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RAMBHAI LAKHANBAI BHAKT

v.

STATE OF GUJARAT AND ORS.

APRIL 10, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Land Acquisition Act, 1894:

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Section 5A(2)—Land Acquisition—Notice calling upon the owner to file objections in person or through Advocate—Notice also stating that at the time of hearing the objections he will be personally heard—Petitioner filing objections by post—Consideration of objection—Award—Subsequent challenge by owner to Notification under section 4(1) and declaration under section 6—Ground that non affording of personal hearing was violative of Section 5A(2)—Held not valid.

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Section 6—Publication of declaration—Period of limitation—Computation for.

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In land acquisition proceedings a notice under section 5A of the Land Acquisition Act, 1894 was issued to the petitioner asking him to file objections in respect of the acquisition either personally or through his Advocate. The notice also stated that at the time of hearing objections he or his advocate would be heard personally. However, the petitioner neither personally appeared nor through an advocate but sent his objections by post. After considering the objections the Government issued a declaration under Section 6.

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The petitioner unsuccessfully challenged the Notification issued under section 4(1) as well as the declaration under section 6 before the High Court on the ground that since no personal hearing was given to him it was violative of sub-section (2) of Section 5A.

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In this Court it was contended for the petitioner that (i) when the petitioner had filed his objections, the Land Acquisition Officer was obliged to give further notice fixing a specified date for adduction of evidence and personal hearing and since that was not done, it was violative of sub-section(2) of Section 5A; and (ii) since the declaration under section

6 was published beyond one year it was invalid in law.

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Dismissing the petition, this Court

HELD: 1. It is unexceptional that when an opportunity of hearing is obliged to be given as enjoined under sub-section (2) of section 5A of the Land Acquisition Act, 1894 the petitioner is entitled to appear and be heard personally or through authorised representative or an advocate, on filing the objection to the acquisition. [276-H, 277-A]

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2. Admittedly, the petitioner had not appeared, either in person or through advocate but had chosen to file his objections through post. It would be obvious he did not intend to avail the benefit of hearing while submitting objections. The petitioner having chosen to send the objections through post and when the notice did indicate that he was to appear either in person or through advocate or authorised representative along with objections but failed, then there would be no need to give any further date of hearing. Therefore, no fault could be laid at the door of Land Acquisition Officer for not giving opportunity of hearing. [277-F, H, 278-B]

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Shyam Nandan Prasad & Ors. v. State of Bihar and Ors. [1993] 4 SCC 255 and *Sir Farid Ahmed Abdul Samad and Anr. v. The Municipal Corporation of the City of Ahmedabad and Anr.*, [1976] 3 SCC 719, referred to.

3. Under clause (2) of section 6 the declaration shall be published within one year from the date of the publication of the notification under s.4(1). That section clearly adumbrates that one year has to be counted from the date of the publication namely in the Gazette or last of the dates of publication envisaged thereunder, excluding the time during which further proceedings were stayed by the High Court. The last date is referred to as the date of the publication of the notification to reckon one year. It would be seen that declaration under section 6 was published within one year of the last of the dates of local publication under section 4(1). [278-D, E]

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 378 of 1995.

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From the Judgment and Order dated 5.9.94 of the Gujarat High Court in S.C.A. No. 7965 of 1992.

Anil B. Diwan, Anil Nauriya and Ms. Indu Goswamy for the

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A Petitioner.

The following Order of the Court was delivered:

B After hearing learned counsel for the petitioner at length, we find that it is not a fit case for interference. It is seen that admittedly a notice was issued under Section 5A to the petitioner on July 18, 1991 calling upon the petitioner to submit his written objections, if any, and it was stated specifically in the notice thus:

C "Therefore, you are hereby informed that if you have any objection in respect of acquisition of this land pursuant to the resolutions under the said Act, you shall, personally or through your authorised person or Advocate, make representation in that respect to the office of the Deputy Collector and Land Acquisition Officer Shri Vyas within 30 days from the date of the publication of this public notice and the time of producing objections, the facts stated by you or your advocate shall also be heard."

D The petitioner was informed that if he had any objection in respect of the acquisition of his land, pursuant to the notification under the said Act, he should, personally or through his authorised representative or Advocate, make representation in that behalf to the Deputy Collector and the Land Acquisition Officer Shri Vyas, within 30 days from the date of the publication of the public notice. At the time of producing objections for the facts stated by him, his authorised representative or himself or his advocate would also be heard. Pursuant thereto, admittedly, the petitioner had sent his objections by post. But he did not personally appear nor appeared through an advocate. The objections had been considered and a report had been submitted to the State Government. Pursuant thereto, after considering the report, the declaration under s.6 of the Land Acquisition Act 1/1890 as amended under Act 68/1984 was published on July 16, 1992 as per the procedure prescribed therein.

G The Petitioner filed writ petition in the High Court challenging the notification published under section 4(1) on June 25, 1991 and also the declaration. The principle contention raised in the High Court was that since no personal hearing had been given to the petitioner, it is violative of sub-s.(2) of s.5A of the Act. Sub-s.(2) contemplates thus:

"Hearing of objections - (1) Any person interested in any land which has been notified under Section 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, A

(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 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 under Section 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 objections, 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. B C D

(3) For the purpose 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." E

The High Court has considered the matter and recorded its finding thus:

"The undisputed fact is that after objections had been filed in writing by the petitioner, no formal notice was issued fixing a date for hearing of the said objection. On the facts of this case, the question arise is whether provisions of Section 5A(2) of the Land Acquisition Act should be taken to have been complied with when notice of 18th July, 1991 postulated that at the time of producing the objections the objectors or their Advocates will be heard. F G

Sub-section (2) of Section 5A requires filing of objections in writing and also casts mandatory duty on the Collector to give the objector an opportunity of being heard. In the instant case, vide a notice dated 18th July, 1991 the petitioner was informed of two things-firstly that objections should be filed by the petitioner within H

A 30 days of the date of publication of the Notice and secondly, at
the time of producing the objections, the objector or his Advocate
shall be heard. The implication of this is very clear. No specific
B date for the hearing of the objections was fixed, but what was stated
was that the objections should be filed in person either by the
objector himself or by the authorised person or through an Advoca-
C cate and then hearing would be granted at that time. The said
notice contemplated personal hearing being afforded at the time
of production of the objections. The petitioner however, chose to
file his objection in writing and sent the same by post. It is not the
case of the petitioner that any attempt was made to personally go
to the office of the Collector with a copy of the objections. It is
also not in dispute that the objections which were filed in writing
were taken into consideration and the report made. In other words,
it is not that the written objections were disregarded.

D The observation of the Land Acquisition Collector in the award
has to be read in the context of the said notice dated 18th July,
1991. Therefore, when in the award it is stated that date was fixed
for personal hearing and no one was present on behalf of the
E objector, the implication clearly is that though 30 days time was
given for the producing of objections and the hearing was to be
granted at the time of production of the same, the petitioner was
not personally present. In our opinion, the provisions of Section
5A(2) of the Land Acquisition Act were duly complied with in the
present case."

F Shri Anil B. Diwan, learned senior counsel appearing for the
petitioner, placing reliance on the decision of this Court in *Sir Farid Ahmed*
Abdul Samad & Anr. v. The Municipal Corporation of the City of Ah-
medabad & Anr., reported in [1976] 3 SCC 719 strenuously contended that
G the owner of the land has a right to object to the acquisition by placing
necessary material and if necessary by adduction of evidence and cross
examination of the witness of the respondent. When he has filed the
objections, the Land Acquisition Officer is obliged to give further notice
fixing a specified date for adduction of evidence and hearing. Since that
was not done, it is violative of sub- s.(2) of Section 5A of the Act. It is
unexceptional that when an opportunity of hearing is obliged to be given
H as enjoined under sub-s.(2) of s.5A of the Act, the petitioner is entitled to

appear and be heard personally or through authorised representative or an advocate, on filing the objection to the acquisition. Sections 4(1) and 6(2) prescribe elaborate procedure as amended by Act 68 of 1984, to take further action, within time frame for making the award under s.11. If he fails to make award within two years from the date of the last of the dates of publication under s.6(2), the proceedings for acquisition should lapse unless it is covered by its Explanation. It was notorious that no award was being made for years putting owner of the land to great hardship. The time frame for making the award and other procedural steps in s.4(1) and s.6(2) were designed to mitigate untold hardship to the person interested in the land and to prevent needless burden on the exchequer. As its limb, unless power under s.17(4) was invoked, enquiry under s.5A should be conducted and completed within 30 days or within unavoidable minimum period. So, the procedure for inquiry under s.5A is not like an elaborate trial. Section 5(2) was amended and right of hearing was made mandatory consistent with development of law of natural justice. It would be open to the claimant to avoid of the remedy of hearing. But it is mandatory that right of personal hearing should be given to the owner or person interested in the land known to the land acquisition officer or he has reason to believe that such a person has interest in the land under acquisition.

Notice in the present case did indicate that the petitioner was at liberty to file his objections within 30 days from the date of the publication of the notice and in case he wished to and at the time when he filed the objections, he was also asked to appear either in person or through authorised representative or advocate and he would be heard on his objections. Admittedly, the petitioner had not appeared, either in person or through advocate but had chosen to file his objections through post. It would be obvious he did not intend to avail the benefit of hearing while submitting objections. If it were a case that he personally appeared and filed objections and requested for hearing, but for one reason or other he was not heard, then time should be granted and perhaps it may be requested to be adjourned to a next short date to be heard. That would be a different circumstances to consider whether failure to give such a date for hearing violates s.5(2). The petitioner having chosen to send the objections through post and when the notice does indicate that he was to appear either in person or through advocate or authorised representative along with objections but failed, then there would be no need to give any further date of hearing.

- A Right of hearing is mandatory under s.5A(2) and the Land Acquisition Officer is enjoined to give the opportunity of hearing to the owner or person known to be interested in the land. The ratio laid down by this Court in *Shyam Nandan Prasad & Ors. v. State of Bihar and Ors.*, [1993] 4 SCC 255 also referred by Sri Diwan, is unexceptional and has to be complied with. Accordingly, the Land Acquisition Officer has not taken it lightly or casually in issuing the notice but the parties had not chosen to appear either in person or through counsel. No fault could be laid at the door of Land Acquisition Officer for not giving opportunity of hearing.
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- C It is then contended that on the dates mentioned in his writ petition filed in the High Court, the declaration under s.6 was published beyond one year and that, therefore, the declaration is invalid in law. We find no force in the contention. It is seen that under clause (2) of s.6 the declaration shall be published within one year from the date of the publication of the notification under s.4(1). That section clearly adumbrates that one year has to be counted from the date of the publication envisaged thereunder excluding the time during which further proceedings were stayed by the High Court. The last date is referred to as the date of the publication of the notification to reckon one year. It would be seen that declaration under s.6 was published within one year of the last of the dates of local publication under s.4(1), in view of the closeness of the publication of these in the
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- E Gazette.

Though this point was not argued in the High Court, since the learned counsel has raised the point, we have heard and answered accordingly.

- F The SLP is, therefore, dismissed.

T.N.A.

Petition dismissed.