GAHC010018552017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2026/2017

AAR PEE INDUSTRIES PVT. LTD. and ANR.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956, AND HAVING ITS REGISTERED OFFICE AT NIRMAL SAGAR APARTMENT, BLOCK- C, FLAT NO. 2A, OLD POST OFFICE LANE, A.K. AZAD ROAD, REHABARI, GUWAHATI - 781008, IN THE DIST. OF KAMRUP METRO, ASSAM

2: SHRI ANAND PODDAR
S/O LT. HARI SANKAR PODDAR
R/O MADHABDEVPUR HOUSE NO. 21
NEAR HAPPY CHILD HIGH SCHOOL
SENIOR SECTION
REHABARI
GUWAHATI- 781008
IN THE DIST. OF KAMRUP METRO
ASSA

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, REVENUE and D.M. LR DEPARTMENT, DISPUR, GUWAHATI - 781006

2:THE SECRETARY
GOVT. OF ASSAM
REVENUE and D.M. L.R. DEPARTMENT
DISPUR
GUWAHATI - 781006

3:THE COLLECTOR

KAMRUP METRO
GUWAHATI - 781001

4:THE LAND ACQUISITION OFFICER
OFFICER OF THE DEPUTY COMMISSIONER
KAMRUP METRO
LAND ACQUISITION BRANCH
GUWAHATI- 781001.

5:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE
DISPUR
GUWAHATI - 781006
IN THE DIST. OF KAMRUP METRO
ASSAM

6:INDIAN OIL CORPORATION LTD.
A GOVERNMENT OF INDIA UNDERTAKING HAVING ITS REGISTERED OFFICE AT G-9
ALI YAVAR JUNG MARG
BANDRA EAST MUMBAI- 400051
HAVING VARIOUS DIVISIONS INCLUDING A PIPELINE DIVISION MORE PARTICULARLY THE GUWAHATI - SILIGURI PIPELINE DIVISION
P.O. NOONMATI
GUWAHATI - 781020
IN THE DIST. OF KAMRUP METRO
ASSA

Advocate for the Petitioner : MS.B DAS

Advocate for the Respondent : MR.M GOGOI R-6

-BEFORE-

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

Advocate for the Petitioners : Mr. D. Baruah.
Sr. Advocate

Advocate for the Respondents: Mr. D. Mazumdar
Addl. Advocate General, Assam

Mr. N. Deka.
Advocate.

Date of hearing : **13.09.2021**

Date of Judgment : **02.11.2021**

JUDGMENT & ORDER (CAV)

Heard Mr. D Baruah, learned counsel for the petitioners. Also heard Mr. D Mazumdar, the learned Additional Advocate General, Assam for respondent No. 5 and Mr. N Deka, learned counsel for the respondent No. 6.

2. The present writ petition is filed challenging the entire land acquisition proceedings in respect of LA case 20/2013 initiated under the provisions of Land Acquisition Act, 1894 (for short, Act of 1894). The petitioners challenged the entire land acquisition proceedings on the ground that the same having not been initiated under the Act, 1894 the respondent authority could not have passed the award and acquired the land by invoking Section 24 (1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short Act of 2013). The specific case of the petitioners is that till the coming into effect of the Act, 2013 from 01.01.2014, no steps for initiation of acquisition proceedings under the Act, 1894 were taken and as such the respondent authority in order to acquire the land of the petitioner ought to have initiated the proceedings under the Act, 2013 and passed the award. Further, the instant acquisition proceedings are liable to be interfered with and set aside and quashed on the ground of non-compliance of Section 5A of the Act, 1894 as well as non-compliance with the limitation period provided in the first proviso to Section 6(1) of the Act, 1894.

3. Upon consideration of the contents in the writ petition and the affidavits-

in-opposition of the respondents along with the affidavits-in-reply of the petitioners, the relevant dates and facts are extracted hereinbelow:

(a) 25.08.2010- AAR PEE Industries Private Limited petitioner No. 1 purchased land measuring 9 Bighas 3 Kathas 15 Lechas covered by Dag Nos. 843, 848, 851, 852, 853 and 854 of KP Patta Nos. 1835, 695, 1508, 699, 695 and 1328 respectively of village Betkuchi under mouza Beltola in the district of Kamrup (M) from its owner M/s Royal Estate Builder (P) Limited represented by its Director, one Mamata Panchary. Subsequently mutation of the name of the petitioner No. 1 was carried out and corrected in the record of rights. The petitioner No. 1 entered into development agreement in respect of land measuring 5 Bighas 2 Kathas 15 Lechas out of the said total land and permission was granted by the GMC to that effect. On the basis of the said development project various agreements were entered into by the petitioners with various purchasers for sale of flats.

(b) 02.04.2013- Notification under Section 4 of the Act, 1894 in LA case No. 20/2013 was published in the Assam Gazette Extra-ordinary notifying that a plot of land within the boundary described therein admeasuring 277.23 ares (20 Bighas 3 Kathas 5 Lechas) under various dag and patta numbers was likely to be needed for public purposes namely for construction of GSPL Pipe line delivery control room under the Indian Oil Corporation Ltd. (IOCL), respondent No. 6. The said land included the land of the petitioners.

(c) 04.05.2013- Notification under Section 4 of the Act of 1894 was published in English daily, 'the Sentinel' and the Assamese daily 'Janasadharan'. Notice was issued to the vendor of the petitioner No. 1 as per the terms under Section 4 of the Act of 1894 fixing 15.07.2013 for submission of objection if any.

(d) 08.08.2013- The petitioner No. 1 requested the land acquisition officer, the respondent No. 4 for issuance of notice and opportunity to file objection by the petitioner No. 1 being the owner of various plots of land.

(e) 09.02.2013- The petitioners submitted objections under Section 5A of the Act, 1894.

(f) 19.12.2013- The Government of India, Ministry of Rural Development issued notification appointing 01.01.2014 as the date on which the Act of 2013 shall come into force.

(g) 12.02.2014- Notification under Section 4 of the Act of 1894 was displayed in the notice board of the Circle Officer, concerned, Gaonburah etc.

(h) 13.02.2014- As per the additional affidavit filed on 13.09.2018 by the respondent Nos. 3 and 4 stating that there was a mistake as regards the date of public notice which should be 13.2.2014 and not 12.02.2014.

(i) 25.08.2014- The Additional Deputy Commissioner, Kamrup (M) pursuant to the report dated 13.02.2014 regarding the service of notification under Section 4 (1) of the Act of 1894 observed that no objections were received from any pattadars within the stipulated period and disposed of the proceeding under Section 5A of the Act, 1894.

(j) 12.02.2015- The declaration under Section 6 (1) of the Act, 1894 was approved by the Government vide Government Letter No. RLA 77/2013/83 dated 12.02.2015.

(k) 11.03.2015 and 17.03.2015- Declaration under Section 6(1) was published in two newspapers on the said two dates.

(l) 24.09.2015- The Deputy Commissioner, Kamrup (M)/ Collector submitted estimate of Rs. 33,36,40,035/- for acquisition of 20 Bighas 3 Kathas 12 Lechas of land.

(m) 19.10.2015- Communication issued by the Deputy General Manager of Indian Oil Corporation Limited (IOCL), respondent No. 6 the requiring department to the Deputy Commissioner, Kamrup (M) along with demand draft.

(n) 13.11.2015- RTI application filed by the petitioners requesting for various information including as to whether the declaration under Section 6 of the Act, 1894 as well as award was declared and if so, the date of making such declaration and award.

(o) 23.04.2015- Information given by SPIO of the office of the Deputy Commissioner stating that the information so sought was big in volume and correspondence of this

file were going on like apportionment of the amount of compensation among the awardees of the acquired land as per Form X of the new Act, 2013. The petitioner can inspect the file personally in the LA branch at any time during office hours.

(p) 07.12.2016- The Joint Secretary forwarded to the Deputy Commissioner an approved copy of the award in LA case No. 20/2013 .

(q) 08.02.2017- The Circle Officer, Dispur Revenue Circle respondent No. 5 issued certificate of handing over the land to the officials of respondent No. 6 showing that on 03.02.2017 the handing over / taking over had taken place and thereafter on 08.03.2017 the petitioners were dispossessed.

(r) 20.03.2017- The petitioner filed application under RTI Act, 2005 pursuant to dispossession.

(s) 29.03.2017- The present writ petition filed by the petitioner.

(t) 24.04.2017- The relevant documents of LA Case No. 20/2013 requested by the petitioners vide RTI application were provided.

(u) 25.04.2017- Petitioners received 8 (eight) notices dated 30.12.2016 asking the petitioner No. 1 to submit necessary documents for collection of the compensation.

4. In the affidavit-in-opposition filed by the respondent Nos. 3 and 4 objected to the prayer made by the petitioners on the ground that the proceeding under LA case No. 20/2013 was initiated prior to 01.01.2014 and as there was no award passed under Section 11 of the Act of 1894 as on 01.01.2014 so the award was made as per Section 24(1)(a) of the Act of 2013.

5. The respondent No. 6 also filed its affidavit-in-opposition supporting the stand that the proceeding was initiated prior to 01.01.2014. Notification under Section 4(1) of the Act of 1894 was published in the official Gazette dated 02.04.2013 specifying the intent of acquisition of land measuring 20 Bighas 3 Kathas 12 Lechas in the schedule of the said notice for the public purposes of construction of GSPL Pipeline Delivery Control Room as such it cannot be said

that no proceeding was initiated prior to 01.01.2014, the date on which the Act of 1894 was repealed. The possession of the land was finally delivered to the respondent No. 6 through the Circle Officer, Dispur Revenue Circle after issuance of the declaration under Section 6(1) of the Act of 1894 and having paid the amount of compensation assessed by the Collector, Kamrup (M).

6. Both the learned counsel for respondent Nos. 3,4 and 6 however raised the issue of delay in filing the writ petition by the petitioner. From the pleadings and submissions following issues are framed:

> *1. Whether there was initiation of land acquisition proceedings under the Land Acquisition Act, 1894 in the instant case and if not whether the continuance of the LA case No. 20/2013 without following the mandatory provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is valid?*
>
> *2. Whether the declaration made under Section 6 of the Land Acquisition Act, 1894 and the subsequent land acquisition proceedings without providing any opportunity of hearing as mandated under Section 5A of the Act is liable to be struck down?*
>
> *3. Whether there was a delay in the institution of the present Writ proceedings?*

7. I have heard the submissions made by the learned counsel for the parties in this writ petition.

(a) <u>Issue No. 1</u>:

8. Vide notification dated 19.12.2013, the Central Government appointed the first day of January, 2014 as the date on which the Act of 2013 shall come into force. Accordingly, as per Section 1 (3) and Section 114 of the Act, 2013 the Act of 1894 stood repealed with effect from 01.04.2014. Admittedly, the award in the LA case No. 20/2013 was as per under Section 24(1) of the Act, 2013 apparent from the affidavit-in-opposition filed by the respondent Nos. 3 and 4.

Section 24 of the Act, 2013 though stipulates certain circumstances prescribing the land acquisition process under the Act of 1894 to be deemed to have lapsed however Section 24(1) prescribed as follows:

> "*24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-*
>
> *(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
>
> *(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."*

9. From the aforesaid prescription under Section 24 (1) (a) there must be a valid land acquisition proceeding under the Act of 1894, authorising the competent authority to declare the award under Section 24(1)(a) when no award under Section 11 of the Act of 1894 was passed as on 01.01.2014. For the said purpose there must be a proceeding initiated under the Act of 1894 in order to exercise the jurisdiction by the competent authority under Section 24(1)(a) of the Act of 2013 . In order to show that there was no such valid land acquisition proceedings under the Act of 1894, Mr. Baruah referred Section 4 of Act of 1894 and relying the opening words of the said Section submits that vide notification under Section 4(1), the Government had not arrived at a definite finding as to whether the land was required for public purpose. Alternatively, as per Mr. Baruah under Section 4(1) of the Act of 1894 a proposal is made by the appropriate Government to find out as to whether the land is required for public purposes. It is also submitted that Sub-section 1 of Section 4 further stipulates

the modes of publication of the notification specifying 3 (three) modes, (i) a notification published in the official Gazette (ii) notification published in two daily news papers circulating in that locality of which one shall be of regional language (iii) public notice of the substance of such notification to be given at convenient places in the said locality. In order to appreciate the said submission Section 4 of the Act of 1894 is extracted hereinbelow:

> "*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 [2] [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 [2] [the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification)].*
>
> *(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen,—*
> *to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil;*
> *to do all other acts necessary to ascertain whether the land is adapted for such purpose;*
> *to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches;*
> *and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:*
> *Provided that no person shall enter into any building or upon any enclosed court or*

garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of this intention to do so."

10. Mr. Baruah relied the decision rendered in ***State of Mysore Vs Abdul Razak Sahib*** reported in ***(1973) 3 SCC 196*** and ***Narindrajit Singh and Ranjit Singh and Ors. vs The State of UP and Ors.*** reported in ***(1973) 1 SCC 157***. The said two decisions were prior to the amendment introduced in the year 1984 in the said Act of 1894. Earlier under Section 4 there were two modes of publications, one in the official Gazette and the other one public notice of substance of such notification to be given at convenient places in the locality. Relying the said two decisions, it is submitted by Mr. Baruah mere publication of the notification in the official Gazette cannot be held sufficient compliance of Section 4 until and unless the other mode like the public notice of substance is published also simultaneously. Accordingly if one mode of publications is resorted to at a particular period and the other mode is resorted to after a lapse of period it would impair the rights of persons interested as enshrined in Section 5A of the Act of 1984. Thus, in order to protect the said interest of the persons whose land are going to be acquired Section 4(1) and Section 5A (1) of the Land Acquisition Act, 1894 were amended vide the Land Acquisition (Amendment) Act, 1984. As per the amendment in Section 4(1) another mode of publication of the notification was prescribed i.e. the notification was required to be published in two daily news papers circulating in that locality of which at least one shall be in regional language. Another notable aspect of the amendment carried out to Section 4(1) was insertion of the words "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". Accordingly, as per the said amendment the last of the dates of such publication

and the giving of such public notice would be considered as the date of publication of the notification.

11. Thus in order to constitute a valid notification under Section 4(1) of the Act of 1894 the three modes of publication are compulsory and mandatory and the last of the dates of such publication and giving of such public notice shall be construed as the date of publication of the notification. In other words, in order to constitute a valid notification which is condition precedent for initiation of land acquisition proceeding it is required that all the modes of publication are duly complied with and the last of the dates of publication of giving of public notice shall be construed to be the date of publication of notification.

12. In order to reinforce the said argument and also to show that the power to be exercised under Section 4(2) can only be exercised after the completion of the three modes of publication, he relied Section 6 of the Act of 1894. It is submitted that as per Section 6 when the appropriate Government is satisfied after considering the report if any, made under Section 5A(2) of the Act of 1894 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. The satisfaction of the appropriate Government that the land is needed for public purpose or for a company is paramount for a valid declaration and without the satisfaction that the land is required for public purposes no declaration can be made and as such without a declaration the initiation of the land acquisition proceeding cannot be resorted to. Sub-section (3) of Section 6 of the Act, 1894 stipulates that the declaration shall be conclusive evidence that the land is needed for public purpose or for a company and after making such declaration the appropriate Government may acquire the land as per the manner stipulated in the said Act of 1894. This itself goes to

show that only on declaration under Section 6 a land acquisition proceeding can be held to be initiated and not prior to that.

13. Mr. Baruah relied ***Babu Barkya Thakur Vs State of Bombay*** reported in ***AIR 1960 SC 1203*** and submits that Section 4 is only to carry on a preliminary investigation with a view to find out after necessary survey and taking of levels and if necessary, digging into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under Section 6 that a firm declaration has to be made by the appropriate Government that the land with proper description and area, so as to identify is needed for public purpose or for a company.

14. Mr. Baruah also relied the Division Bench decision of the Hon'ble Bombay High Court in the case of ***Nilima Mahesh Bhole Vs The State of Maharastra & Ors*** downloaded from Manupatra as ***MANU/MH/0254/2017*** and ***Sheetalkumar Sadashi Vs State of Maharastra & Ors*** downloaded from ***Manupatra as MANU/MH/0296/2018.*** Therein it was held that the provision of Section 24 would not be applicable on the ground that the declaration under Section 6 of the Act of 1894 admittedly were made on 18.07.2014 i.e. after the date of commencement of Act, 2013 i.e. on 01.04.2014. Accordingly, it is the contention of Mr. Baruah that the issue No. 1 is required to be decided in favour of the petitioner.

15. Mr. Mazumdar, learned Additional Advocate General on the other hand submits that a land acquisition proceeding as per the old Act, 1894 starts with a Government notification under Section 4 that land in any locality is needed or is likely to be needed for a public purpose and only on issuance of such a notification it is permissible for a public servant and workman to enter upon the land to do certain acts specified therein with a view to ascertaining whether the

land is adapted for the purpose for which it is proposed to be acquired. The said intent under Section 4 of the Act of 1894 is a mere proposal and the same becomes a subject matter of definite proceeding for acquisition after the declaration is made under Section 6 of the Act of 1894. In support of the said contention Mr. Mazumdar reliedthe case law in ***Babu Burkya Thakur Vs State of Bombay and Ors.*** (supra). He further relied ***Urban Improvement Trust, Uadaipur Vs. Bheru Lal and Ors.*** reported in ***(2002) 7 SCC 712*** wherein it was held that the publication of the notification made or prepared by the Government would be of no effect till it is published in the official Gazette. That part of Section 4 is mandatory and is a condition precedent for initiation of land acquisition proceedings. On the basis of the said ratio, Mr. Mazumdar submits that the requirement of publication of the notifications as stipulated under Section 4 of the Act of 1894 no doubt, are mandatory but for initiation of a proceeding the first step is publication of the said notice of intent of acquisition for public purpose in the official Gazette is mandatory on the basis of which it initiates the proceedings. He also referred the decision of the Apex Court in ***The State of MP and Ors Vs Vishnu Prasad Sharma and Ors*** reported in ***AIR 1966 SC 1593*** and submits that the Act of 1894 provides for the exercise of the power of eminent domain and authorizes the appropriate Government to acquire land thereunder for public purposes or for purpose of a company. The proceedings begin with a notification under Section 4 (1) of the Act, 1894. The purpose of notification under Section 4(1) clearly is to enable the Government to take action under Section 4(2) in the matter of survey of land to decide whether particular land in the locality specified in the notification under Section 4(1) is fit for public purposes. The other purpose of the notifications under Section 4(1) is to give opportunity to persons owning land in that locality to

make objections under Section 5A. He also relied ***Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*** reported in ***(1985) 3 SCC 1*** which also held that the land acquisition proceedings commence with notification under Section 4 of the Act.

16. Mr. Mazumdar also relied ***Indore Development Authority Vs. Manoharalal and Ors.*** reported in ***(2020) 8 SCC 129*** and submits that Section 24 (1) (a) of the Act, 2013 read with the non obstante clause provide that in case of proceedings under the Act of 1894 the award had not been made under Section 11 then the provision of 2013 Act relating to the determination of compensation would apply but the proceeding held earlier do not lapse. Accordingly, it is the contention of Mr. Mazumdar that the initiation of a proceeding under the Act of 1894 is the official Gazette notifying the intent of acquisition of a particular land for the public purpose. In order to carry out the subsequent acts thereunder provided under Section 4(2) of the Act, 1894 the other modes of publication of the notices are required to be carried out more specifically in order to satisfy the terms of Section 5A of the Act as such it cannot be held in the present case that there was no proceedings at all initiated under old Act, 1894 prior to 01.01.2004.

17. Mr. Deka, learned counsel for the respondent No. 6 referring to the requirements of the respondent No. 6 submits that there is specific public purpose for which the land was acquired and to that effect he relied the report on hazard and operability study for IOCL, GSPL, prepared by SEE-Tech Solutions Pvt. Limited dated November, 2012 wherein it was recommended that considering the fire hazard, the existing distance of the control room should be increased to a minimum of 60 meters from MS tank as per OISD guideline. There are 9 tanks of the IOCL at Betkuchi, tap off point (TOP) and 3 tanks of

Hindustan Petroleum Corporation Ltd. (HPCL) over a plot of land adjacent to the land of IOCL. The present acquired plot of land is adjacent to the existing plot of IOCL. Accordingly, the Deputy General Manager, IOCL, GSPL vide letter dated 12.10.2012 requested the Deputy Commissioner, Kamrup (M) to acquire the piece of land in order to meet the safety requirement as hereinabove stated.

18. Mr. Deka relied ***Aflatoon and Ors Vs. Lt. Governor of Delhi & Ors*** reported in ***(1975) 4 SCC 285*** and submits that a valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. He also relied ***Urban Improvement Trust*** (supra) in support of the said contention that the publication of the Gazette notification initiates a land acquisition proceedings under Section 4(1) of the Act, 1894. On the basis of the said judgment of the Hon'ble Supreme Court, Mr. Deka submits that the Division Bench decisions of the Hon'ble Bombay High Court referred by Mr. Baruah are per incuriam and does not laid down the correct position of law. Referring the decision by this court in ***Chandmari Tea Company vs State of Assam*** reported in ***(2021) SCC online Gau 223*** he submits that it laid down the correct position of law by following the law laid down by the Apex court in catena of decisions including ***Urban Improvement Trust*** (supra). Refuting the submission of Mr. Baruah that the proceeding had lapsed it is the contention of Mr. Deka that the proceeding did not lapse and moreover as the land acquisition proceedings were initiated prior to 01.01.2014 as such the award was rightly passed under Section 24(1)(a) of the Act, 2013.

19. I have perused the decision of the Apex Court in ***State of Mysore Vs Abdul Razak Sahib*** (supra). The issue was in respect of the scope of Section 4(1). Therein it was held that in case of a notification under Section 4 of the Land Acquisition Act, 1894, the law prescribed that in addition to the publication

of the notification in the official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied Section 4 of the Land Acquisition Act cannot be said to have been complied. The issue before this court is not in respect of compliance of the provision under Section 4(1) of the Act, 1894. The issue is specific whether mere publication of the notification in the official Gazette and paper publications which were carried out in the year 2013 amounts to initiation of land acquisition proceedings in the LA case No. 20/2013 prior to 01.01.2014. Similarly, the issue before the Apex Court in ***Narindrajit Singh and Ranjit Singh and Ors*** (supra) was whether entire acquisition proceedings were vitiated due to non-publication of the notice under second part of Section 4(1) wherein it was held that both the conditions namely publication of the notification in the official Gazette at first and causing of public notice of the substance of such notification to be given by the Collector are required to be satisfied for a valid proceedings. Here also the issue is not in respect of initiation of the proceedings. On the other hand if we consider the decision in ***Urban Improvement Trust*** (supra) it was held by the Apex Court that the notification by the Government is required to be published in the official Gazette which is a condition precedent for initiation of land acquisition proceedings. Further in ***State of Mysore Vs Abdul Razak Shahib*** (supra) the issue was in respect of when notice is complete so far affected persons are concerned and on the other hand in ***Narindrajit Singh and Ranjit Singh and Ors*** (supra) it was the necessary conditions stipulated for the exercise of power of entry by the Government Officials over the land proposed to be acquired.

20. Further with due respect to the decisions of the Hon'ble Bombay High Court relied by Mr. Baruah, I have reservations as to the correct position of the

law being stated in the view of the decision rendered by the Apex Court in ***Urban Improvement Trust Udaipur –Vs- Bheru Lal and Others*** (supra) wherein it was held that issuance of a Gazette notification under Section 4 is mandatory and is a condition precedent for initiation of acquisition proceedings. A proceeding is initiated step wise and if we look to the provisions of Section 4 and the amendment introduced in the said Act with effect from 24.09.1984 i.e. "last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of notification" the same was introduced in respect of Section 5A which stipulates that the objection by any person interested in any land notified under Section 4(1) is required to submit his objection within 30 days from the date of publication of the notification and also in order to count the limitation period stipulated under Section 6 which prescribes publication of the declaration under Section 6 of the LA Act within 1 (one) year from the date of publication of the notification. The amendment in Section 4(1) itself shows that the said notices after publication of the notification in the official Gazette need not be published simultaneously with the official Gazette and only for the said reason it was introduced that the "last of the dates of such publication and giving of such public notice shall be referred to as the date of publication of the notification". In the present case as the notification under Section 4 (1) was issued on 02.04.2013 and subsequent paper publications were carried out on 04.01.2013. Two of the modes of publication had already been carried out with an intent to take steps under Section 4(2) of the Act prior to 01.01.2014 as such in my opinion it would be justified to hold that as on 01.04.2014 there was initiation of land acquisition proceeding under the Land Acquisition Act, 1894 prior to 01.01.2014 and continuation of LA case No. 20/2013 without following the provision of Act of

2013 is also valid.

(b) Issue No. 2

21. In order to decide this issue, let me extract Section 5A of the Act, 1894 herein below:-

> *"5A. 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.*
>
> *(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 al 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.*
>
> *(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".*

22. Now on a conjoint reading of Section 4 of the Act, 1894 and Section 5A, it can be concluded that any person aggrieved on the issuance of the Gazette Notification under sub-section (1) of Section 4, the said person is required to file the objection within thirty days from the date of publication of the notification

i.e. the within the last of the dates of such publication and the giving of such public notice. Mr. Baruah referring Section 5A submits that it doesnot conceptualise about the date of knowledge of notification. It is the thirty days time within which the person interested is required to file objection and the last date of the thirty days is required to be reckoned from the date of publication as explained in Section 4 of the Act, of 1894. In support of the said submission Mr. Baruah relied ***V. K. M. Kattha Industries Private Limited –Vs- State of Haryana and Ors*** reported in ***(2013) 9 SCC 338***.

23. Relying the statement of the respondent Nos. 3 and 4 in the affidavit-in-opposition read with the additional affidavit filed by them, Mr. Baruah submits that admittedly 13.02.2014 was the last of the dates of the publication of the notification under Section 4(1) of the Act, of 1894 in the present case in hand. Accordingly all persons interested in respect of the said land acquisition proceedings had time to file their objections within 15.03.2014. Section 5A does not limit filing of objection by person interested or non consideration of the said objections filed during the period from the first mode of publication till expiry of thirty days from the date of publication when the Collector is required to cause the public notice of the substance of such notification at convenient places in the said locality. The petitioners had filed the objections on 09.12.2013 and as such it was the duty and the responsibility of the Collector as stipulated in Section 5A(2) of the Act, 1894 to give an opportunity of hearing in person the petitioners or by any person authorized by the petitioners or by the pleader. The order dated 28.05.2014 which forms annexure "Q" to the affidavit-in-reply filed by the petitioners to the affidavit-in-opposition filed by the respondent Nos. 3 and 4 would show that the proceedings under Section 5A were disposed of as "no objection has been received from any pattadar in the stipulated period".

This on the face of it, is perverse inasmuch as the petitioners' objections were very much on record as on 09.12.2013 even there is no reference to the objections filed on 09.12.2013 and the respondent authorities did not at all take into consideration the objection filed by the petitioners.

24. Mr. Baruah referring to the decision of the Apex Court in ***Kamal Trading Private Limited –Vs- State of West Bengal and Ors*** reported in ***(2012) 2 SCC 25*** submits the importance of the rights under Section 5A of the Act, 1894 as observed therein. Referring the facts in the said decision wherein the companies having come to learn about the notification submitted a letter dated 08.09.1977 containing eight paragraphs in four pages, the Second Land Acquisition Officer although initially adjourned the proceeding on one occasion at the request of the owner company but refused to grant an adjournment as requested and there upon submitted his report. Therein the Apex Court held that the Second Land Acquisition Officer should have dealt with the objections carefully and not in a light hearted manner because of a heavy responsibility rested on his shoulders. Further referring ***Surinder Singh Brar and Ors. –Vs- Union of India and Ors*** reported in ***(2013) 1 SCC 403*** it is submitted by Mr. Baruah that the proceeding under the LA Act are based on the principle of eminent domain and section 5A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, that the important ingredient, "public purpose" is absent in the proposed acquisition or the acquisition is mala fide. Accordingly in the said decision, it was held that the formation of opinion after hearing the affected person under Section 5A(2) must be effective and not an empty formality. Further Hon'ble Supreme Court held that if such hearing and / or enquiry is not

conducted thoroughly, the declaration made under Section 6(1) would be devoid of legal sanctity.

25. Mr. Baruah also relied the decision of the Hon'ble Apex Court in ***Hindustan Petroleum Corporation Limited –Vs- Darius Shapur Chenai & Ors*** reported in ***(2005) 7 SCC 627*** and submits that Section 5A (2) of Act 1894 is an important right and/ or safeguard available to the persons interested and violation of the said right as has been done in the instant case by not at all taking into consideration the objections filed by the petitioners have violated the petitioners' rights conferred under Section 5A(2) of the Act of 1894, for which, this is a fit case wherein on account of total noncompliance of Section 5A(2) of the Act of 1894, the Section 6 declaration and the consequential award passed on the basis thereof are liable to be interfered with.

26. The learned counsel for the respondents as against the submission made by Mr. Baruah have raised two contentions. First, that the objections were not filed within the time stipulated and secondly that as the objections raised by the petitioners were on the basis that there were no public interest and there was no objections that the land acquisition proceedings were not for the public purpose, no useful purpose would be served if the authorities concerned were to give an opportunity of hearing to the petitioners. In this respect Mr. Mozumdar relied the decision of the Apex Court in ***Women Education Trust and Anr –Vs- State of Haryana and ors*** reported in ***(2013) 8 SCC 99*** and submits that the person interested in the land notified under Section 4(1) of the Act, 1894 is required to raise objections under Section 5A(1) and show that the purpose specified in the notification is not a public purpose or that in the guise of acquiring land for a public purpose, the appropriate government wanted to

confer benefit upon private persons or that the decision of the appropriate government is arbitrary and vitiated due to mala fide. He also relied ***State of Mysore –Vs- Abdul Razzak Sahib*** (supra) and submits that the Section 5A empowers the interested person to object to the acquisition of any land but his objections should be filed within thirty days from the date of issue of the notification. Any objection filed thereafter need not be considered as the same is filed after the time stipulated in Section 5A (1) of the Act, 1894. The violation of the principle of natural justice as projected by Mr. Baruah may not be prejudicial to the petitioners as per Mr. Mazumdar. In this regard Mr. Mazumdar referred to the leave obtained by the petitioners from this court in order to file appropriate application under Section 18 of the Act, 1894 for reference to an appropriate court of the award notified in the said procedings. In support of the said contentions Mr. Mazumdar relies the decision of the Apex Court in ***M. C. Mehta –Vs- Union of India and Others*** reported in ***(1999) 6 SCC 237*** and further submits that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice. The petitioners failed to show at least before this court that if the objections raised by the petitioners are considered it is demonstrable beyond doubt that the result of the proceeding under Section 5A of the Act, 1894 would have been different. Mr. Mazumdar relied the decision in ***S. L. Kapoor –Vs- Jagohan and Others*** reported in ***(1980) 4 SCC 379*** which also held that the court may not issue writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.

27. Mr. Deka on the other hand supporting the submission of Mr. Mazumdar submits that admittedly, the petitioners had due knowledge of the LA

proceedings in July, 2013 and till December, 2013 they did not file their objections under Section 5A of the Act, 1894. The petitioners could not have predicted the various permissible mode of publication of the notification under Section 4 and the last of which would be made on 13.02.2014 and as such it was incumbent upon the petitioners to have immediately filed the said objection upon coming to know of the issuance of the notification. As it was beyond the period of thirty days from the date of notification as well as the knowledge of the petitioners, under such circumstances there was default on the part of the petitioner and even if the objections as stated by Mr. Baruah is on record, the same requires no consideration and in support of the said submission Mr. Deka relied the ratio in the decision ***State of Mysore –Vs- Abdul Razak Sahib*** (supra).

28. From the submissions made hereinabove, let me consider the scope of Section 4 and Section 5A as laid down in ***V. K. M. Kattha Industries Private Limited –Vs- State of Haryana and Ors*** (supra) and being relevant is quoted herein below:-

> "*14. Among the above provisions, Section 4 of the Act empowers the appropriate Government to initiate proceedings for the acquisition of land. Section 4(1) of the Act lays down that 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, then a notification to that effect is required to be published in (i) the Official Gazette; (ii) two daily newspapers having circulation in that locality of which, one shall be in the regional language; and (iii) it is also incumbent on the part of the Collector to cause public notice of the substance of such notification to be given at convenient places in the locality. It is relevant to mention that the last of the dates of such publication and the giving of such public notice is treated as the date of the publication of the*

notification.

15. In terms of Section 4(2), any officer authorized by the Government in this behalf and his servants or workmen can enter upon and survey and take levels of any land in such locality, dig or bore into the subsoil and can do all other acts necessary for ascertaining that the land is suitable for the purpose of acquisition. The officers concerned can set out the boundaries of the land proposed to be acquired and the intended line of the work, if any, proposed to be made on it. They are also permitted to mark such levels, boundaries and lines by placing marks and cutting trenches and can cut down and clear away any part of any standing crop, fence or jungle for the same purpose. However, neither the officer nor his servants or workmen can enter into any building or upon any enclosed court or garden attached to a dwelling house without the consent of the occupier and previously giving such occupier at least 7 days' notice in writing of their intention to do so.

16. In terms of Section 5A, any person interested in any land notified under Section 4(1) may, within 30 days from the date of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. Thereafter, the Collector is required to give the objector an opportunity of being heard either in person or by any person authorized by him or by his pleader. After hearing the objections and making such further inquiry, as he may think necessary, the Collector shall make a report in respect of the land notified under Section 4(1) containing his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. It is open to the Collector to make different reports in respect of different parcels of land proposed to be acquired".

29. In ***Kamal Trading Private Limited –Vs- The State of West Bengal & Ors*** (supra), the relevant portion is extracted herein below:-

"*14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the concerned authority, inter alia, that the important ingredient namely 'public purpose' is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an ex-proprietary legislation, its provisions will have to be strictly construed.*

15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in Hindustan Petroleum Corpn. Ltd., the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5A and the report made by the Land Acquisition Officer and his

recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5A(2) of the LA Act. The recommendations must indicate objective application of mind".

30. From the aforesaid decision along with one reported in ***Surinder Singh Brar & Ors –Vs- Union of India & Ors*** (supra) it can be concluded that Section 5A(1) of the LA Act, gives right to any person interested in any land which has been notified under Section 4(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. The proceeding under the Land Acquisition Act (LA Act) is based on the principle of eminent domain and Section 5A is the only protection available to a person whose land sought to be acquired. This is the only safeguard afforded to him by law to protect himself by raising the objections against the act of acquisition and also to show the absence of ingredients of "public purposes" in the proposed acquisition. The Collector on the other hand is enjoined with the task of hearing the objectors and also given the freedom of making further enquiry as he may think necessary. The formation of opinion on the issue of need of land for public purposes and suitability thereof is sine-qua-non before issuance of a declaration under Section 6(1) of the Act, 1894. Any violation of the substantive right of the landowners and/ or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without

duly considering the objections filed under Section 5A(1) and submissions made at the hearing given under Section 5A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. The declaration made under Section 6(1) of the Act, 1894 will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not followed or there is violation of the principles of natural justice.

31. In the present case in hand, admittedly, the petitioners filed its objections on 09.12.2013 purportedly under Section 5A of the Land Acquisition Act, 1894. Notice was issued by the respondent authorities to the vendor of the petitioner No. 1 in terms of Section 4 of the Land Acquisition Act, 1894 fixing 15.07.2013 as the last date for submission of objections. The petitioners having come to know about the initiation of such acquisition proceedings requested the Land Acquisition Officer concerned on 08.08.2013 for issuance of notices in the name of the petitioners. As there was no move on the part of the respondents for issuance of fresh notice to the petitioner No. 1, on the basis of the knowledge gathered from the vendor of the petitioner No. 1 it had filed its objection on 09.12.2013. Admittedly on 13.02.2014 Public Notice was issued by the Land Acquisition Officer through the Circle Officer, Dispur Revenue Circle which goes to show that the enquiry required to be conducted under Section 5A(1) and (2) of the Act, 1894 was still going on at least on 09.12.2013. Under such circumstances, the objections filed on 09.12.2013 by the petitioners can be held to be filed during the continuance of the enquiry under Section 5A(1) and (2) of the Act, 1894. Further it is admitted fact that on 25.08.2014, the Additional Deputy Commissioner, Kamrup (M) pursuant to the Report dated 13.02.2014 of

the Circle Officer, Dispur Revenue Circle regarding service of notification under Section 4(1) of the Land Acquisition Act, 1894 for wide publication of the same passed the order dated 25.08.2014, holding proceedings under Section 5A against the LA Case No. 20/2013 was disposed of. It is also relevant to record that the respondent Nos. 3 and 4 in their affidavit-in-opposition relied the letter dated 18.09.2013 whereby the Circle Officer, Dispur Revenue Circle was directed to take steps for service of 43 numbers of notices under Section 5A of the LA Act, 1894 and submit the report. In terms of the said direction, order dated 25.08.2014 was passed by the Additional Deputy Commissioner, Kamrup (M) thereby closing the proceedings under Section 5A against the LA Case No. 20/2013. There is no denial on the part of the respondent Nos. 3 and 4 about the non-receipt of the objection filed by the petitioners on 09.12.2013. Under such circumstances, the submission of Mr. Baruah that there was flagrant violation of the principle of natural justice as enshrined under Section 5A of the Act, 1894 has force. On the basis of the said order dated 25.08.2014, the declaration under Section 6(1) of the Act, 1894 was approved vide Government Letter No. RLA.77/2013/83 dated 12.02.2015 and the said declaration was published on 11.03.2015 and 17.03.2015 in two local dailies. In ***Hindustan Petroleum Corporation Limited –Vs- Darius Shapur Chenai & ors*** (supra) the Apex Court held as follows:-

> "*8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance of the provisions of Section 5-A 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. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner".

32. From the aforesaid judgment read with other decisions of the Apex Court referred hereinabove, there is no dispute that the right prescribed under Section 5A (2) of the Act, 1894 for giving an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader by the Collector is an important right enshrining the principle of natural justice. Non compliance of the same, vitiates the land acquisition proceedings more specifically the declaration under Section 6 of the Act, 1894 which forms the conclusive evidence that the land was acquired for public purpose and any violation thereof, the said proceedings are liable to be interfered.

33. The submission of Mr. Mozumdar that the objections even if it is considered at this stage merits no finding which goes against the findings of the appropriate government that there is a public purpose for acquiring the land covered by the notification and the declaration under Section 6 of the LA Act is taken note of. In this regard, I am of the considered view that the recording of the findings in the order dated 25.08.2014 by the Additional Deputy Commissioner, Kamrup (M) pursuant to the report dated 13.02.2014 and the observation recorded therein that no objections were received from any pattadar in the stipulated period itself shows total lack of seriousness in the performance of the duties of the concerned respondent authorities. The

objection of the petitioners was filed during the pendency of the said proceedings under Section 5A of the Act, 1894 and there is no explanation in the affidavit-in-opposition of the respondent Nos. 3 and 4 as to why the said objection was not taken into consideration while the same was submitted during the pendency of the said proceeding under Section 5A of the Act, 1894. In this regard, the decision of the Apex Court in ***Kamal Trading Private Limited –Vs- The State of West Bengal & Ors*** (supra) is required to be cited:-

> "*28. By no stretch of imagination, can it be said that the Second Land Acquisition Officer had applied his mind to the objections raised by the appellant. The above quoted paragraphs are bereft of any recommendations. The Second Land Acquisition Officer has only reproduced the contentions of the officers of the acquiring body. The objections taken by the appellants are rejected on a very vague ground. Mere use of the words "for the greater interest of public" does not lend the report the character of a report made after application of mind. Though in our opinion, the declaration under Section 6 of the LA Act must be set aside because the appellant was not given hearing as contemplated under Section 5-A(2) of the LA Act, which is the appellant's substantive right, we must record that in the facts of this case, we are totally dissatisfied with the report submitted by the Second Land Acquisition Officer. His report is utterly laconic and bereft of any recommendations. He was not expected to write a detailed report but, his report, however brief, should have reflected application of mind. Needless to say that as to which report made under Section 5-A(2) could be said to be a report disclosing application of mind will depend on the facts and circumstances of each case.*
>
> *29. Having examined this case, in the light of the law laid down by this Court, we are of the opinion that the High Court wrongly rejected the prayer made by the appellant that the notification under Section 4 and declaration under Section 6 of the LA Act be quashed and set aside. The impugned judgment*

and order of the High Court, therefore, needs to be set aside and is, accordingly, set aside. Since no hearing was given to the appellant resulting in con-compliance with Section 5-A of the LA Act, the declaration under Section 6 of the LA Act dated 24.10.1997 published in the Government Gazette on 29.10.1997 must be set aside and is set aside. In view of the judgment of the Constitution Bench of this Court in Padma Sundara Rao –Vs- State of T.N.[10]*, the State Government cannot now rely upon Notification dated 29.07.1997 for the purposes of issuing fresh declaration under Section 6(1) of the LA Act. The said Notification dated 29.07.1997 issued under Section 4 is also, therefore, set aside. It would be, however, open to the State Government to initiate fresh land acquisition proceedings in accordance with law if it so desires".*

34. From the aforesaid discussion, I am of the considered opinion that the declaration made under Section 6 of the Land Acquisition Act, 1894 in LA Case No. 20/2013 and the subsequent land acquisition proceedings without providing any opportunity of hearing to the petitioners as mandated under Section 5A of the Act, 1894 are liable to be struck down due to violation of the principle of natural justice.

Issue No. 3.

35. Mr. Baruah refuting the allegations that there was delay on the part of the petitioners in filing the writ petition knowing fully well about the pendency of the proceedings moreso when the possession of the land was already handed over to the requiring department, it is submitted that the petitioners had exercised due diligence as a reasonable man would have done. After submission of the objections on 09.12.2013, the petitioners were expecting bonafide, service of due notice under Section 5A from the competent authority to give a hearing as directed therein Section 5A. Non service of notice inspite of

objections filed under Section 5A, the petitioners reasonably were under the impression that taken note of the objections, the respondent authorities had withdrawn the proposed acquisition in respect of the land belonging to the petitioners. The notice under Section 12(2) of the Act, 1894 required to be given pursuant to the award dated 07.12.2016 was also admittedly not given to the petitioners. The writ petition was filed on 29.03.2017 whereafter, the petitioners were served notices for claiming compensation. It is also an admitted fact as stated in the affidavit-in-opposition of the respondent Nos. 3 and 4 that on 24.04.2017, the petitioners were provided the relevant documents of LA Case No. 20/2013 vide office letter No. KRA5/2017/222 dated 24.04.2017. In this regard Mr. Baruah relied the judgment of the Hon'ble Supreme Court rendered in ***Anil Kumar Gupta –Vs- State of Bihar and ors*** reported in ***(2012) 12 SCC 443***.

36. Mr. Mazumdar and Mr. Deka both the learned counsel for the respondents vehemently objected to the submission made by Mr. Baruah and projected that the petitioners were fully aware of the proceedings at least on the date on which they filed the written objection purportedly under Section 5A of the Act, 1894. The said objection on 09.12.2013 was filed on the basis of the notices issued and served to the vendor of the petitioner No. 1 and since then the petitioners awaited till the year 2017 to file the writ petition. During the pendency of the writ petition, the petitioners also took the liberty from this court to file Reference Petition under Section 18 of the Act, 1894 for enhancement of the award. Under such circumstances, the petitioners cannot be held that the reasons cited for the delay falls within the term sufficient causes. In support of the said contention, Mr. Mozumdar relied ***Mutha Associates and Others –Vs- State of Maharashtra & Others*** reported in ***(2013) 14 SCC 304*** wherein

relying the Constitution Bench decision of the Apex Court in ***Aflatoon –vs- Lt. Governor of Delhi*** reported in ***(1975) 4 SCC 285*** along with other decisions held that in order to succeed in a challenge to the acquisition proceedings the interested person must remain vigilant and watchful. If instead of doing so, the interested person allows grass to grow under his feet, he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. The failure of the interested persons to seek redress at the appropriate stage and without undue delay would in such cases give rise to an inference that they have waived of their objections to the acquisitions. The bottom line is that the High Court can legitimately decline to invoke their powers of judicial review to interfere with the acquisition proceedings under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moonshine as is the position in the case at hand. The High Court has in the fact situation of this case rightly exercised its discretion in refusing to interfere with the acquisition proceedings. Mr. Mozumdar also relied the decision in ***Municipal Corporation of Greater Bombay –Vs- Industrial Development Investment Co. Pvt. Ltd. and Others*** reported in ***(1996) 11 SCC 501*** and submits that when the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. Moreover, the court is required to consider the relevant factors into pragmatic consideration moreso, in the present case in hand, the award was passed and possession was taken of the land acquired on the date of filing the writ petition.

37. In this regard, the decision relied by Mr. Baruah in ***Anil Kumar Gupta – Vs- State of Bihar and ors*** (supra) and the relevant portion is reproduced

herein below:-

"*14. The factual matrix of this case shows that from 1992, the Appellant has been prosecuting his cause for securing possession of the land. He succeeded in that venture when the writ petition filed by him was allowed by the Division Bench of the High Court and in the appeal filed by the respondents, this Court declined to interfere with the direction given by the High Court. In the second round of acquisition, the award was passed by the Land Acquisition Officer on 31.01.1997 and the writ petition was filed within one month and 11 days thereafter. Therefore, the Division Bench was clearly wrong in holding that the Appellant was guilty of laches.*

15. The issue needs to be examined from another angle. A person who is deprived of his land can challenge the acquisition proceedings at various stages. He can question the notification issued under Section 4(1) on the ground of violation of the mandate contained therein like publication of the notification in the official gazette and / or two newspapers including the on in the regional language, failure of the Collector to cause public notice of the substance of the notification to be given at convenient places in the locality. He can challenge the declaration issued under Section 6(1) on the ground of non-compliance of Section 5A(1) and / or (2) or violation of proviso (ii) to Section 6(1). In a given case, the land owner can also challenge the notice issued under Section 9 and the award passed under Section 11 on the ground that he had not been heard or that the acquisition proceedings are nullity. He can also challenge the award if it is not made within the period prescribed under Section 11 A. The vesting of land in the Government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure. The invoking of urgency clause contained in Section 17 can be questioned on the ground that there was no real urgency. There may be many more grounds on which the land owner can challenge the acquisition proceedings. Insofar as the Appellant is concerned, he had challenged the

acquisition proceedings immediately after passing of the award and pleaded that the declaration issued under Section 6(1) was liable to be declared nullity because of violation of the time limit prescribed in proviso (ii). This being the position, it is not possible to approve the view taken by the Division Bench of the High Court that the writ petition was belated."

38. From the material facts pleaded and the submissions of the learned counsel, it is seen that the knowledge in respect of the land acquisition proceedings of the petitioners can be conclusively held to be from 08.08.2013 on which date the petitioner No. 1 requested the Land Acquisition Officer for issuance of notice purportedly under Section 4(1) of the Act, 1894 in the name of the petitioners. Though no such notices were issued nor served, on 09.12.2013 the objection was filed. Thereafter, as no subsequent notices were issued to the petitioners purportedly under Section 5A(2) of the Act, 1894 directing the petitioners to be present for personal hearing, it is the submission of the learned counsel for the petitioners they were upon the bonafide impression that proceedings had been stayed or yet to be completed. The said explanation is acceptable to me.

39. On the other hand, if a pragmatic view is taken that the possession of the land was delivered to the requiring department respondent No. 6, on 03.02.2017 by the respondent State and the compensation amount had already been deposited, it was only after the petitioners were dispossessed on 08.03.2017 that the writ petition was filed on 29.03.2017. After dispossession the petitioners requested the competent authority for the relevant documents/ orders which were delivered to the petitioners after the writ petition was filed. Moreover on 25.04.2017 petitioners received notices dated 30.12.2016 asking the petitioner No. 1 to submit necessary documents for collection of award. If

we consider the stages highlighted in the aforesaid decision of the Apex Court, the petitioners have a right to challenge the proceedings even after declaration of the award under Section 11 of the Act, 1894. Here in the present case, the petitioners have been able to show that they requested for the relevant documents/ information through RTI Act, 2005 prior to filing of the writ petition which were delivered subsequent to filing of the writ petition. Accordingly no laches on the part of the petitioners can be attributed. In my considered opinion, it cannot be held that there was delay in filing the writ petition which was filed immediately after the dispossession of the petitioners.

Reliefs

40. Though as per my observation and decision in Issue No. 2, the whole proceedings are required to be set aside and quashed and direct the respondent authorities to initiate a fresh proceeding under the Act of 2013 but the act of filing an application under Section 18 of the Land Acquisition Act, 1894 by the petitioners before the competent authority for making a reference of the award to the competent court had given me an impression that the petitioners are mainly aggrieved on the quantum of the award assessed by the competent authority. In order to show the extent of investment made by the petitioners facts and figures are already pleaded in this writ petition. On the other hand, as per the submission of Mr. Deka, the said land is required for the safety purposes as prescribed by the competent safety authority of the Oil Companies. In terms of the acquisition proceedings, the possession of the land had already been delivered to the respondent No. 6 however because of an order of status quo passed by this court immediately on motion the said order is still holding the field. Now the question is whether it would be proper to set aside and quash the

proceedings as hereinabove expressed or take shelter of the ratio laid down by the Apex Court in ***S. L. Kapoor –Vs- Jagmohan and Others*** (supra) read with the ratio in ***M. C. Mehta –Vs- Union of India & Others*** (supra). The relevant portion of the aforesaid two decisions are reproduced hereinbelow:-

(i) ***S. L. Kapoor –Vs- Jagmohan and Others*** reported in ***(1980) 4 SCC 379***:-

"*24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. JACKSON'S NATURAL JUSTICE (1980 Edn.) contains a very interesting discussion of the subject. He says:*

The distinction between justice being done and being seen to be done has been emphasized in many cases…

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widegery C.J.'s judgment in R.V. Home Secretary[13], ex. P. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible

injustice. In ***Altco Ltd. –V- Sutherland***[14] *Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase", that justice should not only be done but be seen to be done. In* ***R. v. Thames Magistrates' Court, ex. P. Polemis***[15]*, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.*

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widegery C. J. at page 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment

under appeal".

(ii) ***M. C. Mehta –Vs- Union of India & Others*** *reported in* ***(1999) 6 SCC 237:-***

"*20. It is true that in Ridge v. Baldwin[3], it has been held that breach of principles of natural justice is in itself sufficient to grant relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this court in several cases, but we might point out that this court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J., in S. L. Kapoor v. Jagmohan[4]. After stating (at SCC page 395 para 24) that 'principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed' and that 'non-observance of natural justice is itself prejudice to a man and proof of prejudice independently of proof of denial of natural justice is unnecessary', Chinnappa Reddy, J., also laid down an important qualification (SCC page 395 para 24) as follows :*

"As we said earlier, where on the admitted or indisputable facts, only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because courts do not issue futile writs."

21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of principles of natural justice.

22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases, there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of

'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corporation[5] (per Lord Reid and Lord Wilberforce), Glynn v. Keele University[6], Cinnamond v. British Airport Authority[7] and other cases where such a view has been held. The latest addition to this view is R v. Ealing Magistrates' Court ex p Fannaran 1996 8 Admn LR 351 (358) (see DeSmith, Suppl., page 89) 1998 where Straughton, Lj, held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMohan [1987] A.C. 625 (862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand court in McCarthy v. Grant 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood - not certainty - of prejudice'. On the other hand, Garner's Administrative Law, 8th Edition, 1996, pages 271-72), says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin[3], Megarry, J., in John v. Rees[11], stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J., has said that the 'useless formality theory' is a dangerous one and, however' inconvenient, natural justice must be followed. His Lordship observed that convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality' theory in R v. Chief Constable of the Thames Valley Police Force ex p Cotton[12], by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary ?' 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural justice, Substance or Shadow' by Prof. D. H. Clark of Canada (see 1975 PL, pages 27-63) contending that Malloch[5]and Glynn[6] were wrongly decided. Foulkes (Administrative Law, 8th Edition, 1996, pages 323), Craig Administrative Law, 3rd Edition, page 596, and others say that the court

cannot prejudge what is to be decided by the decision making authority. de Smith, (5th Edition, 1994, paras 10.031 to 10.036), says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edition, 1994, pages 526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S. K. Sharma[13], Rajendra Singh v. State of M. P[14], that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived."

41. From the discussions made hereinabove, the land required by the respondent No. 6 is admittedly for safety measures to be taken as per the guidelines issued by a specialized authority in the field of safety of Oil industries. Further it is admitted position that the land had already been delivered possession to the requiring department. Moreover award had also been accepted by some of the land owners leaving aside the petitioners though it is an admitted fact that the petitioners too filed a petition before the competent authority for reference to an appropriate court, challenging the quantum of the award so determined by the said authority. It is also made known to this court

that the said application under Section 18 for reference is yet to be acted upon by the competent authorities purportedly due to pendency of this writ petition. From the aforesaid consideration, I am of the considered view that the provision of Section 5A of the Act, 1894 is for the benefit of individual owners who may raise their objection objecting the issuance of notification under Section 4(1) of the Act, 1894 and the public purposes mentioned therein. As such if the ratio of ***M. C. Mehta –Vs- Union of India & Ors*** (supra) is considered and the intent of the Section 5A being for the individual benefit of the owner of the land, the proceedings and/or the declaration under Section 6 of the LA Act, 1894 requires no interference at this stage instead of making a declaration that the declaration under Section 6(1) of the Act, 1894 to be bad under the law and setting aside and quashing the proceedings itself. Because as per the observation in issue No. 1, the proceeding was initiated. It is also a fact that award was made and possession of land was taken under Section 16 of the 1894 Act and the land as of now vests in State, so as per the ratio in Indore Development Corporation (Supra), the possession cannot be reverted back to the owners though the issue before this is not in respect of lapse of proceeding. But some owners of land acquired, accepted the award and delivered possession without any objections. Considering all the intricacies involved which may result in granting the declaration as per findings in issue No. 2, I am not inclined to set aside the proceedings inasmuch in my considered opinion and considering the overall facts with a pragmatic view the writ if issued would be a futile one in the long run. However, it would be proper to dispose of this writ petition which I accordingly do, thereby directing the respondents more specifically, the respondent Nos. 3 and 4 to take steps in the petition filed under Section 18 of the Act, 1894 by the petitioners and with a further direction to the Principal Civil

Court to which the reference is made to dispose of the said Reference Case as per the prevailing of law within a period of six months from the date of receipt of the reference. The petitioners are also given the liberty to accept the award as of now without prejudice to their rights in the reference court seeking for enhancement of the award passed in LA Case No. 20/2013.

With the said observations and direction, this writ petition stands disposed of and disallowed.

Interim order passed earlier stands vacated. No costs.

JUDGE

Comparing Assistant