred to the earlier judgments in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, second R.L. Arora's case, *Jage Ram and Others Vs. State of Haryana and Others*, *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, and observed:-

19. These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in the private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the court.

* * * *

22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.

31. That apart, in the present case the acquisition of land is for the purpose of establishment of a Mega Power Plant is for generation and production of electricity. Section 165 of the Electricity Act, 2003 makes amendment to sections 40 and 41 of the Land Acquisition Act, 1894 and it is contemplated in the Electricity Act that the term "work" as is used in sections 40(1) and 41 of the Land Acquisition Act, shall be deemed to include electricity to be supplied by means of the work to be constructed. If that be so, the purpose for which the land is acquired would also include the purpose of establishment of the Thermal Power Plant and acquisition of land for construction of the work for establishing the Thermal Power Plant. Accordingly, the second ground canvassed by Shri Vivek Rusia is also found to be unsustainable for the reasons as are indicated hereinabove.

32. Apart from the aforesaid, it is clear that the petitioners have filed this writ petition after the award was passed on 9.9.2011 as is evident from Annexure

R/2, and petitioners 8, 13, 31, 37 and 43 have already taken the amount of compensation awarded and the return filed by the State Government, particularly paragraphs 11, 28, 29, 30 and 31, goes to show that most of the agriculturists have accepted the compensation and more than 120 Acres of land have been given in possession to the Company in question. Taking note of the totality of the circumstances and the material that has come on record, this Court does not deem it appropriate to interfere into the matter, at the instance of the petitioners.

33. In the case of Ramniklal (*supra*), the concept of land acquisition, its requirement, the "public purpose" involved in the matter, the exercise of powers by the High Court under Article 226, and the principle to be followed by the High Court in the matter of balancing competing interest has been elaborately dealt with and finally in paragraph 10, the principle has been crystallized in the following manner:

10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognized on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernizations. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-?-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a

certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

34. The learned Advocate General has produced the entire original records with regard to acquisition and the proceedings held and on going through the same, it is seen that all the requirements with regard to conduct of an inquiry under Rule 40 read with Rules 3 and 4 of the Land Acquisition Companies Rules have been complied with and this Court does not find any error in the matter warranting interference. Accordingly, both the petitions stand dismissed. No order as to costs.