2019 INSC 895

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6270 OF 2019

(Arising out of SLP (Civil) No. 32055 of 2018)

Nareshbhai Bhagubhai & Ors. …Appellants

versus

Union of India & Ors. …Respondents

WITH

CIVIL APPEAL NO. 6271 OF 2019

(Arising out of SLP (Civil) No. 32056 of 2018)

Ravibhai Vallabhbhai Sutariya & Ors. …Appellants

versus

Union of India & Ors. …Respondents

WITH

CIVIL APPEAL NO. 6272 OF 2019

(Arising out of SLP (Civil) No. 32057 of 2018)

Ishwerbhai Bhikabhai Patel & Ors. …Appellants

versus

Union of India & Ors. …Respondents

WITH

CIVIL APPEAL NO. 6273 OF 2019

(Arising out of SLP (Civil) No. 32058 of 2018)

Vallabhbhai Chanabhai Ahir & Ors. …Appellants

versus

Union of India & Ors. …Respondents

J U D G M E N T

INDU MALHOTRA, J.

Leave granted.

1. The present Civil Appeals have been filed to challenge the Final Judgment and Order dated 25.07.2018 passed by the Gujarat High Court, whereby the Special Civil Application Nos. 19409 of 2015, 12711 of 2016, 14000 of 2016, and 14001 of 2016 have been dismissed.

2. Since a common issue arises in all 4 Civil Appeals, they are being disposed of by the present common Judgment and Order.

3. The factual matrix in which the present Civil Appeals have been filed is as under :

3.1. On 08.02.2011, a Notification was issued under Section 20A of the Railways Act, 1989 [hereinafter referred to as "the said Act"] by the Ministry of Railways notifying its intention to acquire the lands specified in 18 Villages, situated in District Surat, Gujarat for the public purpose of construction of the Western Dedicated Freight Corridor.

The total land under acquisition was a stretch of 131 kms. The land owned by the Appellants, comprising of approximately 6 kms, was included under the Notification.

3.2. The Appellants along with other land-owners filed written Objections between 06.04.2011 and 07.04.2011 under Section 20D(1) of the Act before the Competent Authority/ Special Land Acquisition Officer, Surat [hereinafter referred to as "the Competent Authority"], Surat to challenge the proposed acquisition.

3.3. The Competent Authority *vide* letter dated 15.07.2011, informed the land-owners that the acquisition was for a necessary public purpose i.e. the development of the Western Dedicated Freight Corridor. It was stated that compensation would be paid to all affected land-owners in accordance with Sections 20F and 20G of the Railways Act, 1989.

The land-owners were asked to remain present with necessary proofs at the time of personal hearing, the date of which would be intimated to them.

3.4. The Competent Authority *vide* letter dated 19.07.2011, directed the land-owners to appear for a personal hearing on the Objections on 30.07.2011.

3.5. The land-owners appeared before the Competent Authority on 30.07.2011 for personal hearing, and submitted further written Objections on 31.07.2011.

3.6. The Competent Authority submitted its Report to the Central Government under Section 20E(1) of the Act on 03.01.2012.

On 06.02.2012, the Ministry of Railways issued a Notification under Section 20E(1) of the Railways Act, 1989 stating that 59 Objections had been received in respect of the proposed acquisition, which had been considered and disallowed by the Competent Authority.

3.7. On 06.02.2013 and 07.02.2013, Awards were passed by the Competent Authority under Section 20F of the Railways Act, 1989.

3.8. On 13.08.2013, Shri Ghanshyamsinh Gambhirsinh Vashi, a land-owner, filed an RTI Application before the Competent Authority seeking a certified copy of the Order passed on the Objections filed by the land-owners.

3.9. The Competent Authority replied to the said RTI Application on 05.09.2013, and stated that the reply to

the Objections raised by the land-owners had already been communicated *vide* letter dated 15.07.2011.

3.10. The Appellants herein challenged the acquisition proceedings by filing Special Civil Application Nos. 19409 of 2015, 12711 of 2016, 14000 of 2016, and 14001 of 2016 before the Gujarat High Court.

The principal ground of challenge raised by the Appellants was that no Order had been passed on the Objections in accordance with Section 20D(2) of the said Act.

The Appellants prayed for quashing and setting aside the Notification issued under Section 20A on 08.02.2011, and the Declaration issued under Section 20E on 06.02.2012.

3.11. During the pendency of the proceedings, the High Court *vide* Interim Order dated 12.07.2018, directed the Respondents to file an Affidavit giving specific details pertaining to the disposal of the Objections after personal hearing was granted on 30.07.2011.

3.12. The Chief Project Manager, Dedicated Freight Corridor Corporation of India Limited filed Affidavit dated 17.07.2018 on behalf of the Respondents before the High Court, wherein it was stated that :

"4. I state that the clarification/reply given vide letter dated 15/7/2011 does not indicate the

decision/order/predetermination of the Competent Authority. The Competent Authority has merely clarified the purpose of acquisition and provision of Railway Amendment Act 2008 to be considered while awarding compensation. On the contrary, in the said letter dated 15/7/2011, the Competent Authority has clearly informed the objector to remain present with all the relevant documents on a date which was to be intimated later.

...

8. I state that the Competent Authority, after hearing all the objectors of land under acquisition, has passed two orders dated 28//11/2011 and 3/1/2012 disallowing all the objections raised by the objectors in public interest. Annexed hereto and marked as Annexure VI Colly. Are the copies of the orders dated 28/11/2011 as well as 3/1/2012."

3.13. The High Court *vide* Final Judgment and Order dated 25.07.2018 dismissed the Special Civil Applications filed by the Appellants.

The Court took the view that in matters involving highly technical and scientific fields, courts would be extremely slow in overruling the decision taken by the Government after due deliberation. Unless it was pointed out that relevant considerations were not properly weighed, or that the decision was blatantly *mala fide*, courts would not attempt to substitute their understanding of such complex subjects for that of the Government. The Appellants failed to produce any

material to support their objection that the proposed railway line was not advisable.

It was, however, held that Section 20D of the Act confers a valuable right on a person interested in the land under acquisition, to raise objections, and be heard on such objections. The objections raised by a person interested have to be considered and disposed of, after a hearing is given by the competent authority. If the objections received by persons interested have not been disallowed by the competent authority, it would not be open for the Central Government to proceed to issue the Declaration under Section 20E(1) of the Act.

The High Court recorded its concern about the manner in which the entire matter was dealt with by the Respondents. The land-owners were informed that their objections were not valid even prior to the personal hearing took place.

After the personal hearing took place on 30.07.2011, the Competent Authority disposed of the objections on the office file, but never conveyed the decision to the objectors. The Competent Authority had not fulfilled

the important stage of disposal of the objections prior to the Declaration being issued under Section 20E.

It was further observed that the Competent Authority gave a completely wrong reply to the RTI Application filed by the land-owners. This was an act of utter carelessness which had serious ramifications.

The Competent Authority *vide* Report dated 03.01.2012, informed the Chief Project Manager, Dedicated Freight Corridor Corporation of India Limited that all the Objections raised by the Appellants were heard at length, and orally answered.

The Special Civil Applications were dismissed by the High Court, and the Competent Authority was directed to pay Costs of Rs. 50,000/- in each of the Special Civil Applications.

3.14. Aggrieved by the aforesaid Judgment, the Appellant – Land-owners filed the present Civil Appeals.

4. We have heard the learned Counsel for the parties, and perused the pleadings and written submissions filed by the parties.

5. Mr. C. A. Sundaram, Senior Counsel appearing for the Appellants *inter alia* submitted that :

5.1. The Objections raised by the Appellants were not decided in accordance with the provisions of Section 20D(2) of the Act. The non-compliance of the same would render the entire acquisition proceedings null and void.

5.2. It was further submitted that the Reply dated 05.09.2013 given by the Respondents to the RTI Application filed by the land-owners, clearly showed that there was no application of mind on the part of the Respondents. The said Reply simply stated that the Order disposing of the Objections raised by the land-owners had already been communicated to them on 15.07.2011.

5.3. The letter dated 15.07.2011 cannot be construed to be an Order as contemplated by Section 20D(2) of the Act, since it was issued prior to the personal hearing which took place on 30.07.2011, and filing of the final objections on 31.07.2011.

5.4. The letter dated 15.07.2011 was not an Order, but merely a direction to the Appellants to remain present with necessary proofs and documents at a time and date which would be subsequently intimated.

5.5. It was submitted that even though the land-owners were granted a personal hearing, there was no order passed either allowing or disallowing the objections as per the mandate of S. 20 D(2) of the Act.

5.6. The orders dated 28.11.2011 and 03.01.2012 were not communicated to the land-owners. They were merely notations made on the internal files of the Competent Authority.

The rejection of the Objections *vide* an endorsement or file noting would not constitute an order in the eyes of the law. An order passed by a statutory authority must be a speaking order supported by cogent reasons, which is required to be communicated to the objectors.

6. Mr. Sanjay Jain, Additional Solicitor General appearing for the Union of India *inter alia* submitted that :

6.1. The land acquisition proceedings in the present case have been undertaken in compliance with Chapter IV A of the Railways Act, 1989.

6.2. Chapter IV A of the Railways Act, 1989 is a self-contained code. The Court should not resort to, or seek the aid of the Land Acquisition Act, 1894 to interpret the provisions of the Railways Act, particularly since Section 20N of the Act makes the provisions of the

Land Acquisition Act, 1894 inapplicable to acquisitions under the Railways Act.

6.3. The process for filing objections under Section 20D(2) of the Act is two-fold. First, the Competent Authority permits objections to be filed within 30 days of the publication of the Notification under Section 20A by the Central Government notifying its intention to acquire land.

Thereafter, the Competent Authority has the discretion to call for a personal hearing in order to conduct a further enquiry if deemed necessary.

6.4. In the present case, the Objections raised by the Appellants were received in writing on 06.04.2011. The Competent Authority after considering the said Objections, passed an Order on 15.07.2011 which was communicated to each of the Appellants. Thereafter, personal hearing was granted on 30.07.2011, which was in the nature of a further enquiry.

The Objections raised by the Appellants in the personal hearing on 30.07.2011 were almost identical to those raised earlier on 06.04.2011. The Objections raised by the Appellants had effectively been dealt with

vide letter dated 15.07.2011, which was communicated to each of the Appellants.

6.5. It was further submitted that no order was required to be passed after the personal hearing dated 30.07.2011, because no fresh material came on record.

7. The issues which arise for our consideration are :

i) Whether the provisions of Section 20D(2) have not been complied with by the Competent Authority in the present case?

ii) If so, what would be the consequences of the non-compliance of Section 20D(2) with respect to the acquisition proceedings, and the rights of the Appellants?

8. Relevant Statutory Provisions

To determine the issues raised by the Appellants in the present proceedings, the statutory provisions of the Railways Act, 1989 as amended in 2008, would require to be considered.

The statutory provisions for acquisition of land for a Special Railway Project are contained in Chapter IV A of the Railways Act, 1989. Chapter IV A is a complete self-contained code for the acquisition of land.

Chapter IV A was incorporated *vide* Amendment Act 11 of 2008. The Statement of Objects and Reasons of the Railways (Amendment) Act, 2008 states that :

> *"2. There is a need to provide for land acquisition provisions in the Railways Act, 1989 to empower the Central Government in the Ministry of Railways for land acquisition on fast track basis for the special railway projects on the lines of the land acquisition provisions available in the National Highways Act, 1956."*

Chapter IV A comprises of Section 20A to 20P of the amended Act. The relevant provisions under Chapter IV A are set out hereinbelow for ready reference :

> *"**20A. Power to acquire land, etc.***
>
> *(1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land.*
>
> *(2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.*
>
> *(3) The State Government or the Union territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required.*
>
> *(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.*

20D. Hearing of objections, etc.

(1) Any person interested in the land may, within a period of thirty days from the date of publication of the notification under sub-section (1) of section 20A, object to the acquisition of land for the purpose mentioned in that sub-section.

(2) Every objection under sub-section (1), shall be made to the competent authority in writing, and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.--For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (1) of sub-section (1) of section 2 of the Advocates Act, 1961(25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

20E. Declaration of acquisition

(1) Where no objection under sub-section (1) of section 20D has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification, that the land should be acquired for the purpose mentioned in subsection (1) of section 20A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under subsection (1) of section 20A for its acquisition, but no declaration under sub-section (1) of this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 20A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

20G. Criterion for determination of market-value of land

(1) The competent authority shall adopt the following criteria in assessing and determining the market-value of the land,--

(i) the minimum land value, if any, specified in the Indian Stamp Act, 1899(2 of 1899), for the registration of sale deeds in the area, where the land is situated; or

(ii) the average of the sale price for similar type of land situated in the village or vicinity, ascertained from not less than fifty per cent, of the sale deeds registered during the preceding three years, where higher price has been paid, whichever is higher.

(2) Where the provisions of sub-section (1) are not applicable for the reason that:--

(i) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(ii) the registered sale deeds for similar land as mentioned in clause (i) of sub-section (1) are not available for the preceding three years; or

(iii) the minimum land value has not been specified under the Indian Stamp Act, 1899(2 of 1899) by the appropriate authority, the concerned State Government shall specify the floor price per unit area of the said land based on the average higher prices paid for similar type of land situated in the adjoining areas or vicinity, ascertained from not less than fifty per cent, of the sale deeds registered during the preceding three years where higher price has been paid, and the competent authority may calculate the value of the land accordingly.

(3) The competent authority shall, before assessing and determining the market-value of the land being acquired under this Act,--

(a) ascertain the intended land use category of such land; and

(b) take into account the value of the land of the intended category in the adjoining areas or vicinity, for the purpose of determination of the market-value of the land being acquired.

(4) In determining the market-value of the building and other immovable property or assets attached to the land or building which are to be acquired, the competent authority may use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by the competent authority.

(5) The competent authority may, for the purpose of determining the value of trees and plants, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(6) For the purpose of assessing the value of the standing crops damaged during the process of land acquisition proceedings, the competent authority may utilise the services of experienced

persons in the field of agriculture as he considers necessary.

20I. Power to take possession

(1) Where any land has vested in the Central Government under sub-section (2) of section 20E, and the amount determined by the competent authority under section 20F with respect to such authority by the Central Government, the competent authority may, by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within a period of sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) In case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;
(b) In case of any land situated in any area other than the area referred to in clause (a), to the Collector of a district,

And such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

20J. Right to enter into land where land has vested in Central Government

Where the land has vested in the Central Government under section 20E, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upo0n the land for carrying out the building, maintenance, management or

operation of the special railway project or part thereof or nay other work connected therewith.

20N. Land Acquisition Act 1 of 1894 not to apply

Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act."

9. The scheme of Chapter IV A is as follows :

i) The Central Government is empowered under Section 20A to issue a preliminary Notification, notifying its intention to acquire land for a public purpose required for the execution of a special railway project.

ii) Section 20D provides for filing of objections and grant of personal hearing. The provision is in two parts :

a) Sub-section (1) states that any person interested in the land, may within a period of 30 days from the date of publication of the notification under sub-section (1) of Section 20A, file objections to the acquisition of land for the purpose mentioned in that sub-section.

b) Under sub-section (2) of Section 20D, the mandate of the statute is that :

- Every objection shall be made in writing to the Competent Authority;

- The Competent Authority is mandated to give an opportunity of hearing to the Objector, either in person or by a legal practitioner;
- That "after hearing" all objections, and after making such further enquiry, if any, the Competent Authority may either allow or disallow the objections by an order.

c) Sub-section (3) of Section 20D states that an order passed by the Competent Authority under Section 20D (2) shall be final.

iii) Sub-section (1) of Section 20E provides that if no objections are received, or if the objections are disallowed, then the Competent Authority shall submit a report to the Central Government.

iv) On receipt of such report from the Competent Authority, the Central Government shall declare by notification, that the land should be acquired for the purpose mentioned in sub-section (1) of Section 20A.

v) On the publication of the declaration under Section 20E(1), the land shall vest absolutely in the Central Government free from all encumbrances.

vi) Sub-section (3) of Section 20E states that if the declaration is not published within a period of one year from the date of publication of the Notification under

Section 20A(1), the Notification shall cease to have any effect.

vii) Sub-section (4) of Section 20E states that the declaration made by the Central Government under sub-section (1) shall not be called in question in any court of law or by any authority.

9.1. A reading of the aforesaid statutory provisions shows that the land-owner or interested person has been granted a limited right to file objections under Section 20D of the Railways Act, 1989. The scope of the objections is limited to the purpose for which the acquisition is made. It is not a general right to file objections as under Section 5A of the Land Acquisition Act, 1894.

9.2. The statute has mandated a strict procedure to be followed under Section 20D with respect to the submission and hearing of objections.

The statute mandates that the order is required to be passed by the Competent Authority "after hearing" the land-owners. The order cannot precede the hearing of objections. If an order is passed prior to the personal hearing, and enquiry by the Competent Authority, it

would be contrary to the statute, invalid, and vitiated by a pre-determined disposition.

10. In the present case, it is the admitted position that after the personal hearing took place on 30.07.2011, no decision was passed on the objections submitted by the land-owners, either allowing or disallowing their objections; nor was any communication sent to them.

This is confirmed by the Affidavit of the Competent Authority dated 18.07.2018 filed before the High Court (pgs. 296 – 301, Volume II), wherein it is stated as follows :-

> *"7. It is respectfully submitted that personal hearing was fixed in between 30.07.2011 to 18.08.2011 and 21.10.2011 to 03.01.2012 and alongwith the objections raised by the petitioners, in total 88 objectors are given opportunity of hearing in the aforementioned time period, and as the date qua the present petitioners was fixed for providing hearing on 30.07.2011, the personal hearing was provided wherein the same kind of objections were raised as raised by way of objection application dated 06.04.2011 and therefore the objection was recorded in the hearing memo dated 30.07.2011 and after completion of the hearing proceedings qua all the objectors, on 28.11.2011 and 03.01.2012 respectively the noting was prepared by endorsing that all the objections are rejected and therefore the proposal was submitted before the Dedicated Freight Corridor Corporation for further procedure. I crave leave to produce the original file at the time of hearing of the present matter.*
>
> *8. It is most humbly and respectfully submitted that so far as the averment regarding reply dated 05.09.2013 under RTI application is*

concerned, I say and submit that the applicants have asked for certified copy of the decision taken for hearing provided to the objector, wherein vide reply dated 05.09.2013 the reply was given from the office of the answering respondent by stating that "the reply to the objection application given by you against Notification under the provisions of Section 20A of the Railway Amendment Act has already been given to you by this office (copy is enclosed). Moreover, necessary hearing in that behalf has also been afforded to you. No order regarding objection application is passed after such hearing, because reply regarding objection application has already been given to you."

(emphasis supplied)

10.1. It is abundantly clear that in the absence of an order being passed as contemplated by Section 20D of the said Act, no further steps could have been taken by the Competent Authority in the acquisition in question.

10.2. During the hearing of the Special Civil Applications, the High Court called for the office files of the Respondent. On a perusal of the files, the Court chanced upon a hand-written note sent by the Competent Authority to the Chief Project Manager, Dedicated Freight Corridor Corporation of India Limited, which is set out hereinbelow :

"Finally after due consideration and taking in to view the nationwide infrastructure, long lifetime permanent utility and hence public utility is greater than that of person, all the 59 objection were disallowed by order by the undersigned

and their applications for objection were filed at this end."

The file noting in the office files of the Competent Authority cannot be considered to be an order on the objections.

11. Section 20D is a mandatory provision which confers a substantive and valuable right on the land-owners, to object to the proposed acquisition, before they are forcibly divested of their right, title and interest in the land by an expropriatory legislation.

The right to file objections under Section 20D of the Railways Act, 1989 is *pari materia* to Section 5-A of the Land Acquisition Act, 1894 even though the scope of objections may be more limited.

The judgments rendered by this Court on the nature of the right to object under the Land Acquisition Act, 1894 are equally applicable to the Railways Act.

Sub-section (2) of Section 20D mandates the Competent Authority to give the objectors an opportunity of hearing, either in person or through a legal practitioner.

The Competent Authority after hearing all objections, and after making such further enquiry, if any, is mandated to pass an order either allowing or disallowing the objections.

There are a catena of judgments passed on Section 5-A of the Land Acquisition Act, 1894, which are relevant for the interpretation of Section 20D(2) of the said Act.

This Court has held that the rules of natural justice have been ingrained in the scheme of Section 5-A of the 1894 Act with a view to ensure that before any person is forcibly deprived of his land by way of compulsory acquisition, he must be provided with an opportunity to oppose the decision of the Government.[1]

This Court has held that the hearing given to a person must be an effective one, and not a mere formality. Formation of opinion with regard to the public purpose, as also suitability thereof, must be preceded by application of mind having due regard to the relevant factors.

Section 5-A of the Land Acquisition Act, 1894 confers a valuable right on the land-owners. Having regard to the provisions contained in Article 300-A of the Constitution, the right to raise and file objections has been held to be akin to a fundamental right.[2]

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1 *Union of India* v. *Shivraj*, (2014) 6 SCC 564.
2 *Ibid.*

In *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai*,[3] this Court held that:

> *"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.*
>
> *...*
>
> *9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.*
>
> (emphasis supplied)

In *N. Padmamma* v. *S. Ramakrishna Reddy*, this Court held that :

> *"21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed."*
>
> (emphasis supplied)

3 (2005) 7 SCC 627.

In *Om Prakash* v. *State of U.P.*,[4] this Court held that :

> *"21. Our attention was also invited by Shri Shanti Bhushan, learned Senior Counsel for the appellants to a decision of a two-Judge Bench of this Court in the case of State of Punjab v. Gurdial Singh [(1980) 2 SCC 471] wherein Krishna Iyer, J. dealing with the question of exercise of emergency powers under Section 17 of the Act observed in para 16 of the Report that save in real urgency where public interest did not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 and 19, burke an inquiry under Section 17 of the Act. Thus, according to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-à-vis, Section 5-A of the Land Acquisition Act would remain apposite.*
>
> *The said decision has been cited with approval in Union of India v. Krishan Lal Arneja[(2004) 8 SCC 453]."*
>
> (emphasis supplied)

11.1. The limited right given to a land-owner/interested person to file objections, and be granted a personal hearing under Section 20D cannot be reduced to an empty formality, or a mere eye-wash by the Competent Authority.

The Competent Authority was duty-bound to consider the objections raised by the Appellants, and

4 (1998) 6 SCC 1.

pass a reasoned order, which should reflect application of mind to the objections raised by the land-owners.

In the present case, there has been a complete dereliction of duty by the Competent Authority in passing a reasoned order on the objections raised by the Appellants.

11.2. In the present case, it is the undisputed position that no order as contemplated in the eyes of law was passed by the Competent Authority in deciding the objections raised by the Appellants.

A statutory authority discharging a quasi-judicial function is required to pass a reasoned order after due application of mind.

In *Laxmi Devi* v. *State of Bihar*,[5] this Court held that :

> *"9. The importance of Section 5-A cannot be overemphasised. It is conceived from natural justice and has matured into manhood in the maxim of audi alteram partem i.e. every person likely to be adversely affected by a decision must be granted a meaningful opportunity of being heard. This right cannot be taken away by a side wind, as so powerfully and pellucidly stated in Nandeshwar Prasad v. State of U.P. [AIR 1964 SC 1217]. So stringent is this right that it mandates that the person who heard and considered the objections can alone decide them; and not even his successor is competent to do so even on the basis of the materials collected by his predecessor. Furthermore, the decision on the objections should be available in a self-contained, speaking and reasoned order; reasons cannot be added to it later as that would be akin to putting old wine in new bottles. We can do no better than commend a careful*

5 (2015) 10 SCC 241.

perusal of Union of India v. Shiv Raj [(2014) 6 SCC 564 : (2014) 3 SCC (Civ) 607] , on these as well as cognate considerations."

(emphasis supplied)

In *Raghbir Singh Sehrawat* v. *State of Haryana*,[6] this Court held that :

"40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

(emphasis supplied)

In *Usha Stud & Agricultural Farms (P) Ltd.* v. *State of Haryana*,[7] this Court held that,

"*The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate*

6 (2012) 1 SCC 792.
7 (2013) 4 SCC 210.

decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)."

(emphasis supplied)

In *Hindustan Petroleum Corpn. Ltd. (supra)*, this Court held that:

"16. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.

...

19. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefor, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation that production of records by the State is necessary.

...

28. Although assignment of reasons is the part of principles of natural justice, necessity thereof may be taken away by a statute either expressly or by necessary implication. A declaration contained in a notification issued under Section 6 of the Act need not contain any reason but such a notification must precede the decision of the appropriate Government. When a decision is required to be taken after giving an opportunity of hearing to a person who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing."

(emphasis supplied)

In *Kranti Associates (P) Ltd.* v. *Masood Ahmed Khan*,[8]

this Court held that:

"*12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150]*

...

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

8 (2010) 9 SCC 496.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now

virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

(emphasis supplied)

11.3. File Notings and lack of Communication

It is settled law that a valid order must be a reasoned order, which is duly communicated to the parties. The file noting contained in an internal office file, or in the report submitted by the Competent Authority to the Central Government, would not constitute a valid order in the eyes of law.

In the present case, there was no order whatsoever passed rejecting the objections, after the personal hearing was concluded on 30.07.2011.

It is important to note that the Competent Authority did not communicate the contents of the file noting to the Appellants at any stage of the proceedings. The said file noting came to light when the matter was

pending before the High Court, and the original files were summoned.

The High Court, upon a perusal of the files, came across the file noting recording rejection of the objections only on the ground that the matter pertained to an infrastructure project for public utility.

In *Bachhittar Singh* v. *State of Punjab*,[9] a Constitution Bench held that merely writing something on the file does not amount to an order. For a file-noting to amount to a decision of the Government, it must be communicated to the person so affected, before that person can be bound by that order. Until the order is communicated to the person affected by it, it cannot be regarded as anything more than being provisional in character.

Similarly, in *Shanti Sports Club* v. *Union of India*,[10] this Court held that notings recorded in the official files, by the officers of the Government at different levels, and even the Ministers, do not become a decision of the Government, unless the same are sanctified and acted upon, by issuing an order in the

9 AIR 1963 SC 395.
10 (2009) 15 SCC 705.

name of the President or Governor, as the case may be, and are communicated to the affected persons.

In *Sethi Auto Service Station* v. *DDA*,[11] this Court held that:

> *"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.*
>
> *...*
>
> *16. To the like effect are the observations of this Court in Laxminarayan R. Bhattadv. State of Maharashtra [(2003) 5 SCC 413] , wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right."*
>
> (emphasis supplied)

11.4. Contradictory Stand taken by the Respondents

The mandate of the law is that the order on the objections is required to be passed by the Competent Authority "after the personal hearing" is granted.

The Respondents had filed an Affidavit dated 17.07.2018 before the High Court wherein it was

11 (2009) 1 SCC 180.

stated that the reply given *vide* letter dated 15.07.2011 does not indicate the decision/order/pre-determination of the Competent Authority. The Competent Authority had informed the objectors to remain present with all material documents at the time of personal hearing, the date of which would be notified later.

At the time of arguments before this Court, it was sought to be contended by the Additional Solicitor General for the Union of India that the letter dated 15.07.2011 was an order passed under Section 20D(2) of the Act.

We find that the stand taken by the Respondents before the High Court and this Court is completely contradictory, and does not commend acceptance.

11.5. In any event, the order under Section 20D(2) cannot be passed prior to the personal hearing. The mandate of the law is that the order must be passed "after" the grant of personal hearing, and after any further enquiry is made by the Competent Authority.

The whole process of granting a personal hearing would be reduced to an empty formality and a farcical exercise, if the order on the objections precedes the

grant of personal hearing. This would be clearly contrary to the provisions of Section 20D(2) of the Act.

It is well settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.[12] The provisions of an expropriatory legislation, which compulsorily deprives a person of his right to property without his consent, must be strictly construed.[13] The Railways Act, 1989 being an expropriatory legislation, its provisions have to be strictly construed.[14]

11.6. The Competent Authority being a quasi-judicial authority, is obligated by law to act in conformity with mandatory statutory provisions. It is important to note that this is the only opportunity made available to a land-owner, as on submission of the Report to the Central Government, there is no further consideration that takes place. The Central Government acts upon the Report of the Competent Authority, and issues the Declaration under Section 20E of the said Act.

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12 *Nazir Ahmad* v. *King Emperor*, (1875) LR 1 Ch D 426 followed in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, AIR 1954 SC 322; *State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358; *J&K Housing Board* v. *Kunwar Sanjay Krishan Kaul*, (2011) 10 SCC 714; *Kunwar Pal Singh* v. *State of U.P.*, (2007) 5 SCC 85.

13 *Jilubhai Nanbhai Khachar* v. *State of Gujarat*, 1995 Supp (1) SCC 596; See also *Khub Chand* v. *State of Rajasthan*, AIR 1967 SC 1074; *CCE* v. *Orient Fabrics (P) Ltd.*, (2004) 1 SCC 597.

14 *Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705.

This is in contradistinction with the provisions of the Land Acquisition Act, 1894. Section 6 of the Land Acquisition Act requires the satisfaction of Central Government before the Declaration is issued.

11.7. In the absence of an order passed under Section 20D(2), the subsequent steps taken in the acquisition would consequentially get invalidated.

12. The issue which remains to be decided is that in the absence of an order passed on the objections under Section 20D, should the consequential steps be invalidated.

We find that the challenge before this Court has been made by the Appellants with respect to a stretch of land admeasuring approximately 6 kms, out of the total stretch of 131 kms. The remaining stretch of land comprising of 125 kms has been acquired, and stands vested in the Government. The Respondents have stated on Affidavit that pre-construction activity and earth work has been completed on most parts of the stretch. Furthermore, most of the bridges are either in progress, or have already been completed.

The Senior Counsel representing the Appellants in all the present Civil Appeals, after taking instructions from his

clients, submitted that since the land was being acquired for a public utility project, his clients would be satisfied if they were granted compensation by awarding the current rate for acquisition of land.

Admittedly, no *mala fides* have been alleged by the Appellants against the Respondents in the acquisition proceedings. The larger public purpose of a railway project would not be served if the Notification under Section 20A is quashed. The public purpose of the acquisition is the construction and operation of a Special Railway Project *viz.* the Western Dedicated Freight Corridor in District Surat, Gujarat.

In these extraordinary circumstances, we deem it fit to balance the right of the Appellants on the one hand, and the larger public purpose on the other, by compensating the Appellants for the right they have been deprived of. The interests of justice persuade us to adopt this course of action.

In *Savitri Devi* v. *State of U.P. & Ors.*,[15] this Court held that:

> *"Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the land*

15 (2015) 7 SCC 21.

owners, developments have taken in these villages and in most of the cases, third party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in Bondu Ramaswamy and Others (supra) came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the land owners in the form of compensation as well as allotment of developed Abadi land at a higher rate i.e. 10% of the land acquired of each of the land owners against the eligibility and to the policy to the extent of 5% and 6% of Noida and Greater Noida land respectively."

(emphasis supplied)

In the present case, the relief is being moulded by granting compensation to the Appellants, to be assessed under Section 20G of the said Act as per the current market value of the land. The Competent Authority is directed to compute the amount of compensation on the basis of the current market value of the land, which may be determined with reference to Section 20G(2) of the Act.

13. With respect to the remaining 125 kms stretch of land, the land-owners were satisfied with the amount awarded, and have not approached this Court.

Under these circumstances, despite our finding that the Respondents have breached the mandatory provisions of the

Act, we do not think this is a fit case to set aside the entire acquisition proceedings.

The relief granted in the present case is confined to the Appellants herein, and would not become a precedent for other land-owners who have not challenged the acquisition proceedings before this Court.

The Civil Appeals are allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(INDU MALHOTRA)

New Delhi;
August 13, 2019.