
(2006) 07 GAU CK 0007

Gauhati High Court

Case No: None

Sarungbam Joykumar
Singh and Others

APPELLANT

Vs

State of Manipur and
Others

RESPONDENT

Date of Decision: July 31, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226, 300A
- Land Acquisition Act, 1894 - Section 4, 5A, 6, 7

Citation: (2007) 1 GLR 138 : (2006) 3 GLT 310

Hon'ble Judges: B. Sudershan Reddy, C.J; B.P. Katakey, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B. Sudershan Reddy, C.J.

In this writ appeal, the judgment and order dated 4.1.2006 passed in WP(C) No. 1141/2005 by a learned Single Judge of this court, is under challenge. The writ petitioners are the appellants herein.

Background Facts:

2. The writ petitioners are the true and absolute owners of the lands and the buildings constructed thereon situated inside the palace compound at Imphal. Each one of them had purchased years ago small extent of lands from late Maharaja for a valid consideration and thereafter constructed their respective houses and living therein. The said properties are sought to be acquired compulsorily vide Notification dated 11.4.2005 for a public purpose, namely, Protection of Historical Monuments of Maharaja and Rajdarbar of New Palace. Being aggrieved by the notification issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") the appellants herein challenged the same in a

petition under Article 226 of the Constitution of India which ultimately came up for consideration before a Division Bench of this Court in Writ Appeal No. 67/2005. This Court took the view that the challenge to the impugned notification is a premature one since the appellants had the remedy under the provisions of the very same Act. This Court accordingly directed the appellants to raise all their objections u/s 5A of the Act. The court, however, took the view that the purpose for which the lands and buildings are sought to be acquired cannot be said to be not for a public purpose.

3. The appellants thereafter filed detailed objections before the Collector, inter alia, contending that out of the total area available in the palace compound only 16th of the area, a part of which is owned and possessed by the appellants, is sought to be acquired to throw out the appellants from their lands and buildings in the name of Protection of Historical Monuments of Maharaja and Rajdarbar of New Palace. The remaining area in possession of various other individuals have been left untouched and the plan, if any, does not suggest as to why the lands and buildings in possession of the appellants alone are sought to be acquired. Objections were also raised contending that the proposed acquisition is not for public purpose. The sum and substance of the objections raised are that the properties in possession of the appellants are not needed for acquisition for the ostensible purpose of Protection of Historical Monuments of Maharaja and Rajdarbar of New Palace.

4. The Collector, Land Acquisition, Imphal East having provided an opportunity of being heard to the appellants submitted his report dated 12.9.2005 to the Govt. of Manipur, together with record of the proceedings, for the decision of the Government. The Government thereafter issued declaration and got the same published, vide Notification dated 23.9.2005 declaring that the lands specified are needed for Acquisition/Protection of Historical Monuments of Maharaja and Rajdarbar of New Palace. The appellants once again filed a writ petition challenging not only the notification issued and published u/s 6 of the Act but as well as the draft notification issued and published in the Gazette u/s 4(1) of the Act proposing to acquire the lands for public purposes.

Submissions:

5. Shri N Dutta, learned senior counsel appearing for the appellants, however, submitted that the appellants are not challenging the draft notification issued and published u/s 4(1) of the Act proposing to acquire the lands for a public purpose inasmuch as the question as to whether proposed acquisition is for public purpose or not has attained its finality by virtue of the judgment rendered by a Division Bench of this Court in WA No. 67/2005 and, therefore, the same question cannot be re-agitated. The learned senior counsel confined his submissions to the challenge of declaration published u/s 6 of the Act. The contention was, the objections raised have not been considered properly by the collector and the report submitted by him to the Government has been accepted by the Government without considering the objections. It was submitted that the objections raised by the appellants have not been taken into consideration at all by the Government. The decision

of the Government is vitiated for the reason of non-application of mind, which is not supported by any reason whatsoever. Per contra, Shri APotsangbam, learned Advocate General for the State of Manipur submitted that adequate opportunity of being heard to the appellants has been provided for by the Collector and all the objections have been duly considered by the Collector in submitting his report to the Government. The Government in its turn having considered the report and the objections raised by the appellants concurred with the report submitted by the Collector and no detailed reason as such are required to be assigned by the Government. The declaration issued u/s 6 of the Act need not contain any reason whatsoever. The learned Advocate General further contended that a declaration as to public purpose of acquisition of land made by the Government is conclusive and, therefore, this Court cannot interfere with the declaration issued u/s 6 of the Act. It was not open for the appellants to raise the question whether the proposed acquisition is for a public purpose or not in view of the judgment of this Court in the earlier round of litigation wherein the issue has been conclusively decided declaring that the proposed acquisition is for public purposes.

6. We have carefully considered the rival submissions and perused the records made available for our perusal.

Questions that arise for consideration:

7. A very short question arises for our consideration, namely, whether the objections raised by the appellants objecting the acquisition of lands on various grounds have been properly considered by the Government? Whether any decision has been taken by the Government on the objections preferred by the appellants? What is the true nature, scope and enquiry u/s 5A of the Act?

Relevant Statutory Provisions:

8. The provisions of the Act, to the extent they are relevant, are reproduced hereinbelow:

5A. Hearing of objections. - (1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader 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 u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objection, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose. - (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made u/s 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5A, Sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) shall be made after the expiry of three years from the date of the publication of the notification ; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

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

Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1), is stayed by an order of a court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it

is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be ; and, after making such declaration the appropriate Government may acquire the land in a manner hereinafter appearing.

Scope and width of Section 5A and 6 of the Land Acquisition Act:

9. A plain reading of the provisions makes it clear that any person interested in any land which has been notified u/s 4(1) of the Act as being needed for a public purpose, is entitled to raise objections to the acquisition of the land and all such objections are required to be made to the Collector in writing. The provision mandates the Collector to give the objectors an opportunity of being heard in person or by any person authorized by him or by pleader, as the case may be. The Collector is duty bound and under statutory obligation to hear all such objections for the purposes of making his report or reports, as the case may be, under the said provision. Hearing of objections is not a formality. The report or reports, as the case may be, should reflect the application of mind by the Collector which is required to contain his recommendations on the objections raised by the persons interested in the lands. The recommendations to be so made are obviously with reference to the objections raised by the persons interested in the lands and as well as the result of his own enquiry made in the matter. The Collector is equally duty bound to submit his report to the Government containing his recommendations and the suggestions, together with record of the proceedings held by him, for the decision of the Government. The record and report are required to be sent enabling the Government to form its satisfaction that acquisition is needed for a public purpose. The decision of the Government is final in the matter. It is required to note, the decision of the Government is with reference to the objections raised by the objectors and not on the report or recommendations of the Collector.

10. In [Smt. Somavanti and Others Vs. The State of Punjab and Others](#), a Constitution Bench of the Apex Court held that the declaration u/s 6 that a particular land is needed for a public purpose is not to be made by the Government arbitrarily, but on the basis of materials placed before it by the Collector. "The provisions of Sub-section (2) of Section 5A make the decision of the Government on the objections final while those of Sub-section (1) of Section 6 enable the Government to arrive at its satisfaction". That such a declaration shall be conclusive evidence that the land is needed for a public purpose. It is existence of the need for public purpose which gives jurisdiction to the Government to make a declaration u/s 6(1) of the Act.

11. It is well settled and needs no restatement in our hands that the provisions of the Act must be strictly construed as they deprive a person of his land without his consent.

12. In The [State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others](#), Supreme Court observed:

14. ...Two things are plain when we come to consider the construction of Sections 45A and 6. The first is that the Act provides for acquisition of land of persons without their consent, and though compensation is paid for such acquisition; the fact, however, remains that land is acquired without the consent of the owner thereof and that is a circumstance which must be borne in mind when we come to consider the question raised before us. In such a case the provisions of the statute must be strictly constructed as it deprives a person of his land without his consent. Secondly, in interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent.

13. In [Abdul Husein Tayabali and Others Vs. State of Gujarat and Others](#), the Supreme Court while interpreting Section 5A of the Act observed:

16. ...Under Section 5A, the Collector has to hear the objections of the owner, take them on record and then submit his report to the Government. The section also requires him to send along with his report the entire record of his inquiry which would include the objections. The report has merely recommendatory value and is not binding on the Government. The record has to accompany the report as it is for the Government to form independently its satisfaction. Both are sent to enable the Government to form its satisfaction that the acquisition is necessary for a public purpose....

14. In [Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others](#), the Supreme Court observed that satisfaction of the Government after consideration of the report, if any, made u/s 5A "is undoubtedly a condition precedent to a valid declaration, for, there can be no valid acquisition under the Act unless the Government is satisfied that the land to be acquired is needed for a public purpose".

It is further observed - "Apart from the clear language of Section 6 it would seem that it is immaterial whether such satisfaction is stated or not in the notification. For, even if it is so stated a person interested in the land can always challenge as a matter of fact that the Government was not actually satisfied. In such a case the Government would have to satisfy the Court by leading evidence that it was satisfied as required by Section 6."

15. The declaration issued u/s 6 of the Act need not contain any reason on its face. Elaborate reasons are not required to be mentioned and published by way of notification u/s 6 of the Act but on challenge the Government is bound to show the record and to satisfy the court that the Government having considered the objections preferred by the persons interested together with the report containing the recommendations of the Collector, arrived at decision and accordingly approved the declaration to be issued and published in the Gazette. The satisfaction of the Government that a particular land is

needed for a public purpose can be arrived at only after considering the report submitted by the Collector. It may be noted that Sections 4, 5A and 6 are required to be read together as they are intertwined. Each cannot be read in isolation.

16. The Apex Court in [Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others](#), upon consideration of various authoritative pronouncements on the subject took the view that Section 5A of the Act confers a very valuable right in favour of a person whose lands are sought to be acquired.

Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid. ... The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders, a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety.

It is further observed-

It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution it has been held to be akin to a fundamental right

(emphasis supplied)

17. The Collector's duty u/s 5A of the Act is to hear the objections and make a report to the appropriate Government containing his recommendations on the objections together with the records of the proceedings. But for what purpose? The purpose is to enable the Government to take an appropriate decision on the objections raised by the persons interested in the lands. The decision of the Government on the objections shall be final. Be it noted, the objections raised can relate not only to the contention that the purpose for which land is being acquired is not a public purpose but objections as well can relate to the contentions that even if the purpose is a public purpose, the lands of the objectors is not necessary, in the sense that public purpose can be served by other land already proposed or some other land to which the objector may refer. Variety of factors can be pressed into service in pleading it is a fit case for omitting the land of the objectors from the acquisition.

18. The expression "decision" employed in Section 5A connotes the meaning as "(1) an act of deciding or settling a dispute or question by good judgment; (2) an act of making up one's mind ; (3) a judgment or conclusion reached or given and (4) determination; fairness of mind." (See Webster's New World Dictionary). In Black's Law Dictionary the meaning of the word "decision" has been described as "a judicial or agency determination after consideration of the facts and the law".

A "decision" should be in writing. Otherwise, it is impossible to appeal against an oral decision. The scope of the word "decision" is not limited to a determination pursuant to adjudication. A "decision" does not merely mean the "conclusion" - it embraces within it's fold the reasons which form the basis for arriving at the conclusions. See Advanced Law Lexicon.

As to the true meaning of the words "a decision or order passed by an officer of customs under this Act" used in Section 188 of the Sea Customs Act had fallen for consideration before the Supreme Court in [Union of India \(UOI\) Vs. Tarachand Gupta and Bros.](#), in which the Apex Court observed that the "decision" "must mean a real and not a purported determination. A determination, which takes into consideration factors which the officer had no right to take into account, is no determination".

19. "Decision" is not an empty formality, but involves application of mind. The records should indicate the application of mind by the appropriate Government. Obviously, every decision is required to be supported by reasons. The decision to be taken by the appropriate Government u/s 5A may not be akin to that of a court of law requiring it to act judicially but the requirement to give reasons in support of its conclusion cannot be dispensed with.

20. In the absence of reasons it would be almost impossible to review the decision making process as to how the mind is applied to the subject-matter requiring decision. It is incumbent on the appropriate Government to state the reasons in a manner which would disclose how the objections have been considered as this is the only visible safeguard against possible injustice and arbitrariness. Reasons in support of the conclusions alone would disclose that the Government formed its satisfaction after its application of mind in the matter.

21. The Apex Court in [Union of India \(UOI\) Vs. Mohan Lal Capoor and Others](#), observed:

Reasons arrived links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached.

22. In the absence of reasons it is impossible to determine whether or not the decision is vitiated by any illegality, irrationality and procedural impropriety. It would be impossible to discern whether power has been exercised in a fair and reasonable manner.

23. It is more than 30 years when Lord Denning stated that the giving of reasons is one of the fundamentals of good administration. In *Breen v. Amalgamated Engineering Union and Ors.* (1971) 2 QB 175 Lord Denning stated the principle:

If he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate¹ expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reasons is one of the fundamentals of good administration.

24. Now we shall examine as to what transpired in the case in hand. The Collector, Land Acquisition having received the objections in writing from the appellants provided adequate opportunity of being heard in the matter; all the appellants were represented through their counsel; the oral hearing on the objections is spread over from 28.7.2005 to 9.9.2005 on various dates. The Collector in his report did not make any recommendation whatsoever for the consideration of the Government. He merely noted the objections and contentions and forwarded the record of the proceedings held by him but without making any recommendation. There is no report in the eye of law as such.

25. Be that as it may, now we shall notice as to in what manner the Government had considered the objections and whether the Government has taken any "decision" on the objections raised by the appellants. The record discloses the decision making process to the following effect:

The recommendation of the Collector/LA(IE) is in order and satisfactory. This is for notification to be issued under Sections 6 and 7 of the LA Act in respect of the lands being acquired for protection of the Historical Monuments of Maharaja and the Rajdarbar, Imphal. For kind approval, since Collector (LA) IE has proposed it after conducting enquiry, etc.

The said note received the approval of the Minister concerned.

26. In our considered opinion there is no consideration of any of the objections raised by the persons interested in the lands. There is no report as such in the eye of law submitted by the Collector after hearing objections as is required in law nor any recommendation on the objections raised by the persons interested in the lands. That, even if the whole of the note is required to be taken into consideration for the reason that it forms part of the record, it does not reflect as to in what manner the Government arrived at its satisfaction to over rule or reject the objections preferred by the appellants. It merely referred to the purported proposals of the Collector after conducting the enquiry. There is no whisper as to in what manner the Government had considered the objections and decided the same. It is a clear case where record does not support the contentions urged by the learned Advocate General. However, we are in complete agreement with the submission made by

the learned Advocate General that the Government is not obliged to record any detailed reason in the form of any judgment and order as is required in an adjudicatory process of a Us but the Government cannot escape from its responsibility of recording reasons in support of its conclusion that it is satisfied that the land in question is needed for public purpose and suitability thereof. The Government is duty bound to take decision on the objections and there can be no decision in the eye of law without there being reasons in support of the conclusions.

27. The formation of opinion leading to satisfaction of the Government is subjective but the existence of circumstances relevant to the inference is the sine qua non for arriving at the satisfaction which must be demonstrable and evident from the record. It is not necessary to state the reasons as to how and on what basis the Government had arrived at the satisfaction for the declaration to be issued and incorporate the same in the notification, but the record must disclose the same. Whenever the action is questioned on the ground that no circumstances leading to an inference of a kind contemplated by the provision exists, the action might be exposed to interference. Unless the existence of the circumstances is clearly made out it is not open to the Government to say that it has formed the requisite opinion on circumstances, which it thinks exist. These circumstances leading to the satisfaction have to be proved at least prima facie. Mere assertion that the circumstances existed is not sufficient. We are not talking about any grounds of propriety or sufficiency as they do not constitute any basis to review the order passed in exercise of statutory power but of arriving at satisfaction requisite under legislation. If any authority is required in support of the proposition the same can be found in [The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others](#), .

28. What remains for us is to consider the submission made by the learned Advocate General as regards the conclusive nature of the declaration issued u/s 6 of the Act. We do not find any difficulty in accepting the submission made by the learned Advocate General to the extent that the court cannot substitute its opinion for that of the one formed by the Government, as it does not exercise any appellate jurisdiction over the decision of the Government. A declaration as to public purpose of acquisition of land made by the Government is final provided such declaration has been made by the Government in accordance with and within the limits of legislation and is not vitiated for the vice of illegality, irrationality or unreasonableness. That, an arbitrary declaration as to public purpose of acquisition of land cannot be upheld merely because it is made by the Government. The submission made by the learned Advocate General is too broad and merits no consideration. The decisions in [Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay \(Now Gujarat\) and Others](#), upon which reliance has been placed by the learned Advocate General in no manner lays down the law in such broad terms. On the other hand in both the decisions it is held that the decision of the Government is final except where it is colourable exercise of power.

29. It is evident from the record that the Government went by the purported proposal made by the Collector, Land Acquisition. The satisfaction, if any, is of the Collector and

not of the Government, as is required in law. It may have to be noted that the Collector in fact proposed nothing except forwarding the gist of the contentions and the proceeding sheets maintained by him during the course of hearing of the objections. Even if it is to be assumed that the Collector made some proposal, it may be one of the factors to be taken into consideration which would not relieve the Government of its statutory obligation to take an appropriate decision on the objections preferred by the persons interested in the lands.

30. "We accordingly hold that the entire decision making process is vitiated requiring this court's interference in exercise of its jurisdiction under Article 226 of the Constitution of India. The substantive right conferred upon persons interested in the lands u/s 5A of the Act has been treated as an empty formality. The wholesome principle incorporated in Section 5A of the Act that a person whose property is intended to be acquired should have a proper and reasonable opportunity of persuading the authority concerned that acquisition of the property belonging to that person should not be made, is given a total go-bye in the case in hand. The decision making process suffers from vice of non application of mind leaving us with no option but to quash the impugned declaration made u/s 6 of the Act vide Notification dated 23.9.2005. The Notification dated 23.9.2005 is accordingly quashed. It shall, however, be open to the Government to take an appropriate decision on the objections raised by the appellants, in accordance with law.

31. The impugned judgment and order dated 4.1.2006 passed in WP(C) No. 1141/2005 is accordingly set aside. The writ appeal is allowed without any order as to costs.