Raghbir Singh Sehrawat vs State Of Haryana & Ors on 23 November, 2011

Equivalent citations: AIR 2012 SUPREME COURT 468, 2012 (1) SCC 792, 2012 AIR SCW 240, 2011 (13) SCALE 260, (2012) 109 ALLINDCAS 200 (SC), (2012) 3 KCCR 156, 2012 (109) ALLINDCAS 200, (2012) 1 ALLMR 905 (SC), (2012) 1 CLR 210 (SC), (2012) 1 LANDLR 687, (2012) 1 JCR 304 (SC), AIR 2012 SC (CIVIL) 276, (2012) 1 GUJ LH 339, (2012) 1 MAD LW 581, (2012) 1 ORISSA LR 436, (2011) 13 SCALE 260, (2012) 1 MAD LJ 808, (2012) 3 MAH LJ 81, (2012) 90 ALL LR 469, (2012) 2 ALL WC 1596, (2012) 3 CIVLJ 206

Author: G.S. Singhvi

Bench: G.S. Singhvi, Sudhansu Jyoti Mukhopadhaya

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10080-10081 OF 2011

(Arising out of SLP(C) Nos. 12042-12043 of 2011)

Raghbir Singh Sehrawat ..Appellant(s)

Versus

State of Haryana and others ..Respondent(s)

J U D G M E N T

G.S. SINGHVI, J.

1. Delay condoned.

2. Leave granted.

3. More than 16 decades ago, John Stuart Mill wrote: "land differs from other elements of production, labour and capital in not being susceptible to infinite increase. Its extent is limited and the extent of the more productive kinds of it more limited still. It is also evident that the quantity of produce capable of being raised on any given piece of land is not indefinite. These limited quantities of land, and limited productiveness of it, are the real limits to the increase of production".

4. In 1947, the first Prime Minister of India Pt. Jawahar Lal Nehru said "everything else can wait, but not agriculture". In its fifth and final report, the National Commission on Farmers headed by Dr. M.S. Swaminathan observed that prime farmland must be conserved for agriculture and should not be diverted for non- agricultural purposes, else it would seriously affect availability of food in the country where 60% population still depends on agriculture and people living below poverty line are finding it difficult to survive.

5. Unfortunately, these words of wisdom appear to have become irrelevant for the State apparatus which has used the Land Acquisition Act, 1894 (for short, 'the Act') in last two decades for massive acquisition of the agricultural land in different parts of the country, which has not only adversely impacted the farmers, but also generated huge litigation adjudication consumes substantial time of the Courts. These appeals filed against orders dated 17.5.2010 and 19.11.2010 of the Division Bench of the Punjab and Haryana High Court is one of many such cases which the landowners are compelled to file with the hope that by Court's intervention they will be able to save their land.

6. The appellant purchased 8 Kanals 4 Marlas land in village Jatheri, District Sonepat in 1984 and is cultivating the same. He claims to have constructed a boundary wall and is growing different crops. His land is surrounded by agricultural fields, factories and residential houses. In the south of his land, there is a canal and a school.

7. By Notification dated 22.6.2006 issued under Section 4(1) of the Act, the Government of Haryana proposed the acquisition of 3813 Kanals 17 Marlas (476 Acres 5 Kanals 17 Marlas) land situated at villages Badhmalik, Badkhalsa, Jatheri, Liwan, Pritampura and Rai, Tehsil and District Sonepat for the development of Industrial Sector 38, Sonepat. The appellant filed objections under Section 5A(1) and pleaded that his land may not be acquired because the same was being used for agricultural purposes and was the only source of income for his family. The other landowners also submitted their respective objections. District Revenue Officer-cum- Land Acquisition Collector, Sonepat (for short, 'the Land Acquisition Collector') is said to have heard the objectors on 29.10.2006 and made recommendations for the acquisition of some parcels of land and for release of some other parcels of land specified in Notification dated 22.6.2006. Thereafter, the State Government issued declaration under Section 6 (1), which was notified on 20.6.2007 for the acquisition of 216 Acres 7 Kanals and 11 Marlas land. As a sequel to this, the Land Acquisition Collector passed award dated 28.11.2008.

8. The appellant challenged the acquisition of his land in Writ Petition No.8441 of 2009 on several grounds including the following:

(i) that the notification issued under Section 4(1) had not been published as per the requirement of the statute,

(ii) that he was not given opportunity of hearing in terms of Section 5A(2),

(iii) that land of large number of persons had been excluded from acquisition at the stage of Section 6 declaration but his land was not released and, in this manner, he had been discriminated,

(iv) that there was no justification to acquire his land, which was the only source of livelihood for him and his family,

(v) that he was not served with notice in terms of Section 9 (3), and

(vi) that the declaration issued under Section 6(1) was not published as per the requirement of Section 6(3).

9. In the written statement filed on behalf of the respondents, it was averred that the notifications issued under Sections 4(1) and 6(1) were duly published; that the appellant was given opportunity of personal hearing and that after issue of declaration under Section 6(1), the Land Acquisition Collector passed the award. It was further averred that possession of the acquired land had been taken and delivered to Haryana State Industrial Infrastructure Development Corporation (HSIIDC) on 28.11.2008.

10. The appellant filed rejoinder affidavit and reiterated that the notifications issued under Sections 4(1) and 6(1) had not been duly published; that he was not given opportunity of hearing by the Land Acquisition Collector; that notice had not been served upon him as per the mandate of Section 9(3). He also pleaded that possession of land was still with him and the paper possession taken by the respondents was inconsequential.

11. The Division Bench of the High Court did not examine the grounds on which the appellant challenged the acquisition of his land and dismissed the writ petition by relying upon the judgments of this Court in Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Limited (1996) 11 SCC 501, Star Wire (India) Ltd. v. State of Haryana (1996) 11 SCC 698, C. Padma v. Deputy Secretary to the Government of Tamil Nadu (1997) 2 SCC 627, Municipal Council, Ahmednagar v. Shah Hyder Beig (2000) 2 SCC 48 and Swaika Properties (P) Ltd. v. State of Rajasthan (2008) 4 SCC 695, wherein it has been held that once the award is passed and possession taken, the acquired land will be deemed to have vested in the Government and the High Court cannot entertain the writ petition filed for quashing the acquisition proceedings.

12. The appellant challenged the order of the High Court in SLP(C) No.26631 of 2010 but withdrew the same with liberty to seek review of the impugned order. Thereafter, he filed Review Application No.321 of 2010. He relied upon the judgment of this Court in NTPC Limited v. Mahesh Dutta (2009) 8 SCC 339 and pleaded that possession of the acquired land cannot be treated to have been taken because the procedure laid down in Order XXI Rule 35 of the Code of Civil Procedure had not been followed. He also pleaded that paper possession taken by the respondents does not have any sanctity in the eye of law and physical possession of land was still with him. The Division Bench rejected the review application by observing that the order dismissing the writ petition does not suffer from any error apparent. However, the date of filing the writ petition mentioned in paragraph (1) of order dated 17.5.2010 was corrected from 27.3.2010 to 27.3.2009.

13. Shri Neeraj Jain, learned senior counsel for the appellant argued that the view taken by the High Court on the issue of maintainability of the writ petition is clearly erroneous and the impugned orders are liable to be set aside because possession taken by the respondents was only on papers and the same did not result in vesting of land in the State Government. Learned senior counsel further argued that the acquisition of the appellant's land is liable to be quashed because the Land Acquisition Collector had made recommendations under Section 5A(2) without giving him opportunity of hearing. He submitted that the official to whom the Land Acquisition Collector had entrusted the task of serving the notice had not performed his duty and submitted false report showing delivery of notice to the appellant and his wife. Shri Jain referred to the typed and xerox copies of notices dated 2.11.2006 issued to S/Shri Madan Lal s/o. Shri Jagdish, Ram Singh s/o. Chhote Lal, Jai Bhagwan s/o. of Hoshiar Singh, Mukhtar Singh s/o. Lakhi Ram, Rajender Singh s/o. Hoshiar Singh, Mohinder Singh s/o. Swarup Singh, the appellant and his wife Smt. Moorti Devi and pointed out that while other addressees acknowledged the receipt of notices by putting their signatures, the notices shown as duly served upon the appellant and his wife do not contain their signatures acknowledging the receipt thereof. Learned senior counsel also invited our attention to Annexure R-3 filed with the counter affidavit of the respondents to show that the name of the appellant's wife has been shown as Moorti Devi widow of Raghbir though he is very much alive. He then pointed out that the signatures appended against the appellant's name in the list of objectors, who are said to have appeared before the Land Acquisition Collector on 29.10.2006 are not that of the appellant and someone had forged the signatures to show his presence. Learned senior counsel submitted that notice under Section 9(3) was not served upon the appellant before passing of award dated 28.11.2008 and physical possession of the acquired land is still with him. In support of this argument, Shri Jain relied upon the entries contained in the copy of Girdawari/Record of cultivation of village Jatheri, Tehsil and District Sonepat for the years 2001 to 2010, which have been placed on record as Annexure P-20. Learned senior counsel emphasized that the High Court failed to notice that the respondents had prepared false record showing delivery of possession of the acquired land to HSIIDC and this has caused serious prejudice to the appellant. In the end, Shri Jain argued that release of more than 50% of land proposed to be acquired is clearly indicative of total non-application of mind by the concerned functionaries of the State and the entire exercise undertaken by them for the acquisition of land is liable to be nullified on the ground of violation of the mandate of Sections 4, 5A, 6 and 9 of the Act and, in any case, there is no justification for uprooting persons like the appellant, whose livelihood is dependent on small parcels of land or who have constructed residential houses or have set up small industrial units by spending lifetime earnings.

14. Learned counsel for the respondents supported the impugned orders and argued that even though the appellant may not have been given opportunity of personal hearing by the Land Acquisition Collector, he cannot question the acquisition proceedings because possession of the acquired land has already been taken by the competent authority and handed over to HSIIDC. Learned counsel submitted that minor discrepancies in the list containing signatures of the objectors, who appeared before the Land Acquisition Collector on 29.10.2006, cannot lead to an inference that the concerned officer had not given opportunity of personal hearing to the appellant and his wife. He further submitted that the Land Acquisition Collector had made recommendations after giving due opportunity of hearing to the objectors and the declaration under Section 6(1) was issued by the State Government after duly considering the recommendations of the Land Acquisition Collector and this is evinced from the fact that various parcels of land on which residential houses and factories were existing on the date of Section 4(1) notification were not included in the declaration issued under Section 6(1). Learned counsel invited our attention to Part Layout Plan of Sector 38 (Phase II), which has been placed on record as Annexure R-1 along with affidavit dated 12.8.2011 of Shri Yogesh Mohan Mehra, Senior Manager (IA), HSIIDC to show that the acquired land has already been utilised for development of industrial estate and plots have been allotted to entrepreneurs, who are desirous of setting up industries. He submitted that HSIIDC has taken up development of the acquired land at an estimated cost of rupees fifty eight crores and submitted that the acquisition of the appellant's land may not be quashed at this stage because 24 meter wide road has already been constructed through his land.

15. We have considered the respective submissions and carefully scrutinized the record.

16. Since the appellant has been non suited by the High Court only on the ground that possession of the acquired land had been taken by the concerned officers and the same will be deemed to have vested in the State Government free from all encumbrances, we think that it will be appropriate to first consider this facet of his challenge to the impugned orders. In the writ petition filed by him, the appellant categorically averred that physical possession of the acquired land was with him and he has been cultivating the same. This assertion finds support from the entries contained in Girdawari/Record of cultivation, Book No.1, village Jatheri, Tehsil and District Sonepat (years 2001 to 2010). A reading of these entries shows that during those years crops of wheat, paddy and chari were grown by the appellant and at the relevant time, i.e. the date on which possession of the acquired land is said to have been taken and delivered to HSIIDC, paddy crop was standing on 5 Kanals 2 Marlas of land. The respondents have not questioned the genuineness and correctness of the entries contained in the Girdawaris. Therefore, there is no reason to disbelieve or discard the same. That apart, it is neither the pleaded case of the respondents nor any evidence has been produced before this Court to show that the appellant had unauthorisedly taken possession of the acquired land after 28.11.2008. It is also not the pleaded case of the respondents that the appellant had been given notice that possession of the acquired land would be taken on 28.11.2008 and he should remain present at the site. Therefore, Rojnamcha Vakyati prepared by Sadar Kanungo and three Patwaris showing delivery of possession to Shri Yogesh Mohan Mehra, Senior Manager (IA), HSIIDC, Rai, which is a self serving document, cannot be made basis for recording a finding that possession of the acquired land had been taken by the concerned revenue authorities. The respondents have not produced any other evidence to show that actual possession of the land, on

which crop was standing, had been taken after giving notice to the appellant or that he was present at the site when possession of the acquired land was delivered to the Senior Manager of HSIIDC. Indeed, it is not even the case of the respondents that any independent witness was present at the time of taking possession of the acquired land. The Land Acquisition Collector and his subordinates may claim credit of having acted swiftly inasmuch as immediately after pronouncement of the award, possession of the acquired land of village Jatheri is said to have taken from the landowners and handed over to the officer of HSIIDC but keeping in view the fact that crop was standing on the land, the exercise undertaken by the respondents showing delivery of possession cannot but be treated as farce and inconsequential. We have no doubt that if the High Court had summoned the relevant records and scrutinized the same, it would not have summarily dismissed the writ petition on the premise that possession of the acquired land had been taken and the same vested in the State Government.

17. The legality of the mode and manner of taking possession of the acquired land has been considered in a number of cases. In Balwant Narayan Bhagde v. M. D. Bhagwat (1976) 1 SCC 700, Untwalia, J. referred to provisions of Order 21 Rules 35, 36, 95 and 96 of the Code of Civil Procedure and opined that delivery of symbolic possession should be construed as delivery of actual possession of the right, title and interest of the judgment-debtor. His Lordship further observed that if the property is land over which there is no building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land. The learned Judge went on to say:

> "When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under Section 47 of the Act if impeded in taking possession. On publication of the notice under Section 9(1) claims to compensation for all interests in the land has to be made; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under Section 16 or 17(1) it vests absolutely in the Government free from all encumbrances. It is, therefore, clear that taking of possession within the meaning of Section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a `symbolical' possession as generally understood in civil law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once

possession has been taken the land vests in the Government."

Bhagwati, J. (as he then was) and Gupta, J., who constituted the majority did not agree with Untwalia, J. and observed as under :

> "We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking `symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession . It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

18. In Banda Development Authority, Banda v. Moti Lal Agarwal and others (2011) 5 SCC 394, the Court referred to the judgments in Balwant Narayan Bhagde v. M. D. Bhagwat (supra), Balmokand Khatri Educational and Industrial Trust v. State of Punjab (1996) 4 SCC 212, P. K. Kalburqi v. State of Karnataka (2005) 12 SCC 489, NTPC Ltd. v. Mahesh Dutta (supra), Sita Ram Bhandar Society v. Govt. of NCT of Delhi (2009) 10 SCC 501 and culled out the following propositions:

> "(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
>
> (ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

19. If the appellant's case is examined in the light of the propositions culled out in Banda Development Authority, Banda v. Moti Lal Agarwal and others, we have no hesitation to hold that possession of the acquired land had not been taken from the appellant on 28.11.2008, i.e. the day on which the award was declared by the Land Acquisition Collector because crops were standing on several parcels of land including the appellant's land and possession thereof could not have been taken without giving notice to the landowners. That apart, it was humanly impossible to give notice to large number of persons on the same day and take actual possession of land comprised in various survey numbers (total measuring 214 Acres 5 Kanals and 2 Marlas).

20. In view of the above discussion, we hold that the record prepared by the revenue authorities showing delivery of possession of the acquired land to HSIIDC has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and the same vested in the State Government in terms of Section 16.

21. The judgments on which reliance has been placed in the impugned order are clearly distinguishable. In Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Limited (supra), this Court reversed the judgment of the Bombay High Court which had quashed the acquisition of land under the Land Acquisition Act, 1894 read with the provisions of Maharashtra Regional and Town Planning Act, 1966. This Court noted that the respondent had approached the High Court after a gap of four years' and held:

> "It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

Similar view was expressed in C. Padma v. Deputy Secretary to the Government of Tamil Nadu (supra), Star Wire (India) Ltd. v. State of Haryana (supra), Municipal Council, Ahmednagar v. Shah Hyder Beig (supra) and Swaika Properties (P) Ltd. v. State of Rajasthan (supra). In all the cases, challenge to the acquisition proceedings was negatived primarily on the ground of delay. An additional factor which influenced this Court was that physical possession of the acquired land had been taken by the concerned authorities. In none of these cases, the landowners appear to have questioned the legality of the mode adopted by the concerned authorities for taking possession of the acquired land. Therefore, these judgments cannot be relied upon for sustaining the High Court's negation of the appellant's challenge to the acquisition of his land.

22. The next issue which merits consideration is whether the acquisition of the appellant's land is vitiated due to violation of Section 5A(2) and the rules of natural justice. A careful scrutiny of record reveals that the Land Acquisition Collector had fixed 29.10.2006 as the date for hearing the objections. He issued notices dated 2.11.2006 to inform the objectors that hearing will take place on 29.11.2006 at 11 a.m. in P.W.D. Rest House, Rai and asked them to appear either in person or through their agent. The notices were delivered to some of the landowners, who acknowledged the receipt thereof. However, the notices issued to the appellant and his wife were not served upon them. This is evident from the fact that other objectors had acknowledged the receipt of notices by putting their signatures, the notices allegedly served upon the appellant and his wife do not bear their signatures and no explanation has been offered by the respondents about this omission. The Land Acquisition Collector proceeded to decide the objections by assuming that the notice has been delivered to all the objectors. Not only this, someone in the office of Land Acquisition Collector forged the appellant's signature to show his presence in P.W.D. Rest House, Rai on 29.11.2006. A bare comparison of the signatures appearing against the appellant's name at serial No.90 (page 184 of the paper book) and those appearing on the vakalatnama and affidavit filed in support of the special leave petitions shows that there is no similarity in the two signatures. Not only this, in the list, appended with Annexure R-3, the appellant's wife has been shown as widow of Raghbir Singh. It is impossible to believe that a woman who knows how to sign a document would put signatures against her name showing her as a widow despite the fact that her husband is alive. When the Court pointed out to the learned counsel for the respondents that the signatures appearing against serial No. 90 at page 8 of Annexure R-3 (page 184 of the paper book) do not tally with the signatures of the

appellant on the vakalatnama and the affidavit filed in support of special leave petitions, the learned counsel expressed his inability to offer any explanation. He also expressed helplessness in defending the description of the appellant's wife Smt. Moorti Devi as widow of Raghbir Singh.

23. From what we have stated above, it is clear that the appellant had not been given opportunity of hearing as per the mandate of Section 5A(2). The importance of Section 5A(2) was highlighted by this Court in Munshi Singh v. Union of India (1973) 2 SCC 337 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."

In State of Punjab v. Gurdial Singh (1980) 2 SCC 471, this Court observed:

> "....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."

In Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, this Court reiterated that compliance with provisions of Section 5A is sine qua non for valid acquisition and observed as under:

> "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."

24. The same view has been reiterated in Union of India v. Mukesh Hans (2004) 8 SCC 14, Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai (2005) 7 SCC 627, Anand Singh v. State of U.P. (supra) and Radhy Shyam v. State of U. P. (supra).

25. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5A 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 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 utilized 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.

26. Before concluding, we deem it necessary to observe that in recent past, various State Governments and their functionaries have adopted very casual approach in dealing with matters relating to the acquisition of land in general and the rural areas in particular and in a large number of cases, the notifications issued under Sections 4(1) and 6(1) with or without the aid of Section 17 and the consequential actions have been nullified by the Courts on the ground of violation of the mandatory procedure and the rules of natural justice. The disposal of cases filed by the landowners and others take some time and the resultant delay has great adverse impact on implementation of the projects of public importance. Of course, the delay in deciding such cases may not be of much significance when the State and its agencies want to confer benefit upon private parties by acquiring land in the name of public purpose. It if difficult, if not impossible, to appreciate as to why the State and its instrumentalities resort to massive acquisition of land and that too without complying with the mandate of the statute. As noted by the National Commission on Farmers, the acquisition of agricultural land in the name of planned development or industrial growth would seriously affect the availability of food in future. After independence, the administrative apparatus of the State has not spent enough investment in the rural areas and those who have been doing agriculture have not been educated and empowered to adopt alternative sources of livelihood. If land of such persons is acquired, not only the current but the future generations are ruined and this is one of the reasons why the farmers who are deprived of their holdings commit suicide. It also appears that the concerned authorities are totally unmindful of the plight of those sections of the society, who are

deprived of their only asset like small house, small industrial unit etc. They do not realise that having one's own house is a lifetime dream of majority of population of this country. Economically affluent class of society can easily afford to have one or more houses at any place or locality in the country but other sections of the society find it extremely difficult to purchase land and construct house. Majority of people spend their lifetime savings for building a small house so that their families may be able to live with a semblance of dignity. Therefore, it is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses by way of the acquisition of land in the name of development of infrastructure or industrialisation. Similarly, some people set up small industrial unit after seeking permission from the competent authority. They do so with the hope of generating additional income for their family. If the land on which small units are established is acquired, their hopes are shattered. Therefore, before acquiring private land the State and/or its agencies/instrumentalities should, as far as possible, use land belonging to the State for the specified public purposes. If the acquisition of private land becomes absolutely necessary, then too, the concerned authorities must strictly comply with the relevant statutory provisions and the rules of natural justice.

27. In the result, the appeals are allowed. The impugned orders are set aside. As a corollary to this, the writ petition filed by the appellant is allowed and the acquisition of his land is declared illegal and quashed. The appellant shall get cost of Rs.2,50,000/- from the respondents.

.....J. (G.S. Singhvi) .....J. (Sudhansu Jyoti Mukhopadhaya) New Delhi, November 23, 2011.

ITEM NO.1A COURT NO.6 SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeals Nos...../2011 @

Petition(s) for Special Leave to Appeal (Civil) No(s).12042- 12043/2011 (From the judgement and order(s) dated 17/05/2010 in CWP No.8441/2009 and order dated 19/11/2010 in RA No.321/2010 in CWP No.8441/2009 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH) RAGHBIR SINGH SEHRAWAT Petitioner(s) VERSUS STATE OF HARYANA & ORS. Respondent(s) [HEARD BY HON'BLE G.S.SINGHVI AND HON'BLE SUDHANSU JYOTI MUKHOPADHAYA, JJ.] Date: 23/11/2011 These Petitions were called on for Judgment today.

For Petitioner(s) Dr. Kailash Chand,Adv.(Not present)

For Respondent(s) Mr. Ravindra Bana,Adv.

Hon'ble Mr. Justice G.S. Singhvi pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr.Justice Sudhansu Jyoti Mukhopadhaya.

Delay condoned.

Leave granted.

For the reasons recorded in the Reportable Judgment which is placed on the file, the appeals are allowed. The impugned orders are set aside. As a corollary to this, the writ petition filed by the appellant is allowed and the acquisition of his land is declared illegal and quashed.

The appellant shall get cost of Rs.2,50,000/- from the respondents.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

[Signed Reportable judgment is placed on the file]