

GOJER BROTHERS PRIVATE LIMITED  
v.  
THE STATE OF WEST BENGAL AND OTHERS  
(Civil Appeal Nos. 10757-58 of 2013)

NOVEMBER 28, 2013

[G.S. SINGHVI AND C. NAGAPPAN, JJ.]

*Land Acquisition Act, 1894:*

s.5-A r/w s.4(1) and 6 – Non-compliance of s. 5-A – Effect of – Land in question acquired at the instance of school, after decree of eviction against school had been upheld by all courts including Supreme Court – Objections of land-owner summarily rejected – Writ petition dismissed by single Judge – Division Bench of High Court going into merits of objections and rejecting the same – Held: Non-consideration of objections filed u/s 5A(1) has resulted in denial of effective opportunity of hearing to appellant — The manner in which the Joint Secretary to the Government approved the recommendation made by Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority — Division Bench of High Court by going into merits of objections raised by appellants, has substituted itself for Land Acquisition Collector which was clearly impermissible – Judgments of single Judge and Division Bench of High Court are set aside – Notification issued u/s 4(1) would be deemed to have lapsed with passage of time – Time allowed to Management to shift the school at alternate site, and further directions issued.

The appellant had leased the land in question to one 'KH', who set up a school thereon. The appellant filed a title suit for eviction of 'KH' on the ground of breach of condition of lease. During the pendency of the suit, 'KH' constituted a trust for running the school and handed

A over the management of the school to the trust. The suit  
 was decreed and the decree was consistently sustained  
 by appellate courts including the Supreme Court.  
 Thereafter, the management of the school approached  
 the State Government for acquisition of the land in  
 B question. The State Government issued a notification  
 dated 9.6.2005, u/s 4(1) of the Act. The appellant filed  
 objections dated 22.6.2005 u/s 5A(1) of the Act. The Land  
 Acquisition Collector recommended that the land be  
 acquired for the purpose of school. The Joint Secretary  
 C to the State Government approved the recommendation  
 and the State Government issued declaration u/s 6(1) of  
 the Act. The appellant challenged the notification issued  
 u/s 4(1) and the declaration issued u/s 6(1) in a writ  
 petition on the grounds that neither the Land Acquisition  
 D Collector nor the State Government applied mind to the  
 objections filed u/s 5A(1) and the exercise undertaken in  
 terms of s.5A(2) read with s.6(1) was an eye wash. The  
 Single Judge dismissed the writ petitions. The Division  
 Bench of the High Court went into the merits of the  
 objections and rejected the same.  
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Allowing the appeals, the Court

HELD: 1.1. The ambit and scope of s.5A of the Land  
 Acquisition Act, 1894 has been considered by this Court  
 F in several judgments. If the report prepared by the Land  
 Acquisition Collector in the instant case is scrutinized in  
 the light of the principles laid down in the judgments of  
 this Court, the Single Judge and the Division Bench of  
 the High Court committed serious error by approving the  
 acquisition proceedings ignoring that the report was  
 G prepared in clear violation of mandate of s.5A and the  
 State Government mechanically accepted the report  
 leading to the issuance of declaration u/s 6(1). In the  
 original and supplementary objections filed by the  
 H appellant, it had claimed that the entire exercise of

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acquisition was vitiated due to malafides and colourable exercise of power. The history of litigation between the parties was also cited by the appellant to substantiate its plea that the acquisition proceedings were initiated only after the management of the school lost legal battle up to this Court. It was also pleaded that the acquisition was meant to bye-pass the direction given by this Court to the management of the school to handover the possession of the school. The Land Acquisition Collector did not deal with any of the objections and summarily rejected the same as if compliance of s.5A(2) was an empty formality. The State Government also did not apply mind and mechanically approved the one line recommendation made by the Land Acquisition Collector. [para 17 and 22] [504-B; 512-D-H; 513-A]

*Surinder Singh Brar and others v. Union of India and others* 2012 (12) SCR 1077 =2013 (1) SCC 403; *Raghubir Singh Sehrawat v. State of Haryana and others* 2011 (14) SCR 1113 = (2012) 1 SCC 792, *Kamal Trading Private Limited v. State of West Bengal* 2011 (13) SCR 529 = (2012) 2 SCC 25, and *Usha Stud and Agricultural Farms Private Limited and others v. State of Haryana and others* (2013) 4 SCC 210 - referred to.

1.2. Non-consideration of the objections filed u/s 5A(1) has resulted in denial of effective opportunity of hearing to the appellant. The manner in which the Joint Secretary to the Government approved the recommendation made by the Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by the Land Acquisition Collector and the report prepared by him. [para 23] [513-B-C]

1.3. What the Division Bench of the High Court has done is to substitute itself for the Land Acquisition Collector, examined the objections raised by the appellant

- A on merits and concluded that no prejudice has been caused on account of violation of the mandate of s.5A(2). This was clearly impermissible. Therefore, the impugned order cannot be sustained. The impugned order as also the one passed by the Single Judge in writ petition Nos. 1634 and 1931 of 2005 are set aside. [para 24-25] [513-C-E]

1.4. The notification issued u/s 4(1) of the Act would be deemed to have lapsed with the passage of time. [para 26] [513-F]

- C *Padma Sundara Rao (Dead) and others v. State of Tamil Nadu* 2002 (2) SCR 383 = (2002) 3 SCC 533 – followed.

- D 1.5. Keeping in view the fact that about 900 students are receiving education in the school, time allowed to the management to shift the school at alternate site and further directions are issued. [para 29] [514-C]

#### Case Law Reference:

- |   |                    |             |         |
|---|--------------------|-------------|---------|
|   | 2012 (12) SCR 1077 | referred to | Para 13 |
| E | 2011 (13) SCR 529  | referred to | Para 17 |
|   | (2013) 4 SCC 210   | referred to | Para 17 |
|   | 2002 (2) SCR 383   | followed    | para 26 |

- F CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10757-58 of 2013.

From the Judgment and order dated 19.06.2013 of the High Court of Calcutta in APO No. 124 of 2012 in WP No. 1634 of 2005 and APO No. 126 of 2012 in WP No. 1931 of 2005.

- G Mukul Rohatgi, Indu Malhotra, Himanshu Shekhar, Abhijit Guhary for the Appellants.

- H Gopal Subramaniam, Soumya Ghosh, Maitrayee Banerjee, Kunal Chatterji, Soumitra G. Chaudhuri, Shagun Matta, Mohit Paul for the Respondents.

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WEST BENGAL**

The Judgment of the Court was delivered by

A

**G.S. SINGHVI, J.1.** Leave granted.

2. One of the questions which arises for consideration in these appeals filed against order dated 19.06.2013 passed by the Division Bench of the Calcutta High Court in A.P.O. No.126 of 2012 in Writ Petition No. 1931/2005 and A.P.O. No.124 of 2012 in Writ Petition No. 1634 of 2005 is whether the learned Single Judge and the Division Bench of the High Court had correctly appreciated the scope of Section 5A of the Land Acquisition Act, 1894 (for short, 'the Act') and rightly rejected the appellant's challenge to the acquisition of land measuring 20 cottahs.

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3. A portion of the land purchased by the appellant on 20.07.1964 had been leased out on 26.5.1955 to Kuldeep Harbans Singh who set up a school, i.e., Central Model School. After five years of purchasing the land, the appellants filed Title Suit No. 100/69 for eviction of Kuldeep Harbans Singh on the ground of breach of the conditions of lease. During the pendency of the suit, Kuldeep Harbans Singh constituted Guru Nanak Education Trust (for short, 'the trust') for running the school and management of the school was handed over to the trust.

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4. The suit was decreed by District Judge, Alipore vide judgment dated 8.5.1979. First Appeal No. 14/80 filed by the trust was dismissed on 28.2.1990 for non prosecution, but the same was restored only to be dismissed on merits vide judgment dated 15.9.1997. The special leave petition filed by the trust was dismissed by this Court on 6.4.1998.

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5. After dismissal of the first appeal, the appellant secured possession of the property in possession of the trust but the same had to be restored in furtherance of order passed by the High Court in Writ Petition No. 4394/1987 filed by the Guardian

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A Association. That petition was finally dismissed on 18.6.1996.

B 6. In the meanwhile, four members of the Managing Committee of the school filed Title Suit No. 59/1994 for grant of a declaration that the decree passed in Title Suit No. 100/1969 was legally unenforceable. We have been informed by learned counsel for the parties that the said suit is still pending.

C 7. Having failed to convince the High Court and this Court to overturn the decree of eviction, the management of the school approached the State Government for the acquisition of 20 cottah, 6 chhatak, 23 sq. ft. of land total measuring 14,738 sq. ft. Thereupon, Joint Secretary, School Education Department, Government of West Bengal sent letter dated 12.5.2005 to the Land Acquisition Collector to proceed with the acquisition of land specified in the schedule. That letter reads as under:

“Government of West Bengal  
School Education Department  
Secondary Branch  
Bikash Bhavan, Salt Lake, Kol-91

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No.580-SE(S)/7B-1/2005      Dated the 12th May, 2005  
From: Shri S. Mahapatra,  
Jt. Secretary to the Govt. of West Bengal.

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To    The Land Acquisition Collector,  
4, Bankshall Street, Kolkata-1.

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Sub: Proposal for acquisition of 20 Cottah 6 Chhatak 23 sq. ft. of land comprised in premises No.220/2, AJC Boss Road, in ward no.64 of Kolkata Municipal Corporation, P.S. Beniapukur, Kolkata – 700017 under Act I of Land Acquisition Act, 1894.

Sir,

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I am directed to inform you that Governor is pleased

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to accord approval for acquisition of the land mentioned in the schedule below for Model School, 220/2, AJC Bose Road, Kolkata – 700017 since 1955, under Act I of the Land Acquisition Act, 1894. A

Central Model School is a English Medium Co-educational Higher Secondary School running 1955. It was recognized by the West Bengal Board of Secondary Education, WB in the year 1963. 450 no. of students have been reading in the school now. There is a long standing dispute over ownership of the said land. This premises was requisitioned in the year 1967 and the possession was handed over to the Secretary of the school in 1971. The order of requisition was rescinded in the same year and since then the school has been facing considerable problem of existence. Now the authority of the school has come up with a proposal of acquisition of aforesaid land for running the school with building facilities of playground and sufficient open space. They have undertaken to bear the amount of compensation as per rule leading to acquisition of the entire land. B C D

The School Education Dept. is of the view that in the interest of students of the school, it is felt necessary to acquire the land, his dept. also agrees to pay Rs.10/- as a token grant towards payment of compensation money for such acquisition to make it a Govt. proposal in support of the school. E F

You are requested to please proceed with the acquisition of the land mentioned below immediately with the publication of notice u/s 4 and u/s 6 and to hand over formal possession to the Secretary, managing Committee of Central Model School on behalf of the Govt. in School Education Dept., West Bengal. G

A The amount of compensation duly ascertained and approved by Competent Authority may pleased be communicated to the said school as well as the School Education Dept. early to facilitate the necessary payment.

B Sd/- 12.05.05  
Joint Secretary

Land Schedule

C Premises No. 220/2, AJC Bose Road, War No.64.  
Kolkata Municipal Corporation, P.s. Beniapukur,  
Kolkata – 700017, Area: 20 Cottah 6 Chhatak 23 Sq.ft.  
In:A sketch map of the land proposed to be acquired."

(taken from the SLP paper book)

D 8. In furtherance of the direction given by the State Government, notification dated 9.6.2005, which was published in Kolkata Gazette Extraordinary dated 10.06.2005, was issued under Section 4(1) of the Act. The appellant filed objections dated 22.6.2005 (8-1/2 typed sheets through their advocate)  
E under Section 5A(1) of the Act. The Land Acquisition Collector issued notice dated 11.07.2005 under Section 5A(2) requiring the appellant to appear on 20.07.2005 for personal hearing. The Land Acquisition Collector issued another notice dated  
F 26.07.2005 and fixed the date of hearing as 29.07.2005, on which date the appellant filed additional objections consisting of three pages.

G 9. The Land Acquisition Collector is shown to have conducted hearing on 29.07.2005 and submitted report with the recommendation that the land mentioned in the notification issued under Section 4(1) be acquired for the purpose of school. The Joint Secretary to the State Government and 1st Land Acquisition Collector approved the recommendation on

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the same day, i.e., 29.7.2005. Thereafter, the State Government issued declaration under Section 6(1) of the Act, which was published on 21.09.2005. A

10. The appellant challenged Section 4(1) notification in Writ Petition No. 1634 of 2005 and the declaration issued under Section 6(1) in Writ Petition No. 1931 of 2005. One of the grounds on which the appellant questioned the declaration was that neither the Land Acquisition Collector nor the State Government applied mind to the objections filed under Section 5A(1) and the exercise undertaken in terms of Section 5A(2) read with Section 6(1) was an eye wash. B C

11. The learned Single Judge dismissed the writ petitions by recording the following observations:

“The petitioners have apparently been given an opportunity of hearing under Section 5A. Notices of hearing were issued. The allegation that no report under Section 5A had been prepared is an after thought, not substantiated by the materials on record. There is nothing in the writ petition to show that the petitioners made any request to the Land Acquisition Collector to allow the petitioners inspection of the report under Section 5A of the Land Acquisition Act, or to furnish the petitioners with a copy of the said report. D E

As held by the Supreme Court in K. Karim Miya vs. State of Gujarat reported in AIR 1977 SC 497, unless there are weighty reasons, a report in a public enquiry under Section 5A should be made available to the persons who take part in the enquiry. However, failure to furnish a copy of the report of the enquiry under Section 5A, and that too, in the absence of any request or demand, cannot vitiate the enquiry, if it is otherwise, not open to any valid objection. F G

Under Section 5A (2), a person interested in land can at best endeavour to show that the declared purpose for which land is sought to be acquired is not a public purpose, H

A or alternatively, satisfy the Collector that the land proposed to be acquired is not suitable for the purpose for which it is proposed to be acquired. For example, where land is proposed to be acquired for construction of a multi-storeyed building to sub-serve a public purpose, persons interested may be able to convince the Collector that the land is not suitable for construction of multi-storeyed building, and should, therefore, not be acquired. Similarly, persons interested in the land might be able to show that the declared purpose of acquisition is not a public purpose, but a private purpose, which is not the case here, as discussed above. The ultimate decision is, however, of the appropriate government, which is final.

D If acquisition is for a public purpose and the appropriate government is of the view that the site proposed to be acquired is suitable for the public purpose, objections of the persons interested are of no consequence. The right, if any, of persons interested, is to claim compensation in accordance with law.

E An acquisition for public purpose should not, therefore, be interfered with by Court in proceedings under Article 226 of the Constitution of India on the ground of any procedural irregularity in compliance of Section 5A. The Court is only to examine whether the land has been acquired for a public purpose. In this case, it is reiterated that the acquisition is for a public purpose of running a school. The school has been run at the said premises for decades. This in itself shows that the said premises has, in the past, sub-served and will continue to sub-serve the public purpose of running a school. This Court is, therefore, not inclined to interfere with the acquisition on the ground of alleged non-compliance of Section 5A(2)."

H 12. The Division Bench of the High Court summoned the record of hearing conducted by the Land Acquisition Collector but did not deal with the laconic nature of recommendations

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made by him. Instead, it went into the merits of the objections and rejected the same by recording the following observations: A

"We have examined on merits, the objection regarding public purpose and we are satisfied that the purpose for which acquisition had been made cannot be said to be a private one camouflaged as a public purpose actuated by consideration of malice in the facts of the instant case. The objections which were raised were purely legal on both the counts as to the affect of the legal proceedings have been dealt with by us and no other objection as to suitability etc. was raised. B C

The next submission raised by the learned senior Counsel with respect to the appropriate Government using the word "approved" while approving the proposal of the Land Acquisition Officer it was bereft of reasons and no decision by-such Government for the purpose of section 5A(2) of the Act, as such the decision of the Government suffered with patent illegality, some reasons ought to be mentioned with regard to the satisfaction but the same having not been given in the instant case, the declaration under section 6 of the Act could not be said to be made in accordance with law. D E

In our opinion, in the facts of the case it has to be seen whether any prejudice has been caused by not writing detailed order or there is any non-application of mind in that regard by appropriate government. The kind of objections which were raised assumes significance so far as rejection is concerned. A challenge to the existence of public purpose merely on account of various litigations and over reach of binding Court's order would not come in the way of exercise of sovereign power of eminent domain of the State provided the exercise of such power was otherwise for a public purpose under the Land Acquisition Act, as held by the Apex Court in the case reported in State of Andhra Pradesh vs. Gowadhan Lal (Supra). F G H

- A The question of legality of provisions of Section 5A has to be seen from the facts of each case. The rule of reasons is based upon the principles of natural justice and they cannot be fitted in a straitjacket formula. The report of the Land Acquisition Officer is clear and categorical in the
- B instant case and while approving the report, the appropriate Government was clearly satisfied as to the objections which were raised and have been squarely dealt with by the Land Acquisition Officer in accordance with law. There were legal objections not factual ones and
- C the same have been examined by us on merits in the instant writ petition they were dealt with and no prejudice was caused to the appellants in that regard by not passing a detailed order by appropriate government. Thus, we find that the submission to be bare legs.
- D Learned Senior Counsel appearing for the appellants next submitted that effective hearing had not been granted to the appellants. Section 5A of the Land Acquisition Act, 1894 contemplates effective hearing and not formal compliance. He has referred to the decision of the Hon'ble
- E Supreme Court in *Radhy Shyam (Dead) through LRs and others vs. State of Uttar Pradesh and Ors.*, (2011) 5 SCC 553 in which *Maneka Gandhi vs. Union of India* has been quoted where it has been laid down that the "audi alteram partem" rule is intended to inject justice into the law and
- F the Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It is also held that "audi alteram partem" rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must,
- G however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.
- H In the instant case, we find that the "audi alteram partem"

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has been duly observed and it cannot be mechanically applied to a straitjacket formula as observed and it has to meet the situational modifications. Considering the nature of the case, we are of the considered opinion that the observations made in the decision of *Maneka Gandhi vs. Union of India* (supra) have not been violated in the instant case and they have been duly observed and the process of reasons adopted by the Land Acquisition Officer qualifies to the aforesaid requirement of "audi alteram partem".

13. The Division Bench distinguished the judgment of this Court in *Surinder Singh Brar v. Union of India* (2013) 1 SCC 403 by observing that factual situation in the cases before it is altogether different.

14. We have heard Shri Mukul Rohatgi and Ms. Indu Malhotra, learned senior advocates for the appellant, Shri Gopal Subramaniam, learned senior counsel for respondent nos. 3 and 4, Shri Soumitra G. Chaudhuri, learned counsel for the State of West Bengal and perused the record. We have also gone through the record of acquisition, which was summoned vide order dated 25.7.2013.

15. Since the main ground on which the appellant has assailed the impugned order relates to violation of Section 5A(2), i.e., non-application of mind by the Land Acquisition Collector and the State Government to the objections filed by the appellant, it will be useful to notice the contents of report dated 29.07.2005. The same reads as under:

"OBJECTION HEARING U/S 5A IN RESPECT OF PREMISES NO. 220/2, A.J.C BOSE ROAD, KOLKATTA

Received L.A. proposal along with plan for acquisition of land with building comprising premises No. 220/2, A.J.C. Bose Road, Kolkatta for public purpose namely for accommodation of Central Model School from Joint

A Secretary School Education Dept., secondary Branch vide their memo No. 580-s.e (s)/7B-1/2005 dated 12.5.2005 and the said proposal vetted by the Govt. in land and land reforms dept. vide their memo No.1287-s.a./1E-06/05 dated 17.05.2005.

B After observing formalities PER was prepared on 9.6.2005.

C Notification u/s 4 being No. 4-LA/D/2005/S.E. Dept. dated 9.6.2005 was published in the Calcutta gazettes on 10.6.05. The substance of notification in form 30 was served to the interested persons. The substance of notification was displaced and also published in two daily newspaper in Asian Age and 10.06.2005 and Ganashakti on 11.06.2005 on the spot on 15.06.2005. After that on receipt of notice on objection petition filed by the Abhijit Guha Roy, Advocate, on behalf of M/s. Gojet Brothers Private Limited.

E Notice U/s 5A of the L.A. Act were served upon the inserted persons including the receiver is fixing on 20.07.2005 and 29.07.2005 for hearing. But receiver refused to accept the notice of hearing through the receiver received the substance of notification in form 3D of the L.A/ Act.

F On the date of hearing 29.07.2005 owners and Advocate were present.

G The contentions of their submissions were that the acquisition proceedings in respect of the premises in questions does not cover the public purpose and acquisition proceedings is bad in law. They have submitted two letters dated 22.06.05 and 29.07.05 issued by Abhijit Guha Roy, Advocate, High Court addressed to the 1st Land Acquisition Collector, Kolkata along with order of the Hon'ble High Court and apex Court in connection with Title

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suit matter between the parties. There is no stay and or any injunction restraining the Govt. for acquisition of the premises for a public purpose. A

Proposal for acquisition of land issued by the school Education, secondary branch vetted by the land and Land reforms dept have been received in this office wherein it appears that the school education Dept, Secondary branch agreed to pay Rs.10/- as a token grant towards payment of compensation money for such acquisition to make it a Govt. proposal in support of the school. On the P.E.R. it was recommended to acquire the land as proposed by Govt. for a public purpose. B C

No further objection from any corner has been received in this office till date including the receiver. D

Hence I overruled the objection filed by the parties and recommend to proceed with acquisition for a public purpose.

Submitted to the 1st L.A.C. for his kind approval. E

sd/- C.A. Rahim 29.07.05  
LAND Acquisition Collector, Kolkata.

Approved  
sd/- K.S. Bandyopadhyay  
29.07.2005  
1st Land Acquisition Collector, Kolkata." F

16. A reading of the report shows that in the first four paragraphs, the Land Acquisition Collector recorded the facts relating to the acquisition proceedings. In the sixth paragraph he briefly noted the objections of the appellant and recorded his conclusion in the following words: G

'Hence I overruled the objection filed by the parties and H

A recommend to proceed with acquisition for a public purpose.'

B 17. The ambit and scope of Section 5A had been considered in several judgments, but we do not consider it necessary to burden this judgment by noticing various judicial precedents and feel that it would be sufficient to take cognizance of four recent judgments in *Raghubir Singh Sehrawat v. State of Haryana and others* (2012) 1 SCC 792, *Kamal Trading Private Limited v. State of West Bengal* (2012) 2 SCC 25, *Surinder Singh Brar and others v. Union of India and others* (supra) and *Usha Stud and Agricultural Farms Private Limited and others v. State of Haryana and others* (2013) 4 SCC 210.

D 18. In *Raghubir Singh Sehrawat v. State of Haryana* (supra), the Court referred to the earlier precedents on the subject and culled out the following propositions:

E "39. 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.

H 40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade



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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 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."

19. In *Kamal Trading Private Limited* (supra), this Court considered the report prepared by the Land Acquisition Collector, which is substantially similar to report which was challenged by the appellant before the High Court and held:

"14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5A 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 concerned authority, 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 5A(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

A 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 5A(2). As said  
 B by this Court in *Hindustan Petroleum Limited*, 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  
 C 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  
 D 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 5A and the report made by  
 E 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  
 F under Section 5A(2) of the LA Act. The recommendations  
 must indicate objective application of mind."

20. In *Surinder Singh Brar v. Union of India* (supra), this  
 Court extensively considered the report prepared by the Land  
 Acquisition Officer and the decision taken by the administration  
 G of Union Territory of Chandigarh and observed:

"68.A cursory reading of the reports of the LAO may give  
 an impression that he had applied mind to the objections  
 filed under Section 5A(1) and assigned reasons for not  
 H entertaining the same, but a careful analysis thereof leaves

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no doubt that the officer concerned had not at all applied mind to the objections of the landowners and merely created a facade of doing so. In the opening paragraph under the heading "Observations", the LAO recorded that he had seen the revenue records and conducted spot inspection. He then reproduced the Statement of Objects and Reasons contained in the Bill which led to the enactment of the Punjab New Capital (Periphery) Control Act, 1952 and proceed to extract some portion of reply dated 31.7.2006 sent by the Administrator to Surinder Singh Brar.

69. In the context of the statement contained in the first line of the paragraph titled "Observations", we repeatedly asked Shri Sudhir Walia, learned counsel assisting Dr. Rajiv Dhawan to show as to when the LAO had summoned the revenue records and when he had conducted spot inspection but the learned counsel could not produce any document to substantiate the statement contained in the two reports of the LAO. This leads to an inference that, in both the reports, the LAO had made a misleading and false statement about his having seen the revenue records and conducted spot inspection. That apart, the reports do not contain any iota of consideration of the objections filed by the landowners. Mere reproduction of the substance of the objections cannot be equated with objective consideration thereof in the light of the submission made by the objectors during the course of hearing. Thus, the violation of the mandate of Section 5A(2) is writ large on the face of the reports prepared by the LAO.

70. The reason why the LAO did not apply his mind to the objections filed by the appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the

A Administrator to Surinder Singh Brar. If he had shown the  
 courage of acting independently and made  
 recommendation against the acquisition of land, he would  
 have surely been shifted from that post and his career  
 would have been jeopardized. In the system of governance  
 B which we have today, junior officers in the administration  
 cannot even think of, what to say of, acting against the  
 wishes/dictates of their superiors. One who violates this  
 unwritten code of conduct does so at his own peril and is  
 described as a foolhardy. Even those constituting higher  
 C strata of services follow the path of least resistance and  
 find it most convenient to tow the line of their superiors.  
 Therefore, the LAO cannot be blamed for having acted as  
 an obedient subordinate of the superior authorities,  
 including the Administrator. However, that cannot be a  
 D legitimate ground to approve the reports prepared by him  
 without even a semblance of consideration of the  
 objections filed by the appellants and other landowners and  
 we have no hesitation to hold that the LAO failed to  
 discharge the statutory duty cast upon him to prepare a  
 report after objectively considering the objections filed  
 E under Section 5A(1) and submissions made by the  
 objectors during the course of personal hearing.

76. Section 5A, which embodies the most important  
 dimension of the rules of natural justice, lays down that any  
 F 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  
 G 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  
 H recommendations on the objections and forward the same

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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. A

77. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) which lays down that 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 5(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). B  
C  
D  
E

78. 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. F  
G  
H

A 79. 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. After publication of  
 the declaration under Section 6, the Collector is required  
 B of land to be carved out and measured and planned  
 (Sections 7 and 8). The next stage as envisaged is 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  
 C and passing of an award by the Collector who is required  
 to take into consideration the provisions contained in  
 Section 23.

D 84. What needs to be emphasised is that hearing required  
 to be given under Section 5A(2) to a person who is sought  
 to be deprived of his land and who has filed objections  
 under Section 5A(1) must be effective and not an empty  
 formality. The Collector who is enjoined with the task of  
 hearing the objectors has the freedom of making further  
 enquiry as he may think necessary. In either eventuality, he  
 E has to make report in respect of the land notified under  
 Section 4(1) or make different reports in respect of  
 different parcels of such land to the appropriate  
 Government containing his recommendations on the  
 objections and submit the same to the appropriate  
 F Government along with the record of proceedings held by  
 him for the latter's decision. The appropriate Government  
 is obliged to consider the report, if any, made under  
 Section 5A(2) and then record its satisfaction that the  
 particular land is needed for a public purpose. This  
 G exercise culminates into making a declaration that the land  
 is needed for a public purpose and the declaration is to  
 be signed by a Secretary to the Government or some  
 other officer duly authorised to certify its orders. The  
 formation of opinion on the issue of need of land for a  
 H public purpose and suitability thereof is sine qua non for

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issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5A(1) and submissions made at the hearing given under Section 5A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the concerned authorities or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5A(2) and 6(1).”

21. In *Usha Stud and Agricultural Farms Private Limited v. State of Haryana* (supra), the Court reiterated the propositions laid down in *Raghubir Singh Sehrawat's case* (supra) and *Kamal Trading Private Limited v. State of West Bengal* (supra) and observed:

“30. 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

A 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)."

22. If the report prepared by the Land Acquisition Collector is scrutinized in the light of the principles laid down in the aforementioned judgments, we do not find any difficulty in holding that the learned Single Judge and the Division Bench of the High Court committed serious error by approving the acquisition proceedings ignoring that the report was prepared in clear violation of mandate of Section 5A and the State Government mechanically accepted the report leading to the issue of declaration issued under Section 6(1). In the original and supplementary objections filed by it, the appellant had claimed that the entire exercise of acquisition was vitiated due to malafides and colourable exercise of power. The history of litigation between the parties was also cited by the appellant to substantiate its plea that the acquisition proceedings were initiated only after the management of the school lost legal battle up to this Court. It was also pleaded that the acquisition was meant to bye-pass the direction given by this Court to the management of the school to handover the possession of the school. Unfortunately, the Land Acquisition Collector did not deal with any of the objections and summarily rejected the same as if compliance of Section 5A(2) was an empty formality. The State Government also did not apply mind and mechanically



approved the one line recommendation made by the Land Acquisition Collector. A

23. In our view, non-consideration of the objections filed under Section 5A(1) has resulted in denial of effective opportunity of hearing to the appellant. The manner in which the Joint Secretary to the Government approved the recommendation made by the Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by the Land Acquisition Collector and the report prepared by him. B C

24. In the result, the appeals are allowed, the impugned order as also the one passed by the learned Single Judge in writ petition Nos. 1634 and 1931 of 2005 are set aside. D

25. What the Division Bench of the High Court has done is to substitute itself for the Land Acquisition Collector, examined the objections raised by the appellant on merits and concluded that no prejudice has been caused on account of violation of the mandate of Section 5A(2). This was clearly impermissible. Therefore, the impugned order cannot be sustained. E

26. In view of the above, we do not consider it necessary to pronounce upon the legality of the notification issued under Section 4(1) of the Act because the same would be deemed to have lapsed with the passage of time. In this connection, reference can usefully be made to the Constitution Bench judgment of this Court in *Padma Sundara Rao (Dead) and others v. State of Tamil Nadu* (2002) 3 SCC 533. F G

27. At this stage, Shri Gopal Subramaniam, learned senior counsel for respondent nos. 3 and 4 made a request that his clients may be allowed sufficient time to explore the possibility of shifting the school to an alternative accommodation and the H

- A State Government may be directed to allot land for construction of the school building.

- B 28. Shri Mukul Rohatgi, learned senior counsel appearing for the appellant graciously agreed that sufficient time may be given to the management of the school to shift from the present site provided that an undertaking is filed before this Court to vacate the premises by the end of the specified period.

- C 29. Keeping in view the fact that about 900 students are receiving education in the school, we accept the request made by Shri Subramaniam and issue the following directions:

- D 1. The management of the school shall handover vacant possession of the portion of the ground floor of the building in which the school is currently housed on or before 31.5.2015.

- E 2. Within a week from today, the management of the school may make a representation to the State Government for allotment of an alternative site for construction of a school building and for other ancillary purposes.

- F 3. If any such representation is made by the management for allotment of the alternative site, the State Government shall consider the same sympathetically and pass appropriate order within a period of next three months.

- G 4. Within four weeks from today, the management shall file an undertaking in the form of an affidavit before this Court that the portion of the ground floor of the building, which is in their possession will be handed over to the representative of the appellant on or before 31.05.2015.

- H 5. If the management of the school fails to handover vacant possession of the portion of the ground floor of the building, which is in their possession on or before 31.05.2015, then the concerned official shall make himself liable to be

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punished under the Contempt of Courts Act, 1971. Not only A  
this, the appellant shall be entitled to secure possession  
and, for this purpose, it shall be free to seek assistance  
of the local police. In that eventuality, the Commissioner  
of Police shall provide the required police assistance to  
the appellant. B

R.P.

Appeal allowed.