

**COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CJ Court

Reserved on : 21.12.2021

Pronounced on : 31.12.2021

Case: OWP No. 822 of 2016

c/w

OWP No. 290 of 2016

Ashok Kumar Padha

.....Appellant/Petitioner(s)

Through :- Sh. Vikram Sharma, Sr. Advocate with
Sh. Sachin Dev Singh, Advocate in
OWP No. 822/2016
Sh. Abhinav Sharma, Sr. Advocate with
Mr. Vishal Sharma, Advocate in
OWP No. 290/2016

v/s

State of J&K and others

.....Respondent(s)

Through :- Sh. S. S. Nanda, Sr. AAG for R-1 to 5
Sh. Adarsh Sharma, Advocate for R-6

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

(Per: Javed Iqbal Wani-J)

1. The instant petitions raise akin and analogous issues, as such, are being taken up for final disposal at this stage.

2. In the first place facts those emerge from the petitions in hand are that the petitioners claim to be owner in possession of landed property situated at Village Hut, Katra, District Reasi. Some residential houses are also stated to have been constructed upon the portion of the land being owned and possessed by the petitioners, besides having agriculture land abutting thereto as a source of their livelihood.

3. A notification dated 11.08.2014 under Section 4 of the J&K Land Acquisition Act, SVT. 1990 (for brevity '*the Act*') is stated to have been issued by the respondent No. 5 -Collector Land Acquisition, (Assistant Commissioner (Rev) Reasi) for construction of Heliport at village Hut, inviting therein objections from the land owners/interested persons. The petitioners state to have submitted their objections in response to the said notification.

4. It is being stated that the respondent No. 5 without granting any opportunity of being heard to the petitioners in person and without dealing with each and every objection submitted by the petitioners forwarded a report dated 15.01.2016 to respondent No. 4-Deputy Commissioner, Reasi who is stated to have forwarded the said report on 15.01.2016 itself to respondent No. 3-Divisional Commissioner, Jammu to respondent No. 1 thereafter.

5. It is being next stated that the respondent No. 1 arbitrarily and mechanically issued notification dated 05.02.2016 under Section 6 of the Act declaring therein that the land was required for the public purpose of construction of Heliport at Village Hut, thereby directing respondent No. 5 to take order of acquisition under Section 7 of the Act. Respondent No. 5 thereafter is stated to have issued notification dated 16.02.2016 under Section 9 & 9A of the Act calling upon the land-owners to attend his office with their respective interests and particulars of claim to compensation and objections.

6. It is being contended in the grounds urged in the petitions that the respondents undertook the process of acquisition in a mechanical and arbitrarily manner, in that, the respondent No. 5 without granting an opportunity of being heard to the petitioners in person and without adverting to each and every objection raised by the petitioners to the proposed

acquisition, failed to discharge the statutory obligations/duties provided under Section 5A of the Act and that the respondent No. 1 without applying his mind and without deriving objective satisfaction and considering the fact that the respondent No. 5 had not dealt with each and every objection raised by the petitioners in response to notification dated 11.08.2014 issued notification under Section 6 of the Act.

7. Fundamentally, It is being urged *inter alia*, in the grounds of challenge that the acquisition proceedings in general and notification dated 11.08.2014 issued under Section 4 (1) of the Act by respondent No. 5 read with notification dated 05.02.2016 issued by respondent No. 1 under Section 6 of the Act and also notification dated 16.02.2016 issued by respondent No. 5 under Section 9 & 9A of the Act are arbitrary, bad and unconstitutional besides being not for the public purpose.

8. ***Per contra***, respondents 1 to 5 in their objections filed in opposition to the petitions have resisted and controverted the contentions raised and grounds urged in the writ petitions and seek dismissal of the petitions on the premise that the petitions are not maintainable, in that, there has been no violation of any of the legal, fundamental or statutory rights of the petitioners and that the proceedings for acquisition of land in question have been initiated for public propose i.e., for construction of Heliport on placement of an indent by Shri Mata Vaishno Devi Shrine Board, Katra for the land measuring 286 Kanals 13 Marlas (local) 191 Kanals 16 Marlas (standard) upon issuance of notification under Section 4(1) of the Act dated 11.10.2014 by the Collector Land Acquisition and that an opportunity of being heard was granted to the 14 objectors out of which 12 caused their appearance before the Collector and that upon considering the said

objections, the Collector submitted his report to the Government which after being satisfied thereto issued a consequent declaration under Section 6 of the Act.

9. Respondent No. 6 –Shri Mata Vaishno Devi Shrine Board has also filed objections to the petitions almost on the same lines on which the objections have been filed by respondents 1 to 5, justifying the public purpose for which the land had been sought to be acquired besides endorsing fulfillment of all statutory and legal requirement provided under the Act. In essence the respondent No. 6 as well seeks dismissal of the writ petitions fundamentally on the ground that same are not maintainable as none of the legal, fundamental or statutory rights of the petitioners have been infringed.

Heard learned counsel for the parties and perused the record.

10. Learned senior appearing counsels for the petitioners while reiterating the contentions raised and grounds urged in the respective petitions would lay emphasis on the grounds of challenge viz-a-viz non-adherence of the statutory and legal requirements by respondents 5 and 1 qua Section 5-A and Section 6 respectively.

11. Having regard to the respective pleadings of the parties coupled with the submissions made by the appearing counsel for the parties, following moot question arises for consideration in the petitions in hand:-

- (i) *Whether the respondent No. 5- Collector has discharged his statutory obligation enshrined under Section 5A of the Act in line and tune therewith qua the objections filed by the petitioners in response to notification dated 11.08.2014 issued under Section 4(1) of the Act; and whether consequently respondent No. 1 while issuing notification dated 05.02.2016 under Section 6 of the Act followed rightly the mandate contained therein.*

12. In view of the above, before proceeding further in the matter, it thus, becomes imperative to refer hereunder to Section 5A and 6 of the Act:-

“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 may within fifteen days after such land is notified in the manner prescribed in clause (a) of sub-section (1) of section 4 as being needed or likely to be needed for a public purpose, 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 either in person or by pleader or by a person authorised by him and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government on the objections shall be final.

(3) For the purpose 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 public purpose.* –

(1) When the Government is satisfied after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for public purpose, a declaration shall be made to that effect under the signature of the Revenue Minister or of some officer duly authorised in this behalf

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

(2) The declaration shall be published in official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate areas 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 land is needed for a public purpose, and after making such declaration the Government may acquire the land in manner hereinafter appearing.”

13. The law in regard to land acquisition in general and in particular the nature, scope and object of Sections 5A and 6 of the Act has been lucidly deliberated upon and laid down by the Apex Court in a long line of decisions. A reference to the judgment of the Apex Court passed in case titled as ***Kedar Nath Yadav vs. State of West Bengal and others, AIR 2016 SC 4156*** would be relevant and germane hereunder wherein following has been noticed:-

“63. In this day and age of fast paced development, it is completely understandable for the state government to want to acquire lands to set up industrial units. What, however, cannot be lost sight of is the fact that when the brunt of this ‘development’ is borne by the weakest sections of the society, more so, poor agricultural workers who have no means of raising a voice against the action of the mighty state government, as is the case in the instant fact situation, it is the onerous duty of the state Government to ensure that the mandatory procedure laid down under the [L.A. Act](#) and the Rules framed there under are followed scrupulously otherwise the acquisition proceedings will be rendered void ab initio in law. Compliance with the provisions of the [L.A. Act](#) cannot be treated as an empty formality by the State Government, as that would be akin to handing over the eminent domain power of State to the executive, which cannot be permitted in a

democratic country which is required to be governed by the rule of law.”

A reference to Para 56 of the judgment (supra) would also be appropriate hereunder:-

“56.....In the case of [Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana & Ors.](#) a three judge bench of this Court, after adverting to a catena of case law on the subject held as under:

“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](#) 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\(1\)](#).”

14. Reverting to the petitions in hand, the petitioners herein have had raised as many as six objections in response to Section 4 notification and that the Collector seemingly has not dealt with the said objections in tune

with sub-section (2) of Section 5A, which mandates affording of an opportunity to the objector viz-a-viz every objection and thereafter submitting of the case for the decision of the Government along with the record of the proceedings held by him and a report containing his recommendation on the objections.

15. Record reveals that the Collector has not considered the said objections raised by the petitioners in line with sub-section (2) of section 5A, but ironically has held the objections not maintainable liable to be rejected instead of making a recommendation thereto for taking such decision by the Government. There seems to be no application of mind by the Collector in discharge of his statutory obligation as contained in Section 5A of the Act. The respondent No. 5-Collector admittedly, has rejected the objections without assigning any clear reasons which by no sense of imagination can said to be equated with objective consideration thereof in the eyes of law. The law is no more *res-integra* that the right under Section 5A is not merely statutory, but also has the flavour of fundamental right as held by the Apex Court in **1998 AIR SCW 2507**.

16. Record further tends to show that surprisingly even the respondent No. 1 has failed to consider the matter after receipt of the report from the respondent No. 5-Collector strictly in accordance with the mandate of law enshrined under Section 6 of the Act. The respondent no. 1 while issuing impugned notification under Section 6 dated 05.02.2016 has only referred to the report of the respondent No. 5-Collector which appears to have been endorsed by respondent No. 4-Deputy commissioner, Reasi vide letter dated 15.01.2016, respondent no. 3- Divisional Commissioner Jammu dated 29.01.2016 and of the respondent No. 2-Financial Commissioner dated

30.02.2016, in one of the paras of the impugned notification. Indisputably there has been no independent application of mind by the respondent No. 1. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is *sine qua non* for issuance of a declaration under Section 6. Any violation of the substantive right of the land owners/interested persons to file objections or denial of opportunity of personal hearing or else non-consideration appropriately of their objections not only vitiates the recommendation made by the Collector, but also the decision taken thereof by the Government on the said recommendations. Failure of the Government to take objective decision on the objections in the light of the recommendation made by the Collector will denude the decision of the Government of statutory finality. The satisfaction recorded by the Government that the particular land is needed for public purpose and the declaration under section 6 (1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authority concerned or there is violation of principles of natural justice, as has been held by the Apex Court in Para 86 of the ***Kedar Nath's*** case (supra).

17. The cases in hand are illustrative of flagrant violation of mandate of Sections 5-A and 6 of the Act. Thus, we deem it appropriate to remit the matter back to the respondents for reconsideration and revisiting of the cases in accordance with law, while taking into consideration and having regard to the objections of the petitioners/objectors filed to Section 4 notification. Accordingly, impugned notification dated 05.02.2016 and consequential proceedings/notifications issued thereof are liable to be quashed.

16. Viewed thus, in the context of what has been observed, analyzed and considered hereinabove, the instant petitions are, accordingly allowed, while quashing notification dated 05.02.2016 issued under Section 6 of the Act and consequential proceedings undertaken thereof. The matter is remanded back to respondents for re-consideration and revisiting the cases of the petitioners/objectors independently in light and tune with the provisions of the Act and proceed in the matter in accordance with law.

(JAVED IQBAL WANI)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

JAMMU
31.12.2021
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