

CASE NO.:
Appeal (civil) 1391 of 1999

PETITIONER:
Swasthya Raksha Samiti Rati Chowk

RESPONDENT:
Chaudhary Ram Harakh Chand (D) by LRs. & Ors.

DATE OF JUDGMENT: 22/02/2005

BENCH:
N.Santosh Hegde, B.N.Srikrishna & P.K.Balasubramanyan

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

This appeal is placed for final hearing before this Bench on a reference made by a Bench of two learned Judges of this Court.

The question involved in this appeal pertains to the nature of enquiry to be conducted under Rule 4(2)(iii) of the Land Acquisition (Company) Rules, 1963. The referring Bench noticed a judgment of this Court in the case of Shyam Nandan Prasad & Ors. vs. State of Bihar & Ors. (1993 (4) SCC 255) which held that compliance of Rule (4) is not only mandatory but a notice of the said enquiry should also be given to the land owners concerned. The said judgment had noticed three earlier judgments of this Court in the case of State of Gujarat & Anr. vs. Patel Chaturbhai Narsibhai & Ors. (1975 (1) SCC 583), State of Gujarat & Ors. vs. Ambalal Haiderbhai & Ors. (1976 (3) SCC 495) and General Government Servants Cooperative Housing Society Ltd., Agra vs. Shri Wahab Uddin & Ors. (1981 (2) SCC 352) which also took similar views.

The referring Bench, however, felt that though the enquiry under Rule (4) is mandatory, issuance of notice to the land owners of such enquiry is not mandatory, because they will anyway be heard in Section 5A (L.A Act) enquiry even in regard to the validity of the acquisition in favour of a company.

It is in view of the above doubt entertained by the Division Bench the matter is referred to a larger Bench.

So far as the judgments of this Court cited herein above are concerned, they do hold that Rule (4) is not only mandatory but that the notice of the said enquiry has to be given to the land owners. The above judgments, however, have not taken into consideration an earlier 5-Judge Bench judgment of this Court in the case of Babu Barkya Thakur vs. The State of Bombay & Ors. (1961 (1) SCR 128) wherein this Court indicated that all the requirements of Part VII of the Act especially Section 40 could be considered in Section 5A enquiry itself which would include all and any objection of the land owners including the objection in regard to the acquisition in favour of a company. This judgment of the 5-Judge Bench of this Court in our view seems to support the doubt entertained by the referring Bench.

We have heard the learned counsel for the parties and we are also of the opinion that since the objections that could possibly be raised in Rule (4) enquiry can also be raised in a Section 5A enquiry and in the absence of any specific requirement in Rule (4) as to the issuance of notice to the land owners of being heard in

such an enquiry, hearing the land owners at the stage of Rule (4) enquiry would lead only to duplication and cause delay. Since the judgment of this Court in the case of State of Gujarat vs. Patel Chaturbhai Narsibhai (supra) and State of Gujarat vs. Ambalal Haiderbhai (supra) as also the judgment of General Government (supra) are judgments of 3-Judge Bench and the said Bench having not noticed the observations of this Court in the case of Babu Barkya Thakur (supra). We think it appropriate to refer this matter to a larger Bench.

For the reasons stated above, we direct the office to place the papers of this appeal before Hon. the Chief Justice of India for appropriate orders.

JUDIS