Shrikishen Das Gupta and anr. Vs. Delhi Administration and ors.

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Court : Delhi

Decided On : Sep-27-1971

Reported in : ILR1972Delhi27

Judge : S. Rangarajan, J.

Acts : Delhi Municipal Corporation Act, 1957 - Sections 199; Land Acquisition Act, 1894 - Sections 5A

Appeal No. : Civil Writ Appeal No. 443 of 1968

Appellant : Shrikishen Das Gupta and anr.

Respondent : Delhi Administration and ors.

Advocate for Pet/Ap. : S.N. Chopra,; Urmila Kapoor,; Deepak Chaudhary,;

Judgement :

S. Rangarajan, J.

(1) The petitioners arc aggrieved by the land acquisition proceedings taken by the Delhi Administration at the behest of the Municipal Corporation of Delhi in respect of their property bearing Nos. 3777, 3778 and 3779 in Ward No. Vi, Charkhewalan, Chauri Bazar, Delhi, Om Parkash is the owner and landlord of the neighbour- ing property bearing No. 3780.

(2) On or about the 9th July, 1962, the Commissioner of Municipal Corporation, Delhi sent a proposal to the Corporation lor the acquisition of 2 plots of land bearing Nos. 3564/VI in Kucha Daya Ram belonging to Shri Hansraj Gupta (now Mayor of Delhi) and No. 3777/ Vi in Charkhewalan, Delhi belonging to the petitioners for the purposes of a school; the said letter disclosed the two plots measured 2000 squar yards and 1500 sq. yards, respectively- The aforesaid letter was put up before the Education Committee of the Municipal Corporation for approval. After the same was approved it was put up before the Standing Committee of the Municipal Corporation and after approval of the proposal it was finally placed before the Municipal Corporation a its meeting held on 11-9-1962. By Resolution No. 338 the said proposal was approved. On the recommendation of the Commissioner another Resolution No. 5218 dated 11-12-1962 was passed by the Corporation amending the number of the property to be acquired ; No. 3563 and 3564 of Hansraj Gupta and No. 3777 to 3779 of tl petitioners. In January, 1965 the Commissioner put up a proposal to the Corporation regarding acquisition of property bearing No. 3771- 3779, at Charkhewalan, Delhi for the purposes of a school, informing the Corporation that the Deputy Housing Commissioner, Delhi Administration had informed him that property Nos. 3563-64 in

Kucha Da Ram was being acquired for the Directorate of Education of Delhi f setting up a Government School for Girls and that property Nos. 377 3779/VI at Charkhewalan was only 150 sq. yds. in extent and was not enough for the School. He, thereforee, requested to the Corporation. to sanction the acquisition of property bearing No. 3780 also. The Standing Committee approved this proposal by means of its Resolution No. 1264 dated 16-2-1965 and also by the Municipal Corporation by its Resolution No. 509 on 22-3-1965.

(3) In July, 1966 the Special Zonal Committee, City North, by its Resolution No. 26 recommended the relinquishment from acquisition of property No. 3563/VI in Kucha Daya Ram on the ground that it was a small double storeyed building in the occupation of old reside of the locality. This was out to the Corporation by the Commissioner and was approved by the Standing Committee in December. 1966. June, 1966, a notification under section 4 of the Land Acquisition Act was issued in respect of properties No. 3777 to 3779/VI, Charkhewalan, Delhi, showing the area of the same as 663 sq yeards. The petitioners field objections under section 5A of the Land Acquisition Act staling, inter alia, that the area was only 150 sq. yards and not 663 sq. yards, the acquisition was in violation of the provisions of section 198 and 199 of the Delhi Municipal Codporation Act and that the entire proposal to acquire the petitioners' property was due to ill-will of the Ward Councillor. Certain owners of property in that area had offered about 2,000 sq. yards for locating the School.

(4) Nonetheless a declaration was made under section 6 and was published in the Delhi Gazette dated 25th April, 1968. The petitioners alleged that pressure was put on them to withdraw the Writ Petition which they had already filed in the Supreme Court challenging the action of the respondents 1, 2 and 4 concerning the demolition of their factory, removal of goods there from etc. Mala fides was attributed to the then Deputy Housing Commissioner, Shri Jagmohan, but he has not been made even a nominal party to the petition. Such allegations, thereforee, could not be gone into behind his back.

(5) A considerable amount to ground has to be cleared for discussing the real points that arise lor decision in this case by a brief reference lo what happened during the hearing of the Writ Petition. One of the points taken in the Writ Petition was that the tola! area oi property bearing Nos. 3777-3779/VI, Charkhewalan was only 150 sq-yards and not 663 sq. yards as mentioned in the notification, it is no doubt true that the Master Plan for Delhi states that for a school which has not more than 300 pupils a total area of about 620 sq. yards would be enough but the petitioners case was that the total available area in respect of property bearing No. 3777-3779 was only 150 sq. yards and thereforee the purpose of having a school could not be served. Support for this contention was sought to be had from a reference to the area being given only 150 sq. yards in the report of the Town Planner mentioned in Annexure C to the Writ Petition which sets out the facts concerning the proposal re the said acquisition. The subject before the Corporation was the Commissioner's letter dated 18-1-1965 relating to the acquisition of property Nos. 3777-3779. The following is found stated therein:

'THETown Planner has intimated that the area of the property in question is only 150 sq. yards and is not enough for school. He has advised that House No. Vl/3780 may also be acquired in order to make the area adequate for the purpose. Thus an area of 674 sq. yards will be available if House No. Vl/3780 is also acquired. The Education Officer has also agreed with his views.

THEsite was inspected. House No. Vl/3780 is a part of H. No. Vr/3777-79.'

(6) According to Shri R. N. Tikku, learned counsel for the Corporation, however, the said statement of the Town Planner was a mistake and that property Nos. 3777 to 3779 which had been measured for the purpose of fixing the compensation due to the petitioners had been found to be 663 sq. yards and not less. If the facts, as stated by the Town Planner oncerning the area, were correct it would be inadequate for a school and the purpose of acquisition would not be served. An Advocate, Shri L- D. Adiakha was appointed as Local Commissioner to make inspection of the above said properties. He reported that he could not measure the area on account of a concrete multi-storeyed building being built up by the petitioner after demolishing some structures and since the parties were not agreed about the actual location of property Nos. 3777, 3778 and 3779, he could not measure the area without making an extensive investigation and recording evidence to locate those numbers.

(7) This aspect assumed a new shape when the petitioners later on filed a reply affidavit to the application made by the fouth respondent (C.M. 1704-W of 1971), to the details of which I shall revert later. Along with the reply affidavit to C.M. 1704-W/71 the petitioners had filed a copy of the plan prepared on 20-4-1965, certified by Shri C. M. Vij. Zonal Engineer ol' Buildings of the Corporation and which had been filed by the Corporation in File No. 216 of 1969 before the District Judge. Delhi (Shri Mohan Lal Jain). It is seen from that plan that the total area of property Nos. 3777-3779 has been given as 663 sq. yards. To this plan also I shall revert later in greater detail. Reference to these aspects has become necessary even in this context because the area, namely, 663 sq. yards, mentioned in the plan prepared in 1965. tallies with the actual measurement stated even in the award in respect of which compensation has been directed to be paid to the petitioners by the Land Acquisition Collector. This Writ Petition, thereforee, has to be disposed of on the footing that the total area is 663 sq. yards and that the petitioners cannot attack the acquisition on the ground that the area was too inadequate for the purposes of a school.

(8) Another ground has been taken in the Writ Petition that the acquisition is had because no private negotiations had taken place between the Corporation on the one hand and the petitioners on the other in order to acquire the property by mutual agreement for which provision has been made under section 198 of the Delhi Municipal Corporation Act, 1957. On this aspect a Division Bench of this Court consisting of Hardayal Hardy, J. (as his lordship then was) and T. V. R. Tatachari in Mohinder Puri v. Municipal. Corporation, Delhi, decided on 26-11-1969(1) held that there was nothing in the Delhi Municipal Corporation Act, 1957, enabling land acquisition, to warrant the viiew that proceedings could be started only if the Municipality was unable to purchase the land by agreement.

(9) Reference to the previous litigation which went up to the Supreme Court between the petitioners and the Municipal Corporation concerning the petitioners' factory and its demolition is not germane for the present controversy especially because Shri Jagmohan, against whom allegations of mala fide were made in the context of those proceedings. has not been made a party in this case.

(10) Nor would the fact of any property of Shri Hansraj Gupta being exempted from acquisition be of any relevance because the same related to a different acquisition for a different school, need actually being felt for having several such schools in that rather congested area. Equally would the fact that the Municipal Corporation did not

consider the offer of other persons of their properties to be acquired for a school be of any relevance because the only question for consideration is whether the proceedings with respect to the petitioners' property were validly taken. Merely because- after a notice under section 4 was issued, the objector causes such proposals to be made in order to substantiate his objections such offers would not have to be necessarily accepted and proceedings taken already abandoned, beause it would be for the public authority concerned to determine what property would have to he acquired for the public purpose in view.

(11) Having thus cleared the ground we may now discuss the question which is of crucial importance in this case whether the acquisition in this case complies with statutory requirements? This question has two-aspects. The first aspect is whether it is open to the Commissioner of the Municipal Corporation to drop any from and add to properties which are recommended by the Corporation to be acquired-a requirement of the Delhi Municipal Corporation Act, 1957. The second aspect is whether there has been sufficient compliance with the provisions of the Land Acquisition Act and a proper satisfaction expressed by the appropriate Government in relation to the acquisition of this property. The specific point raised is that the Land Acquisition Collector had not himself made any recommendation under section 5A. of the Land Acquisition Act but had left it to the appropriate Government to decide; this. is said to infringe section 5A of the Act.

(12) Regarding the first aspect of the matter it is necessary to read section 199 of the Delhi Municipal Corporation Act, 1957 :

'WHENEVERthe Commissioner is unable to acquire any immovable property under section 198 by agreement, the Central Government may at the request of the Commissioner procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894, and on payment by the Coloration of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Corporation.'

(13) Shri S. N. Chopra lays emphasis upon the use of the definite article, 'the' ins. 199 and urges that the Central Government may acquire the land which is requested by the Commissioner and that the Commissioner himself could only recommend acquisition of property, which is actually resolved to be acquired by the Corporation without adding any other property or subtracting any other property-

(14) According to section 59 of the Delhi Municipal Corporation Act. the entire executive power for the purpose of carrying out the provisions of the Act, other tha.n those pertaining to the Delhi Electric Supply Undertaking or the Delhi Transport Undertaking or of any other Act for the time being in force which confers any power or impose any duty on the Corporation, shall, save as otherwise provided in the said Act, vest in the Commissioner.

(15) According to section 78(1) all matters required to be decided by the Corporation shall be decided by the majority of the votes by the members present and voting and the minutes of the proceedings are conclusive evidence of what was resolved at the meeting of the Corporation without any further proof according to sub-section (3) of section 78. Section 85 requires that the minutes of the proceedings of each meeting of the Corporation, of the Standing Committee and every other Committee of the Corporation, shall be drawn up and recorded in a book to be kept for that purpose,

which shall be laid before the next ensuing meeting of the Corporation or of such Committee, as the case may be, and signed at such meeting by the Presiding Officer thereof.

(16) The Resolution (No. 1264) of the Standing Committee dated 25-2-1965 was to the effect that House Nos. VI/3563 and 3564 in Kuch Daya Ram and House Nos. Vl/3777 to 3780 excluding the area wider the shops abutting on main Chauri Bazar in Charkhewalan should be acquired for school purposes and that the same should be recommended to the Corporation for approval. By a Resolution of the Corporation dated 23-3-1965 it was resolved (vide Resolution No. 927) that the above recommendation of the Standing Committee be approved with only three members dissenting.

(17) It is seen from the letter of the Commissioner dated 9-3-1966 to the Housing Commissioner, Delhi Administration that he had enclosed a draft notification. To the report of the Land Acquisition Collector under section 5A I shall revert later. It is seen from the said draft notification that an extent of 663 sq. yards in House No. Vl/3777 to 3779 had been suggested. House No. 3780 mentioned in the said Resolution was dropped and Shops in House Nos. 3777 to 3779. which had been directed to be excluded, were also included in the said notification. In the additional affidavit which had been filed by Shri Mohd. Hayat Malik, Surveyor of the Corporation, dated 13-9-1971, it was stated that the two shops which were referred to by the petitioner. abutted on the Charkhewalan, but not to the side of the Chauri Bazar, and that the two shops could not have been excluded from the acquisition of the property bearing Nos. 3777 to 3779. The two shops are in property Nos. VI/3778 and 3779, in which case the acquisition of those properties bearing Nos. 3778 and 3779 would have been excluded. In other words, it is stated by Shri Malik that the Resolution would have no meaning if the property bearing Nos. 3778 and 3779 was to be acquired as per Resolution and yet also not to be acquired. It is also worth recalling in this context that in the plan which was filed by the petitioners, an area of 66-50 sq. yards being the area of the shops in property Nos. 3778 and 3779 had to be deducted and that the total net area acquired would be 663 sq. yards minus 66.50 sq. yards 576.50 (sic) sq yards. With reference to this feature in the said plan, Shri Malik stated that in the original plan he wo shops were not shown as having been excluded and that he did not give the net area as 576.50 sq. yards. The contention put forward is that these changes are unauthorised and do not tally with he original plan which was prepared by Shri Malik himself on 20-4-1965.

(18) It is not possible in this Writ Petition to go into the question of the correctness of the above feature, relating to the two aspects stated in the said plan. But even without going into those said features in the said plan, even the undisputed portions of it are helpful to understand the Resolution of the Standing Committee which was approved by the Corporation later. It will be seen from the said plan that property Nos. VI/3778 and 3779 have been marked as shops. It is not even suggested that the word 'shop', as against each of those two Nos. was not there in the original plan. The property No. 3779 abuts both Gali Loha Wali as well as Charkhewalan; No. 3778 is south of No. 3779 and abuts Charkhewalan only. According to the said plan both those shops have an opening into Charkhewalan. Property No. VI/ 3777 is further south of No. 3778 and that No. is seen to extend further towards west and at its western extremity extends in the north up to Gali Lohe Wali. The point that was made by Shri R. N. Tikku o& behalf of the Corporation is that if the entirety of the two shops were to be excluded then there would have been no point in stating that those

two numbers, namely, 3778 and 3779 could be acquired less the shops as the shops occupy the entirety of the two numbers. On the other hand the Resolution talked of the acquisition of Nos, 3777, 3778 and 3779 as well as 3780 which is to the west of 3777. It may also be recalled that there was at least some confusion about the extent of I he property which was available for acquisition, while the Surveyor having reported that the extent was only 150 sq. yards on account of which alone property No. 3780 was also included. It also appears to have been the intention of the Corporation as well as the Standing Committee not to acquire properties in possession of the tenants since if that was done alternative accommodation to the tenants would also have to be provided. We are left, thereforee, with the Resolution of the Standing Committee as it stands because it talks of excluding the area under the shops abutting 'main Chauri Bazar in Charkhe Walan'. It is, no double seen from the said plan that the Chauri Bazar itself is further south of not only No. 3777 but of certain shops stated to be Nos. 3761 to 3774-3775. None of these shops arc the subject matter of the proposed acquisition. This must have been known to the Standing Committee. thereforee, the Resolution can only be reasonably understood as meaning that the two shops bearing Nos. 3778 and 3779 were to be excluded from the. acquisition even though it is also stated that the shops were abutting Chauri Bazar in Charkhe Walan; the shops abut Charkhe Walan. There is no shop in No. 3780. The fact of the matter., thereforee, is that the resolution made it clear that the shops in No. 3777 to 3780 should be excluded. This cannot be ignored on the mere ground that the two shops in No. 3778 and No. 3779 abut only the Charkhe Walan but not the main bazar in Charkhe Walan.

(19) One of the petitioners, Shri Krishnal Lal Gupta, has stated in his affidavit on 1-3-1971 that there are shops which are in Charkhe Walan towards the side of Chauri Bazar. He has also filed along with the said affidavit as Annexure A-l a copy of the notice' No. 13/R/Z-E/DB /C/Z/71 dated 19-2-1971 served by the Corporation on the petitioners under section 348 of the Delhi Municipal Corporation Act showing a shop (shaded red). This shop has been referred to as 3778. This appears to bear that number which was noticed by the local Commissioner also but then there seems to be some confusion about numbers. It may be taken, as suggested by Shri R. N. Tikku, that No. 3779 was referred to as 3778 in the said notice. We may for the purpose of this proceeding ignore that mistake because it is even clear from the sketch in Annexure A-l that it is the corner shop. What is more material is the fact that it is described as a shop, thus showing the existence of a shop in the property under acquisition. According to the plan, now filed by the petitioners, No. 3778 is south of No. 3779, which is the corner shop abutting both Gali Lohe Wali as well as Charkhe Walan.

(20) The Municipal Commissioner's function is only to carry out the Resolution of the Corporation. He cannot obviously act contrary to the wishes of the Corporation and without any Resolution of the Corporation he could not of his own motion suggest that any property may be acquired. The Resolution having excluded the shops he could not suggest the acquisition of those shops as well. In this view it is even needless to go into the further question which is debated as to whether the Commissioner was justified in dropping No. 3780 from acquisition. because the petitioners are not concerned with Nos. 3780.

(21) It is not stated by the Delhi Administration that this acquisition could, have been made without the same having, been suggested by the Corporation. The Administration was, thereforee, acting only on a recommendation made under section

5A of the Delhi Municipal Corporation Act and the acquisition could not be supported independently. if there had been no compliance with the provisions of the .Delhi Municipal Corporation Act. On this short ground itself the' impugned declaration made on 15th April, 1968 under section 6 in respect of property Nos. 3777 to 3779 deserves to be quashed.

(22) There is further support for the petitioners' case by reason of the fact that the Land Acquisition Collector himself did not make any specific recommendation concerning whether property Nos. 3777 to 3779 had to be acquired in the public interest. Reference was already made to the report of the Land Acquisition Collector under section 5A of the Act. It will be necessary to read the report almost fully :

'THEmain objection raised by the petitioners is that the area of the premises bearing municipal Nos. 3777 to 3779 is only 150 sq. yds. and not 663 sq. yds. as stated in the notification. The petitioners further in para 3 of their objection petition have contended that the proposal for the' present acquisition is not in accordance with the Master Plan of Delhi. In support of their contention they produced the extract of the relevant provisions of the Delhi Development Act No. 61 of 1957. They also alleged that the acquisition is not valid as the Delhi Municipal Corporation has violated sections 198 and 199 of the Delhi Municipal Corporation in as much as it failed to negotiate with the owners of the property before starting the acquisition proceedings. They also alleged that the property under acquisition is situated in most congested commercial area and that the area being 150 sq. yds. only, it is not sufficient for the purpose of a school. In support of this contention the objection petitioners filed copies of the resolutions of the Standing Committee of the Delhi Municipal Corporation whereby it was resolved that the area of 150 sq. yds, was not enough and it was advised to acquire house No. VI/3780 also for the said purpose but according to the objection petitioners the Delhi Municipal Corporation has not notified to acquire the property No. 3780'.

'THEfile containing the original objections and the relevant documents filed by the objection petitioners is sent herewith for consideration, of the Delhi Administration.

THE'final declaration u/s 6 may be issued after considering these objections. The draft notification u/s 6 of the Land Acquisition Act is also enclosed herewith.'

It is thus clear that the Land Acquisition Collector though he appended a draft notification under section 6 had not done anything more than summarise the objections of the petitioners and had not said anything himself about those objections. He only forwarded the file containing the objections, after summarizing them, along with the documents filed and slated that the final declaration under section 6 may be issued after onsidering these objections. This is a clear indication that the Land Acquisition Collector himself did not consider the objections. The point for consideration, thereforee, is that whether the Land Acquisition Collector sufficiently complied with the provisions of section 5A when he merely forwarded the objections of the petitioners to the appropriate Government without considering them. Section 5A of the Land Acquisition Act squarely places the: duty on the Collector to give an opportunity of hearing to the petitioner concerning the proposed acquisition and this opportunity may really become meaningless if even after hearing the petitioner the Land Acquisition Collector does not make his own recommendation one' way or the other. My attention has been invited to the following observations of the Supreme Court in Juyantilal Amratlal Shodhan v. F. N. Rana : [1964]5SCR294 :

'BYS..5A of the Land Acquisition Act, power to hear objections has to be exercised by the Collector as defined in S. 2(c) of the Act. The power to hear objections is under the statute, not the power of the appropriate Government, but of the Collector.'

(23) The learned counsel for the respondents, on the other hand, relics upon some of the observations made by a Division Beinch of this Court consisting of Hardayal Hardy, J. (as his lordship then was) and M. R. A. Ansari, J. in L. P. A. No. 11 of 1969-Hanuman Prasad Gupta & Ors. v. Lt. Governor & Ors, decided on 6-11-1970(3). After discussing the legal position the Division Bench held that since in that case' the Collector had applied his mind to the objections of the petitioner and having done so came to the view that the objections were purely legal and thereforee refrained from expressing any opinion about the same. hilt left it to the Government to decide, there had been no failure to comply with the statutory requirements in that case. The net finding in that case was that there was no question of lack of application of mind or abdication of his functions by the. Collector. The present case is different because there had been complete abdication of his functions by the Collector. Apart from merely summarizing the objections he has not applied his mind at all to the matter before him. The objections ra.iscd were factual rather than legal. He had heard the petitioners' objections and as the observations of the Supreme Court in the above noted case (not cited before the Division Bench) show it was for the Collector and not for the appropriate authority to make the recommendation; per contra, the Collector had to recommend and the Government to act on that recommendation. It is true, no doubt, that even if the Collector made his recommendation it was not binding on the Government, the Government may choose either to accept the recommendation or not to accept the recommendation. But then the requirement of the statute is that when a person's property is proposed to be acquired he must be given an opportunity to show causse against the acquisition. The duty has been statutorily laid on the Collector to give an opportu- nity of hearing to the person whose property is proposed to be acquired. Merely because the Government may not choose to accept the recommendation of the Collector, even when he makes one, it cannot be said that he need not make any recommendation at all but leave it to the Government itself to decide. After a careful perusal of the decision of the Division Bench it seems to me that the action of the Collector in that case was upheld merely because the issues in that case were purely legal and, thereforee, he refrained from expressing any opinion on those legal issues but left it to the Government. The present situation is totally different because the Collector was obliged to make his own recommendation concerning the factual matters raised in the objections filed by the petitioners' The Division Bench repelled the argument that the requirement of sub-section (2) of section 5A of the Act about the Collector making his report containing his recommendations concerning the objections, was not mandatory. The learned single Judge, against whose decision the said appeal was filed, thought that the above said requirement was not mandatory and sought to derive assistance for this position from the decision of the Supreme Court in Abdul Hussain Tayabali v. State of Gujarat : [1968]1SCR597 . Hardayal Hardy, J. observed that the Supreme Court did not decide in that case that the expression of opinion by the Collector and making a positive recommendation was not mandatory. The observations of Wanchoo, J. (as his Lordship then was) who spoke for himself and for Mudholkar, J. in State of Madhya Pradesh v. Vishnu Pershad Sharma 1966 S.C. 1593 emphasising the need to construe the provisions of the statute, which provided for acquisition of land for persons without their consent, strictly, were referred to. Hardayal Hardy. J. has discussed the above view of learned Single Judge at considerable length and I cannot do better than set out those observations in their entirety :

'THElearned Single Judge has held that the making of recommendation is not imperative and its absence would not vitiate the acquisition. Firstly, because the Collector is not the authority who decides the objections; Secondly, because sub-section (1) of Section 6 contemplates a case in which no report of the Collector may be available to the Government at all and yet the Government can take a decision to acquire the land in a particular case; Thirdly, because Section 5A shows that the purpose of the report of the Collector is merely to inform the. Government. The Collector is not under any duty to show his report to the objectors and Fourthly, because the final decision as to whether a particular land should be acquired is of the Government which has before it the objections of the petitioners as well as the record of the inquiry made by the Collector and there is nothing to show that the absence of Collector's report with or without his recommendation can ever affect the validity of the decision of the Government in a particular case.

The argument of the learned counsel for the appellants is that none of the reasons given by the learned Judge warrant the conclusion reached by him. The fact that the Collector is not the authority who decides the objections and the report of the Collector is not to be shown to the objectors and the final decision as to whether a particular land should be acquired, rests with the Government, hardly furnish any justification for holding that the malding of recommendation on the objections is not a mandatory requirement of Section 5A.

WEfind substance in this argument. The very object of appointing an officer of the status of Collector to hear objections and to make such further inquiry as he thinks necessary, is that he should make a report in respect of the land which has been notified in Section 4(1), or make different reports in respect of different parcels of such land, to the appropriate Government. The section further provides that the report should contain his recommendation on the objections. If he is not to make a report or to make a report which does not contain his recommendation on the objections, we fail to see what purpose will be served by his hearing objections and holding an inquiry. It is no doubt true that the real purpose of the report and the recommendation made therein is to inform the mind of the Government and the Government has a right to reject the recommendation. But the very fact that the report and the recommendation made therein, are intended to help the Government in making up its mind shows the need for them.

IThas been laid down in Abdul Hussain Tayabali's(4) case that the section does not contemplate a second inquiry. It thereforee follows that the only opportunity which the objectors have, is to appear and present their point of view before the Collector. It is not as if the Collector is merely to act as a post office for receiving objections and transmitting them to the appropriate Government. He has to apply his own mind to the objections and if necessary, to supplement the material placed before him by the objectors, by making his own inquiry and then to submit a report which must contain his recommendation on the objections. The submission of a report containing his recommendation on the objections is the culminating point of the process which began with the filing' and hearing of the objections and is thus an integral part of the proceedings under Section 5A of the Act.

ITmay be that after holding the inquiry and hearing objections the Collector comes to the conclusion that the land proposed to be acquired is wholly unsuitable for the purpose for which it is to be acquired, or while some parcels of that land are suitable the others will not serve the purpose which the Government has in view. Since the

owner of the land will have no further opportunity of objecting to the proposed acquisition a favorable report by the Collector may go a long way in influencing the decision of the Government and save his land from being acquired against his consent, just as an adverse report may tip the scales heavily against him. When the statute mentions the authority who shall hear objections against the action which the Government intends to take and lays down that the authority shall make his report containing his recommendations on the objections, the obvious intention is that the. authority should perform his duty in the manner laid down by the statue. The failure of the Collector to send a report or to send a report without his recommendation on the objections, would in the circumstances, be a sheer exercise in futility and will reduce, the inquiry into a farce.

LEARNED Judge's reference to the words 'after considering the report, if any. made under Section 5A, sub-section (2)' in sub-section (1) of Section 6 also does not appear to us to be helpful to the argument that has found favor with him. According to the learned Judge, Section 6(1) contemplates a case in which no report of the Collector may be available to the Government at all and even then the Government can take a decision to acquire the land in a particular case. In our opinion, the use of the words ''if any' in sub-section (1) of Section 6, does not warrant the conclusion that the report need not be made at all or if made, need not contain what the section says it should. The words 'if any' have been used in Section 6(1) only with reference to a case which comes within the exception contained in Section 17 of the Act. It is only when action is taken under Section 17(4) of the Act that it is not necessary to follow the procedure in Section 5A and a notification under Section 6 can be issued without a report from the Collector under Section 5A. The usual procedure on the other hand, is that a notification under Section 6 can be issued only after the procedure under Section 5A has been followed.

FORthe view we are taking, we find support from the decision of the Supreme Court in Nandeshwar Prasad v. U.P. Government : [1964]3SCR425 , it is said that compliance with the provisions of Section 5Ais necessary before a notification can be issued under Section. 6 and that the words 'if any' in the clause 'after considering the report, if any, made under 'Section 5A' have been used only to cover the case of an exception under Section 17.

ONbehalf of the respondents, our attention, was invited to an un-reported decision of a Division Bench of the Supreme Court (K. S. Hegde and A. N. Ray, JJ.) in Civil Appeal No. 1637 of 1966: Chandar Rama Patil and others v. The State of Maharashtra and others decided on 19th August 1969(7) where it was said :

'SECTION 6 of the Act docs not indicate that a report is imperative. The words used are 'report, if any' and the implication is that there need not be a report in all cases'.

THEabove observations do not appear to us to be contrary to what was said in Nandeshwar Prasad's case as the learned Judges do not say that a declaration under S. 6 of the Act can be made in all cases without there being a report by the' Collector. We arc thereforee unable to agree with the learned Judge that while the holding of inquiry and the hearing of objections is obligatory on the Collector and that a part of Section 5A of the Act is mandatory in character the provision regarding submission of a report or at any rate a report containing the Collector's recommendations on the objections, is not and that the requirement of Section 5A will be satisfied even if there are no such recommendations '

(24) Applying those observations to the present case it follows that there has not been sufficient compliance with section 5A. The recommendation by the Collector has to be made after giving opportunity to the owner of the property who would be affected by the acquisition, merely because the recommendation may not be accepted, the Collector cannot tail to comply with the duty statutorily laid on him to make the said recommendation. If the Collector finds that a recommendation should he made in favor of the party concerned that may be of great assistance to the party because the Government may in the light of such recommendation not proceed further with the acquisition. The report of the Collector in the present case docs not discuss the further question concerning the Resolution having been passed about the acquisition of property Nos. 3777 to 3779 without the shops and the' Collector's report docs not deal with his aspect. The appropriate Government has to express satisfaction only in the light of the relevant considerations being present before it; a recommendation by the Collector, one way or the' other, being a mandatory requirement any satisfaction expressed by the Government without having the recommendation of the Collector under section 5A after applying his mind to the matter is vitiated for that reason alone, the Division Bench has pointed out that the said requirement is mandatory. For this reason also the impugned declaration under section 6, dated 15-4-1968 is quashed. The Writ Petition is accordingly accepted, but in the circumstances I do not make any order as to costs.