

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2927 OF 2006

Nandkishore Shridhar Kakarniniya,
aged 40 years, Occ. Business
r/o Kakaraniya Building, Jawahar Gate,
Amravati

... Petitioner

-vs-

1. State of Maharashtra,
Through its Secretary,
Revenue Department, Mantralaya,
Mumbai 32

2. Collector, Amravati

3. Special Land Acquisition Officer,
(Upper Wardha Project), No.4,
Amravati

4. Amravati Municipal Corporation
Amravati, through its Municipal
Commissioner

... Respondents

Shri A. C. Dharmadhikari, Advocate for petitioner.
Ms T. Khan, Assistant Government Pleader for respondent Nos.1 to 3.
Shri J. B. Kasat, Advocate for respondent No.4.

CORAM : A. S. CHANDURKAR AND VINAY JOSHI, JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : February 27, 2020
DATE ON WHICH JUDGMENT WAS PRONOUNCED : April 03, 2020

Judgment : (Per : A. S. Chandurkar, J.)

The grievance of the petitioner as raised in this writ petition is to the failure on the part of the respondent Nos.2 and 3 in considering the objection raised by him under Section 5-A of the Land Acquisition Act, 1894 (for short, the said Act) while seeking to acquire land admeasuring 68 sq.

meters from plot No.173 for the purposes of extension of road.

2. It is the case of the petitioner that he is the owner of plot No.173 which admeasures 2000 sq. ft. The petitioner has constructed a building thereon and is in occupation thereof. On 28/12/2004 the respondent No.3-Special Land Acquisition Officer issued a notice under Section 4(1) of the said Act informing the petitioner that it was proposed to acquire 68 sq. meters from the aforesaid property for extension of a road. The petitioner was called upon to submit his objection if any on or before 28/01/2005. According to the petitioner on 28/01/2005 he submitted his objection to the acquisition of the proposed land. It was sought to be demonstrated that the work of extension of the road could be undertaken without acquiring 68 sq. meters of the petitioner's land as proposed. It is the grievance of the petitioner that he was not granted any personal hearing nor was his objection considered. Thereafter Notification under Section 6 of the said Act came to be published by which the aforesaid land came to be acquired for extension of the road. The petitioner on 03/02/2006 raised another objection to the aforesaid acquisition. Since no cognizance thereof was taken, the petitioner filed the present writ petition. During pendency of the proceedings the Land Acquisition Officer passed his award on 08/11/2006. Hence by amending the writ petition the petitioner has challenged the aforesaid award too.

3. Shri A. C. Dharmadhikari, learned counsel for the petitioner submitted that failure on the part of the Land Acquisition Officer in considering the objection raised by the petitioner under Section 5-A of the said Act has resulted in vitiating the subsequent proceedings of acquisition. It was submitted that the requirements prescribed by Section 5-A of the said Act were mandatory in nature and failure to comply with the same resulted in breach of such statutory right as well as violation of the provisions of Article 300-A of the Constitution of India. He submitted that the Honourable Supreme Court has held in clear terms in various decisions that it was mandatory for the Land Acquisition Officer to grant opportunity of hearing when an objection is raised to the proposed acquisition as notified under Section 4(1) of the said Act. It is always open for the land owner to try and convince the Land Acquisition Officer that the acquisition proposed was not for a public purpose as specified in the Notification or that the land proposed to be acquired was not suitable for the particular purpose. On such objection being raised the same was liable to be objectively considered by the Land Acquisition Officer and a recommendation was required to be made as to whether the said land was genuinely required to be acquired. Placing reliance on the decisions in *Women's Education Trust and anr. vs. State of Haryana and ors. (2013) 8 SCC 99*, *Usha Stud and Agricultural Farms Private Limited and ors. vs. State of Haryana and ors. (2013) 4 SCC 210*, *Surinder Singh Brar and ors. vs. Union of India and ors. (2013) 1 SCC 403*, *Union of India and*

ors. vs. Shiv Raj and ors. AIR 2014 SCC 2242 and *Kedar Nath Yadav vs. State of West Bengal and ors. AIR 2016 SC 4156*. It was thus submitted that failure on the part of the Land Acquisition Officer in not granting any opportunity of hearing to the petitioner for substantiating the objections as raised under Section 5-A of the said Act and failure on the part of the Land Acquisition Officer in making any recommendation whatsoever after referring to the objection resulted in the entire process of acquisition being vitiated.

4. Ms T. Khan, learned Assistant Government Pleader for the respondent Nos.1 to 3 supported the acquisition of the land in question. Referring to the affidavit in reply filed on behalf of the Land Acquisition Officer it was submitted that in the objection dated 28/01/2005 the petitioner had sought an amount of Rs.25,00,000/- towards compensation for the acquisition of the land in question. By making such demand of compensation it was clear that the petitioner has no grievance with the proposal to acquire the petitioner's land. After considering the contents of the said objection it was noted that the petitioner had no grievance with the said acquisition and hence the further process was duly followed while acquiring the said land.

Shri J. B. Kasat, learned counsel for the respondent No.4- Amravati Municipal Corporation for whose requirement the land was proposed to be acquired supported the aforesaid contention to submit that

on 28/01/2005 no specific objection to the acquisition as proposed was raised. The requirement of Section 5-A of the said Act had not been satisfied and therefore it could not be said that the Land Acquisition Officer committed an error in thereafter proceeding with the process of acquisition. The learned counsel also referred to the communication dated 03/02/2006 issued by the petitioner to substantiate his contentions. According to him plot No.49 referred to in the said communication was owned by the Municipal Corporation. On these counts it was submitted that the acquisition proceedings were not initiated and on the contrary the land in question was acquired by following the prescribed procedure.

5. We have heard the learned counsel for the parties at length. We have also perused the records of the acquisition proceedings as maintained by the Special Land Acquisition Officer. It is seen from the record that on 08/07/2004 Notification under Section 4 of the said Act was published in daily 'Matrubhumi'. On 15/07/2004 such Notification was published in the official gazette. In response to the notice dated 28/12/2004 issued under Section 4(1) of the said Act the petitioner submitted his objection under Section 5-A of the said Act on 28/01/2005 which date is wrongly mentioned as 28/01/2004 in that objection. Cognizance of that objection was taken by the Special Land Acquisition Officer in his communication dated 11/02/2005. On 14/02/2005 the petitioner submitted a fresh objection

which finds reference in the subsequent communication dated 02/03/2005 of the Land Acquisition Officer. Further reference to the objection under Section 5-A of the said Act is also found in the report dated 22/12/2005 submitted by the Special Land Acquisition Officer. Thereafter on 12/01/2006 the Notification under Section 6 of the said Act was published in the official gazette.

By amending the writ petition the petitioner has specifically averred in paragraph-15B and paragraphs 17A and 17B that the objections raised by him under Section 5-A of the said Act have remained unadjudicated. It is also his specific case that he was never granted any opportunity of hearing by the Special Land Acquisition Officer in that regard. In the reply filed on behalf of the Collector and the Special Land Acquisition Officer it has been admitted in paragraph 2 that on 28/01/2005 the petitioner was present before the Special Land Acquisition Officer and had submitted his written objection. This fact is recorded in the roznama and it is further stated that the petitioner refused to accept 80% of the amount of compensation.

6. The right of a landowner to raise objections to acquisition proceedings under Section 5-A of the said Act is well recognised. Reference in that regard can be made to the decision in *Shiv Raj and ors.* (supra). Paragraphs 9 to 11 which are relevant are reproduced herein under :

“ 9. Therefore, Section 5-A of the Act, 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the 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, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

10. Thus, the limited right given to an owner/person interested under Section 5-A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and its a substantive right, which can be taken away only for good and valid reasons and within the limitations prescribed under Section 17(4) of the Act, 1894.

11. The Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.”

This legal position has also been laid down in the other decisions relied upon by the learned counsel for the petitioner. It is thus seen that Section-5-A of the said Act confers a valuable right in favour of a person

whose lands are to be acquired. If objection to the acquisition proceedings are raised, same have to be adjudicated by indicating brief reasons which could demonstrate objective application of mind to the entire record.

7. In the present case there is no material whatsoever produced on record to indicate that the petitioner was duly heard on the objections raised by him on 28/01/2005 or that those objections were adjudicated upon. There is nothing on record to indicate application of mind by the Special Land Acquisition Officer to those objections or any material indicating reasons for rejection of those objections. Without adverting to the objections as such the Special Land Acquisition Officer has proceeded further with the acquisition proceedings. This has thus vitiated the entire process of acquisition.

8. Though it was urged on behalf of the respondents that the petitioner in the objection dated 28/01/2005 had indicated his inclination to receive compensation at the rate of Rs.8000/- per sq. ft. for the land and Rs.1000/- per sq. ft. for the constructed portion, it is seen that this stand has been taken without prejudice to the objections raised by him. This is clear from plain reading of the entire objection dated 28/01/2005. The same would not mean that the petitioner did not intend to pursue his objection and had given up the same. Said contention therefore cannot be

accepted. Similarly, the submission made on behalf of the respondents that the objections raised by the petitioner were without any merits thus warranting rejection also cannot be accepted. It was for the Special Land Acquisition Officer to have applied his mind to the objections as raised and to have taken a decision on the same. This Court cannot undertake the exercise of examining the said objections in absence of same not being considered by the Special Land Acquisition Officer.

9. In that view of the matter we find that failure to comply with the provisions of Section 5-A of the said Act has resulted in vitiating the acquisition proceedings. There is no other option but to declare that the entire process of acquisition pursuant to the Notification issued under Section 4 of the said Act on 08/07/2004 in respect of acquisition proceedings pertaining to 68 sq. meters land from plot No.173, Mouja Amravati have been vitiated. The said proceedings are accordingly set aside. Needless to state that the respondents are free to take further steps for acquiring said land if advised in accordance with law.

The writ petition is allowed. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE