

Dinesh vs The State Of Madhya Pradesh on 15 May, 2024

Author: B.R. Gavai

Bench: B.R. Gavai

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 28410-28414 of 2023)

DINESH AND OTHERS ETC.

...APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH
AND OTHERS ETC.

...RESPONDENT(S)

JUDGMENT

Mehta, J.

1. Leave granted.

2. The instant appeals by special leave have been filed by the appellants herein for assailing the common final judgment and order dated 13th October, 2023 passed by the High Court of Madhya Pradesh, Indore Bench in a batch of writ petitions whereby, the petitions filed by the appellants to assail the proceedings of acquisition of the appellants' land were dismissed.

3. The State of Madhya Pradesh published a notification dated 27th May, 2022 under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(hereinafter being referred to as the 'Act of 2013') proposing to acquire lands of Village Jamodi, Tehsil Pithampur, District Dhar, Madhya Pradesh of which appellant's lands also formed a part. The lands were sought to be acquired for the purposes of establishing a Multi-Model Logistics Park under the Bharatmala Project of the Government of India.

4. The appellants submitted their objections to respondent No. 1-Collector under Section 15 of the Act of 2013 on 1st September, 2022. However, no response was forthcoming on such objections whereupon the appellants filed fresh objections on 23rd December, 2022 to the Collector-respondent No. 1.

5. The objections were not considered by the respondent No. 1- Collector, but rather the same were taken up by respondent No. 2 being the Anuvibhagiya Adhikari(Revenue) Evam Bhu Arjan Kshetra, Pithampur, District Dhar, Madhya Pradesh(hereinafter being referred to as 'SDO'). The appellants also submitted written arguments on their objections on 31st December, 2022. However, the objections filed by the appellants were rejected by the SDO by order dated 27th February, 2023 and it was directed that the department should publish a declaration under Section 19 of the Act of 2013.

6. As a consequence, a declaration along with summary of rehabilitation and resettlement was published on 10th March, 2023 under Section 19 of Act of 2013. Respondent No. 2-SDO published information under Section 21 of the Act and notices were issued to the appellants regarding the acquisition of their land by communication dated 8th August, 2023.

7. Being aggrieved by the rejection of their objections by an officer not having jurisdiction, the appellants and similarly situated land owners preferred numerous writ petitions before the Madhya Pradesh High Court seeking quashing of the afore-stated land acquisition proceedings. The writ petitions came to be filed on 11th September, 2023 and during the pendency thereof, a final award came to be passed by respondent No. 2-SDO on 3rd October, 2023. The High Court, by order dated 13th October, 2023 proceeded to dismiss the writ petitions preferred by the appellants without considering the merits by simply observing that the same had been rendered infructuous owing to the passing of the final award. The said order is assailed in these appeals by special leave.

8. The appellants have posed a pertinent question of law for assailing the legality and validity of the land acquisition proceedings and the order passed by the High Court. The said question of law is reproduced hereinbelow for the sake of ready reference: -

“Question No.4: Whether the Hon'ble High Court erred in not deciding the writ petition which specifically objected to the authority of the Respondent No.2 to hear and decide objections filed under section 15 of the Act of 2013 and direct publication of declaration and summary of Rehabilitation and Resettlement?”

9. Notice of the appeals was issued to the respondents, who have filed their counter affidavit stating therein that the Collector is deemed to be the “appropriate Government” under the proviso to Section 3(e) of the Act of 2013 and that he being the appropriate Government has got power under Section 3(g) of the Act to designate any officer to perform the functions/exercise powers vested with the Collector for the purpose of the land acquisition proceedings. Taking recourse to the said provisions, the respondents have averred at Para 11 of the counter affidavit that respondent No. 2-SDO being the officer designated by the appropriate Government, personally heard the land owners on the objections filed under Section 15 of the Act and prepared a report dated 27th February, 2013 which was forwarded to the Collector with a recommendation that the objections deserved to be rejected and the declaration under Section 19 of the Act may be issued.

10. It is also stated at Para 12 of the counter affidavit, that the respondent No.1-Collector rejected the objections filed by the land owners by an order dated 3rd March, 2023 and directed for the publication of the declaration under Section 19 of the Act. Thus, in sum and substance, the

respondents have pleaded that the Collector had powers to delegate the jurisdiction to hear the objections to the SDO and hence, the objections filed by the land owners were rightly heard by the said officer. It is further pleaded that the order rejecting the writ petitions preferred by the appellants, as having rendered infructuous since the final award has been passed, does not warrant any interference.

11. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties and have gone through the material placed on record.

12. The relevant provision being Section 15 of the Act of 2013 is reproduced hereinbelow for the sake of ready reference: -

“15. Hearing of objections.— (1) Any person interested in any land which has been notified under sub-section (1) of section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to—

(a) the area and suitability of land proposed to be acquired;

(b) justification offered for public purpose;

(c) the findings of the Social Impact Assessment report.

(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 an Advocate 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 sub-section (1) of section 11, 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 along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.”

13. A bare perusal of Sub-Section (2) of Section 15 of the Act of 2013 would indicate that the objections to the land acquisition notification have to be submitted to the Collector who is mandatorily required to give the objector an opportunity of being heard in person or by any person authorised in his behalf or by an Advocate. After hearing such objections and making such further inquiry as may be felt necessary, the Collector is required to make a report to the appropriate Government with his recommendations on the objections together with the record of the

proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled etc. for the decision of that Government. As per Sub-Section(3) of Section 15 of the Act, the decision of the appropriate Government on the objections made under Sub-Section(2) shall be final.

14. The respondents have taken recourse to Section 3(g)(which provides the definition of “Collector”) of the Act of 2013 and the proviso under Section 3(e)(which provides the definition of the “appropriate Government”) of the Act to contend that the Collector of the District is deemed to be the ‘appropriate Government’. Thus, the Collector acting as the “appropriate government” under the Act is possessed of the authority to designate any other officer to perform the functions/exercise powers vested in the Collector for the purpose of the land acquisition proceedings. The relevant statutory provisions are extracted hereinbelow for the sake of ready reference:-

“3(g) [C]ollector means the Collector of a revenue district, and includes a Deputy Commissioner and any officer specially designated by the appropriate Government to perform the functions of a Collector under this Act;

3(e) [A]ppropriate Government means,—

(i) in relation to acquisition of land situated within the territory of, a State, the State Government;

(ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;

(iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry;

(iv) in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and

(v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;”

15. By referring to this power of delegation provided under Section 3(g), the respondents have tried to urge that the Collector being the appropriate Government forwarded the objections under Section 15 of the Act to the SDO vide order dated 2nd December, 2022 for exercising the delegated powers and to personally hear and decide the said objections and thereafter to submit his report. The SDO, in compliance of the said order heard the objections and prepared the report dated 27th February,

2023. It was thus contended that the impugned orders do not suffer from any jurisdictional error.

16. We are afraid that the said interpretation which is sought to be given by the respondents is ex facie misplaced and misconceived. The provisions contained in Section 15 of the Act of 2013 are analogous to Section 5-A of the Land Acquisition Act, 1894. This Court has interpreted Section 5-A of the Land Acquisition Act, 1894 in a catena of decisions. In the case of *Om Prakash and Another v. State of U.P. and Others*¹, it was held as follows:

“21.Thus, according to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-à-vis, Section 5-A of the Land Acquisition Act would remain apposite.”

17. In the case of *Union of India and Others v. Mukesh Hans*², it was observed:

“35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of *Munshi Singh v. Union of India* [(1973) 2 SCC 337] wherein this Court held thus :

‘7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... 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:’ ” (1998) 6 SCC 1 2 (2004) 8 SCC 14

18. In the case of *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Others*³, this Court has held the right to make objections under Section 5-A to be akin to a fundamental right. The relevant paras are extracted hereinbelow: -

“6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired.....

9.It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

15. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason. (See *Kalumiya Karimmiya v. State of Gujarat* [(1977) 1 SCC 715] and *Delhi Admn. v. Gurdip Singh Uban* [(2000) 7 SCC 296]).

29. The Act is an expropriatory legislation. This Court in *State of M.P. v. Vishnu Prasad Sharma* [(1966) 3 SCR 557] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also *Khub Chand v. State of Rajasthan* [(1967) 1 SCR 120] and *CCE v. Orient Fabrics (P) Ltd.* [(2004) 1 SCC 597]] (2005) 7 SCC 627

19. This Court has interpreted Section 15(2) of the Act of 2013 in the case of *Shiv Singh and Others v. State of Himachal Pradesh and Others*⁴, wherein it was held as under:-

“6. Under the scheme of the Act, once the objections are filed by the affected landowners, the same are required to be decided by the Collector under Section 15(2) of the Act after affording an opportunity of being heard to the landowners, who submitted their objections and after making further inquiry, as the Collector may think necessary, he is required to submit his report to the appropriate Government for appropriate action in the acquisition in question.

7. In this case, we find that the Collector neither gave any opportunity to the appellants as contemplated under Section 15(2) of the Act and nor submitted any report as provided under Section 15(2) of the Act to the Government so as to enable the Government to take appropriate decision. In other words, we find that there is non-compliance of Section 15(2) of the Act by the Collector. In our view, it is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the Act.” (emphasis supplied)

20. The Collector would be deemed to be the “appropriate Government” under the proviso to Section 3(e) of the Act of 2013 only when a land acquisition notification is issued by the appropriate Government that is the State Government indicating the limits of the area to be acquired for a public purpose and appointing the Collector as the authority empowered to acquire (2018) 16 SCC 270 that particular area of land ‘in the district’ over which the officer holds jurisdiction. Hence, this proviso requires notification by the State Government of a particular area within the district to be acquired for public purpose and only for such limited area, the Collector would be authorised by deeming

fiction to act as the appropriate Government.

21. However, a bare perusal of the land acquisition notification dated 27th May, 2022(Annexure P-1) would make it clear that the same came to be issued by the State Government with the objective of acquiring lands for establishing a Multi-Model Logistics Park under the Bharatmala Project of the Government of India. Thus, neither was the land acquisition notification issued by the District Collector nor was the acquisition limited to a particular district. Hence, the District Collector could not have exercised the powers of the appropriate Government by virtue of the proviso to Section 3(e) of the Act of 2013 which authority continued to vest in the State Government.

22. It is also clear that in the present case, the order passed by the SDO rejecting the objections of the appellants is being tried to be validated on the strength of Section 3(g) of the Act of 2013 which provides that the Collector means the Collector of Revenue District and includes a Deputy Commissioner and any officer especially designated by the appropriate Government to perform the functions of the Collector under this Act.

23. There is no dispute that the SDO who rejected the objections of the appellants, was never specially designated by the appropriate Government to perform the functions of the Collector under the Act. Rather, the SDO has been conferred powers to act only as the Land Acquisition Officer under the land acquisition notification.

24. The respondents have tried to project that the SDO after personally hearing the objections of the land owners against the proposed land acquisition under Section 15 of the Act of 2013, prepared report dated 27th February, 2023 which was forwarded to the Collector opining that the objections deserved to be rejected. It is further stated that the District Collector rejected the objections vide order dated 3rd March, 2023 and issued a direction to make the publication under Section 19 of the Act.

25. A perusal of the order dated 3rd March, 2023 annexed with the counter affidavit of respondent No. 3 would indicate that the objections filed by the appellants were actually disposed by the SDO(Revenue) and not the Collector acting as the appropriate Government. Relevant paras of the said order are extracted hereinbelow: -

“4. After the publication of the Notification, the objections received were heard as per law within the prescribed time limit. The Objectors appeared on the fixed date and while disposing of the aforesaid objections the Sub-Division Officer (Revenue) and Land Acquisition Officer, Pithampur has submitted their reports.

6. The Sub-Division Officer (Revenue) and Land Acquisition Officer, Pithampur has filed the instant matter while disposing of the objections raised therein seeking injunction under Section 19.”

26. Para 6 of the order dated 3rd March, 2023 clearly indicates that the SDO(Revenue) had forwarded the matter to the Collector while disposing of the objections raised therein and seeking

injunction under Section 19 of the Act.

27. Furthermore, on discussion made above, the land acquisition notification dated 27th May, 2022 was issued by the State Government. Hence, neither the District Collector could act as the appropriate Government in regard to the acquisition in question nor was he authorised to delegate the powers to the SDO. As a matter of fact, considering the scheme of the Act of 2013 and the law as laid down by this Court in the case of Shiv Singh(supra), the District Collector was simply required to hold inquiry on the objections filed under Section 15(2) of the Act and thereafter, to forward the record of proceedings along with his opinion to the State Government for its decision. The State Government is mandated to take a decision on the objections as per Section 15(3) of the Act. However, these mandatory requirements of the statute were not followed in the case, and hence, the proceedings are hit by non-compliance of Sections 15(2) and 15(3) of the Act of 2013.

28. Even if, for the sake of arguments, the SDO is treated to be an officer authorised to hear the objections made under Section 15(2) of the Act, apparently, the final decision on such objections would have to be taken by the appropriate Government as per Section 15(3) of the Act which is lacking in this case.

29. The High Court while dismissing the batch of writ petitions filed by the land owners including the appellant treated the same as having rendered infructuous observing that the final award had already been passed on 3rd October, 2023. It is not in dispute that the writ petitions came to be filed on 11th September, 2023 and thus the mere fact that the final award had been issued during pendency of the petitions would not save the acquisition proceedings because the hearing of the objections is a sacrosanct act treated akin to a fundamental right as held in the case of Hindustan Petroleum Corpn. Ltd.(supra). Thus, the non- compliance of this mandatory requirement would vitiate the acquisition.

30. Consequently, the impugned judgment dated 13th October, 2023 is hereby quashed and set aside 'qua the appellants herein'. As a result, the final award dated 3rd October, 2023 is declared to be illegal and quashed 'qua the appellants lands'.

31. The respondents-authorities are directed to consider and decide the objections filed by the appellants under Section 15 of the Act of 2013 as per law whereafter, further proceedings may follow.

32. The appeals are allowed in these terms. No order as to costs.

33. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI)J. (SATISH CHANDRA SHARMA)J. (SANDEEP MEHTA) New Delhi;

May 15, 2024