

Sharp Tools and Etc. Vs. State of Tamil Nadu and anr. Etc.

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Court : Chennai

Decided On : Sep-29-2006

Reported in : AIR2007Mad37; 2007(1)AIRKarR535

Judge : P. Sathasivam,; M.E.N. Patrudu and; S. Manikumar, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 5A, 5A(1), 5A(2), 6, 11A, 18 and 18(3); Limitation Act - Sections 5; Tamil Nadu Land Acquisition Rules - Rules 2, 3 and 4; Pondicherry Land Acquisition Rules - Rule 5

Appeal No. : Writ Petn. Nos. 17575 of 1995 and 4526 of 1996 and W.P.M.P. Nos. 27772 of 1995, 7285 of 1996, 59773

Appellant : Sharp Tools and Etc.

Respondent : State of Tamil Nadu and anr. Etc.

Advocate for Def. : P. Wilson, Spl. Govt. Pleader assisted by C. Thirumaran, Govt. Adv.

Advocate for Pet/Ap. : T.R. Rajagopalan, Sr. Counsel for T.R. Rajaraman, Adv. in W.P. No. 17575/95 and; K. Venkatachalapathy, Sr. Counsel for B. Rajendran, Adv. in W.P. 4526/96

Judgement :

P. Sathasivam, J.

1. The question raised and referred to this Full Bench for clarification of the legal position is,

Whether the objections received from the persons interested on receipt of Form 'B' notice within the period of 15 days stipulated therein has to be considered and Rule 3(b) (now Rule 4(b) has to be followed

2. Before proceeding to analyse the issue and answer the question before us, we deem it necessary to refer in brief the factual details in W.P. 17575 of 1995 for better understanding.

For the purpose of construction of houses under the Neighbourhood Scheme in Coimbatore North Taluk, Coimbatore District, in an extent of 11.14.0 Hectares, on the requisition of the 3rd respondent viz. the Tamil Nadu Housing Board, Notification under Section 4(1) of the [Land Acquisition Act, 1894](#) (hereinafter referred to as 'Central Act') was issued in G.O. Ms. No. 647, Housing and Urban Development (LA-II) dated 22-9-1992.

The petitioner, which is a partnership firm, and eleven others are the owners of an extent of 1.84 acres situated in S.F. No. 332/ 2B in Kalapatti village, Coimbatore North Taluk, having purchased the same on 4-9-1985 for a valuable consideration. This property forms part of the property in respect of which Section 4(1) notification was issued as referred supra.

According to the petitioner/firm, it was founded in the year 1964 and is engaged in the manufacture of Monoblock pumps and special purpose machineries and it had been in active business in its field for over 30 years and has in its employment about 130 workers. The petitioner, in fact, desired to construct its own guest house and after purchase, fenced the entire extent with barbed wires and had also applied with the authorities concerned, seeking sanction for putting fop construction. G.O. Ms. No. 647 issued with reference to Section 4(1) Notification is dated 22-9-1992 and the same was gazetted on 14-10-1992. On 15-10-1992 and 21-10-1992, the said Notification was published in two local Newspapers viz., 'Makkal Kural' and 'Mamadhu MGR', which are not circulated widely in that area. On 23-1-1993, the petitioner received notice with reference to the enquiry under

Section 5-A of the Act. Pobjections were filed on 12-2-1993 and the enquiry was held on 15-2-1993. The objections were forwarded by the 2nd respondent to the 3rd respondent and the remarks received by the 2nd respondent were forwarded to the petitioner on 8-3-1993. Subsequent to that date, there was no enquiry. Section 6 declaration was issued in G.O. Ms. No. 967 dated 8-12-1993. The procedure contemplated under Rule 4 of the Land Acquisition (Tamil Nadu) Rules (hereinafter referred to as 'Rules') has not been followed and, that apart, Section 6 Declaration came to be issued after the prescribed period viz., one year after the Section 4(1) Notification. Award enquiry was conducted thereafter and ultimately, on 8-12-1995, the 2nd respondent passed the award. It is contended that the award was not passed within two years from the date of Section 6 Declaration as contemplated under Section 11A of the Act.

In the common counter affidavit filed on behalf of R-1 and R-2, the respondents had endeavoured to explain the claim that the 2nd respondent strictly adhered to the procedure laid down under the Act. According to the 2nd respondent, apart from the publication in the gazette and Newspapers, public notice of the substance of such notification at the convenient places in the said locality was made on 11-12-1992. It is stated that the objections raised by the land owners were duly communicated to the requisitioning body i.e., the 3rd respondent herein, and the remarks received from the 3rd respondent were communicated to the land owners including the petitioner. It is on the basis of the remarks of the Executive Engineer, Tamil Nadu Housing Board, the objections were overruled, Section 5A(2) proceedings were issued and result of the enquiry was communicated to the land owner on 31-5-1993. Only after examining the merits of the objection and remarks of the requisitioning body, Draft declaration under Section 6 of the Act was approved by the Government in G.O. Ms. No. 967, dated 8-12-1993. Thereafter, the 2nd respondent proceeded further into the matter and, after strictly complying with the provisions of the Act, passed the award on 8-12-1995. As far as the claim made by the petitioner that the 2nd respondent failed to conduct any. enquiry after sending remarks of the requisitioning body viz., 3rd respondent, to the petitioner on 8-3-1993, it is contended that since the petitioner made its objection long after the prescribed period, the 2nd respondent is not duty bound to consider the same. Even otherwise, the 2nd respondent did not act solely on the remarks received

from the requisitioning body, but it also considered the merits of the claims made by the petitioner.

3. Based on the above pleadings, though the learned Judge determined four questions for consideration, we are concerned only with the 4th question, which reads as follows:

Whether the Notification under Section 4(1) of the Land Acquisition Act and Declaration under Section 6 are liable to be quashed on the ground that the 2nd respondent has not followed the procedure prescribed under Rule 4(b) of the Rules

4. Now let us focus on the statutory provisions applicable and relevant to the question raised.

I. Section 4(1) of the Central Act reads as follows:

4. Publication of preliminary notification and powers of officers thereupon - (1) Whenever it appears to the (appropriate Government) that land in any locality (is needed or) is likely to be needed for any public purpose (or for a company), a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

II. Section 5A of the Act reads thus:

5-A. Hearing of Objectioris - (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.

(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 enquiry, 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.

(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.

III. Rule 4 of the Rules reads as under:

Rule 4. - (a) If a statement of objections is filed by a person who is not interested in the land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5A, the Collector shall fix a date for hearing the objections and give notice thereof in Form 'B' to the objector as well as to the department or company requiring the land. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector, a statement by way of answer to the objections and may also depute a representative to attend the enquiry

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector, or a person authorised by him in this behalf, or his pleader and the representative, if any, of the department or company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land

IV. Both Form A and Form-B, vide Rule 2 and Rule 4(b) respectively, are reproduced below,

FORM 'A'

(vide rule 2)

Notice Under Sub-Section (1) of

Section 4 of the land acquisition

Act, 1894 (Central Act 1 Of 1894)

Under Sub-section (1) of Section 4 of the [Land Acquisition Act, 1894](#) (Central Act I of 1894), notice is hereby given that the land/lands specified in the Schedule and situated in the village of... in the taluk of... in the district of... is/are needed or Is likely to be needed for a public purpose or for a company, to wit, for_____. All persons interested in the land/lands are accordingly required to lodge before the... within thirty days from the date of publication of this notice, a statement in writing of their objections, if any, to the acquisition of the said lands.

Any objection/statement which is received after the date of which does not clearly explain the nature of the sender's interest in the land is liable to be summarily rejected.

Objections received within the due date, if any, will be enquired into on... at... when the objectors will be at liberty to appear in person or by a person or persons authorized by him or them in this behalf or by a pleader and to adduce any oral or documentary evidence in support of their objections.

The Schedule

Description	Survey	Reputed	ownerNo	Survey No
Owner_____				1
2		3		4

'B'

(vide rule 4(b))

Notice under Sub-Section (1) Of
Section 5A Of The Land Acquisition
Act, 1894.

Under Sub-section (1) of Section 5-A of the [Land Acquisition Act, 1894](#) (Central Act I of 1894), notice is hereby given that the land specified in the Schedule and situated in the village of... in the taluk of... in the district of... is needed or is likely to be needed for a public purpose or for a company, to wit, for....

You are, accordingly, required to lodge before the - within fifteen days from the date of service of this notice, a statement in writing of your objection, if any, to the acquisition of the said land.

Any objection/statement which is received after the due date or which does not clearly explain the nature of your interest in the land is liable to be summarily rejected.

Objections, if any, received within the due date will be enquired into on ...at...when you will be at liberty to appear in person or by a person authorised by you in this behalf or by pleader and to adduce any oral or documentary evidence in support of your objections

The Schedule

Description	Survey	Reputed	No.
No. 2			3
4			

5. In the larger interest of all concerned, we mainly concentrate on the following two points:

a. Answering the reference by examining Rule 4(b) and Form 'B'.

b. Requirement of personal hearing of the objectors and the concerned Department as provided under Section 5A(2) and Form B.

6. A plain reading of Section 5A(1) of the Act makes it clear that an interested person in respect of the land notified under Section 4(1), who intends to object to the acquisition, is expected to submit his objection within thirty days from the date of the publication of the notification. Sub-section (1) of Section 4 provides the Notification to be published In three modes, viz.,

(i) publication in the Official Gazette;

(ii) in two daily newspapers circulating In that locality of which at least one shall be in the regional language; and

(iii) causing public notice of the substance of the Notification in the locality.

Sub-section (2) of Section 5A makes it clear that 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; and, after hearing all such objections and after making such further enquiry; shall submit report/reports containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the Government. Sub-section (3) makes It clear that 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 the Act.

7. We have already extracted Rule 4, which says that if objections are received from a person interested in the land and within the time prescribed is Sub-section (1) of Section 5-A, the Collector shall fix a date for hearing the objections and 'give notice thereof In Form B to the objection as well as to the department or company requiring the land'.

(Emphasis supplied)

Hence, the Rule is very clear that Form 'B' is only a notice to the objectors and the department to appear for hearing and it is not a notice for filing objections. Rule 4(b) further says that the Department concerned may file a statement by way of answer to the objections before the date fixed by the Collector. Therefore, it is further clarified that the Department is given an opportunity to file answer to the objections. The Rule does not provide any opportunity for the interested persons/owners of the land to file any objection after receipt of Form B notice.

8. Now, let us deal with the various decisions cited on either side, throwing light on the issue.

A. ILR (1996) 2 Mad 299 Govt. of Tamil Nadu v. Ramaswami.

This appeal came to be preferred against the order of the learned single Judge, allowing the writ petition and quashing the acquisition proceedings. It was argued on behalf of the writ petitioner/landowner that the objections filed by the writ petitioner were not sent to the acquiring body, namely, Housing Board, and the comments of the Housing Board were not received and made available to the writ petitioner and as such, the enquiry held under Section 5A of the Act is vitiated. Since old Rule 3(b) of the Rules (now Rule 4(b)) is mandatory, non-compliance with the Rule and failure to send a copy of the objections to the acquiring body vitiates the entire proceedings conducted under Section 5A of the Act and consequently, it vitiates the very acquisition.

On the other hand, it was contended on behalf of the Government that the notification, dated 14-3-1983, issued under Section 4(1) of the Act, was published, in the Tamil Nadu Government Gazette dated 30-3-1983 and the substance of the same was published in the locality concerned on 29-5-1983, whereas the objections were on 17-9-1983, pursuant to the notice dated 6-9-1983 issued to the writ petitioner for the enquiry under Section 5A of the Act proposed to be held on 20-9-1983 and the declaration was published under Section 6 of the Act in the Gazette on 17-3-1986. It was submitted by the learned Government Pleader that the objections were required to be filed within 30 days from the date of publication of the notification under Section 4(1) of the Act in the Gazette or from the date of publication of the substance of the notification under Section 4(1) of the Act in the

locality. It was pointed out that, as the substance of the notification was published in the locality on 29-5-1983 and as the objections filed on 17-9-1993 were beyond the time prescribed, the same were not required to be sent to the acquiring body. After referring to the contents of Form-B, Sub-section (1) of Section 5A and Rule 2 of the Rules, the Division Bench observed as follows:

13. Thus a plain reading of Rule 4(b) of the Rules would indicate that what Form B is required to provide. It is only the notice of hearing of the objections already filed under Section 5A(1) of the Act and not for filing of objections to the notification.

Therefore, Rule 4(b) requires that a notice must be given of the date for hearing of the objections already filed, and not the date for filing of the objections. The contention of the learned Counsel for the writ petitioner is that as the notice in Form B was served upon the petitioner giving time to file objections, he was entitled to file the objections within the time allowed by that notice, and as such the objections filed on 17-9-1983 were valid objections filed within the time therefore the same ought to have been sent to the acquiring body.

14. It may be pointed out here that the time within which the objections are to be filed, is covered by the provisions contained in Section 5A(1) of the Act. No rule framed under the Act can be contrary to the provisions of the Act.

After finding so, placing reliance on a decision of the Supreme Court reported in *Deepak Pahwa etc. v. Lt. Governor of Delhi* : [1985]1SCR588 , the Division Bench concluded thus:

16... Therefore, we are of the view that in cases other than those wherein the objections received from the person interested were beyond the time stipulated in Section 5A(1) of the Act, conducting of an enquiry with an opportunity to the person interested alone to substantiate his objections would constitute sufficient compliance and the failure to follow the special procedure and method of enquiry visualised in Rule 4(b) of the Rules will not vitiate the Section 5A enquiry or the declaration which followed the enquiry held otherwise than in accordance with Rule 4(b) of the Rules.

17 and 18....

19. Rule 4(b) also does not support the view expressed by the Division Bench of this Court in W.P. No. 10351 of 1982 and other connected writ petitions decided on 8-1-1988. Form B confers an optional right upon the person interested to file objections pursuant to the Form B Notice. It is no doubt true that any person interested in the land is entitled to file objections and if such person files objections within 30 days from the date of the publication of the notification under Section 4(1) of the Act. In the Gazette or from the date of publication of substance of the Notification in the locality, whichever is convenient to the person interested, such objections are required to be sent to the acquiring body, and not the other objections which are filed subsequent thereto, may be pursuant to the Form B Notice that are required to be sent to the acquiring body, and failure to send such objections will not in any way vitiate the acquisition proceedings.

20. As already pointed out, Rule 2 of the Rules makes it clear that the Collector shall cause public notice of the substance of the notification under Sub-section (1) of Section 4 in Form A and the notice shall be published at convenient places in the locality and copies thereof fixed up in the offices of the Collector and the Tahsildar. This is apart from the publication of such notification in the Gazette. Rule 2 of the Rules is intended to ensure that the persons interested in the land get information as to the proposed acquisition and so that they can file the objections, if any, within 30 days, Rule 4(a) of the Rules states that if a statement of objection is filed by a person who is not interested in the land, it shall be summarily rejected. Rule 4(b) provides that if any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A, the Collector shall fix a date for hearing the objections and give notice thereof in Form B to the objector as well as to the department or company requiring the land.

21. Therefore, it is clear that in Form B notice, the time to be given therein is for the purpose of hearing the objections and not for the purpose of filing the objections. But at the same time, if any objection is filed as per Form B notice, it does not mean that it becomes excluded from consideration, because the person

interested filed objections, the principles of natural justice demand that he should be heard. Of course Form B is neither in conformity with Rule 4(b) of Rules nor with Section 5A(1) of the Act. We are surprised to notice that such Form B is maintained for all these years. It is high time that the State Government should take immediate steps to amend the Form B, so as to bring it in conformity with Rule 4(b) of the Rules, to avoid misunderstanding on the part of the persons interested in the lands proposed to be acquired. The persons interested in the land are misled as to the date of filing of objections. The State Government is directed accordingly.

B. In 2000 WLR 779 Chief Executive Officer, C.M.D.A. Egmore v. Saunthala, against the order of one of us, reported in AIR 1998 Mad 25 Sakunthala v. Government of T.N.. holding that though the objections have been submitted beyond 30 days' period, since the same were received by the Land Acquisition Officer and communicated to the Requisitioning Body, failure to conduct further enquiry in terms of Rule 3(b) vitiated the entire acquisition proceedings, the Division Bench, disagreeing with the said view, held as follows:

13. The writ petitioners not having strictly adhered to the provisions of Rule 3(b) by: filing their objection in time cannot now attack the Land Acquisition Officer for not conducting the enquiry after forwarding their objection on the Requisitioning Body and obtaining their remarks thereon. The Land Acquisition Officer may have forwarded the belated objection on account of misplaced zeal, that does not mean that he has to conduct an enquiry upon the delayed receipt of the objection. As seen earlier, a time limit is prescribed for filing the objections and the notice which calls upon the land owners to file their objections also warns them that any delay in filing the objections will result in their objection being rejected summarily. In the decision reported in : (2000)IIMLJ48 Velusamy v. Govt. of Tamil Nadu the First Bench of this Hon'ble Court has held in a similar matter that Rule 3 would apply only to objections filed within 30 days from date of publication of Section 4(1) Notification, and that the objections filed beyond 30 days 'cannot be' construed as objection filed in accordance with Section 5-A of the said Act. So the question of following the procedure as contemplated under Rule 3(b) of the Rules will not arise. We hold therefore that there is no violation of Rule 3(b) in this case and the

entire proceedings have been conducted in accordance with law.

C. In the decision reported in 2002 WLR 1 Tamil Nadu Real Estates Ltd. v. Special Tahsildar, the Division Bench concluded that objections received even after 15 days need be considered once the authority forwarded the objections to the concerned department and received back the remarks from it and also forwarded to the persons interested moreso when those remarks weighted with the officer while considering the objections.

D. In the decision reported in : (1993)4SCC255 (Shyam Nandan Prasad v. State of Bihar), the 'Hon'ble Supreme Court, while considering Rule 4 and Section 5A of the Act, concluded that Rule 4 is mandatory and essential to be complied with. It was held that the Collector is required to hold an enquiry in a quasi-judicial sense and would give not only to the company a reasonable opportunity to make good its representations in that behalf but would also, to fulfil the needs of rules of natural justice, give sufficient opportunity to the land owners to refute the case of the company at least insofar as a matter like negotiation of price is concerned, as also on other relevant matters.

E. In Velusamy v. Government of Tamil Nadu 2000 CTC (1) 530, a Division Bench of this Court, while considering the effect of Rules 3 and 4 and the submission of objection within 30 days from the date of Notification, concluded thus:

4...

The said Rule refers only to the objections filed under Section 5A of the said Act. Section 5A of the said Act contemplates an objection to the acquisition of the land by any person interested in any land. According to the said provision, the said objections should be filed within thirty days from the date of the publication of the notification. So, from a cumulative reading of Section 5A and Rule 3, it is clear that only with respect to the objections filed by a person interested within 30 days from the date of publication of the notification under Section 4(1) of the said Act, the same have to be taken into consideration for the purpose of enquiry under Section 5A of the said Act. Only with respect to such objections filed within 30 days from the date of the notification under Section 4(1) of the said Act, the procedure

contemplated under Rule 3(b) of the Rules has to be followed....

After reference to the earlier Division Bench decision viz., ILR 1996 (2) Mad 299 Government of Tamil Nadu v. Ramaswami, the Division Bench concluded thus:

6. In view of the above said Rulings of the Division Bench, the submission of the learned Counsel appearing for the appellants that their objections had been considered without holding further enquiry, after getting remarks from the requisitioning body, and so the entire acquisition proceedings are vitiated cannot be countenanced.

F. In the decision reported in 2000 (2) LACC 497 Gandhi Ammal v. The Government of Pondichery, represented by its Commissioner, the Division Bench observed as follows:

7. As rightly pointed out by the learned Government Pleader, the objections were submitted by the land owners beyond the period of 30 days, which is in contravention of the requirement of Section 5-A of the Land Acquisition Act. In such cases, the question is whether those objections are to be considered. The Division Bench of this Court in the case of Velusamy v. the Government of Tamil Nadu by its Secretary, Housing and Urban Development Departments, Chennai (2000) 1 CTC 530 : , held that only if the objections have been received within 30 days such objections have to be forwarded to the requisitioning body and the remarks have to be called for. Otherwise, the requirement of the Rule 3(b) of the Tamil Nadu Land Acquisition Rules need not be followed. The said rule is almost in Part Materia with the Rule 5(b) of the Pondicherry Land Acquisition Rules. Following the said principle, laid down by the Division Bench of this Court, we are of the view that the objections filed by the appellants herein beyond the period of 30 days need not be considered.

G. In Ramanujam N.D. v. Collector of Madras (1994) 1 LW 519 : 1995 AIHC 3211, the Division Bench held that after the remarks of the requisitioning body were obtained, they should be communicated to the petitioner and there should, thereafter, be an enquiry under Section 5-A to find out the tenability or otherwise of prosecution of acquisition proceedings on the basis of the consideration of the

objections of the petitioner, the remarks of the requisitioning body and further representations of the petitioner over the remarks. After saying so, the Bench concluded that the mandate of the above said Rule stood violated in the case before them.

H. In the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Vellore v. S. Govindaraj : (2004)1MLJ381 , the Division Bench concluded that if the objections are not submitted within the prescribed statutory time limit, the land owners/persons interested cannot take recourse to the violation of Rule 3(b) of the Rules.

I. It is also useful to refer to the Full Bench decision reported in : AIR1989 Mad222 P.C. Thanikavelu v. Special Deputy Collector, L.A. Madras, wherein, after considering the mandates of the provisions of Section 5-A of the Act, the Full Bench held as follows:

6...It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under Section 5A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source.

J. Following the above mentioned principles, several learned single Judges have held that if objections are filed not within thirty days of the publication of Notification, there cannot be any complaint against the authority concerned of infringement of Rule 3(b) or 4(b) of the Rules, and upheld the acquisition proceedings, vide,

(a) 1976 (1) MLJ 410 : State of Madras v. Ramakrishnan

(b) 2002 (2) CTC 599 Harshavardhan, S. v. State of Tamil Nadu

(c) 2001 (1) LACC 46 : 2000 AIHC 3979 P. Jayadevan v. State of Tamil Nadu

(d) 2001 (2) LACC 14 : 2001 AIHC 1731 S. Chithiravelu v. The State of Tamil Nadu.

K. In *Harkartar Kaur v. Lt. Governor* : AIR1971 Delhi195 , it was held that under Section 5A(1), Collector is not obliged to consider time barred objections.

L. It is also useful to refer to the judgment of the Supreme Court reported in : AIR 2006 SC24 *State of Karnataka v. Laxuman*. The said case law relates to reference under Section 18. After referring to the relevant provision, viz., Section 18(3)(b)(as in force in Karnataka), the Supreme Court held that the Limitation prescribed therein was to prevent undue delay in making reference and making of highly belated references, sometimes based on applications clandestinely received. It was further held that Section 5 of the Limitation Act is not applicable to such belated applications. Their Lordships further held that a statute can, even while conferring a right, provide also for a repose; that the Limitation Act is not an equitable piece of legislation but is a statute of repose; that the right undoubtedly available to a litigant becomes unenforceable if the litigant does not approach the Court within the time prescribed; that the law expects a litigant to seek the enforcement of a right available to him within a reasonable time of the arising of the cause of action and that reasonable time is reflected by the various articles of the Limitation Act. By pointing out that the mischief that was sought to be averted by the time-limit prescribed in Section 18(3)(a) for making of reference by the Deputy Commissioner was the causing of undue delay by the Deputy Commissioners in making references and the making of highly belated references, sometimes based on applications clandestinely received long after the award itself had been made, it was observed that, therefore, if a claimant does not get. his claim referred to the Court within three years of his making the application before the Deputy Commissioner within the period fixed and the accrual of a cause of action, his right to claim enhancement of compensation would get extinguished. The above decision makes it clear that if there is an outer limit; the same has to be strictly complied with and the time limit prescribed cannot be enlarged by applying Section 5 of the Limitation Act.

9. The statutory mandates in Sections 4(1) and 5A(1) & (2) of the Act; Rule 4(b) and Forms - A & B as well as the various decisions referred above, would make clear the following:

Forms and Notices devised to achieve the object contemplated in the provisions of the statute should not be in a way defeating or confusing the very object of the provisions. The procedure mandated in Section 4(1) of the Act is based on the principles of natural justice, the reason being that, in matters of land acquisition, the rights of the individuals over their land are permitted to be taken away by the mighty hands of the Government, exercising the power of eminent domain, only because there involves interest and welfare of the public at large. The land owners/persons interested, who have lost the land, would be looking for every minute opportunity in their favour and their expectation cannot be faulted with. However, a welfare State, which acquires the lands of the individuals for the benefit of the public at large, should follow all the procedural and formal obligations and there should not be any report of non-compliance of or deviation from the procedure on its part. Since land acquisition matters involve taking away the properties/lands of the citizens, the Government obligated upon itself adherence to certain procedures so that its action is based on the principles of natural justice.

On the one hand, the land owners are given opportunity to put forth their objections to the acquisition proceedings, for which, the time limit is well prescribed as 30 days. Collector receives the objection, whereupon, he is obligated to send Form-B notice to the parties. Insofar as it relates to the land owner/person interested, Form-B Notice is only an information relating to the date of enquiry and, insofar it relates to the Department/Company, it is an information relating to date of enquiry plus ;a call to answer the objections made by the land owners.

Though Form-B refers to a further period of 15 days for filing objection, in view of the specific provision in Sub-section (1) of Section 5-A of the Act read with Rule 4(b), the time-limit prescribed cannot be enlarged merely because of some reference in Form-B notice. This is clear from the judgment of the Supreme Court

reported in : [1960]1SCR200 Central Bank of India v. Their Workmen. In that decision, Their Lordships have held that, '...if a rule goes beyond what the section contemplates, the rule must yield to the statute....'

Form B was prepared in total violation of Rule 4(b). In fact Form (A) and Form (B) are just identical, copied from each other except deleting one or two words or sentences here and there. A reading of Form B discloses that notice has been issued to the reputed owner requiring him to lodge a statement in writing with his objection if any within 15 days from the date of service of the notice under Form B. This procedure is not contemplated either under the Act or under the Rules and the executive brain has introduced a new procedure through Form 'B' and it is quite confusing. When Rule 4(b) is totally silent on filing objection within 15 days. Form B has been prepared wrongly by the concerned. Since Form B is not in conformity with Rule 4(a), the authority concerned is to modify the Form and publish the new Form expeditiously. It is relevant to point out that similar direction was issued by a Division Bench of this Court in ILR (1996) 2 Madras 299 Govt. of Tamil Nadu v. Ramaswami. We deem it necessary to point out with great stress that when, even in 1996, the Government had been asked by the Court to amend Form-B in consonance with Rule 4(b), serving the purpose adumbrated therein, it is but proper for the Government, being a welfare State, to have implemented the same so that matters of this nature would not have arisen at all. We hope and trust the Government will rectify the lacunae by bringing suitable amendment.

Sub-section (2) of Section 5(A) clarifies that the Collector shall give the objector an opportunity of being heard. Therefore, the hearing is mandatory. The said Section further says, 'the Collector shall after hearing all such objections and after making such further enquiry, if any, as he thinks necessary...', making it clear that mandatory directions are given to the Collector that he shall hear the objectors and make such further enquiry as he thinks necessary. Therefore, hearing the objectors is mandatory and making a further enquiry by the Collector is discretionary. If the objectors have not filed any objection within 30 days but come forward with oral objection, even then, the Collector must hear. The hearing is mandatory.

Sub-section (2) of Section 5A further clarifies that, after hearing and making further enquiry, he will have to make a report to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the Government. Therefore, without the recommendations of the Collector on the objections and; without the record of proceedings of the Collector, it would be difficult for the Government to take any decision. In our considered opinion, if there are any objections by the interested persons, the Collector must make an enquiry and record his proceedings. The enquiry should be in a fair manner. The Collector is discharging his duties as quasi-judicial authority and his action should not be mala fide and there should not be any biased approach. He has to consider whether the proposed acquisition is necessary for the Department. After considering all the necessary implications, he must make a record and forward his recommendations to the Government. There is no need to simply forward the views of the requisitioning department as his conclusion.

10. Further, in our opinion, objections must be filed in writing within 30 days. Whereas objections in oral can be raised even at the time of enquiry. No doubt the Section, viz.. Section 5A(2) says, 'after hearing all such objections' meaning thereby the objections raised by the objectors in writing, however, there is also a scope for an interpretation that 'all such objections' includes the objections given in writing within 30 days and the objections made after 30 days either in writing or oral at the time of enquiry. Since the Section clarifies that... after making such further enquiry, if any, as he thinks necessary...', it is always advisable that the Collector must make such further enquiry. In our view, discretion is given to the Collector to make such further enquiry. A careful reading of Section 5A(2) clarifies the following.

(1) Objections under Sub-section (1) of Section 5(A) shall be made to the Collector in writing;

(2) The Collector shall give the Objectors an opportunity of hearing;

(3) The Collector shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, make a report to the appropriate

Government containing his recommendations on the objections.

(4) The Collector shall enclose the record of the proceedings held by him.

(5) The decision of the Government will depend upon such recommendations.

11. Therefore receiving the objections in writing within 30 days is one part of the Section and the second part of the Section is hearing the objections and the third part is making such further enquiry if any as he (the Collector) thinks necessary. To put it clear, personal hearing of both sides and enquiry alone can facilitate the Collector to send his recommendations and to enclose the record on his proceedings. In our opinion, the personal hearing is mandatory and further enquiry is discretionary depending upon the submission of objections within 30 days of the last mode of publication.

12. As could be seen, We have elaborately considered the relevant provisions and the case laws, and dealt with various aspects very broadly in view of the complexity involved in the issue. Now, let us sum up the principles standing as answer to the question referred,

(I) Objections to the acquisition are to be submitted by the persons interested in the lands within 30 days from the date of publication of the Notification as provided by Sub-section (1) of Section 5A of the Act.

(II) The 30 days' period is to be reckoned from the last mode of publication as contemplated under Section 4(1) of the Act.

(III) In all cases where objections are filed within 30 days as provided under Section 5A(1); hearing the objectors and Department/Company and further enquiry are mandatory.

(IV) The Collector shall have to fix, the date of hearing the objections. He has to give notice in Form-B to the Objector as well as to the Department. The 'Department or Company may file a statement by way of answer to the objections before the date fixed by the Collector. The Department may also depute their Representative to attend the enquiry.

(V) If objections are not filed within the time, but the person interested/land owner appears before the Collector pursuant to the Notice in Form-B and makes any objections orally, it is incumbent on the part of the Collector to hear the objector, however, conducting further enquiry is not obligatory but it is only a discretion of the Collector. To put it clear, 'personal hearing' is mandatory and 'further enquiry' is discretionary depending upon the submission of objections within 30 days of the last mode of the publication.

(VI) Rule 4(b) is mandatory and to be followed essentially. In terms of Rule 4(b), Form-B is only a Notice to the objectors and the Department to appear for the hearing and it is not a notice for filing the objections.

As observed earlier, since the present Form-B is neither in conformity with Rule 4(b) nor Section 5A(1) of the Act, the State Government is directed to take immediate steps to amend Form-B so as to bring it in conformity with Rule 4(b) of the Rules to avoid misunderstanding on the part of the persons interested in the lands proposed to be acquired.

13. Clarifying the legal position as above on the question referred to us, we direct the Writ Petitions to be heard by the learned single Judge to decide the issues on merit.

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