CASE NO.:
Appeal (civil) 7015 of 2005

PETITIONER:
Competent Authority

RESPONDENT:
Barangore Jute Factory & Ors.

DATE OF JUDGMENT: 22/11/2005

BENCH:
K.G. Balakrishnan & Arun Kumar

JUDGMENT:
JUDGMENT
(arising out of SLP) 16820 OF 2004)
With
Civil Appeals No._7016-7017 of 2005
(arising out SLP(C) Nos.17874-17875 of 2004)

AND WITH

Civil Appeal No.7018 of 2005
(@ SLP (C) No.18773 of 2004)

ARUN KUMAR, J.

Leave granted.

These appeals arise from a common judgment of the High Court. The contesting parties before the High Court filed special leave petitions in this Court against the judgment of the High Court dated 7th April, 2004. The special leave petitions filed by the Competent Authority are registered as SLP (Civil) No. 16820 of 2004 while those filed by the National Highways Authority of India are SLP (Civil) Nos.17874-75 of 2004. The Writ Petitioners before the High Court have also filed a petition which is numbered as SLP (Civil) 18773 of 2004. Since all the petitions arise from a common judgment, they were heard together and are being disposed of by this judgment. For sake of convenience the land owners are being referred to as the writ petitioners in this judgment. The other main parties are the Competent Authority and the National Highways Authority of India (NHAI) and they will be referred to as such in the judgment.

The subject matter of these appeals is the compulsory acquisition of certain lands belonging to the writ petitioners by the Central Government vide Notification dated 11th June, 1998 under Section 3A of the National Highways Act, 1956 (hereinafter referred to as the 'Act'). The writ petitioners challenged the acquisition of their lands on various grounds. The Division Bench of the High Court by its impugned judgment dated 7th April, 2004 disposed of the writ petition holding the impugned Notification regarding compulsory acquisition of land to be bad in law. However, keeping in view the fact that possession of the acquired land had already been taken by the authorities, the High Court felt that no useful purpose would be served by quashing the Notification. The High Court also took note of the power of the acquiring authority to issue a fresh Notification for acquisition of the land which could only lead to possible increase in the amount of compensation payable to the owners. Keeping these aspects in view it ordered that an additional amount of compensation be awarded to the land owners. Accordingly, an additional amount calculated at 30% over and above the compensation already determined was ordered to be paid to the writ petitioners. The Competent authority is aggrieved of the order of the High Court holding the Notification regarding the acquisition of the land to be illegal, while the NHAI is aggrieved of the award of additional 30 per

cent amount as compensation to the Writ Petitioners. The owners/writ petitioners are aggrieved of the Notification not being quashed in spite of having been declared as illegal.

The acquisition of land in the present case is under the National Highways Act, 1956. The power to acquire land is contained in Section 3A of the Act. According to sub-section (1) where the Central Government is satisfied that for a public purpose, any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. Sub-section (2) provides that every Notification under sub-section (1) shall give a brief description of the land. Under sub-section (3) the Competent Authority is required to cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language. The impugned notification in this case is challenged on the ground that it does not give a brief description of the land sought to be compulsorily acquired. There has been lot of argument on either side on this aspect. The Competent Authority and the NHAI have supported the Notification urging that brief description of the land contained in the Notification meets the requirement of the statute while according to the writ petitioners it is not so. A copy of the impugned Notification dated 11th June, 1993 has been placed on record. As per the Notification, a brief description of the land sought to be acquired is given in the Appendix to the Notification. In order to appreciate the rival contentions it is necessary to reproduce some portions of the Appendix.

The GAZETTE OF INDIA EXTRAORDINARY

_____[PART II \026 SEC. 3 (iii)_

Brief description of land with or without Structure falling within the proposed Right of way in terms of Sub-Section (2) of Section 3A of National Highways Laws (Amendment) Act, 1997.

As per Appended \026 A

[No.RW/NH-15013/31/94-PL.]

A.D.NARAIN, Director General(Road Development & Addl. Secy.

APPENDIX \026 A to NOTIOFICATION No.

BRIEF DESCRIPTION OF PRIVATE LAND WITH/WITHOUT STRUCTURE FALLING WITHIN PROPOSED RIGHT OF WAY OF SECOND VIVEKANANDA BRIDGE & ITS APPROACHES IN NATIONAL HIGHWAY \026 2, WEST BENGAL.
(Vide Sub-Section (2) of Section 3A of the NH Laws (Amendment) Act, 1997

Sl. No.	Dag No.	Khaitan No. Old	Khaitan No. New	Full Area (Acre)	Land classification as per BL & LR Record	Acquisition/Alienation proposed For Area (Acre)
1	2	3	4	5		6
	7	8				
State \026 West Bengal, District \026 Howrah, Police Station \026 Bally, Mouza \026 Bally, J.L. - 14, Sheet \026 2.						
1.	1020	1499	0	0.420	DANGA	Part 0.0150
2.	1021	1538	0	0.130	DANGA	Part 0.0900
3.	1448	7167	0	17.000	SUNA	Part 2.7500
4.	1449	7115	0	10.550	SUNA	Part 0.3800
5.	1659	3446	0	0.1800	DANGA	Part

0.1800
6. 1662 2162 0 0.070 BASTU Part
0.0250
7. 1682 7167 0 6.250 SHALI Part
4.0500

0.4900
State \026 West Bengal, District \026 Howrah,
Police Station \026 Bally, Mouza \026 Bally, J.L. \026 14, Sheet \026 4.

1.	2920	7167	0	17.6500	SUNA	Part	0.1000	
2.	2904	7167	0	0.4900	DANGA	Part		0.08
15								

8.6715

State \026 West Bengal, District \026 Howrah,
Police Station \026 Bally, Mouza \026 Bally, J.L. \026 14, Sheet \026 10.

1.	8602	1990	0	0.2790	BASTU	Part	0.00
10							
2.	8603	1991	0	0.2080	BASTU	Part	0.16
20							
3.	8604	1992	0	0.0670	UDBASTU	Part	
0.0150							
4.	8609	3532	0	0.0310	BASTU	Full	0.03
10							
5.	8610	3532	0	0.5100	DANGA	Full	0.14
00							
6.	8611	3532	0	0.0100	BASTU	Full	0.01
00							
7.	8612	5373	0	0.0930	UDBASTU	Full	0.09
30							
8.	8613	5373	0	0.1360	BASTU	Full	0.13
60							
9,	8616	7113	0	0.1560	DANGA	Full	0.15
90							
10.	8617	3579	0	0.0540	DANGA	Full	0.05
40							
11.	8618	3579	0	0.0240	BASTU	Full	0.20
40							

9.4965

The Appendix contains a long list of various portions of lands sought to be acquired. The list runs into more than 10 pages in the paper book. We have chosen to reproduce only a small portion of the Appendix in order to appreciate the rival contentions of the learned counsel for the parties. The learned counsel for the writ petitioners submitted that the purpose of giving a brief description of the land sought to be acquired is that the person whose land is to be taken away, should at least know what he is being deprived of. This becomes all the more necessary when only a part of the land out of a bigger chunk of land is sought to be acquired. A reference to the Tables forming part of the Appendix, which according to the acquiring Authority contain brief description of the land, will show that under various heads, only part of bigger chunks of land is being acquired. If the entire land falling in a particular survey is acquired, there cannot be any problem of identification of land. But when only a part of land out of larger tract of land is sought to be acquired, the question arises which part is going to be acquired. For instance in the first Table full area of land in Dag No.1448 at Serial No.3 is 17 acres as per column 5. Column 7 indicates that only a part of the said 17 acres is being acquired and as per Column 8, the part which is

sought to be acquired is 2.7800 acres. This means out of 17 acres only 2.7800 acres is being acquired. The question will arise as to which side this part which is sought to be acquired is falling, it could be anywhere on the northern, southern, western, eastern sides or in the centre. How is one to know which part is under acquisition? Similar position emerges with reference to other serial numbers where only part of larger chunks of land is being acquired. Such cases are several when we look at the entire Appendix and the Tables forming part of it. According to the learned counsel for the writ petitioners, the absence of information as to which part of the land is being acquired makes the description insufficient, rather vague. The owners are not in a position to identify the land under acquisition. It also renders it impossible to make claim regarding compensation for the land under acquisition because it is a matter of common knowledge that in bigger tracts of land, certain areas on a particular side are more valuable than the others. The absence of proper description of land makes it impossible to file objection against acquisition. For all these reasons it is argued on behalf of the land owners that the statutory requirement of a brief description of land is not fulfilled. According to the Writ Petitioners non-compliance of sub-section (2) of Section 3A renders the Notification invalid and the same is therefore, liable to be quashed.

The learned counsel appearing for the Competent Authority as also the counsel for the NHAI have tried to support the Notification. According to them, the requirement in sub-Section (2) of Section 3A of the Act is only of giving a brief description of the land. Brief description does not mean a complete description. That would not be the intention of the statute. An acquisition Notification is only required to convey to the persons claiming interest in the land about the intention of the Government to acquire a particular land and the description given in the impugned Notification meets that requirement. The learned counsel appearing for the Competent Authority had really no answer to the problem demonstrated above about identification of land where only part of a larger chunk of land was being acquired. Faced with this difficulty and in an effort to ensure that the impugned Notification is upheld, the learned counsel appearing for the Competent Authority raised various subsidiary issues which according to him are sufficient to non-suit the Writ Petitioners. They are :

(1) Delay on part of writ petitioners in challenging the Notification under Section 3A(1);

(2) Failure to file objections under section 3C within twenty one days as prescribed in sub-section (1);

(3) Applying for compensation for the acquired land giving full details of the lands sought to be acquired which shows that land owners knew all the details about the land under acquisition and the objection regarding absence of proper description of land sought to be acquired in the impugned Notification is not open to them;

(4) On failure of the land owners to file objections under Section 3C (1), the Competent Authority submitted a report to the Central Government and the Central Government issued a declaration that the land should be acquired for purposes mentioned in sub-section (1). On publication of this declaration the land vests absolutely in the Central Government free from all encumbrances. As per sub-section (2) of Section 3D, therefore, land having vested in the Central Government the acquisition could not be challenged;

(5) The Competent Authority on vesting of the land in the Central Government and on compensation amount being deposited by the Competent Authority, has taken possession of the lands, therefore, the acquisition could not be challenged;

(6) Lastly, it was submitted that these acquisitions were for very important public purpose, i.e., construction of National Highway and the court should not interfere with the acquisition on mere technicalities. The land owners only have a right to compensation. The quashing of the Notification would only lead to postponment of the date of Notification thereby possibly resulting in increase in amount of compensation payable to the land owners. Therefore, at best the land owners could be compensated by giving some additional compensation for their acquired land. The acquisition

need not be disturbed.

So far as the question whether the impugned Notification meets the requirement of Section 3A(1) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of land in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law.

While dealing with the question of brief description of land in the acquisition notifications, reference was made to some judgments of this Court where acquisition Notifications under Section 4 of the Land Acquisition Act had come up for consideration on account of challenge being leveled on ground of vagueness of the Notifications. In most of these cases, Plan of the area under acquisition was made part of the notifications to show that the requirement of description of land was met. This lead us to inquire whether there was any site plan forming part of the impugned Notification.

The availability of a Plan would have made all the difference. If there is a Plan, the area under acquisition becomes identifiable immediately. The question whether the impugned Notification meets the requirement of brief description of land under Section 3A(2) goes to the root of the matter. The High Court rightly observed : "\005.it is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without preparation of a proper Plan." The Appendix to the impugned Notification shows that in many cases small parts of larger chunks of land have been notified for acquisition. This is not possible without preparing a Plan. But where is the Plan? The Notification in question makes no reference to any Plan. Our attention was drawn to averments in pleadings by Writ Petitioners and replies thereto of the acquiring authority. The Writ Petitioners have pleaded that there was no Plan. Replies are vague and by way of rolled up answers. There is no specific reply. It is obvious that there was no Plan and therefore none was referred to in pleadings nor any thing was produced before Court at the hearing. Learned counsel for the Competent Authority tried to submit before us that there was a Plan at the time of issue of the notification and the Writ Petitioners ought to have inspected it if they so desired. He further submitted that the Plan was produced before the High Court. We find that both these submissions are not sustainable as they are not correct. A reference to the impugned Notification shows that there is no mention of any Plan. Without this how can anybody know that there was a Plan which could be inspected and inspected where? We are inclined to accept that there was no Plan accompanying the impugned Notification.

During the course of hearing we were shown a Plan which we are unable to link with the impugned Notification. This was a 1996 P.W.D.Plan. The P.W.D. is a department of the State Government. The impugned Notification is by the Central Government. The NHAI is established under a Central Act. The Competent Authority under Section 3 of the Act is appointed by the Central Government. Therefore, this State Government Plan of 1996 (the impugned Notification is of 1998) is of no assistance. The impugned judgment of the High Court emphasises the need for a Plan. It is clear from the judgment of the High Court that no Plan was produced before it. The absence of any reference to a Plan in the impugned Notification and in fact non-availability of any Plan linked to the Notification, fortifies the argument that the description of the land under acquisition in the impugned Notification fails to meet the legal requirement of a brief description of the

land which renders the Notification invalid.

The absence of plan also renders the right to file objections under Section 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act,1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this court in Delhi Administration vs. Gurdip Singh Uban & Others [(1999) 7 SCC 44]. In our view, this judgment has no application in the facts of the present case where right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. De hors the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification under Section 3C, therefore, cannot non-suit the Writ Petitioners in this case.

The learned counsel supporting the acquisition submitted that the delay in filing the Writ Petition is fatal to the case of land owners. It is true that 11th June, 1998 Notification was challenged only in September, 2001 by filing the Writ Petition. But if the Notification violates the very statute from which it derives its force, will delay in challenging it clothe it with legitimacy? The Act requires the Notification to be issued in a particular manner with brief particulars of land being acquired. The Notification in this case fails to meet this requirement. We have held it to be bad in law. It has no legs to stand. The conduct of the opposite party cannot be used to make it stand. Moreover, the Writ Petitioners have explained the reasons for the delay in filing the Writ Petition. The Company which owns the lands had been de-registered. It is a Company registered in the U.K. It had to be revived. Revival came in mid-2001 whereafter the action was taken. Thus we find no merit in the argument about delay in challenging the Notification rendering the challenge liable to be rejected.

Coming to the point regarding filing of claim for compensation on behalf of the Company by its General Manager with complete details of the land under acquisition, we must note that at the relevant time in 1998 and thereafter till 2001, the Writ Petitioner Company had no existence. On account of demands of workers of the factory and to meet other statutory demands, a committee was appointed by the High Court in the winding up proceedings pending before it to run the factory. The claim for compensation was filed by somebody as the General Manager of the Company. He had no authority to do so. The committee had to manage only the factory and had nothing to do with ownership issues. So far as details of land under acquisition contained in the claim is concerned, it is based on material contained in the impugned Notification and the Appendix. Filing of such a claim by somebody who had no authority to do so, cannot deprive the owners of their right to challenge the acquisition of the lands owned by the Company. Therefore, neither delay in filing the Writ Petition nor filing of claim for compensation can stand in the way of the Writ Petitioners in seeking relief in these proceedings.

About the argument based on vesting of the land in the Central Government, it is to be seen that if the initial Notification is bad, all steps

taken in pursuance thereof will fall with it. Vesting under Section 3D(2) arises on a declaration by the Central Government under Section 3D(1).The declaration is the result of disposal of objections under Section 3C. Each step is a consequence of earlier step and in that sense all the steps are linked to initial Notification for acquisition under Section 3A(1) and (2). This initial Notification has been held to be not in accordance with law. When the foundation goes rest of the edifice falls. The invalid Notification under Section 3(A) renders all subsequent steps invalid. Therefore, vesting of land in the Central Government in the present case cannot be said to be lawful and it does not advance the case of the Competent Authority or the NHAI. Taking possession of the land is yet another step in the same sequence and is again subject to the initial Notification being held valid. The initial Notification having been invalidated, there can be no legal or valid vesting of land in the favour of the Central Government.

The aspect of possession of land having been taken by the Competent Authority, is an important issue for consideration in this case. Vesting of land in the Central Government has been held to be not in accordance with the law. The other statutory requirement which needs to be complied before taking possession is deposit of compensation. Under Section 3E(1) possession can be taken only after the land vests in the Central Government and the amount determined by the Competent Authority as compensation under Section 3G has been deposited under sub-section (1) of Section 3H. In the present case in view of an order dated 3rd April,2002 passed by the High Court final compensation could not be determined by the competent Authority. Therefore, there could not be a valid deposit of amount finally determined as required under Section 3E(1) of the Act, which means the possession could not have been taken. But the fact is that possession was taken on 19th February, 2003 on deposit of provisional amount of compensation. The NHAI had in fact applied for permission of court to take possession of the land under acquisition. But without any order being passed on that application, it hastened to take possession after giving only one day's notice when the Act requires 60 days notice. Moreover, the possession is to be taken through the Commissioner of Police or the Collector. This was not done. Neither of the three statutory requirements for taking possession were fulfilled. Thus taking of possession of the lands in the present case is in total violation of the statutory provisions. The learned counsel for the acquiring authority submits that possession was taken on basis of oral observations of the court. This is a totally misconceived plea. Court orders are always in black and white. Oral orders are never passed. Moreover, this plea is wrong because the Division Bench observed in its order dated 27th March,2003 that it never dealt with question of possession. The result is that taking possession of the land sought to be acquired cannot be said to be in accordance with law in this case and does not improve matters for the NHAI.

At this stage we would like to note that the learned counsel appearing for the writ petitioners made reference to a publication in the nature of a brochure issued by the West Bengal Government wherein it is mentioned that motels/shops/petrol pumps etc. will also come up in the area where the acquired land is situate. On this basis it was sought to be argued that such use of the acquired land would be contrary to the use mentioned in Section 3A of the Act and, therefore, is not permissible. There was lot of controversy on this aspect between the parties particularly, on the ground that this plea was being taken at this belated stage when the respondents had no opportunity to give a proper reply thereto. We have mentioned this only for the reason that the issue has come up during the course of hearing. We do not consider it necessary to go into this aspect, in view of the fact that we have held in this judgment that the basic acquisition notification itself is not in accordance with law.

Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners.

The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway. The construction of national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.

Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the notification so that the land owners are adequately compensated. Reference may be made to:

(a) Ujjain Vikas Pradhikaran v. Rajkumar Johri and others [1992 (1)SCC 328]
(b) Gauri Shankar Gaur & Ors. v. State of UP & Ors. [1994 (1) SCC 92]
(c) Haji Saeed Khan & Ors. v. State of UP & Ors. [2001 (9) SCC 513]

In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19th February, 2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19th February, 2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19th February, 2003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the appropriate authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act should be given to the Writ Petitioners along with what has been directed by us in this judgment.

Accordingly appeals filed by the Competent Authority (arising out of SLP (C)No.16820 of 2004) and the National Highways Authority of India (arising out of SLP (C) Nos.17874-17875 of 2004 are hereby dismissed while the appeal filed by Ridh Karan Rakecha & Anr. (arising out of SLP(C) No.18773 of 2004) is allowed in terms of the above judgment. There shall be no order as to costs.