Before Rajesh Bindal & Gurvinder Singh Gill, JJ.

HARI SINGH AND ANOTHER—*Petitioners*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 12260 of 2008

August 23, 2017

Land Acquisition Act, 1894—S.5A—Objections filed—No hearing afforded—Acquisition set aside.

Held that it remained undisputed that notification under Section 4 of the Act was issued on 19.1.2007. The petitioners filed objections on 15.2.2007, however, undisputedly no notice was served upon the petitioners for hearing of objections and the report was sent by the Collector recommending acquisition of land. Even at the time of hearing as well, learned counsel for the State had not been able to produce any record showing that notice was ever served upon the petitioners for hearing of objections in terms of the provisions of Section 45 of the Act, which lays down the procedure for the purpose or that they were heard personally. Meaning thereby, the petitioners have been deprived of their valuable right of hearing of objections filed by them to object to the acquisition of land. Without affording opportunity of hearing to the petitioners/landowners, recommendations were sent by the Collector to the Government.

(Para 17)

Further held that there being clear violation of principles of *audi alteram partem*, while considering the objections filed by the petitioners under Section 5-A of the Act, in our view, the action taken by the State subsequent thereto deserves to be set aside, namely, the notification issued under Section 6 of the Act and consequently the award pertaining to the land owned by the petitioners. Ordered accordingly. However, the judgment will not preclude the State from taking fresh decision after considering the objections filed by the petitioners under Section 5-A(1) of the Act in accordance with law. The interim stay granted by this court shall continue for a period of three months to enable the State to carry out the exercise, if it so desires. It is made clear that if the final decision taken by the State is adverse to the petitioners, they shall be at liberty to avail of their appropriate remedy in accordance with law.

(Para 18)

Ashok Aggarwal, Senior Advocate with
Alok Jain and Mukul Aggarwal, Advocates
for the petitioners.

Amar Vivek, Additional Advocate, General, Haryana.

Sangram Singh, Advocate
for Sumeet Goel, Advocate
for respondent nos. 4 to 6.

R. K. Hooda, Advocate
for the applicant in CM No. 2348/2017.

RAJESH BINDAL, J.

(1) The petitioners have filed the present petition impugning the acquisition of land owned by the m. The notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the Act'), were issued on 19.1.2007 and 18.1.2008, respectively.

(2) Learned counsel for the petitioners submitted that the petitioners are co-sharers in the land with respondent Nos. 4 to 6, as impleaded in the writ petition. The land is yet to be partitioned by metes and bounds. Initially 6.4 acres of land was notified for acquisition under Section 4 of the Act. While issuing notification under Section 6 of the Act, substantial land was released as only 4.122 acres was notified. Thereafter,the Land Acquisition Collector (for short, 'the Collector'), announced the award merely for 3.477 acres of land. In fact, wherever it suited the authorities, they continued releasing the land. Part of that was belonging to respondent nos. 4 to 6, who were the builders operating in the area. They are the persons, who are dictating the policies of the Government.

(3) Learned counsel for the petitioners further submitted that the acquired land though is small portion measuring 3.477 acres of land, however, it is located at 4-5 different places in small-small pockets in the sector in which builder has been granted the licence. The purpose of acquisition as shown in the notification is for development and utilization of the acquired land for residential, commercial and institutional Sectors 53-54, Gurgaon. How such small-small portions of land located at different-different places can be utilized for development as sectors cannot be imagined. He further submitted that though respondent nos. 4 to 6 are merely co-sharers in the joint khewat,

but still they were granted the license on some portion of un-partitioned land. In the jamabandis, still the area has been shown in the joint ownership with no specific possession of any of the co-owner on any specific portion of land. The basic error in the notification issued by the State under Section 4 of the Act was that against none of the khasra numbers, the area sought to be acquired was mentioned. It is only that the total area sought to be acquired was mentioned. If the total area in each khasra number is calculated, the same is much more than the area sought to be acquired. In the absence thereof, the petitioners were not able to file objections effectively. Still the objections were filed on 15.2.2007,*inter-alia*, claiming that it was colourable exercise of power by the authorities in acquiring small-small portions of land located at different places in the sectors developed by the builders which are of no use to the department and will ultimately be handed over to the builders only. There was no land owned by HUDA located close to the land sought to be acquired with which it could be integrated. The area being small could not effectively be used by providing infrastructural facilities. The objections were duly received, however, for the hearing thereof, the petitioners were not served with any notice whatsoever. The procedure for service of notice for hearing of objections under Section 5-A of the Act has been prescribed in Section 45 of the Act, which has clearly been violated. The reports, whatever, suited the authorities were sent and finally notification under Section 6 of the Act was issued on 18.1.2008 notifying 4.122 acres of land. In this notification, specific area against each khasra number was mentioned. The allegations made by the petitioners in the writ petition to that effect have not specifically been denied.

(4) Pointing arbitrary exercise of powers at the dictates of builders operating in the area, learned counsel for the petitioners referred to khasra number 2413, which was mentioned with no specific area in notification under Section 4 of the Act, however, while issuing notification under Section 6 of the Act only 0-16-8 was mentioned. The total area of this khasra number is 1 Bigha 2 Biswas and 0 Biswansi. As to which portion of land was notified for acquisition finally, is anybody's guess without there being any partition. In the site plan, of their own the State has shown some portion of area of this khasra number as acquired without there being any partition only because that portion suited the builders, whose land was adjoining.

(5) Learned counsel for the petitioners further submitted that this Court vide order dated 11.8.2016 directed the official respondents

to produce any specific plan prepared for development of the area for utilization of the acquired land, however, till date nothing has been produced. Meaning thereby the object is only to hand over the land to the builders, otherwise there was no reason just to acquire the land and keep it unutilized for a decade. The land which has been released from acquisition, for that the license was also given to the builders after issuance of notification under Section 4 of the Act, however, before the notification under Section 6 of the Act was issued, the plea that there was modification of the license earlier granted in the year 1997, is merely an eyewash as the fact that the use of the land was changed from residential to commercial in the year 2007 itself establishes the fact that license may have been granted in the year 1997 but the land had not been utilized by them and had been lying vacant but still not acquired.

(6) It was further submitted by learned counsel for the petitioners that part of land which was initially notified under Section 4 of the Act was released from acquisition finally by not passing any award itself establishes colourable exercise of power and the discriminatory and arbitrary action of the official respondents.

(7) It was further submitted that the report of the Collector is one of the major step in the process of acquisition and has importance in the process where complete application of mind is required. It is not merely an eyewash, as has been done in the present case. Further the opinion of the Government on the report of the Collector is also very important, as application of mind is required at every stage.

(8) On the other hand, learned counsel for the State submitted that the license was granted to the builders in the year 1997. No doubt, some portions of land for which the license was granted was out of joint khewat. However, when the licence was granted, none of the co-owners raised any objection to the specific area which was included in the permission while granting license. Even if no construction had been raised by the licensee, till such time notification under Section 4 of the Act was issued, the license did not lapse as on payment of requisite charges, it was being renewed. On a request made by the licensee on 14.8.2007, some part of the land, for which licence was granted in the year 1997, was de-licensed and a fresh license was granted on 5.10.2007. It was approved by the then Chief Minister on 14.8.2007. It was not disputed that at the time of issuance of notification under Section 4 of the Act, the land was lying vacant. He referred to various policies of the State issued from time to time regarding non acquisition

of land for which license had been granted or regarding release of land. Part of land was released from acquisition so as to ensure that it was developed in a planned manner.

(9) Regarding non-mentioning of areas against specific khasra number in notification issued under Section 4 of the Act, learned counsel for the petitioners submitted that the same is not fatal as the details and the purpose have already been mentioned. All the landowners filed objections raising all pleas, there was no prejudice to any one. It was not a case where there was any error in publication of notification either in gazette or in the newspapers or otherwise. The error is not fundamental.

(10) As regards acquisition of part of land pertaining to khsara number 2413 is concerned, it was submitted that for this small portion of land, license was granted for the reason that it was in occupation of the builders. Even if the revenue record is not suggesting any partition but all the co-shares were in possession of their respective shares and on the basis thereof it is clearly suggested that the land had been partitioned.

(11) As regards the hearing of objections under Section 5-A of the Act is concerned, it was submitted by learned counsel for the State that copies of the notices sent to the landowners are available on record, however, there is no report of service. He further fairly submitted that there is no record available regarding hearing of objections, where presence of landowners had been marked. Only report of the Collector sent to the Government is available on file. It was further not disputed that even notices addressed to all the landowners were not available on record.

(12) Regarding planning of the acquired portion of land, it was submitted by learned counsel for the State that as no request had been received from the Haryana Urban Development Authority, the District Town & Country Planner had not prepared any plan. Regarding acquisition of small portion of land, reference was made to judgment of this Court in CWP No. 19374 of 2007 – ***Rajpal Yadav and others*** versus ***The State of Haryana and others***, decided on 1.4.2015, to submit that the same is required for planned development of the area, otherwise small-small portions of land left out in the sectors results in haphazard development, whereas the object is to have planned development.

(13) In response to the arguments raised by learned counsel for the State, learned counsel for the petitioners submitted that non-grant of opportunity of hearing of objections filed by the petitioners under Section 5-A of the Act is admitted. Hence, all consequence proceedings thereto would be illegal. In case the land is sought to be acquired for handing over the same to the builders for proper development of the area, then the procedure provided under the Act is required to be followed. In the absence thereof, the acquisition would be bad.

(14) Heard learned counsel for the parties and perused the paper book.

(15) The primary issue sought to be raised by learned counsel for the petitioners is that acquisition of land measuring just 3.477 acres, that too located at different-different places in small-small portions, will be of no use for the State, especially for the purpose the same is sought to be acquired. The purpose mentioned in the notification is for use as residential, commercial and institutional Sectors 53-54, Gurgaon. The area had not been specifically mentioned in the notification issued under Section 4 of the Act to enable the persons concerned to file objections objectively. Though the land was un-partitioned, but still the builder had been granted licence to develop colony by the authorities on the part of the land according to his choice and the more important issue sought to be raised is that no opportunity of hearing was afforded to the petitioners for hearing of the objections filed by them under Section 5-A of the Act to enable them to raise all the issues before the authorities effectively.

(16) Importance of right of the landowners with reference to filing objections, effective hearing thereof and submission of report by the Collector to the State had been subject-matter of consideration before the courts number of times. In M/s Usha Stud and Agricultural Farms Private Limited and others v. State of Haryana and others, 2013(2) RCR (Civil) 788, Hon'ble the Supreme Court considered the issue and reiterated the earlier view opining that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision. He should be given liberty to convince the authority to make recommendations against acquisition or that the proposed acquisition is not suitable for the purpose specified in the notification. He is also at liberty to produce evidence in support of his claim. After hearing the objections, the Collector, if he thinks so necessary, can make further enquiry. Thereafter, he has to make a report to the appropriate Government containing his recommendations.

The decision of the Government is final. Relevant paras thereof are extracted below:

> "31. In Raghbir Singh Sehrawats case (supra), this Court referred to the judgments in ***Munshi Singh v. Union of India (1973) 2 SCC 337, State of Punjab v. Gurdial Singh (1980) 2 SCC 471, Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, Union of India v. Mukesh Hans, 2004(4) RCR (Civil) 315: (2004) 8 SCC 14, Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, 2005(4) RCR (Civil) 289: (2005) 7 SCC 627, Radhy Shyam v. State of U. P., 2011(3) RCR (Civil) 96: 2011 (3) Recent Apex Judgments (R. A.J.) 197: (2011) 5 SCC 553*** and observed:
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> "In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme. 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."

32.In ***Kamal Trading (P) Ltd. v. State of West Bengal*** (supra), this Court again considered the scope of Section 5-A and observed:

"13. Section 5-A(1) of the LA Act gives a right to any person interested in any land which has been notified under Section 4(1) as being needed or likely to be needed for a public purpose to raise objections to the acquisition of the said land. Sub-section (2) of Section 5-A requires the Collector to give the objector an opportunity of being heard in person or by any person authorised by him in this behalf. After hearing the objections, the Collector can, if he thinks it necessary, make further inquiry. Thereafter, he has to make a report to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the appropriate Government and the decision of the appropriate Government on the objections shall be final.

14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, "public purpose" is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15.Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collectors recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A

(2). As said by this court in Hindustan Petroleum Corpn. Ltd., the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind."

33. 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 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]

Finally, the notification issued under Section 6(1) of the Act was quashed, however, the State was given liberty to take fresh decision after objectively considering the objections filed by the appellants before Hon'ble the Supreme Court.

(17) In the case in hand, it remained undisputed that notification under Section 4 of the Act was issued on 19.1.2007. The petitioners filed objections on 15.2.2007, however, undisputedly no notice was served upon the petitioners for hearing of objections and the report was sent by the Collector recommending acquisition of land. Even at the time of hearing as well, learned counsel for the State had not been able to produce any record showing that notice was ever served upon the petitioners for hearing of objections in terms of the provisions of Section 45 of the Act, which lays down the procedure for the purpose or that they were heard personally. Meaning thereby, the petitioners have been deprived of their valuable right of hearing of objections filed by them to object to the acquisition of land. Without affording opportunity of hearing to the petitioners/landowners, recommendations were sent by the Collector to the Government.

(18) There being clear violation of principles of *audi alteram. partem*, while considering the objections filed by the petitioners under Section 5-A of the Act, in our view, the action taken by the State subsequent thereto deserves to be set aside, namely, the notification issued under Section 6 of the Act and consequently the award pertaining to the land owned by the petitioners. Ordered accordingly. However, the judgment will not preclude the State from taking fresh decision after considering the objections filed by the petitioners under Section 5-A(1) of the Act in accordance with law. The interim stay granted by this court shall continue for a period of three months to enable the State to carry out the exercise, if it so desires. It is made clear that if the final decision taken by the State is adverse to the petitioners, they shall be at liberty to avail of their appropriate remedy in accordance with law.

(19) The writ petition stands disposed of, accordingly.

Sumati Jund