

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) S. B. Civil Writ Petition No. 5786/1995

CNR: RJHC020003461995 | URN: CW / 3953U / 1995

Jugal Kishore son of Girdhari Lal aged about 65 years, resident of Dhani Poonchla Wali, Neemkathana, District Sikar.

----Petitioner

Versus

1. The State of Rajasthan.
2. Land Acquisition Officer (S.D.O.), Neemkathana.
3. Rajasthan State Industrial Development & Investment Corporation (RIICO), Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur.

----Respondents

Connected With

(2) S. B. Civil Writ Petition No. 257/1996

CNR: RJHC020004201996 | URN: CW / 471U / 1996

1. Amar Singh aged about 75 years
2. Ramu since deceased through his legal heirs:
 - 2/1 Dadki wife of Ramu;
 - 2/2 Gokul Chand Yadav son of Ramu;
 - 2/3 Mahaveer Yadav son of Ramu;
 - 2/4 Babu Lal Yadav son of Ramu;
 - 2/5 Pappu Yadav son of Ramu;
 - 2/6 Mainpal Yadav son of Ramu;All residents of Dhani Poonchla Wali, Neem Ka Thana, District Sikar.
3. Bihari, aged about 65 years
All sons of Raghunath, residents of Dhani Poonchla Wali, Neem Ka Thana, District Sikar.

----Petitioners

Versus

1. The State of Rajasthan through Chief Secretary, Government of Rajasthan, Secretariat, Jaipur.
2. Land Acquisition Officer (SDO), Neem Ka Thana.
3. Rajasthan State Industrial Development & Investment Corporation (RIICO), Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur.

----Respondents

(3) S. B. Civil Writ Petition No. 258/1996

CNR: RJHC020004211996 | URN: CW / 472U / 1996

1. Banwari since deceased through his legal heir:
1/1 Kailash Chand son of Late Banwari
2. Harchand since deceased through his legal heirs:
2/1 Liladhar
2/2 Mohan Lal
2/3 Balvir
All sons of Late Harchand
3. Harchand since deceased through his legal heirs:
3/1 Radhey Shyam
3/2 Madan Lal
3/3 Prabhu Dayal
3/4 Satvir
All sons of Late Mohar Singh
4. Banshi
5. Prahlad
6. Jhabar since deceased through his legal heirs:
6/1 Rohitashwa
6/2 Jaspal Singh
6/3 Mahipal
All sons of Late Jhabar
7. Dayal Chand
8. Sher Singh
All residents of Dhani Poonchla Wali, Neem Ka Thana, District Sikar.

-----Petitioners

Versus

1. The State of Rajasthan.
2. Land Acquisition Officer (SDO), Neem Ka Thana.
3. Rajasthan State Industrial Development & Investment Corporation (RIICO), Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur.

-----Respondents

For Petitioners : Mr. Madhusudan Singh Rajpurohit
Advocate & Mr. Harshit Bansal
Advocate.

For Respondents : Mr. Virendra Lodha, Senior Counsel
assisted by Mr. Ankit Rathore
Advocate, Ms. Ritika Naruka
Advocate.
Mr. Sachin Rathore Advocate on
behalf of Mr. S.S. Naruka Additional
Advocate General.

HON'BLE MR. JUSTICE ANAND SHARMA
Judgment

REPORTABLE

Date of conclusion of arguments	::	27.07.2026
Date on which judgment was reserved	::	27.07.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	12.08.2026

1. The petitioners in the above writ petitions have questioned the legality, validity and propriety of notification dated 09.11.1993 issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') and declaration dated 19.06.1995 issued under Section 6 thereof, whereby the respondents have sought to acquire the petitioners' land situated at Dhani Poonchla Wali, Village and Tehsil Neemkathana, District Sikar for extension and development of the industrial area of Rajasthan State Industrial Development and Investment Corporation Limited (for short 'RIICO').

2. Since common questions of fact and law arise for consideration in these three writ petitions and the pleadings, issues involved as well as the reliefs claimed are substantially similar, they were heard together with the consent of learned counsel appearing for the parties and are being decided by this common judgment. For the sake of convenience, the facts are being noticed from S. B. Civil Writ Petition No. 5786/1995, unless the context otherwise requires.

3. The facts, in brief, as pleaded in the writ petition are that the petitioner is the khatedar and occupier of land measuring 0.51 hectare comprised in Khasra No.364/4 situated at Dhani Poonchla Wali, Village and Tehsil Neemkathana, District Sikar. According to the petitioner, although the revenue record describes the land as *Banjar* (barren land), the land has long been treated as *Abadi* and continuously being used for residential purposes. Permanent residential houses, out-houses and other constructions have existed over the land for several years. Only a negligible portion of the land is occasionally used for agricultural operations.

4. It has further been pleaded that before initiation of the acquisition proceedings, the Sub-Divisional Officer concerned directed the Tehsildar, Neemkathana to conduct a preliminary survey regarding the status of the lands proposed to be acquired. Pursuant thereto, the Tehsildar submitted a report dated 25.01.1993 recording, inter alia, that the petitioner's land comprised residential houses over a substantial portion, while the remaining land was partly barren and partly agricultural. According to the petitioner, the said report clearly acknowledged the residential character of the land.

5. It is the case of the petitioner that despite the aforesaid factual position emerging from the official survey itself, the State Government issued notification dated 09.11.1993 under Section 4 of the Act of 1894 proposing acquisition of approximately 21.50 hectares of private khatedari land for expansion of the industrial area of RIICO. The notification specifically stated that the acquisition was being undertaken for RIICO and at its expense.

6. Upon learning about the proposed acquisition, the petitioner submitted detailed objections under Section 5A of the Act of 1894 before the Land Acquisition Officer. It was specifically asserted that the petitioner's land constituted residential *Abadi* and acquisition thereof would render the petitioner and his family homeless. It was also objected that several suitable *Banjar* and *Barani* lands adjoining the existing industrial area were available for expansion and therefore, there was no necessity to acquire residential properties situated on the northern side of the industrial area.

7. The petitioner has further pleaded that although the Land Acquisition Officer, while considering the objections under Section 5A of the Act of 1894, recommended release of certain parcels of land from acquisition and thereafter made a further recommendation for exclusion of additional lands, the petitioner's land continued to be retained within the acquisition proceedings without assigning any cogent reason to distinguish the case of the petitioner.

8. The petitioner has further averred that the State Government thereafter issued declaration dated 19.06.1995 under Section 6 of the Act of 1894 declaring that the land was required for RIICO. According to the petitioner, the declaration came to be published subsequently in the newspaper.

9. The petitioner has also pointed out that the existing industrial area is situated on one side of the State Highway connecting Sikar and Kotputli. The petitioner's land, however, falls within the *abadi* of Dhani Poonchla Wali adjoining the municipal limits of Neemkathana. Between the existing industrial area and

the petitioner's land lie Khasra Nos.362, 364/1 and 365 comprising pasture land, cremation ground and a well respectively. He emphasised that none of these intervening khasras have been acquired.

10. It has thus been contended that the respondents have sought to acquire isolated residential pockets situated beyond the intervening lands while leaving the intervening public utility lands untouched. According to the petitioner, such acquisition neither results in a planned extension of the industrial area, nor bears any rational nexus with the proposed object of industrial expansion.

11. The petitioner has also pleaded that adjoining the existing industrial area, particularly towards the southern and western sides, extensive *Banjar* and *Barani* lands were available, which were comparatively cheaper and more suitable for industrial expansion. Nevertheless, without recording any reason, the authorities selected residential *Abadi* lands situated on the northern side of the industrial area. It has also been averred that an electricity transmission line is passing through the adjoining khasras, which is also a negative factor for the feasibility of establishing industrial units over the acquired land. It is contended that no technical or planning study was undertaken before selecting the petitioner's land. The petitioner has further pleaded that neither any environmental study, nor any planning exercise preceded the acquisition and the authorities failed to consider the adverse consequences which industrial development in close proximity to the residential *Abadi* would have upon the inhabitants of the locality.

12. It has also been pleaded that the notifications disclose acquisition "for RIICO and at its expense" and therefore, ought to have complied with the procedure prescribed under Part VII of the Act of 1894, but such provisions have not been followed by the respondents.

13. On the basis of above, it was prayed that the notifications issued under Sections 4 and 6 of the Act of 1894, insofar as they relate to the petitioner's land, be declared illegal and quashed and the respondents be restrained from proceeding further with the acquisition.

14. Reply to the writ petition has been filed on behalf of the respondents opposing the writ petition. The respondents do not dispute that the petitioner's land forms part of Khasra No.364/4 measuring 0.51 hectare. They also do not dispute the issuance of notifications under Sections 4 and 6 of the Act of 1894. The principal defence raised by the respondents is that RIICO is a Government Company owned and controlled by the State Government and, therefore, acquisition of land for establishment or expansion of an industrial area constitutes acquisition for a public purpose. According to the respondents, the provisions contained in Part VII of the Act of 1894 governing acquisition for companies are wholly inapplicable. The respondents have further pleaded that a proper survey of the area had been conducted before initiation of acquisition proceedings and that the land proposed to be acquired formed a contiguous extension of the existing industrial area. It has been denied that the selection of land was arbitrary or irrational.

15. In relation to the petitioner's objections under Section 5A of the Act of 1894, the respondents have pleaded that the objections were duly considered by the Sub-Divisional Officer cum Land Acquisition Officer, who submitted his report recommending acquisition of the petitioner's land after recording that acquisition would not adversely affect the petitioner. It is contended that the objections were found to be devoid of merit and, therefore, stood rightly rejected.

16. It has further been pleaded that the declaration under Section 6 of the Act of 1894 was duly issued and published in accordance with law and all statutory requirements prescribed under the Act of 1894 stood fully complied with. The respondents have denied all allegations regarding mala fides, colourable exercise of power, non-application of mind and violation of constitutional rights and have prayed for dismissal of the writ petition.

17. As a matter of fact, it would be relevant to refer that earlier all the above writ petitions came to be dismissed vide orders dated 02.08.2006 and 05.01.2007 passed by the Co-ordinate Bench of this Court, solely on the ground that alleged award dated 20.06.1997 was passed during the pendency of the writ petition. Thereafter, feeling aggrieved, the petitioners preferred D.B. Special Appeal (Writ) No. 1252/2006, 1253/2006 and 616/2008 before the Division Bench of this Court. The Division Bench initially while issuing notices passed interim orders dated 21.11.2006 to the effect that if residential houses existed on the land in question then the petitioners shall not be disposed therefrom. Ultimately, the DB Special Appeals were disposed of

vide order dated 19.02.2018 passed by the Division Bench of this Court, whereby the writ petitions were remanded back to the Single Judge for deciding the same afresh.

18. Copy of alleged award dated 20.06.1997 was placed by learned counsel for the parties before this Court during the course of arguments. Since the award is an undisputed document and earlier also at the instance of learned counsel for the respondents, it was relied by Co-ordinate Bench of this Court at the time of order of dismissal of the writ petitions vide orders dated 02.08.2006 and 05.01.2007, this Court took the same on record.

19. Learned counsel for the petitioners, while reiterating the contents of the writ petitions, submits that the respondents have proceeded with the acquisition in a wholly arbitrary manner by selecting residential *Abadi* land despite the admitted availability of *Banjar* and *Barani* lands in the same vicinity. It is contended that the Tehsildar's own report acknowledged the existence of permanent residential houses upon the petitioner's land, yet the authorities ignored the same while proceeding with the acquisition.

20. It has further been argued that the enquiry under Section 5A of the Act of 1894 has been reduced to a mere ritual. The objections specifically pointing out the residential character of the land, existence of alternative lands, absence of planning rationale and irrational exclusion of intervening khasras have not been objectively considered. According to the learned counsel, the recommendation of the Land Acquisition Officer merely records conclusions without discussing the objections raised by the petitioner or assigning any reasons for their rejection.

21. Learned counsel has further argued that the record itself demonstrates that similarly situated parcels were recommended for release from acquisition, yet the petitioner's land alone was retained without any rational basis. Such discriminatory treatment vitiates the entire decision-making process.

22. Learned counsel has also argued that the impugned proceedings disclose complete absence of objective satisfaction by the respondent-Government, thereby rendering the declaration under Section 6 of the Act of 1894 legally unsustainable.

23. In addition to above, it has also been submitted by learned counsel for the petitioners that even otherwise in the present matter although during the pendency of the writ petitions, an award dated 20.06.1997 was passed by the Land Acquisition Officer in respect of other land included in declaration under Section 6 of the Act of 1894, yet in the award itself it has been mentioned that the compensation has not been assessed for the petitioners, hence, the aforesaid award cannot be treated as legitimate award in respect petitioners. Learned counsel for the petitioners argued that under the circumstances, where declaration under Section 6 of the Act of 1894 was issued on 19.06.1995 and was later on published in newspapers on 14.07.1995, and till date no award has been passed by the Land Acquisition Officer in respect of land in question, consequence of such omission would entail result of lapsing of proceedings in view of explicit provisions of Section 11A of the Act of 1894.

24. Learned counsel for the petitioners relied upon judgments delivered by the Hon'ble Supreme Court in the cases of

Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai & Others, (2005) 7 SCC 627, Raghbir Singh Sehrawat vs. State of Haryana & Others, (2012) 1 SCC 792, Kamal Trading Private Limited (now known as Manav Investment & Trading Company Limited) vs. State of West Bengal & Others, 2012 (2) SCC 25, Women's Education Trust & Another vs. State of Haryana & Others, (2013) 8 SCC 99, Gurbinder Kaur Brar & Another vs. Union of India & Others, (2013) 11 SCC 228 and Lajja Ram & Others vs. Union Territory, Chandigarh & Others, (2013) 11 SCC 235.

25. *Per contra*, learned counsel appearing for the respondents submits that acquisition of land for expansion of the industrial area of RIICO constitutes acquisition for a public purpose. It is contended that RIICO being a Government Company, the provisions contained in Part VII of the Act of 1894 are wholly inapplicable.

26. Learned counsel has further submitted that the question regarding suitability of land falls within the exclusive domain of the acquiring authority and judicial review cannot extend to substituting the Court's opinion for that of the Government. It is argued that once objections under Section 5A of the Act of 1894 were considered and rejected and the Government was satisfied regarding the public purpose, the acquisition cannot be interfered with merely because the petitioner suggested availability of some other land. It has further been submitted that every mandatory requirement prescribed under the Act of 1894 has been duly complied with and no case warranting interference under Article 226 of the Constitution is made out.

27. In order to counter argument raised on behalf of the petitioners claiming lapsing of the acquisition proceedings, learned counsel appearing for the respondents would submit that such ground has not been pleaded in the writ petitions and otherwise also, in the present writ petitions since stay order dated 15.01.1996 was passed to the effect that status quo as obtaining on that day shall be maintained by the parties, therefore, the respondents were prevented from passing award by determining compensation in respect of land in question. Therefore, provisions of Section 11A of the Act of 1894 would not be attracted so as to lapse the acquisition proceedings. However, learned Senior Counsel appearing on behalf of the respondents could not dispute that the above stay order dated 15.01.1996 came to an end soon after the writ petitions were earlier dismissed by Co-ordinate Bench of this Court vide orders dated 02.08.2006 and 05.01.2007.

28. Learned Senior Counsel vehemently argued that even otherwise petitioners in the present cases were holding only 2.04 hectares land out of total land measuring 21.50 hectares sought to be acquired. Other land holders have not challenged the acquisition proceedings and have accepted the compensation awarded to them. Hence, where substantial portion of the area in question has already formed the industrial area of the RIICO, therefore, deacquiring petitioners land would cause hurdles in smooth establishment and functioning of the industrial area. Learned Senior Counsel appearing on behalf of the respondents relied upon Section 24 of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013') and also placed reliance

upon Constitution Bench judgment in the case of **Indore Development Authority vs. Manoharlal & Others, (2020) 8 SCC 129.**

29. Having heard learned counsel for the parties and upon perusal of the pleadings and material available on record, this Court finds that the principal challenge raised by the petitioners rests upon alleged violation of the provisions of the Act of 1894 as well as arbitrary exercise of the State's power of eminent domain.

30. Needless to observe that the State undoubtedly possesses the authority to acquire private property for a lawful public purpose. Such power, however, is neither unbridled, nor unfettered, rather is regulated by the statutory safeguards incorporated in the Act of 1894 and Article 300A of the Constitution of India, which ordains that no person shall be deprived of his property save by authority of law. Therefore, although the Court ordinarily does not sit in appeal over the subjective satisfaction of the Government regarding the need for acquisition, it is always open to judicial scrutiny whether the decision-making process is fair, reasonable, and free from arbitrariness.

31. The Act of 1894 prescribes a carefully structured procedure before a citizen can be deprived of his property. Section 4 of the Act of 1894 contemplates a preliminary notification expressing the Government's intention to acquire land. Upon publication of such notification, every person interested in the land is conferred a statutory right under Section 5A of the Act of 1894 to object to the proposed acquisition. The District Collector is obliged to afford an opportunity of hearing, consider each

objection objectively, submit his recommendations together with the entire record to the appropriate Government and thereafter, the Government is required to independently apply its mind before issuing a declaration under Section 6 of the Act of 1894.

32. The legislative intent underlying Section 5A of the Act of 1894 is quite significant. It constitutes the only opportunity available to a landholder to demonstrate that his property ought not to be acquired either because the land is unsuitable, unnecessary, already put to a particular use, or because alternative lands are available which would equally satisfy the public purpose. The provision, therefore, acts as an important check upon arbitrary exercise of the power and ensures that acquisition is founded upon objective satisfaction rather than administrative convenience.

33. The importance of the enquiry under Section 5A of the Act of 1894 has repeatedly been emphasised by the Hon'ble Supreme Court. In **Munshi Singh & Others vs. Union of India, (1973) 2 SCC 337**, the Hon'ble Supreme Court described the opportunity under Section 5A of the Act of 1894 as a "just and wholesome opportunity" available to every person interested in the land proposed to be acquired. The Hon'ble Supreme Court observed that the statutory right under Section 5A of the Act of 1894 is intended to enable the landholder to convince the authorities that the proposed acquisition is either unnecessary or inappropriate and that such opportunity cannot be reduced to a mere empty formality. Relevant part of the judgment is quoted here:

"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. We may refer to the observation of this court in Nandeshwar Prasad v. State of U.P. [AIR 1964 SC 1217] that the right to file objections under Section 5- is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side wind. Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A: [See Section 17(4) of the Acquisition Act.]"

34. Again, in **Union of India & Others vs. Mukesh Hans, (2004) 8 SCC 14**, the Hon'ble Supreme Court reiterated that the right available under Section 5A of the Act of 1894 is a substantial and valuable right and cannot be lightly taken away. It has been held that the enquiry under Section 5A of the Act of 1894 constitutes the only meaningful safeguard available to a citizen against compulsory deprivation of property and, therefore, the statutory procedure deserves strict adherence. The Apex Court observed as under:

"35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of Munshi Singh v. Union of India [(1973) 2 SCC 337] wherein this Court held thus: (SCC p. 342, para 7)

"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has,

therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A:"

35. The legal position was explained with greater clarity in **Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai & Others (supra)**, wherein the Hon'ble Supreme Court held that Section 5A of the Act of 1894 confers a valuable right upon the land owner and the hearing contemplated thereunder must be real, effective and meaningful. The Hon'ble Supreme Court observed that the formation of opinion by the Government must necessarily be preceded by due application of mind to the relevant material and rejection of irrelevant considerations. It was further observed that where the statutory safeguard under Section 5A of the Act of 1894 is rendered illusory, the entire acquisition proceedings become vulnerable to judicial review. It would be appropriate to refer following paragraphs of the above judgment:

"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

8. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to 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 with 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.

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

16. *However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.*

17. *Contention of Mr Chaudhari to the effect that for long the additional ground relating to non-application of mind on the part of the State had not been raised and, thus, it might not be necessary for the State to file a counter-affidavit, does not appeal to us. When rule nisi was issued, the State was required to produce the records and file a counter-affidavit. If it did not file any counter-affidavit, it may, subject to just exceptions, be held to have admitted the allegations made in the writ petition.*

18. *In view of the fact that the action required to be taken by the State Government is distinct and different from the action required to be taken by the Collector; when the ultimate order is in question it was for the State to satisfy the court about the validity thereof and for the said purpose the counter-affidavit filed on behalf of a Collector cannot be held to be sufficient compliance with the requirements of law. The job of the Collector in terms of Section 5-A would be over once he submits his report. The Land Acquisition Collector would not know the contents of the proceedings before the State and, therefore, he would be incompetent to affirm an affidavit on its behalf.*

19. *Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefor, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation that production of records by the State is necessary.*

26. *Yet again in Mohinder Singh Gill [(1978) 1 SCC 405] this Court observed : (SCC p. 417, para 8)*

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [AIR 1952 SC 16] :"

29. *The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma [AIR 1966 SC 1593] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan [AIR 1967 SC 1074] and CCE v. Orient Fabrics (P) Ltd. [(2004) 1 SCC 597]]*

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."

36. The observations of the Supreme Court in **Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai & Others (supra)** are of considerable significance. The Hon'ble Supreme Court observed that although the right to property is no longer a fundamental right, Article 300A of the Constitution of India confers constitutional protection against arbitrary deprivation of property. Consequently, while exercising statutory power of compulsory acquisition, the authorities are expected to exhibit fairness, transparency and objective application of mind. A mechanical or ritualistic disposal of objections under Section 5A of the Act of 1894 does not satisfy the mandate of law.

37. Similar principles were reiterated in **Dev Sharan & Others vs. State of Uttar Pradesh & Others, (2011) 4 SCC 769**, wherein the Hon'ble Supreme Court held that objections relating to availability of alternative land, comparative hardship and suitability of the proposed site are relevant considerations

which deserve objective examination by the acquiring authority. The Hon'ble Supreme Court held that failure to consider such objections vitiates the decision-making process itself. It was further observed that the Government cannot merely rely upon the recommendation of the Collector but must independently apply its mind before issuing a declaration under Section 6 of the Act of 1894. It was held thus:

"23. In DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622], this Court construed the statute on Town Planning Law and held: (SCC p. 635, para 41)

"41. Expropriatory statute, as is well known, must be strictly construed."

The same principle has been reiterated subsequently by a three-Judge Bench of this Court in State of Maharashtra v. B.E. Billimoria [(2003) 7 SCC 336] in the context of ceiling law. (See SCC para 22 at p. 347 of the Report.)

25. In the background of the aforesaid discussion, this Court proceeds to examine the scope of a person's right under Section 5-A of the Act.

26. Initially, Section 5-A was not there in the Land Acquisition Act, 1894 but the same was inserted long ago by the Land Acquisition (Amendment) Act, 1923 vide Section 3 of Act 38 of 1923.

27 [Ed.: Para 27 corrected vide Official Corrigendum No. F.3/Ed.B.J./16/2011 dated 16-3-2011]. *The history behind insertion of Section 5-A, in the Act of 1894 seems to be the basis of a decision of the Division Bench of the Calcutta High Court in J.E.D. Ezra v. Secy. of State for India [(1902-03) 7 CWN 249 (Cal)]. In that case, the properties of Ezra were sought to be acquired under the pre-amended provision of the Act for expansion of the offices of Bank of Bengal. In challenging the said acquisition, it was argued that the person whose property is going to be taken away should be allowed a hearing on the principles of natural justice. However the Judges found that there was no such provision in the Act. (See CWN p. 269.)*

28. In order to remedy this shortcoming in the 1894 Act, an amendment by way of incorporation of Section 5-A was introduced on 11-7-1923. The Statement of Objects and Reasons for the said amendment is as follows:

"The Land Acquisition Act 1 of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is the Government bound to enquire into and consider any objections that may

reach them. The object of this Bill is to provide that a Local Government shall not declare, under Section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under Section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government."

(Gazette of India, Part V, dated 14-7-1923, p. 260.)

The said amendment was assented to by the Governor General on 5-8-1923 and came into force on 1-1-1924.

29. *The importance and scheme of Section 5-A was construed by this Court in several cases. As early as in 1964, this Court in Nandeshwar Prasad v. U.P. Govt. [AIR 1964 SC 1217] speaking through K.N. Wanchoo, J. (as His Lordship then was) held: (AIR p. 1222, para 13)*

"13. ... The right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that that right can be taken away as if by a side wind...."

In that case the Court was considering the importance of rights under Section 5-A vis-à-vis Section 17(1) and Section 17(1-A) of the Act. (See AIR para 13 at p. 1222 of the Report.)

30. *The same view has been reiterated by another three-Judge Bench decision of this Court in Munshi Singh v. Union of India [(1973) 2 SCC 337]. In SCC para 7 of the Report this Court held that Section 5-A embodies a very just and wholesome principle of giving proper and reasonable opportunity to a landloser of persuading the authorities that his property should not be acquired. This Court made it clear that declaration under Section 6 has to be made only after the appropriate Government is satisfied on a consideration of the report made by the Collector under Section 5-A. The Court, however, made it clear that only in a case of real urgency the provision of Section 5-A can be dispensed with. (See SCC para 7 at p. 342 of the Report.)*

31. *In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] this Court held that the right which is conferred under Section 5-A has to be read considering the provisions of Article 300-A of the Constitution and, so construed, the right under Section 5-A should be interpreted as being akin to a fundamental right. This Court held that the same being the legal position, the procedures which have been laid down for depriving a person of the said right must be strictly complied with."*

38. In **Radhy Shyam(Dead) through LRs & Others vs. State of Uttar Pradesh & Others, (2011) 5 SCC 553**, the Hon'ble Supreme Court after considering several foreign judicial precedents concerning the right to fair hearing emphasised that

the enquiry contemplated under Section 5A of the Act of 1894 is not an idle formality but constitutes the only statutory safeguard available to a land owner before compulsory acquisition. It was held as under:

"40. Before advertng to the precedents in which Section 5-A has been interpreted by this Court, it will be useful to notice development of the law relating to the rule of hearing. In the celebrated case of *Cooper v. Wandsworth Board of Works* [(1863) 14 CB (NS) 180] the principle was stated thus: (ER p. 420)

"... even God himself did not pass [a] sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?'. "

Therein the District Board had brought down the house of the plaintiff's (Cooper), because he had failed to comply with the Metropolis Local Management Act. The Act required the plaintiff to notify the Board seven days before starting to build the house. Cooper argued that even though the Board had the legal authority to tear his house down, no person should be deprived of their property without notice. In spite of no express words in the statute the Court recognised the right of hearing before the plaintiff's house built without permission was demolished in the exercise of statutory powers. Byles, J. stated: (*Cooper case* [(1863) 14 CB (NS) 180] , ER p. 420)

"... although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law [shall] supply the omission of the legislature."

41. Perhaps the best known statement on the right to be heard has come from Lord Loreburn, L.C. in *Board of Education v. Rice* [1911 AC 179 (HL)] where he observed: (AC p. 182)

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. ... In such cases ... they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. ... They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial in their view."

42. In *Ridge v. Baldwin* [1964 AC 40] Lord Reid emphasised on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In *O'Reilly v. Mackman* [(1983) 2 AC 237 (CA & HL)] Lord

Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of presenting his own case is so fundamental to any civilised legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement.

43. *In Lloyd v. McMahon [1987 AC 625] Lord Bridge said: (AC pp. 702 H-703 B)*

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

44. *In the United States, principles of natural justice usually find support from the due process clause of the Constitution. The extent of due process protection required is determined by a number of factors; first the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail.*

77. *From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:*

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good—Dwarkanadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd. [(1953) 2 SCC 791], Charanjit Lal Chowdhury v. Union of India [1950 SCC 833] and Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596].

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly— DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622]; State of Maharashtra v. B.E. Billimoria [(2003) 7 SCC 336] and Dev Sharan v. State of U.P. [(2011) 4 SCC 769]

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to

economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons."

39. In the case of **Raghubir Singh Sehrawat (supra)**, wherein the Hon'ble Supreme Court explained that the appropriate Government cannot act merely as a rubber stamp upon the report submitted by the Collector (Land Acquisition Officer). The statutory obligation casts an independent duty upon the Government to examine the recommendations, consider the objections and thereafter arrive at its own satisfaction before issuing the declaration under Section 6. The satisfaction contemplated by the statute must, therefore, be real and founded upon objective consideration of the entire record. Observations made by the Apex Court in following paragraphs are worth noticeable:

"39. *In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.*

40. *Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."*

40. Similarly, in the case of **Kamal Trading Private Limited (now known as Manav Investment & Trading Company Limited) (supra)**, the Hon'ble Supreme Court held that formation of opinion for arriving at satisfaction by the appropriate Government under Section 6 of the Act of 1894 must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. Hearing given to the person must be effective one and not a mere formality. The recommendation of Land Acquisition Officer must indicate objective considerations. Following paragraphs of the above judgments deserves reference:-

"14. *It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A 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, 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 expropriatory 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. [(2005) 7 SCC 627], 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."

41. Equally significant are the observations made by the Hon'ble Supreme Court in the case of **Usha Stud and Agricultural Farms Private Limited & Others vs. State of Haryana & Others, (2013) 4 SCC 210**, the Hon'ble Supreme Court, after taking into consideration earlier judgments, observed as under:

"30. The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)."

42. While taking the procedure contemplated in Section 5-A of the Act of 1894 as akin to the rule of *audi alteram partem* and underlying the necessity of effective hearing and objective consideration by the Land Acquisition Officer, the Hon'ble Supreme Court in **Women's Education Trust & Another (supra)**, has held as under:

"5. *The principles which can be culled out from the abovenoted judgments are as under:*

5.1. *The rule of audi alteram partem engrained in the scheme of Section 5-A of the Act ensures that before depriving any person of his land by compulsory acquisition, an effective opportunity must be given to him to contest the decision taken by the State Government/competent authority to acquire the particular parcel of land..*

5.2. *Any person interested in the land, which has been notified under Section 4(1) of the Act, can file objections under Section 5-A(1) and show that the purpose specified in the notification is really not a public purpose or that in the guise of acquiring the land for a public purpose the appropriate Government wants to confer benefit upon private persons or that the decision of the appropriate Government is arbitrary or is vitiated due to mala fides.*

5.3. *In response to the notice issued by the Land Acquisition Collector under Section 5-A(2) of the Act, the objector can make all possible endeavours to convince the Land Acquisition Collector that the acquisition is not for a public purpose specified in the notification issued under Section 4(1); that his land is not suitable for the particular purpose; that other more suitable parcels of land are available, which can be utilised for execution of the particular project or scheme.*

5.4. *The Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.*

5.5. *The Land Acquisition Collector is required to submit his report and the recommendations to the State Government along with the record of proceedings to enable the latter to take final call on the desirability, propriety and justification for the acquisition of the particular parcel(s) of land.*

5.6. *The declaration under Section 6(1) of the Act can be issued only if the appropriate Government, on an objective application of mind to the objections filed by the interested persons including the landowners and the report of the Land Acquisition Collector, is satisfied that the land is needed for the particular purpose specified in the notification issued under Section 4(1) of the Act.*

6. *It is unfortunate that despite repeated judicial pronouncements, the executive authorities entrusted with the task of acquiring private land for any specified public purposes have time and again exhibited total lack of seriousness in the performance of their duties under the statute. Often they do not comply with the mandate of Section 5-A of the Act, which is sine qua non for making a valid declaration under Section 6(1) of the Act. This batch of appeals is illustrative of the malady that has afflicted the*

State authorities who are keen to acquire private lands in the name of planned development of various urban areas, but do not bother to comply with the relevant statutory provisions and the rules of natural justice."

43. This Court finds that the similar principles have been laid down by the Hon'ble Apex Court in the cases of **Gurbinder Kaur Brar & Another (supra)**, **Surinder Singh Brar & Others vs. Union of India & Others, (2013) 1 SCC 403** and **Lajja Ram & Others (supra)**.

44. The aforesaid principles unmistakably establish that although the Court ordinarily does not interfere with the subjective satisfaction of the Government regarding public purpose, it is nevertheless required to examine whether the satisfaction itself is the result of objective consideration of relevant material. If relevant circumstances have been ignored or if statutory objections have been rejected without due consideration, judicial review is not only permissible but becomes necessary to preserve the rule of law.

45. The petitioners have come out with a case that once the acquisition is for a company (RIICO), compliance with the provisions contained in Part VII of the Act of 1894 becomes mandatory and since no agreement contemplated under Sections 39 to 42 was executed, the entire acquisition deserves to be quashed. However, upon a careful examination of the statutory provisions, this Court is unable to accept the said contention. Section 3(cc) of the Act of 1894 defines the expression "Corporation owned or controlled by the State", while Section 3(e) of the Act of 1894, which defines the expression "Company", expressly excludes a Government Company referred to in clause

(cc). Thus, the legislative scheme itself draws a clear distinction between an ordinary company and a Government Company owned or controlled by the State. RIICO is admittedly a Government Company incorporated under Section 617 of the Companies Act, 1956 and wholly owned and controlled by the State Government. The respondents have specifically pleaded this fact in their reply and the same has not been disputed by the petitioner. Once RIICO answers the description of a Government Company, it stands excluded from the definition of "Company" occurring in Section 3(e) of the Act of 1894. This Court is, therefore, of the considered opinion that the challenge raised by the petitioner on alleged non-compliance of Part VII of the Act of 1894 cannot be accepted.

46. However, the legality of the acquisition, therefore, has still to be tested on the touchstone of fairness of the decision-making process, objective consideration of the objections preferred by the petitioners and the existence of genuine application of mind by the acquiring authorities.

47. At the outset, this Court may observe that expansion of an industrial area undoubtedly constitutes a legitimate public purpose. However, it is equally well settled, that mere existence of a public purpose does not confer an unfettered discretion upon the State to acquire any land with following the procedure established by law.

48. The material placed before this Court discloses that prior to issuance of the notification under Section 4 of the Act of 1894, the Tehsildar, Neemkathana was directed by the competent authority to conduct a preliminary survey regarding the nature

and status of the lands proposed to be acquired. Pursuant thereto, a report dated 25.01.1993 came to be submitted. A careful reading of the said report reflects about the existence of residential houses over a substantial portion of the land while the remaining portion was described as partly barren and partly agricultural. Thus, the acquiring authorities were fully conscious, even before initiation of acquisition proceedings, that the land in question substantially formed part of the residential *Abadi* of Dhani Poonchla Wali. Once such material was available before the authorities, it became incumbent upon the Land Acquisition Officer to objectively consider whether acquisition of an existing residential settlement was indispensable for expansion of the industrial area or whether equally suitable alternative lands were available which would adequately serve the same public purpose with lesser displacement and hardship. The petitioner, while filing objections under Section 5A of the Act of 1894, specifically invited the attention of the Land Acquisition Officer to these very circumstances. These objections were directly related to the necessity, suitability and rationality of selecting the petitioner's land and therefore, deserved objective consideration. Surprisingly, however, the report submitted by the Land Acquisition Officer rejecting the petitioner's objections merely records the conclusion that acquisition would not adversely affect the petitioner and that the objections were baseless. The report is conspicuously silent on the principal issues raised by the petitioner. This court finds that there is no discussion whatsoever regarding the existence of residential houses. There is no finding regarding the availability or

otherwise of alternative *Banjar* and *Barani* lands. There is no consideration of the intervening khasras admittedly left outside acquisition. There is no explanation as to why residential *Abadi* alone deserved acquisition while similarly situated lands came to be excluded.

49. The report, therefore, reflects only the conclusion and not the reasons which persuaded the authority to arrive at such conclusion. It is settled that reasons constitute the soul of every administrative decision affecting valuable civil rights.

50. Equally significant is another aspect emerging from the record. It is an admitted position that while considering the objections, the Land Acquisition Officer himself recommended release of certain parcels of land. Subsequently, by another communication dated 16.03.1995, he further proposed release of additional lands. Once such exemption was granted in respect of similarly situated land, it became imperative for the authority to disclose why the petitioner's residential land was treated differently despite the material indicating residential occupation. The record, however, is completely silent on this aspect.

51. In **Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai & Others (supra)**, the Hon'ble Supreme Court held that consideration under Section 5A of the Act of 1894 cannot be an empty formality and that the Government is required to objectively consider the report before arriving at satisfaction under Section 6 of the Act of 1894. It was emphasised that formation of opinion without proper consideration of relevant material renders the acquisition vulnerable.

52. Likewise, in **Dev Sharan & Others (supra)**, the Hon'ble Supreme Court specifically recognised that objections pointing out existence of residential houses, comparative hardship and availability of alternative lands are relevant objections which cannot be brushed aside mechanically. Failure to deal with such objections vitiates the acquisition.

53. Applying the aforesaid principles to the present case, this Court finds that every objection which required serious consideration has either remained unanswered or has been disposed of by recording bald conclusions unsupported by reasons. No material has been placed before this Court to explain the planning rationale behind such selective acquisition. Neither Section 5A report, nor the declaration under Section 6 of the Act of 1894, nor the reply filed before this Court furnishes any explanation.

54. The cumulative effect of the aforesaid circumstances leads this Court to conclusion that the statutory enquiry under Section 5A of the Act of 1894 was not conducted in the manner prescribed in the mandatory provisions of the Act of 1894. It is settled preposition of law that land acquisition laws are expropriatory in nature, hence, are required to be construed strictly. This court finds that the objections of the petitioner were not examined in the manner contemplated by law. Relevant considerations remained ignored while conclusions unsupported by reasons came to be recorded. Consequently, the recommendation submitted to the Government did not provide a legally sustainable foundation for formation of satisfaction under Section 6 of the Act

of 1894. Such infirmity vitiates the decision-making process as well as the entire acquisition proceedings.

55. In the present case, the infirmity does not lie in the existence of a public purpose; it lies in the absence of a fair and reasoned decision-making process. The enquiry under Section 5A of the Act of 1894, which constitutes the only statutory opportunity available to the petitioner before compulsory acquisition, has been reduced to an empty ritual. Such an approach is contrary to the legislative intent underlying Section 5A of the Act of 1894 and inconsistent with the constitutional guarantee embodied in Article 300A of the Constitution of India.

56. This Court is, therefore, satisfied that the declaration under Section 6 of the Act of 1894 is vitiated by non-application of mind and failure to consider relevant material. Once the very foundation upon which the Government arrived at its satisfaction stands vitiated, the consequential declaration cannot be sustained.

57. Now coming to the ground raised by the petitioners that the acquisition proceedings have lapsed by virtue of operation of Section 11A of the Act of 1894, this court finds that although such ground was not pleaded in the writ petition, but this ground being related to pure question of law, can be permitted to be raised, on the basis of undisputed facts, during the arguments also. It is not in dispute that the declaration under Section 6 of the Act of 1894 was issued on 19.06.1995 and was thereafter published in the newspapers on 14.07.1995. Section 11A of the Act of 1894 mandates that an award under Section 11 of the Act of 1894 is required to be made within a period of two years from

the date of publication of the declaration. In the absence of an award within the prescribed period, the acquisition proceedings are rendered ineffective by operation of law, subject to the exclusion contemplated by the statutory provision in respect of any period during which the proceedings were stayed by an order of the Court.

58. In the present case, although an award dated 20.06.1997 was passed by the Land Acquisition Officer in respect of certain land covered by the declaration under Section 6 of the Act of 1894, the award itself records that compensation in respect of the land belonging to the petitioners had not been assessed. Thus, merely because an award came to be passed in respect of some other parcels of land covered by the same declaration, the same cannot, in law, be treated as an award in respect of the petitioners' land.

59. The submission of the respondents that the award dated 20.06.1997 should be regarded as sufficient compliance with Section 11 of the Act of 1894, therefore, cannot be accepted. The substance of the statutory requirement is not the mere existence of a document styled as an "award", but a lawful determination of the compensation payable in respect of the land sought to be acquired. Where the authority itself records that compensation in respect of a particular land has not been assessed, such document cannot be treated as an effective award qua that land merely by virtue of its nomenclature or because the land happens to be included in the same declaration.

60. The further defence of the respondents is that an interim order dated 15.01.1996 was operating in the writ petitions, whereby the parties were directed to maintain status quo as obtaining on that date, and consequently the Land Acquisition Officer was prevented from passing an award in respect of the petitioners' land. It is true that the period during which the acquisition proceedings are stayed by an order of the Court has to be excluded while computing the period prescribed under Section 11A of the Act of 1894. However, the benefit of such exclusion can operate only for the period during which the restraint imposed by the Court actually continued to operate.

61. In the present case, admittedly, the writ petitions were earlier dismissed by the learned Single Judge vide orders dated 02.08.2006 and 05.01.2007. The respondents have not disputed that the interim order dated 15.01.1996 ceased to operate upon dismissal of the writ petitions. Thus, even assuming that the period during which the aforesaid interim order remained operative is liable to be excluded, the respondents cannot claim an indefinite exclusion of time thereafter. Once the interim protection came to an end, there was no legal impediment preventing the competent authority from completing the acquisition proceedings in accordance with law.

62. The subsequent filing of intra-court appeals by the petitioners does not advance the case of the respondents. The Division Bench, vide order dated 19.02.2018, ultimately remanded the matters to the learned Single Judge for fresh consideration. Significantly, there is nothing on record to demonstrate that, after

the interim order dated 15.01.1996 ceased to operate, any further order of this Court restrained the respondents from making an award in respect of the petitioners' land. The respondents, therefore, cannot rely upon an interim order which had already ceased to operate for explaining the continued failure to make an award thereafter.

63. More importantly, the respondents have failed to demonstrate that, after cessation of the interim order, any award determining compensation in respect of the petitioners' land was ever made within the period permissible under Section 11A of the Act of 1894. The award dated 20.06.1997, on its own terms, does not determine compensation in respect of the petitioners' land. Consequently, the statutory requirement remained unfulfilled insofar as the petitioners' land is concerned.

64. The object underlying Section 11A of the Act of 1894 is to ensure that acquisition proceedings do not remain pending indefinitely after issuance of the declaration under Section 6 of the Act of 1894. The Legislature has prescribed a definite outer limit for making an award and has attached a specific consequence to failure on the part of the acquiring authority to adhere to that mandate. Once the statutory period expires without a valid award, the acquisition proceedings cannot be kept alive merely on the basis of an earlier declaration or by treating an award relating to other parcels of land as sufficient compliance in respect of the land of a person whose compensation was admittedly not determined.

65. It is also relevant that the petitioners had approached this Court at the relevant point of time and the acquisition

proceedings were subjected to judicial scrutiny. The Division Bench, while ultimately remanding the matters for fresh consideration, did not hold that the respondents had acquired an indefeasible right to continue the acquisition notwithstanding their failure to comply with the mandatory requirement of Section 11A of the Act of 1894. Thus, the mere pendency of the litigation or the fact that the matters were ultimately remanded cannot, by itself, revive an acquisition which had otherwise ceased to subsist by operation of the statute.

66. For the foregoing reasons, this Court is of the considered view that the award dated 20.06.1997 cannot be treated as a valid award in respect of the petitioners' land, particularly when the award itself records that compensation in respect thereof had not been assessed.

67. Accordingly, the acquisition proceedings initiated in respect of the petitioners' land are held to have lapsed by operation of Section 11A of the Act of 1894.

68. As regards the contention of the respondents that the petitioners hold only 2.04 hectares out of the total acquired area of 21.50 hectares, whereas other landowners have accepted compensation and the acquired land has substantially been utilised for establishment of the industrial area, cannot be accepted. This court observes that the legality of acquisition qua the petitioners' land has to be examined independently, and the acceptance of compensation or failure to challenge the acquisition by other landowners cannot validate an otherwise unlawful acquisition.

69. The Hon'ble Supreme Court in **Radhy Shyam(Dead) through LRs & Others (supra)**, has categorically held that legal and constitutional rights of an aggrieved landowner cannot be denied merely because other landowners have not challenged the acquisition or have accepted the compensation. The same principle squarely applies to the present case. Para 87 of the judgment lays down as under:

"87. The argument of the learned Senior Counsel for the respondents that the Court may not annul the impugned acquisition because land of other villages had already been acquired and other landowners of Village Makaura have not come forward to challenge the acquisition of their land cannot be entertained and the Court cannot refuse to protect the legal and constitutional rights of the appellants merely because the others have not come forward to challenge the illegitimate exercise of power by the State Government. It is quite possible that others may have, due to sheer poverty, ignorance and similar handicaps not been able to avail legal remedies for protection of their rights, but that cannot be made the basis to deny what is due to the appellants."

70. Equally untenable is the contention raised by the respondents that the remaining acquired land has been utilised for establishment of the industrial area cannot validate an acquisition which has otherwise become unsustainable in law. Administrative inconvenience or alleged hindrance in the functioning of the industrial area cannot override the statutory rights of the petitioners. The respondents cannot derive advantage from their own failure to complete the acquisition proceedings in accordance with law. The contention, therefore, deserves to be rejected.

71. Reliance placed by the Respondents upon Section 24 of the Act of 2013 and upon judgment in the case of **Indore Development Authority (supra)** has no applicability in the facts and circumstances of the case, hence, the argument of learned

Senior Counsel appearing on behalf of the respondents based thereupon is also not sustainable in the eye of law.

72. Consequently, the writ petitions deserve to succeed and the same are hereby allowed. Notifications dated 09.11.1993 issued under Section 4 of the Land Acquisition Act, 1894 and the declarations dated 19.06.1995 issued under Section 6 of the Land Acquisition Act, 1894 insofar as they relate to the petitioners' lands measuring 0.51 hectare each comprised in Khasra Nos.364/4, 364/3 and 364/5 respectively situated at Dhani Poonchla Wali, Village and Tehsil Neemkathana, District Sikar, are hereby quashed and set aside. It is also held that the acquisition proceedings initiated vide above notifications also stood lapsed by virtue of operation of Section 11A of the Land Acquisition Act, 1894. The respondents are restrained from proceeding further with the acquisition of the petitioners aforesaid land pursuant to the impugned notifications.

73. Pending applications, if any, shall stand disposed of.

74. Office is directed to place a copy of this judgment on record of each connected writ petition.

(ANAND SHARMA),J

MANOJ NARWANI