

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2557 OF 2013

M/s. Usha Stud and Agricultural Farms
Private Limited and others

...Appellants

versus

State of Haryana and others

...Respondents

WITH

CIVIL APPEAL NO.2576 OF 2013

CIVIL APPEAL NO.2577 OF 2013

CIVIL APPEAL NO.2578 OF 2013

CIVIL APPEAL NO.2580 OF 2013

CIVIL APPEAL NO.2582 OF 2013

CIVIL APPEAL NO.2583 OF 2013

CIVIL APPEAL NO.2584 OF 2013

JUDGMENT

G. S. Singhvi, J.

1. Whether the acquisition of the appellants' land is vitiated due to violation of Sections 5-A and 6(1) of the Land Acquisition Act, 1894 (for short, 'the Act') and whether the State Government resorted to

discrimination in the matter of release of the acquired land are the questions which arise for consideration in these appeals filed against order dated 27.1.2012 passed by the Punjab and Haryana High Court.

2. By notification dated 13.11.1981 issued under Section 4(1), the State Government proposed the acquisition of 1005.30 acres land of three villages, namely, Mullahera, Dundahera and Daulatpur Nasirabad (Carterpur) for the development of Sectors 21, 22, 23 and 23A of Gurgaon. The appellants, whose land measuring 52.74 acres situated in village Daulatpur Nasirabad (Carterpur) was included in the notification, filed objections under Section 5-A(1). The Land Acquisition Collector submitted report under Section 5-A(2) and recommended the acquisition of 702.37 acres land. As regards the appellants' land, the Land Acquisition Collector opined that Stud Farm cannot be allowed to remain in the residential zone and, therefore, the entire land may be acquired except the portion on which residential building had been constructed. The State Government accepted the recommendations of the Land Acquisition Collector and issued five separate declarations under Section 6(1). For 91.98 acres land of village Daulatpur Nasirabad (Carterpur), the declaration was published in the Official Gazette dated 15.11.1984.

3. The appellants challenged the acquisition of their land in Writ Petition No.5623/1984 which was dismissed by the High Court along with other similar petitions.

4. The appellants then filed Special Leave Petition (C) No.2302/1986.

During the pendency of the matter before this Court, the State Government released the land belonging to M/s. Jawala Textiles Ltd., M/s. Rani Shaver Poultry Farm Ltd., M/s. Enfilco Ltd., M/s. Indo Swiss Time Limited and M/s. Omega Commercial (Pvt.) Ltd.

5. On 13.7.1986, the Chief Town Planner, Haryana submitted a note for release of the appellants' land subject to the condition that they should withdraw the Special Leave Petition. The appellants did the needful. Thereafter, the Commissioner and Secretary, Town and Country Planning Department sent communication dated 21.8.1986 to the appellants incorporating therein the terms on which the land was released. As a sequel to this, agreement dated 8.6.1987 was executed between the appellants and Haryana Urban Development Authority (HUDA) for release of 47.74 acres land.

6. In furtherance of the agreement, the appellants deposited Rs.1,00,000/- which, according to them, were towards the first instalment of the development charges. However, before the other terms of agreement could be acted upon, the State Government issued fresh notification dated 7.12.1988 under Section 4(1) for the acquisition of 55.10 acres land including the land owned by the appellants. They filed detailed objections dated 4.1.1989, the salient features of which were:

(i) they had established Stud Farm on the acquired land by spending

substantial amount for breeding, rearing and exporting horses and were doing other activities like animal husbandry, agriculture, horticulture, nursery and dairy farming;

- (ii) they had grown 5,000 trees on the land and also constructed ‘A’ class buildings worth several crores of rupees;
- (iii) the purpose of acquisition was vague;
- (iv) the notification issued under Section 4(1) was not published in two newspapers and was not affixed in the vicinity of the acquired land, and
- (v) the decision of the State Government to acquire their land was discriminatory and violative of Article 14 of the Constitution.

7. Land Acquisition Collector, Urban Estate, Gurgaon submitted report dated 17.11.1989 with the recommendation that the land of the appellants may not be notified because the same had already been released from acquisition. Similar recommendation was made by the Chief Town and Country Planner. However, the State Government did not accept their recommendations and issued a declaration under Section 6(1), which was published in the Official Gazette dated 6.12.1989.

8. The appellants challenged notifications dated 7.12.1988 and 6.12.1989 in Writ Petition Nos. 3820-3823/1991. During the pendency of those petitions, the Land Acquisition Collector passed award dated 5.12.1991, which was followed by supplementary award dated 25.8.1993.

Thereupon, the appellants filed Writ Petition Nos. 1152-1155/1994 and prayed for quashing of the awards.

9. While the writ petitions filed by them were pending, the appellants made an application to the competent authority for permission to use the acquired land for group housing. The Additional Director, Urban Estates recommended the release of 37.906 acres land in favour of the appellants but no final decision was taken in the matter apparently because the writ petitions filed by them were pending.

10. M/s. Rani Shaver Poultry Farm Ltd., M/s. Indo Swiss Time Ltd., and M/s. Kanodia Petro Products Ltd., successor of M/s. Jawala Textile Mills, whose lands were acquired in 1981 but were released by the State Government and were re-acquired vide notification dated 11.9.1990 filed Writ Petition Nos. 11679/1993, 10456/1993 and 3942/1992 for quashing the same. After receiving the notices issued by the High Court, the State Government/HUDA executed separate agreements with them and released substantial portion of their land. As a sequel to this, the writ petitions were dismissed as withdrawn. However, the writ petition filed by M/s. Enfilco Ltd. was dismissed by the High Court. When the matter was carried to this Court (Civil Appeal No.4359/1994) an agreement was executed between HUDA and M/s. Enfilco Ltd. and major portion of its land was released.

11. In the writ petitions filed by them, the appellants highlighted the discrimination practiced against them. They pleaded that the Stud Farm

established by them is covered by the term ‘agriculture’ defined in Section 2(1) of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short, ‘the 1963 Act’) and they had raised constructions in consonance with the provisions of that Act. The appellants further pleaded that even though the Land Acquisition Officer and the Chief Town Planner had recommended the release of their land, the State Government arbitrarily issued the declaration under Section 6(1) by wrongly assuming that the entire land was lying vacant.

12. In the counter affidavits filed on behalf of the respondents, it was averred that the objections filed by the appellants were duly considered and final decision to acquire their land was taken by the highest political functionary of the State, i.e., the Chief Minister. It was further averred that the construction made by the appellants was contrary to the provisions of the 1963 Act because they had not obtained permission from the competent authority. The respondents also pleaded that rearing and breeding of horses is a commercial activity, which could not have been undertaken by the appellants without obtaining sanction from the competent authority for change of land use.

13. The Division Bench of the High Court rejected the contentions raised on behalf of the appellants and dismissed the writ petitions. While dealing with the question whether the acquisition of the appellants’ land was vitiated due to violation of Section 5-A(2), the Division Bench observed as

under:

“As regards the contention of the counsel for the petitioners that since the Land Acquisition Collector has not made any recommendation in his report while considering the objections filed by the petitioners under Section 5-A of the Act, the same only requires to be noted and rejected for the simple reason that the Collector is not the competent authority to decide the objections under Section 5-A of the Act raised by the land owners against the acquisition. He is required to submit his report as it existed on the spot as he is required to enquire into the objections, record the statements of the parties, inspect the sites and send his report to the State Government. Along with his report he may make recommendation or may not do so because it has no bearing as the competent authority to take decision on the objections is the State Government. Thus, for the failure to make any recommendation by the Collector, acquisition proceedings cannot be quashed on the ground that it violates the procedure or deny the rights conferred on the land owners under Section 5-A of the Act.”

14. The Division Bench of the High Court also negatived the appellants' plea of discrimination in the following words:

“A ground of discrimination has been raised by the petitioners alleging that in an earlier acquisition in the year 1981, petitioners and other similarly placed Companies, namely, M/s Rani Shaver Poultry Farm, M/s Omega Commercial Pvt. Ltd., Anand Purifier (now M/s Enfilco Ltd.), Indo Swiss Time Ltd., M/s Jawala Textile Mills, had challenged the said acquisition by filing independent writ petitions. These writ petitions were dismissed and during the pendency of the Special Leave Petitions before the Supreme Court, an agreement was entered into and the land of the petitioners as also these Companies were released from acquisition. Thereafter, while notification for acquisition of the land of the petitioners was issued, land of other companies was not re-acquired. This objection was raised under Section 5-A of the Act, which led to the issuance of the notifications for acquiring the land of other companies also. As the petitioners challenged, similarly other companies also challenged the notifications. During the pendency of the writ petitions, agreements were entered into between these companies and respondents and on the basis of these agreements, writ petitions were withdrawn by these companies as their lands stood released from acquisition except that in the case of M/s Enfilco. This contention of the petitioners can also not be accepted as it is not in dispute that the acquisition, through which the lands of these companies were acquired, was different from the notifications issued for acquisition of the land of the petitioners. The judgments relied upon by the counsel for the petitioners in the case of Hari Ram

and another (supra), M/s Aggarwal Paper Board and Allied Industries (supra), Chandu Singh (supra) and Anil Kakkar (supra) would not be applicable to the facts of the present case for the reason that in those cases, the land, which was being acquired and discrimination qua which was raised by the land owners, was the same whereas the notifications for acquisition are different in the present case.”

15. Shri Soli Sorabjee and Shri Pallav Shishodia, learned senior counsel appearing for the appellants, argued that the impugned order is liable to be set aside because the finding recorded by the High Court on the issue of discrimination is ex-facie erroneous. Learned senior counsel emphasized that the lands belonging to the appellants and those of M/s. Rani Shaver Poultry Farm Ltd. and others were acquired for developing different sectors of Gurgaon and, therefore, the State Government was not at all justified in adopting different yardsticks in the matter of release of the acquired land. Shri Sorabjee submitted that if the lands of M/s. Rani Shaver Poultry Farm Ltd. and others were released on the ground that the same had already been utilised for establishing industrial units, the same treatment should have been accorded to the appellants because they had not only established Stud Farm for rearing and breeding of horses but also started agricultural, horticulture, animal husbandry, nursery and dairy farming and planted 5,000 trees. Learned senior counsel criticized the view expressed by the High Court on the issue of compliance of Section 5-A and argued that the same is contrary to the law laid down by this Court in Raghbir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792 and Kamal Trading (P) Ltd. v. State of West Bengal (2012) 2 SCC 25.

16. Shri Neeraj Jain, learned senior counsel appearing for the respondents, supported the impugned order and argued that the High Court did not commit any error by dismissing the writ petitions. Shri Jain submitted that the appellants cannot seek invalidation of the acquisition proceedings on the ground of violation of Section 5-A because final decision to acquire the land was taken by none other than the Chief Minister. He submitted that the role of the Land Acquisition Collector ended with the making of recommendations and it was for the State Government to decide whether or not the particular piece of land should be acquired for the specified public purpose. Shri Jain further argued that the State Government cannot be accused of practicing discrimination because while the lands belonging to M/s. Rani Shaver Poultry Farm Ltd. and others had already been used for industrial, commercial and other purposes, those owned by the appellants were lying vacant.

17. We have considered the respective arguments. We shall first consider whether the reason recorded by the High Court for rejecting the appellants' plea of discrimination is legally correct. It is not in dispute that the lands owned by the appellants and M/s. Rani Shaver Poultry Farm Ltd. and four others were acquired for one and the same purpose i.e. the development of Sectors 21, 22, 23 and 23A of Gurgaon. Therefore, once the State Government took a conscious decision to release the lands of M/s. Rani Shaver Poultry Farm Ltd. and four others, albeit by executing agreements with them, there could be no justification whatsoever for not

according similar treatment to the appellants. As will be seen hereafter, the solitary reason put forward by the respondents for not releasing the appellants' land, namely, that most of it was lying vacant was ex-facie erroneous. In this context, it will be apposite to take cognizance of the notings recorded by the officers and the Special Secretary to the Chief Minister of the State on the objections filed by the appellants:

(i) **09.10.1989**

"For acquiring pie land of Usha stud farm and Agricultural farms, Gurgaon, Sector-4 notification dated 7.12.88 was advertised in national newspaper the Tribune on 14.12.88 and in The NAV BHARAT Times on 17.12.88. It was issued in the vicinity on 9.12.88. Section 5-A objections were received from four persons which are put in the file. The report of the land acquisition collector is marked on page "K".

I have studied the objections. The details of the development on this land before section 4 has been made which can be seen on page B . On the shajra plan this development has also been marked which is at page " kh". Out of the total land of 55 Acres A class construction is on 1K-11M, Class B construction is on 18 Maria and class C and D construction is on 6 k. In my view the class A construction of residential accommodation should not be acquired while the rest of the land should be acquired.

One of the objections raised by the objectors is that earlier when the land of the objectors was released land of other land owners like Rani Shaver Farm, Jwala Textile Mills, and Indo-swiss Times ltd and others land was also released. But now only the land of the objectors is being re acquired while not of the others. In order to get to get a solution to this objection, it is my suggestion that before we issue Section 6 notification in respect of the land of the objectors, we should issue Section 4 notification to re acquire the land of the others so that the objectors do not have the ground of discrimination available.

The objectors have also written that when their land was released earlier they had deposited the development charges. My view on this may be seen on page 65 whereby it is clear that the objectors had sent a cheque of 1 lakh of Rupees to the Estate Officer, HUDA, Gurgaon without being asked to do so. In my view, in case this cheque has already not been returned then the Estate Officer should be instructed to return the cheque immediately.

Sd/-

Additional Director Urban Estates
9-10-1989”

(ii) **09.11.1989**

“The objection of M/s Usha Stud and Agricultural Farm, Gurgaon whose lands are now to be notified, u/s 6 of the LA. Act have clearly stated the aspect of discrimination since, lands in respect of M/s Rani Shaver, Jawala Textile Mills Indian Swiss Time Ltd. notified for acquisition in Nov., 1981 along with Usha Stud simultaneously and subsequently all these were released.

However, now only lands of M/s Usha Stud and Agricultural Farms are proposed to be acquired leaving the other lands.

The ADUE has therefore proposed that to remove any plea of discrimination the lands of M/s Rani Shaver, Jawala Textile Mills and Indo Swiss time should also now be acquired and therefore notified simultaneously.

To my mind this would not a practicable proposition since all these are functioning enterprises and to disturb and disrupt them through acquisition would not be appropriate.

Therefore keeping into consideration the aspect of discrimination and the report of ADUE the Government may take an appropriate view regarding notifying this land u/s 6 which should have to be done prior to 6.12.89.

Sd/-

D. U. E.

9-11-89”

C.T.C.P.

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(iii) **17.11.1989**

“In view of the position explained by the DUE, we need not issue the notification under Section 6 for this land. This land was earlier released from acquisition on the grounds mentioned on Pages 13 to 17 (LFII) (Noting portion), There is no change in the situation even now.

Dy. CM(I)/CM may kindly see for approval.

Sd/- C.T.C.P.

17.11.89

Dy.C.M.(I)

Sd/-Dy. CM

27.11.89”

CM.

(iv) **05.12.1989**

“Reg. Acquisition of land of M/S Usha Stud Agricultural Farm, Gurgaon.

C.M. has ordered that the notification under section 6 for the acquisition of land of M/S Usha Stud Agricultural Farm may be issued because it is mostly lying vacant. He has further ordered that vacant lands belonging to M/S Rani Showers Farm and Jawala Textiles may also be notified for acquisition.

Sd/-SSCM

5.12.89.”

18. A reading of the above reproduced notings makes it clear that while the Additional Director and the Director, Urban Estates Department had treated the appellants' case as similar to M/s. Rani Shaver Poultry Farm Ltd. and others, the Chief Minister ordered the issue of notification under Section 6(1) in respect of the land of appellant No.1 by assuming that major portion of it was lying vacant. Of course, he also ordered that the vacant lands belonging to M/s. Rani Shaver Poultry Farm Ltd. and Jawala Textiles may also be notified for acquisition. It is a different thing that in the second round also the lands owned by M/s. Rani Shaver Poultry Farm Ltd. and four others were released during the pendency of the writ petitions and the civil appeal filed by them. It is intriguing that while ordering the issue of notification under Section 6(1), the Chief Minister did not even advert to the objections filed by the appellants and the report made by the

Land Acquisition Collector under Section 5-A(2). He was totally oblivious of the fact that the appellants had already utilised substantial portion of their land for establishing Stud Farm and for other activities, like, animal husbandry, agriculture, horticulture, nursery and dairy farming and had also constructed a large number of buildings by spending crores of rupees and planted 5,000 trees. Be that as it may, the direction given by the Chief Minister for the issue of notification under Section 6(1) without considering the objections of the appellants and other relevant factors must be held as vitiated due to non application of mind.

19. What is most surprising is that not only the Chief Minister, but the High Court also overlooked the fact that after the Chief Minister had ordered acquisition of vacant land belonging to M/s. Rani Shaver Poultry Farm Ltd. and others and notification dated 11.9.1990 was issued, the State Government and/or HUDA executed agreement with them and released the acquired land leaving out the appellants' land and in this manner they were subjected to hostile discrimination.

20. We also find merit in the argument of the learned senior counsel for the appellants that the declaration issued by the State Government was vitiated due to violation of Section 5-A (2) read with Section 6(1). For the sake of reference, Sections 4, 5-A and 6 of the Act are reproduced below:

“4. Publication of preliminary notification and powers of officers thereupon.—(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public pur-

pose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5-A. Hearing of objections.—(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose.—(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1)—

(i) * * *

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.—Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.”

21. An analysis of the above-reproduced provisions shows that Section 4 empowers the appropriate Government to initiate the proceedings for the acquisition of land. Section 4(1) lays down that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, then a notification to that effect is required to be published in the Official Gazette and two daily newspapers having circulation in the locality. Of these, one paper has to be in the regional language. A duty is also cast on the Collector, as defined in Section 3(c), to cause public notice of the substance of such notification to be given at convenient places in the locality. The last date of publication and giving of public notice is treated as the date of publication of the notification.

22. Section 4(2) lays down that after publication of the notification under Section 4(1), any officer authorised by the Government in this behalf, his servants or workmen can enter upon and survey and take levels of any land in the locality, dig or bore into the sub-soil, and to do all other acts necessary for ascertaining that the land is suitable for the purpose of acquisition. The officer concerned, his servants or workmen can fix the boundaries of the land proposed to be acquired and the intended line of the work, if

any, proposed to be made on it. They can also mark such levels and boundaries by marks and cutting trenches and cut down and clear any part of any standing crops, fence or jungle for the purpose of completing the survey, and taking level, and marking of boundaries and line. However, neither the officer nor his servants or workmen can, without the consent of the occupier, enter into any building or upon any enclosed court or garden attached to a dwelling house without giving seven days' notice to the occupier.

23. Section 5-A, which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. The Collector is required to give the objector an opportunity of being heard either in person or by any person authorised by him or by pleader. After hearing the objector(s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under Section 4(1) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired.

24. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) which lays down that if after considering the report, if any, made under Section 5-A(2), the appropriate

Government is satisfied that any particular land is needed for a public purpose, then a declaration to that effect is required to be made under the signatures of a Secretary to the Government or of some officer duly authorised to certify its orders. This section also envisages making of different declarations from time to time in respect of different parcels of land covered by the same notification issued under Section 4(1). In terms of clause (ii) of the proviso to Section 6(1), no declaration in respect of any particular land covered by a notification issued under Section 4(1), which is published after 24.9.1989 can be made after expiry of one year from the date of publication of the notification. To put it differently, a declaration is required to be made under Section 6(1) within one year from the date of publication of the notification under Section 4(1).

25. In terms of Section 6(2), every declaration made under Section 6(1) is required to be published in the Official Gazette and in two daily newspapers having circulation in the locality in which the land proposed to be acquired is situated. Of these, at least one must be in the regional language. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places in the locality. The declaration to be published under Section 6(2) must contain the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area or a plan is made in respect of land and the place where such plan can be inspected.

26. Section 6(3) lays down that the declaration made under Section 6(1) shall be conclusive evidence of the fact that land is needed for a public purpose.

27. After publication of the declaration under Section 6(1), the Collector is required to take order from the State Government for the acquisition of land and cause it to be measured and planned (Sections 7 and 8). The next stage is the issue of public notice and individual notice to the persons interested in the land to file their claim for compensation. Section 11 envisages holding of an enquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23.

28. In Munshi Singh v. Union of India (1973) 2 SCC 337, this Court emphasised the importance of Section 5-A in the following words:

“ ... Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A.”

29. In State of Punjab v. Gurdial Singh (1980) 2 SCC 471, the Court observed as under:

“ ... it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does 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 enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.”

30. In Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, this Court reiterated that compliance of Section 5-A is mandatory and observed:

“ ... The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument.”

31. In Raghbir Singh Sehrawat's 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) 8 SCC 14, Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai (2005) 7 SCC 627, Radhy Shyam v. State of U.P. (2011) 5 SCC 553 and observed:

“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 Collector's 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 Corp. 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).

34. As a sequel to the above discussion, we hold that the decision taken at the level of the Chief Minister was not in consonance with the scheme of Section 5-A(2) read with Section 6(1). We further hold that the State Government's refusal to release the appellants' land resulted in violation of their right to equality granted under Article 14 of the Constitution.

35. In the result, the appeals are allowed, the impugned order is set aside and the declaration issued by the State Government under Section 6(1) is quashed. However, it is made clear that this judgment shall not preclude the State Government from taking fresh decision after objectively considering the objections filed by the appellants under Section 5-A(1).

36. If the final decision of the State Government is adverse to the

appellants, then they shall be free to challenge the same before an appropriate judicial forum and urge all legally permissible contentions in support of their cause.

.....J.
(G.S. SINGHVI)

.....J.
(RANJANA PRAKASH DESAI)

.....J.
(KURIAN JOSEPH)

New Delhi;
April 02, 2013.

JUDGMENT