

(6) Before parting with the judgment, we may notice two more decisions which were relied upon by the learned counsel for the respondents. In *Dev Pal Kashyap v. M/s. Sant Ram Narinder Mohan Cloth Merchants and another*, (9) the question involved was as to whether an appeal would be barred by the provisions of Section 96(3) of the Code of Civil Procedure against a consent decree or not. The right of appeal is a substantive right and not a procedural one, and as such the provisions of the Code of Civil Procedure were rightly held to be not applicable. In the other case — *Punjab Chemi Plants Ltd. v. G. S. Malhotra*, (10) it was held that the provisions of Order 8 rule 10 of the Code being penal in nature could not be invoked to shut out the defence of the respondents. The case is obviously distinguishable and has no bearing on the issue in hand because the provision involved does not relate to any general principle of law governing the judicial or quasi-judicial proceedings.

(7) In the result, the question of law referred to us is answered in the affirmative and it is held that a second petition for the ejection of the tenant on a ground on which an earlier petition was got dismissed as withdrawn without liberty to file a fresh petition would be barred and not maintainable. The case would now go back to the learned Single Judge for disposal of the petition on merits.

S. C. K.

Before M. R. Agnihotri, J.  
OM PARKASH,—Petitioner.

versus

THE STATE OF HARYANA and another,—Respondents.

Civil Writ Petition No. 2015 of 1985.

November 11, 1987.

*Land Acquisition Act (1 of 1894)—Section 5-A—Financial Commissioner's Standing Order No. 28—Para 19-A—Objections against acquisition—Inquiry under Section 5-A—Right of hearing—Notice of objections not issued to department—Omission—Whether amounts to improper consideration and disposal of objections—Effect on acquisition—Stated.*

(9) 1983 (2) R.C.R. 6.

(10) 1982 (1) R.L.R. 130.

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*Held*, that the omission to issue notice to the department concerned invalidates and renders the consideration and disposal of the objections filed under Section 5-A as illegal. Further, according to para 19-A of the Financial Commissioner's Standing Order No. 28, which is binding on the Collector and other functionaries of his office, the enquiry envisaged by Section 5-A of the Land Acquisition Act, 1894 is quasi-judicial in nature as it has civil consequences of depriving a person of his property. Therefore, the opportunity intended to be granted to the objector has to be of substance and not of form only. It is, therefore, incumbent on the authorities disposing of the objections that merits of objections must be dealt with. Otherwise, it would be no consideration of the objections at all in the eye of law. Hence it has to be held that for want of proper consideration and disposal of the objections, the notifications under Sections 4 and 6 of the Act are liable to be quashed.

(Para 6).

*Petition under Articles 226/227 of the Constitution of India praying that :—*

- (a) *the records of the case be called for and after perusing the same, issue a writ of certiorari for quashing the notification, Annexure P/5 ;*
- (b) *any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case be issued.*
- (c) *service of advance notices on the respondents be dispensed with.*
- (d) *Filing of certified copies of Annexure P/1 to P/5 may be exempted ;*
- (e) *Costs of the petition be awarded to the petitioner against the respondents ;*
- (f) *It is further prayed that during the pendency of the writ petition, the respondents to be restrained from raising construction on the site in dispute ;*
- (g) *any other relief which is just and proper in the circumstances of the case be awarded to the petitioner.*

Gopi Chand, Advocate, for the Petitioner.

Mani Ram, Advocate, for A.G. (Haryana), for the Respondents.

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**JUDGMENT**

*M. R. Agnihotri, J.*

(1) This judgment will dispose of C.W.P. Nos. 1526 and 2015 of 1985 in which common questions of fact and law are involved. For reference sake, the facts have been taken from C.W.P. No. 2015 of 1983.

(2) The petitioner is owner of a plot of land bearing Killa No. 54/5/1, measuring 1 Kanal, situated in the abadi area of village Dharuhera, tehsil Rewari, district Mohindergarh, in the State of Haryana. On 16th June, 1981, a draft plan for the development of Dharuhera was framed by the Department of Town and Country Planning, Haryana, which was notified in the Haryana Government Gazette. In this plan, a plot of land measuring 12 acres was earmarked for construction of bus stand. Thereafter, on 9th August, 1983, a notification under section 4 of the Land Acquisition Act, 1894, was issued by the State of Haryana for acquiring six acres of land in village Dharuhera for the construction of bus stand. On the same day, that is, on 9th August, 1983, the notification under section 6 of the Act was also issued. Out of the land proposed to be acquired for the aforesaid purpose, the land measuring 5 Kanals and 6 Marlas belonged to Sarvshri Rao Bhup Singh, Smt. Ishwari Devi, Smt. Shakuntla Devi Rao, Shiv Rattan Singh and others, while the remaining land measuring 1 Kanal was owned by the petitioner. This piece of land abutted on the Jaipur-Delhi National Highway road, which is of great potential value on account of its strategic position, being adjacent to the site of the proposed bus stand and the location on the main road.

(3) Soon thereafter, in addition to the land for which notification under section 4 of the Land Acquisition Act was issued on 9th August, 1983, yet another notification under section 4 of the said Act was published in the Haryana Government Gazette, dated 27th October, 1983 (Annexure P-3). This notification was issued in exercise of the emergency powers conferred by Section 5-A of the Land Acquisition Act and was followed by a notification under section 6 of the Act also on the same date. Aggrieved by the aforesaid notification, the petitioner filed C.W.P. No. 125 of 1984, which was disposed of by a Division Bench of this Court on 8th

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February, 1984, by the following order :—

“Mr. Bishnoi submits that the State Government shall not invoke urgency provisions in regard to the land in dispute ; that the petitioner would be entitled to file objections under section 5-A of the Land Acquisition Act, 1894 within thirty days from today and that in case the objections are filed within the said period, then the same shall be disposed of on merits in accordance with law.

In view of what is stated by Mr. Bishnoi, Mr. Gopi Chand, learned counsel for the petitioner, states that this petition be dismissed as withdrawn. We order accordingly.

Before parting with the order, it may be observed that Mr. Gopi Chand states that the petitioner shall not raise any construction over the land in dispute till his objections are decided by the State Government.

Sd/- Prem Chand Jain,  
Acting Chief Justice,  
Sd/- I. S. Tiwana  
Judge ”.

(4) Accordingly, the petitioner filed his objections to the acquisition under section 5-A of the Land Acquisition Act, whereupon the State of Haryana, respondent No. 1, issued a fresh notification under section 6 of the Act, on 11th September, 1984, Annexure P-5. The present writ petition has challenged the legality, validity and propriety of the notifications issued on 27th October, 1983 (Annexure P-3) and 11th September, 1984 (Annexure P-5), on the variety of grounds, including the absence of cogent reasons for the exercise of emergency powers for dispensing with the entertainment of the objections under section 5-A of the Land Acquisition Act earlier, change of the site of bus stand without complying with the provisions of the Punjab Scheduled Roads Controlled Areas Restriction of Unregulated Development Act, 1963, non-observance of the provisions of the Financial Commissioner's Standing Orders, non-application of mind by the Land Acquisition Collector while disposing of the objections under section 5-A of the Land Acquisition Act, proximity of School, Health Centre, Fire Station, etc. to the proposed bus stand and non-acquisition of the vacant land available for the aforesaid purpose and acquisition of the land of the petitioner for extraneous considerations due to allegations of *mala fides* arising out of political enmity.

(5) In reply to the writ petition written statement was filed by the Under-Secretary to Government, Haryana, Transport Department, on behalf of respondent No. 1, the State of Haryana, and respondent No. 2 Land Acquisition Collector, Rewari, in which the proposed acquisition is sought to be justified. In the written statement it has been stressed time and again that various sites for construction of bus stand at Dharuhera were inspected and ultimately it was decided that the land in question was most suitable for being acquired for the purpose of bus stand. It has been stated that the objections filed by the petitioner before the Land Acquisition Collector, Rewari, were duly considered but the same were rejected as there was no force in the same. The allegations of political rivalry have also been refuted. Later on, a supplementary affidavit was also filed by the Joint State Transport Controller, Haryana, stating that there was no alternative site which was as suitable as the one in question from the point of view of the nearness to the main abadi exit/entrance to the main road and the adequate area required for the bus stand. The site was, therefore, considered most suitable for the construction of bus stand at Dharuhera. It is further admitted that while issuing the original notification dated 9th August, 1983, for the acquisition of land for the bus stand at Dharuhera, the area of 6 Kanals and 6 Marlas of land was either deliberately or through error omitted.

(6) After hearing the learned counsel for the parties and having gone through their pleadings, I am of the considered view that the objections filed by the petitioner have not been considered in accordance with law. As a result thereof, unless the same is done, the proposed acquisition, in pursuance of the impugned notifications, dated 27th October, 1983 (Annexure P-3) and 11th September, 1984 (Annexure P-5) cannot be permitted to proceed further. The learned counsel for the petitioner has placed reliance on the unreported judgment of the Supreme Court in *M. Maniklal v. The State of Mysore and others*, (1) *Pt. Mehar Chand and others vs. The State of Haryana and another*, (2) and *Lenuppan v. Sub-Collector, Palghat*, (3) to contend that the object of the Legislature

(1) Civil Appeal No. 1948 of 1968 decided on 23rd November, 1976-77 U.J.C.S.C. 35.

(2) 1983 P.L.J. 25.

(3) AIR 1959 Kerala 343.

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in enacting section 5-A was that no final order directing acquisition should be made by Government without giving the owner of the land proposed to be acquired or persons interested in it an opportunity to put forward their objections to the proposed acquisition and without the Government considering these objections. In order to implement and further the object of Section 5-A, notice to the concerned department was necessary to be issued before the hearing of the objections filed under Section 5-A in order to provide an opportunity to the department for the original requisition being reviewed or reconsidered in the light of the objections raised by the owner of the land and other persons interested in it. The omission to issue notice to the department concerned invalidates and renders the consideration and disposal of the objections filed under section 5-A as illegal. Further, according to para 19-A of the Financial Commissioner's Standing Order No. 28, which is binding on the Collector and other functionaries of his office, the enquiry envisaged by Section 5-A of the Land Acquisition Act is quasi-judicial in nature as it has civil consequences of depriving a person of his property. Therefore, the opportunity intended to be granted to the objector has to be of substance and not of form only. Therefore, it is incumbent on the authorities disposing of the objections that merits of objections must be dealt with. Otherwise, it would be no consideration of the objections at all in the eye of law. Since in the present case, there has not been any compliance of the Financial Commissioner's Standing Order nor was any notice issued to the concerned department, much less the availability of record, indicating any proper consideration and disposal of the objections raised by the petitioner under section 5-A of the Land Acquisition Act, I have no option but to issue a writ of *certiorari* and quash the impugned notifications dated 27th October, 1983, and 11th September, 1984, so far as the petitioners in these two writ petitions are concerned.

(7) Consequently, both these writ petitions are allowed. The petitioners shall also be entitled to the costs of the petition which are *quantified* at Rs. 1,000 in each writ petition.

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R. N. R.