

(1984) 04 AHC CK 0026

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 584 of 1976

Abdul Ghaffar

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: April 27, 1984

Acts Referred:

- Land Acquisition (Companies) Rules, 1963 - Rule 4
- Land Acquisition Act, 1894 - Section 6

Citation: AIR 1984 All 283

Hon'ble Judges: O.P. Saxena, J; K.N. Singh, J

Bench: Division Bench

Advocate: S.A. Shai, for the Appellant; Vishnu Sahai, V. Sahai, B. Dayal and A.K. Sand and Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

K.N. Singh, J.

By means of this petition under Article 226 of the Constitution, the petitioner has challenged validity of the land acquisition proceedings taken by respondents under which the petitioner's land has been acquired under the provisions of the Land Acquisition . Act.

2. Abdul Gaffar, the petitioner is the owner of abadi land having Municipal Nos. 262 and 263 situate in the town of Sikandarabad, district Bulandhshar. A notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued by the Collector, Bulandsbahr on November 7, 1970. Objections u/s 5A of the Act were invited. After obtaining the report of the Collector u/s 5A of the Act, the State Government issued notification u/s 6 of the Act on November 8. 1973 acquiring the petitioner's land for the purpose of construction; of a building for science Laboratory, Dark Room, Cycle stand for the Jain Higher Secondary School, Sikandarabad run by Jain Siksha Samiti, Sikandarabad, when the respondents (authorities) wanted to take possession of the land,

the petitioner filed this petition challenging the validity of the acquisition proceeding claiming relief for the issue of writ of certiorari quashing the notifications issued under Sections 4 and 6 of the Act.

3. Learned counsel for the petitioner urged that even though the land was acquired for a company within the meaning of Section 3 of the Act, the mandatory provisions of Rule 4 of the Land Acquisition (Companies) Rules 1963 were not complied inasmuch as no notice was given to the petitioner nor any inquiry as contemplated by the rule was ever held by the Collector. Since the notification u/s 6 of the Act has been issued without complying with the provisions of Rule 4, it is rendered invalid. We find merit in this submission.

4. Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as the Rules) lays down that whenever the company makes an application for acquisition of any land, the Government shall direct the Collector to submit a report forthwith on the matters enumerated therein. The Collector is required to give reasonable opportunity to the company to make representation and hold inquiry into the matter specified in Sub-rule (1) of Rule 4 and thereafter he will submit his report to the Government. One of the matters which has to be inquired into by the Collector is that whether the company has made all reasonable efforts to get such land by negotiation with the person interested therein on payment of reasonable price and such efforts have failed. The Collector is further required to hold an inquiry into the matter as to whether the company has made its best endeavour to find out other land in the locality suitable for the purpose of acquisition. The Collector under Clause (3) of Rule 4 of the said rule is required to submit a report to the Government. Clause (4) of Rule 4 further lays down that no declaration shall be made by the Government u/s 6 of the Act unless appropriate government has consulted the committee and has considered the report under this rule and the report if any, submitted u/s 5A of the Act. Rule 4 does not expressly lay down that the Collector should issue notice to the person whose land is sought to be acquired but having regard to the object and purpose of the inquiry, it is implicit in the rule that the notice of the proceedings should be given to the person interested whose land is proposed to be acquired. If the rule is silent regarding the mode and method of inquiry to be held by the Collector or the rules of natural justice would apply and the Collector is under a duty to give notice to the person interested while holding the inquiry. In the absence of notice to the person whose land is sought to be acquired, the inquiry as contemplated by Rule 4 cannot be a valid enquiry as the owner of the land whose land is proposed to be acquired, is the best person to demonstrate before the Collector that the company has not made any effort to get the land by negotiation. In the absence of notice to the owner, the inquiry, if any, held by the Collector would be no enquiry in law.

5. In the [State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others](#), the Supreme Court held that the owners of the land are entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation and, therefore, the owner of the land is entitled to be given

an opportunity to be heard at the inquiry held by the Collector. In the [State of Gujarat and Others Vs. Ambalal Haiderbhai and Others](#), the Supreme Court again considered Rule 4 and observed as under (at Pp. 2004-5):

"Although the above mentioned rule is silent regarding the mode and method of the enquiry to be held by the Collector and the report of the Collector is of a recommendatory character yet regard being had to the legislative history and purpose of the rule, and the mischief sought to be prevented, we have no hesitation in holding that; in conducting the enquiry, the Collector has, in the interest of fair play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations Of the Company."

6. The effect of non-compliance of Rule 4 was again considered by the Supreme Court in [General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others](#), and on detailed discussion the Supreme. Court held that Rule 4 is mandatory, its compliance is no idle formality, unless the directions enjoined by Rule are complied with, the notification u/s 6 would be invalid. It, therefore, follows that Rule 4 is mandatory and it enjoins upon the Collector to give notice to the owner of the land and to afford a reasonable opportunity of placing his version and to contest the Company"s claim. If the Collector fails to give notice or opportunity to the owner of the land, the subsequent notification issued u/s 6 would be rendered invalid and illegal.

7. In the instant case the petitioner has asserted in para 6 of the petition that no notice of the inquiry as contemplated by Rule 4 of the Land Acquisition (Companies) Rules was ever served upon the petitioner and he was not afforded any opportunity to contest the proceeding. Three different counter-affidavits have been filed, or, behalf of the Collector, State Government and the Society, responded no. 4 for whose benefit the petitioner"s land was acquired. In para. 7 of the counter-affidavit of Swarup Singh filed on behalf of the Collector in reply to para 6 of the petition it has been asserted that a detailed affidavit has been filed on behalf of the State of U. P. in which it has been stated that full compliance of Rule 4 of the said rules has been made. In para 3 of the affidavit filed on behalf of State it is asserted that full compliance of Rule 4 was made before acquisition proceeding and the Collector submitted his report under Rule 4 on Aug. 20, 1971. The State Government considered the same and thereafter issued notification. Apart from those averments no assertion has been made in the counter-affidavit that any notice was issued to the petitioner by the Collector or that he was afforded opportunity to appear before the Collector to contest the company"s claim. In the counter-affidavit filed by Mahesh Chandra Jain on behalf of the Jain Siksha Samiti a bald statement has been made that Rule 4 was complied before the notification was made. There is thus no assertion made on behalf of the respondents that the notice of the proceedings under Rule 4 had ever been issued to the petitioner or that he was given any opportunity to contest the proceedings before the Collector. On the material on record we are satisfied that the Collector did not give notice to the petitioner or afforded any opportunity to the

petitioner to contest the proceedings under Rule 4. No doubt, the Collector submitted a report to the State Government but that report was submitted without hearing the petitioner. The denial of opportunity to the petitioner vitiates the proceedings.

8. Since the inquiry as contemplated by Rule 4 has not been held in accordance with law and as no opportunity was given to the petitioner to contest the same, the subsequent notification issued u/s 6 of the Act is rendered invalid.

9. We accordingly allow the petition and quash the notification dated Nov. 8, 1973 issued u/s 6 of the Act. The petitioner is entitled to his costs.