

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 1747 of 2018**

Power Grid Corporation Of India Ltd. A Central Government Public Sector Enterprise Under The Ministry Of Power, Government Of India, Through Its Additional General Manager, Power Grid Corporation Ltd., 765/400KV, Power Grid P.S. Varari, District Bilaspur, Chhattisgarh.

**---- Petitioner****Versus**

1. The Sub Divisional Officer (Revenue) (Land Acquisition) (NH-111, New NH No. 180), Bilaspur, District Bilaspur, The Competent Authority Notified U/s. 3C Of The National Highways Act 1956.
2. Secretary, Ministry Of Road Transport & Highways, Government Of India, Transport Bhawan- I, Parliament Street, New Delhi- 110001.
3. National Highway Authority Of India Thro' The Project Director (NH- 111, New NH No. 180), Abhilasha Parisar, HIG 62, Behind New Bus Stand, Bilaspur, District Bilaspur, Chhattisgarh.

**---- Respondents**

For Petitioner	:	Mr. Abhishek Sinha, Advocate
For State	:	Mr. Alok Bakshi, Addl. A.G.
For Respondent No.3	:	Mrs. Fouzia Mirza, Advocate

**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****20.08.2019**

Heard

1. The present petition has been filed seeking the following reliefs :

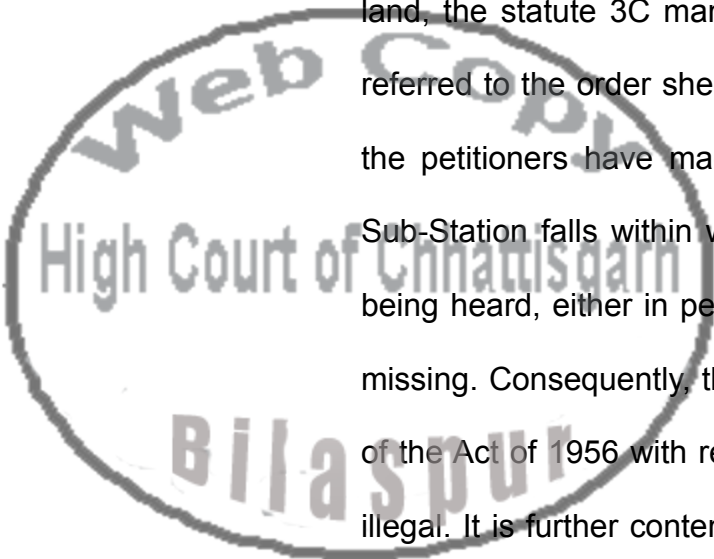
“(i) This Hon'ble Court may kindly be pleased to declare the proceedings, the order dated 02.12.2017 (Annexure P/3) illegal and nonest being in violation of the mandatory provisions of Sub-section 2 of Section 3C of the NH Act 1956 and quash Annexure P/3.

(ii) This Hon'ble Court may kindly be pleased to quash the declaration of acquisition made in exercise of powers u/s. 3D (Annexure P/4) as it stands vitiated by non-compliance of the statutory mandatory provisions of Sub-section 2 of Section 3C of NH Act, 1956.



(iii) Any other relief, which this Hon'ble Court deems fit in the facts and circumstances of the case along with costs of the petition be awarded.”

2. The submission of the petitioner Power Grid Corporation is that the Highway which is being constructed from Bilaspur to Katghora, is for widening. The Sub-Station of petitioner falls on the way at village Bharari which bears Specification No.765/400 KV. It is contended on behalf of the petitioner that the National Highways Act 1956 (*for short "the Act of 1956"*), Section 3 provides the entire scheme and how the lands to be acquired either for construction or widening of National Highway. It is contended, the mandate is that after notification under Section 3A of the Act of 1956 for acquisition of land, the statute 3C mandates hearing of objections. The learned counsel referred to the order sheet dated 02.12.2017 and would submit that though the petitioners have made objection to acquisition of property as part of Sub-Station falls within widening, the objection required the opportunity of being heard, either in person or by a legal practitioner, which is completely missing. Consequently, the subsequent notification made under Section 3D of the Act of 1956 with respect to the petitioner's land would be completely illegal. It is further contended that if the statute prescribes certain act to be done in a particular way, the same has to be done in such particular way, any deviation could not be allowed. He placed his reliance in case of *Bhimavarapu Giridhar Kumar Reddy v. Union Govt of India [2012 SCC Online AP 148]* and further in case of *R.Natarajan & Others v. The Union of India & Others [2010-5-L.W. 868]*.
3. Per contra, learned counsel for the respondent National Highway Authority of India would submit that considering the fact that the petitioner and respondent both are public sector undertaking, a special team was constituted so as to look into the problem and objection of the petitioner which would be evident from Annexure R-1 dated 13.04.2018. It is further





stated that after the team verified the area in question, it found that certain part of boundary wall and only store house were being affected which will not have any effect on construction of four lane road. It is further contended that the notification having been made under sub-section 2 of Section 3D of the Act of 1956, the land has now vested absolutely in the Central Government free from all encumbrances. Reliance is placed in *AIR 2011 SC 3210 (Union of India v. Kushala Shetty & Ors.)* and it is submitted that change of alignment as has been prayed for would not be subserve the larger public interest and the Court should not enter into such field which relates to project relating development and maintenance of highways, as it is done by the experts. It is stated that the development of infrastructure in the country is necessary. Therefore, the petition is liable to be dismissed.

4. Learned State counsel also adopt the submission made by the petitioner.
5. I have heard learned counsel for the parties and perused the documents.
6. The short question which falls for consideration in this case is that whether the order dated 02.12.2017 will subserve the requirement of Section 3C of the Act of 1956. There is no dispute that primarily notification under Section 3A of the Act of 1956 was published on 01.09.2017 which takes into sweep the part of the Sub-Station of the Power Grid Corporation, which falls for widening of the National Highway. Section 3B of the Act of 1956 speaks about the power to enter for survey etc. then Section 3C for hearing objections comes into play. For sake of brevity Section 3C is reproduced here under :

“3C. Hearing of objections- (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to



the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

(3) Any other made by the competent authority under sub-section (2) shall be final.

7. Annexure P-2 dated 20.09.2017 is the objection made by the petitioner Power Grid Corporation which was received by the competent authority on 20.09.2017. The said objection was decided on 02.12.2017 by the following order sheets, which is quoted herein below :

प्रकरण प्रस्तुत।

प्रकरण में हितबद्ध व्यक्तियों द्वारा प्रस्तुत की गई आपत्तियों के तथा स्थल में भौतिक सत्यापन पश्चात् तहसीलदार से जांच प्रतिवेदन एवं आवेदित विभाग से अभिमत प्राप्त। तहसीलदार के जांच प्रतिवेदन एवं आवेदित विभाग के अभिमत अनुसार हितबद्ध व्यक्तियों की आपत्ती का निराकरण किया जा रहा है।

आपत्तिकर्ता श्रीमती सरला ने अधिग्रहित की जा रही भूमि ख. नं. 378 में स्वामित्व संबंधी, कैलाश वगै. ने ख.नं. 378/379, 380, को अधिग्रहित नहीं किए जाने तथा पावरग्रिड कार्पोरेशन ख.नं. 368/2, 369 में भूमि 3 मीटर के पश्चात् पावरग्रिड निर्माण होने के संबंध में आपत्ति प्रस्तुत किए हैं। ततसंबंध में अधिग्रहित की जा रही भूमि एलाईमेंट के अनुसार किया जा रहा है, जिसमें परिवर्तन नहीं किया जा सकता। तदनुसार आपत्ति अमान्य किया जाता।

प्रकरण में तहसीलदार से भौतिक सत्यापन पश्चात् प्राप्त प्रतिवेदन के अनुसार धारा 3डी की सूचना प्रारूप तैयार कर प्रकाशन हेतु आवेदित विभाग के माध्यम से भेजा जावे।

Sd/-

अनुविभागीय अधिकारी (रा0)  
एवं सक्षम अधिकारी भू-अर्जन  
बिलासपुर

8. The order sheet dated 02.12.2017 is when compared at parallel with Section 3C, it speaks of the fact that no hearing is required under Section 3C(2) of the Act of 1956 was given to the petitioner. Sub-section (2) of Section 3C speaks that when the objection has been made then the competent



authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks fit either allow or disallow the objections. The order dated 02.12.2017 by which the objection was said to be decided do not satisfy the requirement as required under Section 3C(2), it only purports that certain objection in respect of 3 meter of road which the Power Grid Corporation has objected, has been filed. The order further says that the acquired land are according to the alignment of road which cannot be changed, therefore, the objection was dismissed. Admittedly this shows that no hearing was given to the Power Grid Corporation either of being heard in person or by any legal practitioner.

9. Section 3D, declaration of acquisition, purports that when the competent authority decides and disallows the objection under sub-section (2) of Section 3C then shall submit a report and on receipt of such report, further by notification in Official Gazette, the Central Government shall notify that the land shall be acquired for the purpose mentioned in sub-section (1) of Section 3A. Sub-section (1) of Section 3A & 3D is reproduced herein below :

“3A. Power to acquire land, etc. - (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.

(2) xxx.....xxx.....xxx.

(3) xxx....xxx.....xxx

3D. Declaration of acquisition.— (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.



(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

10. Sub section (2) of Section 3D mandates that on the publication of declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. Naturally therefore it follows that before the publication is made in compliance of sub-section (1) of Section 3D, the hearing of objections have to be made according to the statute of 3C(2) of the Act of 1956. This issue cannot be short circuited or given a go by when the legislature has fixed a particular act to be done in a particular way then the same should have to be followed accordingly.

11. The principle governing the similar situation in the case of ***R.Natarajan & Others v. The Union of India & Others*** reported in ***2010-5-L.W. 868*** which reads as under :

“15..... the Central Government declared its intention by issuing a notification in the Official Gazette to acquire the lands for the building, maintenance, management or operation of the National Highway, the land owners or person interested have the right to file their objections within twenty one days from the date of publication of the notification, and can object to the use of the land for the purpose or purposes mentioned in sub-Section (1) of [Section 3-A](#) of the Act. Sub-section (2) of [Section 3C](#) of the Act very specifically provides that the Competent Authority before whom such objection is made, shall give the objector an opportunity of being heard either in person or by a legal practitioner, and may, after hearing such objections, and after making further enquiry, if necessary, either allow or disallow the objections. At this juncture,





again we take the opportunity to reproduce Sub-section (2) of [Section 3C](#) of the Act.

'Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Prima facie, therefore, it is manifestly clear that the compliance of the aforesaid provision is not a mere formality. Sub-section (2) cast a duty upon the competent authority to consider the objections, and after hearing such objections, and after making such further enquiry, if any, shall allow or disallow the objections."

12. Likewise in case of ***Bhimavarapu Giridhar Kumar Reddy v. The Union of India & Others*** reported in ***2012 SCC Online AP 148***, the relevant paras are quoted herein below :

"Sub-section 2 of Section 3 - C enjoins the competent authority to give the objector an opportunity of being heard, either in person or by a legal practitioner. This provision further enjoins the competent authority to pass an order either allowing or disallowing the objections, after hearing such objections and making such further enquiry, if any, as the competent authority considers necessary.

Section 3 - D enacts that where no objection under Section 3 -C(1) has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under Sub-section 2 of that Section, the competent authority shall submit a report accordingly to the Central Government, whereafter the Central Government shall declare by notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3- A(1). Section 3 - D(2) declares that on the publication of the declaration in Sub-section 1, the land shall vest absolutely in the Central Government free from all encumbrances.

Affording of opportunity to persons whose lands are proposed for acquisition under the 1956 Act, mandated by Section 3 - C(1) is neither a ritual nor an empty formality. It is a salutary provision akin to the provisions of Section 5 - A of the Land Acquisition Act, 1894. *In Union of India v. Mukesh Hans (2004 8 SCC 14); Union of India v. Krishan Lal Arneja (2004) 8 SCC 453; Mahender Pal and Ors. v. State of Haryana and Ors. (2009) 14 SCC 281; Anand Singh v. State of U.P. (2010) 11 SCC 242; Radhy Shyam v. State of U.P. (2011) 5 SCC 553; and in Greater Noida Industrial Development Authority v. Devendra Kumar and others (2011) 12 SCC 375*, the Supreme Court observed



that the opportunity of hearing to the land owners to object to acquisition of their lands is a valuable right which cannot be jettisoned for jejune reasons and that such opportunity and compliance with rules of natural justice is a small price which the State should always be prepared to pay before it can deprive any person of his property. These observations of the apex court made in the context of the Land Acquisition Act apply to the present acquisition a fortiori.

In *State of Punjab v. Sodhi Sukhdev Singh* AIR 1961 SC 493, and *Bachhittar Singh v. State of Punjab and another* AIR 1963 SC 395 and in several other decisions, the Supreme Court consistently declared the principle that an un-communicated administrative order is inoperative. Section 3 - C(2) enjoins the competent authority to provide an objector an opportunity of being heard and thereafter to either allow or disallow the objections by an order. Since hearing of objections to the process of acquisition is a valuable right, an objector is entitled to communication of an order passed by the competent authority rejecting his objections and the reasons recorded therefor. Since the order dated 23-06-2009 passed by the 4th respondent was not communicated to the petitioner there is no disposal in law of the petitioner's objections by the competent authority under Section 3 - C(2) of the Act.”

13. The contention of the respondents that by Annexure R-1, three members team were formed and inspection of the spot was made, thereafter, by Annexure R-2 dated 26.04.2018 and it found that only boundary wall and store house would be affected, which belong to the petitioner and construction of four lane highways would not affect any part of the petitioner. If are considered with respect to the publication made under Section 3D, it shows that the publication of Section 3D was made on 27.02.2018 whereas team was formed after the publication was made in terms of sub-section (2) of Section 3D. What was the purpose of such constitution of team after the publication is made is completely contrary to general expectation of statute.
14. This subsequent act on the part of the respondents only fortifies the fact that hearing was not given as contemplated under Section 3C(2) of the Act, 1956. After going through para 24 of the reliance placed by the respondents i.e. **AIR 2011 SC 2310**, this Court is bound to follow the same. The ratio as is laid down that Courts are not expert and the viability and feasibility of the





particular project and change of the alignment is not within the domain of this Court. However, the Supreme Court in the same para has observed that when in particular project, if it is found to be ex-facie contrary to the mandate of law then the Court can interfere. Admittedly in this case the order sheet of 02.12.2017 do not subserve the requirement of sub-section (2) of Section 3C and after notification of Section 3D of the Act of 1956, fumbling efforts were made by respondent to form a team and give a finding and tried for a patch work solution. Further para 5 & 6 of the judgment of the Apex Court would show that in such case the objection was made under Section 3C, after hearing the same was decided and rejected. Therefore, the ratio of case cited by respondent rather holds the sway in favour of the petitioner. Consequently, the notification made in respect of the petitioner's property which falls under Section 3D is quashed. Accordingly, the order sheet dated 02.12.2017 which is a cryptic and non-speaking order also liable to be set aside. The respondents shall be at liberty to initiate the proceeding under Section 3C of the Act of 1956 afresh in respect of the land of the petitioner.

15. In view of the above, the writ petition is allowed to the above extent with respect to the claim of the petitioner.

Sd/-  
**Goutam Bhaduri**  
Judge