

(2015) 12 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3559 of 2011 (OandM)

Arjan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 22-12-2015

Acts Referred:

Constitution of India, 1950 — Article 261, 320, 320(3)(c)
Government of India Act, 1935 — Section 256
Income Tax Act, 1961 — Section 253, 254, 254(2), 254(2A)
Land Acquisition Act, 1894 — Section 38, 4, 40(1), 5-A
Punjab Town Improvement Act, 1922 — Section 22, 23, 24, 24(1), 25

Citation : (2016) 2 RCR(Civil) 34

Hon'ble Judges : Hemant Gupta and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : H.S. Grewal, Advocate, for the Appellant; Manoj Bajaj, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall also dispose of the writ petitions mentioned at the foot note of this order, raising identical questions of law and facts. However, for the facility of reference, the facts are taken from CWP No. 3559 of 2011.

2. The challenge in the present writ petition is to the notifications dated 07.06.2010 and 03.12.2010 under Sections 36 and 42 of the Punjab Town Improvement Act, 1922 (for short "the Act"), inter-alia, on the ground that the acquisition process was issued by publication of a notification under Section 36 of the Act without finalizing the scheme as contemplated under Chapter-IV of the Act and also that the notification under Section 42 of the Act was published without issuing or serving notices thereof to all the land owners.

3. As per the averments made in the writ petition, in pursuance of Resolution No. 187 passed in the meeting of the Jalandhar Improvement Trust, held on

27.04.2010, a development scheme was approved for an area measuring 94.97 acres (999 kanal 6 marla) adjoining development scheme of Surya Enclave and Maharaja Ranjit Singh Avenue. The said land was shown in the Khasra Plan Drawing dated 16.04.2010 and the survey plan drawing dated 23.04.2010 available in the office of the Jalandhar Improvement Trust. The survey plan of the land as mentioned in the notification under Section 36 of the Act (Annexure P.3) has been appended by the petitioners as Annexure P.2. It is asserted by the petitioners that soon thereafter, a request was made by some of the petitioners on 11.06.2010 demanding documents to facilitate filing of the objections. The documents demanded are as under:--

"1. Copy of resolution No. 187 passed in the meeting of Jalandhar Improvement Trust on 27.04.2010.

2. Copy of Development Scheme for an area of 94.97 acres adjoining development Scheme of Surya Enclave and Maharaja Ranjit Singh Avenue.

3. Copy of Khasra Plan Drawing No. JIT/693/2010 dated 23.04.2010.

4. Copy of Survey Plan Drawing No. JIT/695/2010 dated 23.04.2010.

5. Copy of the statement of land proposed to be acquired."

4. It is thereafter the objections were filed on 05.07.2010, even when the documents sought were not supplied. It was vide publication of notice dated 19.10.2010 (Annexure R.3 in CWP No. 8619 of 2011), the land owners were given public notice of hearing of the objections on 20.10.2010 and after alleged hearing of the objections, the notification under Section 42 of the Act was published on 03.12.2010. Subsequently, an Award was announced on 31.05.2011.

5. In the written statement, the stand is that the development scheme has been framed under Sections 24(1) , 25 and 28(2) of the Act for the area measuring 94.97 acres adjoining the development scheme of Sujrya Enclave and Maharaja Ranjit Singh Avenue in Jalandhar. A survey plan drawing dated 23.04.2010 was available in the office of the Trust. The boundaries had been clearly depicted in the said plan. It is further stated that the notification under Section 36 was published informing the public through newspapers as well as Official Gazette about the framing of the scheme and inviting objections from the public to the said scheme. Copies of the documents i.e. details of the scheme, including statement of land proposed to be acquired, a general map of the locality comprised in the scheme was prepared and was available for inspection. It is pointed out that the notification under Section 42 of the Act was published after due compliance of all the procedures contemplated by law.

6. The argument of the learned counsel for the petitioners is that the scheme as contemplated by law, which is required to be published under Section 36 of the Act, requires detailed planning of the utilization of the land in the proposed scheme. No such details were published, but instead a general map giving

boundaries of the scheme was published without any internal planning or utilization of the land in the scheme in question. It is contended that such publication is not as prescribed by Sections 24 , 25 or 28 of the Act.

7. On the other hand, Shri Ashok Aggarwal, learned Senior Counsel, argued that the publication of the notification under Section 36 of the Act is the macro level planning giving the area, which is the subject matter of the scheme and the purpose thereof. However, the micro level planning is after considering the objections when the scheme is published before publication of a notification under Section 42 of the Act. Such requirement has been complied with.

8. To appreciate the argument raised, certain statutory provisions need to be extracted:--

"Section 24 . Development and expansion schemes.--(1) The Trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a development scheme", and

(2) Such Trust may, if it is of opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto, within the local area of such Trust prepare "an expansion scheme".

(3) "A development scheme" or "an expansion scheme" may provide for the lay-out of the locality to be developed, the purposes for which particular portions of such locality are to be utilised, the prescribed street alignment and the building line on each side of the streets proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable.

Section 25 . Housing accommodation scheme.--If the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within its local area such Trust may frame "a housing accommodation scheme" for the purpose aforesaid:

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Section 28 . Combination of schemes and matters which may be provided for in scheme.--(1) A scheme under this Act may combine one or more types of schemes or any special features thereof.

(2) A scheme under this Act may provide for all or any of the following matters:--

(i) the acquisition under the Land Acquisition Act, 1894, as modified by this Act, or the abandonment of such acquisition under sections 56 and 57 of this Act, of any land or any interest in land necessary for or affected by the execution of the scheme, or adjoining any street, thoroughfare, open space to be improved or formed under the scheme;

(ii) the acquisition by purchase, lease, exchange or otherwise of such land or interest in land;

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Section 36 . Preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants.--

(1) When a scheme under this Act has been framed, the Trust shall prepare a notice stating-

(i) the fact that the scheme has been framed,

(ii) the boundaries of the locality comprised in the scheme, and

(iii) the place at which details of the scheme including statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) The Trust shall-

(a) notwithstanding anything contained in section 78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the Chairman of the municipal committee, and to the medical officer of health.

(3) The chairman shall cause copies of all documents referred to in clause (iii) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 74 .

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Section 38 . Notice of proposed acquisition of land.--(1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any scheme under this Act the Trust shall serve a notice on-

(i) every person whom the trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme,

(ii) the occupier (who need not be named) of such premises as the trust proposes to acquire in executing the scheme.

(2) Such notice shall-

(a) state that the Trust proposes to acquire such property for the purposes of carrying out a scheme under this Act, and

(b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of, the chairman.

Section 41 . Power to sanction, reject or return scheme.--

(1) The State Government may sanction, either with or without modification, or may refuse to sanction, or may return for reconsideration, any scheme submitted to it under section 40

(2) If a scheme returned for reconsideration under sub-section (1) is modified by the Trust, it shall be republished in accordance with section 36 -

(a) in every case in which the modification affects the boundaries of the locality comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired; and

(b) in every other case, unless the modification is, in the opinion of the State Government not of sufficient importance to require republication:

Section 42 . Notification of sanction of scheme.--

(1) The State Government shall notify sanction of every scheme under this Act, and the Trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of section 27 have been fulfilled.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Provided that no notification in respect of sanction of a scheme shall be issued after the expiry of the three years from the date of first publication of notice relating to that scheme under Section 36 ."

9. Chapter IV of the Act provides for the schemes under the Act. Section 22 deals with the general improvement scheme or rebuilding scheme, whereas Section 23 deals with the street schemes and deferred street schemes. It is Section 24 , which deals with the development and expansion of the schemes, whereas Section 25 of the Act deals with the housing accommodation scheme.

10. As per the undisputed facts on record, Resolution No. 187 was passed on 27.04.2010, contemplating a scheme to acquire 94.97 acres of the land and a general map of the locality was prepared. It, thus, satisfies that requirements of sub clauses (i) and (ii) of subsection (1) of Section 36 . The dispute is, thus, whether the scheme as contemplated under Sections 24 , 25 or 28 of the Act, has been framed or not or whether a detailed scheme contemplated user of the land, which is intended to be acquired, is a pre condition for a valid notification to be published under Section 36 of the Act.

11. Section 36 of the Act deals with the publication and transmission of notice in respect of the land proposed to be acquired. Sub section (1) of Section 36 provides that a notice shall be issued when a scheme under the Act has been framed and such notice would be of the fact that the scheme has been framed; the boundaries of the locality comprised in the scheme and; the place at which

details of the scheme including a statement of the land proposed to be acquired and a general map of the locality available for inspection. The scheme as mentioned in sub-section (1) is of the scheme under Chapter IV of the Act.

12. Section 24 of the Act empowers the Trust to prepare a development scheme or an expansion scheme. Sub-section (3) of Section 24 contemplates that such scheme "may provide for the layout of the locality to be developed, the purposes for which particular portions of such locality are to be utilized, the prescribed street alignment and the building line on each side of the streets". Similar is the language of Sections 25 , 26 and 27 of the Act. Therefore, it needs to be examined whether the use of expression "may" in sub-section (3) of Section 24 is mandatory or a directory provision. If it is mandatory, the notification under Section 36 of the Act, cannot be issued unless the lay-out of the locality is prepared and published or the utilization of the locality are prepared including street alignment and the building line on each side of the streets, is not specified therein.

13. We have heard learned counsel for the parties and find that a scheme under Section 24 read with Section 25 of the Act does not mandatorily require preparation and publication of a micro level lay out of the locality or the purposes for which particular portions of such locality are to be utilized or the street alignment and the building line on each side of the streets.

14. The question whether provisions in a statute are directory or mandatory has very frequently arisen before the courts in India. There is no general rule but in every case the object of the statute must be looked at. When the provisions of the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been a practice to hold such provisions to be directory only. The use of word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid.

15. The Constitution Bench of Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, , quoted the quotation from Crawford on "Statutory Construction" and held as under:

"10.....The question whether a certain provision in a statute imposing a duty on a public body or authority was mandatory or only directory, arose before their Lordships of the Judicial Committee of the Privy Council in the case of *Montreal Street Railway Company v. Normandin*, LR (1917) AC 170. In that case the question mooted was whether the omission to revise the jury lists as directed by the statute, had the effect of nullifying the verdict given by a jury. Their Lordships held that the irregularities in the due revision of the jury lists, will not

ipso facto avoid the verdict of a jury. The Board made the following observations in the course of their judgment:

"...The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th Edn., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

The principle laid down in this case was adopted by the Federal Court in the case of *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court). In that case, the Federal Court had to consider the effect of non-compliance with the provisions of Section 256 of the Government of India Act, 1935, requiring consultation between public authorities before the conferment of magisterial powers or of enhanced magisterial powers, etc. The Court repelled the contention that the provisions of Section 256, aforesaid, were mandatory. It was further held that non-compliance with that section would not render the appointment otherwise regularly and validly made, invalid or inoperative. That decision is particularly important as the words of the section then before their Lordships of the Federal Court, were very emphatic and of a prohibitory character.

11. An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction - Article 261 at p. 516, is pertinent:

"The question as to whether a statute is mandatory or directory depends upon

the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...."

16. It was held that consultation of the Public Service Commission affecting a person serving the Government of India or a State Government are not mandatory in spite of the use of words "shall" therein.

17. In *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , a Constitution Bench of the Supreme Court held that no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity or only directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But, in each case, the court has to decide the legislative intent. The courts have to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same.

18. In *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , the Supreme Court held that in determining the question whether a provision is mandatory or directory, one must look into the subject-matter and the relation of that provision to the general object intended to be secured. It was held that, no doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview but it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. The said intention has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other.

19. In *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , the Supreme Court ruled that absence of provision for consequence in case of non-compliance with the requirements prescribed would indicate directory nature despite use of word "shall". In *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , it was ruled that whenever the statute prescribes that a particular Act is to be done in a particular manner and also lays down that failure to comply with the said requirement would lead to severe consequences, such requirement would be mandatory.

20. In *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , the Supreme Court negatived the argument raised that the State Commission constituted under the Consumer Protection Act, 1986 has no power to accept a reply filed beyond a total period of 45 days. It was held that such provision is not

mandatory in nature. No penal consequences are prescribed and the period of extension of time "not exceeding 15 days", does not prescribe any kind of period of limitation. The provision is directory in nature. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of desirability in strong terms. But it falls short of creating any kind of substantive right in favour of the complainant reason of which the respondent may be debarred from placing his version in defence in any circumstances whatsoever.

21. A Division Bench of this Court in *Somany Pilkingtons Ltd., Naraina Industrial Area, Phase I, New Delhi v. Commissioner of Income Tax (Haryana), Rohtak*, ITR Nos. 40 and 41 of 1991, decided on December 3, 2004, examined the provisions of Section 254(2A) of the Income Tax Act, 1961, which contemplated that the Appellate Tribunal may hear and decide the appeal within a period of four years from the end of the financial year in which such appeal is filed. This Court held to the following effect:--

"We may also notice Sub-section (2A) of Section 254 , which was inserted by the Finance Act, 1999. The same reads as under:

"(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under Sub-section (1) of Section 253 .

A careful reading of the provisions reproduced above, makes it clear that the time period of four years prescribed in Sub-section (2) of Section 254 is directory in nature. It is settled that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory - *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , *Nomita Chowdhry v. State of West Bengal* [1999] 2 Cal LJ 21, *Garbari Union Coop. Agricultural Credits Society Ltd. v. Swapan Kumar Jana* [1997] 1 CHN 189 and *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) .

The language of Sub-section (2A), which has been inserted by the Finance Act, 1999, makes it clear that the Legislature did not intend to make the time period of four years for disposal of the application as mandatory. This view of ours finds support from the principle stated in *Halsbury's Laws of England* in the following words:--

"If public officials or a public body fail to perform any public duty with which they have been charged, an order of mandamus will lie to compel them to carry it out, even though the time prescribed by statute for the performance of the duty may have passed.

In view of the above discussion, we hold that failure of the Tribunal to decide an application made under Section 254(2) of the Act within four years did not denude it of the jurisdiction to decide the application on merits."

22. Still further a Division Bench of this Court in a judgment reported as

Biswanath Khemka vs. Emperor AIR 1945 67 (Federal Court) , in which one of us (Hemant Gupta, J.) was a Member, considered the provisions of Section 14B(7) (ii) & (iii) of Punjab General Sales Tax Act, 1948 providing that the proceedings shall be decided within a period of 14 days. The Court held that such provision is more by way of procedure to achieve the object of speedy disposal of the disputes. It is an expression of desirability in strong terms. It was held to the following effect:--

"24.....Once there is a provision for release of the goods and the vehicle, the conclusion of enquiry proceedings within 15 days is to impose a duty on the enquiry officer to complete the proceedings expeditiously but it does not follow that any departure from it shall taint the proceedings with fatal blemish. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of desirability in strong terms. But it falls short of creating any kind of substantive right in favour of the petitioner so as resulting into adjudicating proceedings pertaining to evasion of tax as abated.

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26. Therefore, we are of the opinion that the provisions of Section 14B(7)(ii) and (iii) of the State Act, are directory in nature and consequently failure to decide such proceedings within the time prescribed will not result into abatement of proceedings."

23. The said judgment was followed in CWP No. 877 of 2013- M/s. PML Industries Limited v. Commissioner of Central Excise and others, decided on 26.02.2013, wherein it was held as under:--

"23. In the light of the precedents mentioned above, the provisions of the Statute and Circular are required to be examined, as to when a provision of a Statute is to be treated as mandatory or directory. It is well- settled that the use of expression "shall" or "may" is not determinative of the fact whether the provision is directory or mandatory. There is no general rule in respect of as to when a provision is to be treated as directory or mandatory, but in every case the object of Statute must be looked.

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46. Therefore, we are of the opinion that right of consideration in appeal and on an application for waiver of pre-deposit, is a right conferred by the Statute and such right cannot be defeated on the basis of Circular, which contemplates that the recovery can be effected, is stay is not granted within 30 days. Therefore, such condition in the Circular is not legal and is therefore set aside with the observation that till such time, the application for waiver of pre-deposit is decided in an appeal filed in terms of the Statute, the Revenue shall not proceed to recover the same provided that the assessee does not delay the hearing of the appeal directly or indirectly. In the event, the assessee is delaying the decision, the Revenue shall be at liberty to move an application before the Commissioner

(Appeals) to take the application for waiver of pre-deposit and seek orders thereon in accordance with law. If such an application is filed by the Revenue, the Commissioner (Appeals) shall decide the same expeditiously.

47. Thus, in respect of first question of law, it is held that direction to recover the duty demanded and penalty levied, if the stay was not granted within 30 days, contravenes the right of consideration of appeal and of an application for waiver of pre-deposit conferred under Section 35B read with Section 35F of the Act and is illegal. Such direction to the Administrative Officers to recover the amount pending consideration of application of waiver of pre-deposit is not justified and, thus, not enforceable in law."

24. We find that there is no consequence contemplated for not providing the micro level planning in the scheme. The scheme required to be framed under Section 24 read with Section 25 of the Act, is only a macro level planning i.e. giving details of the boundary and general map of the locality so as to give indication of the broad contours of the scheme. The micro level planning can be made at the subsequent stage after the objections are considered in terms of the provisions of the Statutes find as to how much land actually would be available for planning and execution of the scheme. Thus, the provisions of Sections 24 and 25 of the Act are only directory.

25. Another argument of the learned counsel for the petitioners is that the documents were sought by the land owners, but not supplied. It is sub-section (3) of Section 36 , which contemplates the delivery of documents on payment of such fee, as may be prescribed by Rule 74 of the Punjab Town Improvement Trust Rules, 1939. The documents, the copies of which can be supplied are the details of the land to be acquired, general map of the locality, which is also available for inspection in terms of Section 74 of the Act.

26. Rule 23 of the Rules deals with the Registers of demands and collection on account of copying and embossing charges maintained in Form No. 7.

27. Except in one case i.e. CWP No. 8619 of 2011, none has offered to deposit the requisite fee. An application for obtaining the documents in terms of sub-clause (3) of Section 36 , can be delivered on payment of fee. Though sub-section (3) of Section 36 deals with the supply of documents, yet such documents are available for inspection in terms of sub-clause (i) of Section 36 . Though there is time of supply of documents, yet none of the land owners have sought inspection of the documents. Therefore, the non supply of documents in the absence of proper fee, will not vitiate the acquisition proceedings when all the land owners have filed their respective objections to the acquisition of the land in respect to the publication of notification under Section 36 of the Act.

28. After the publication of the notification under Section 36 of the Act and after considering the objections filed, the Trust has resolved to approve the scheme vide Resolution No. 187 passed on 27.04.2010. The said Resolution approves of the detail la-out plan of the locality including the purposes for which particular

portions of such locality to be utilized and the prescribed street alignment and the building line on each side of the streets. It is the said scheme, which is approved by the State Government. Therefore, the micro level planning was finalized after considering the objections before publication of the scheme under Section 42 of the Act and therefore, there is no procedural illegality or irregularity in the publication of the scheme warranting interference by this Court in the writ jurisdiction. It is particularly so that the supply of the documents is to facilitate the filing of the objections. Once, the objections have been filed, none of the land owners can be said to have suffered any prejudice.

29. Another argument raised by the learned counsel for the petitioners was that the notice was published on 19.10.2010 whereas the land owners were given public notice of hearing of the objections on 20.10.2010. Though some of the land owners have received notice, but some have not. The question is whether the non-receipt of notice by some of the land owners vitiated the acquisition proceedings, it is Section 79 of the Act which deals with the serving of the notice including notice under Section 36 of the Act.

30. Now the question arises whether the serving of notice within 30 days of publication under Section 36 of the Act is mandatory or directory and/or whether the failure to serve notice will render the acquisition proceedings as void?

31. The Full Bench of this Court in Prof. Jodh Singh and others v. Jullundur Improvement Trust, Jullundur, AIR 1984 Punj 398, held that the provisions of Section 36 of the Act provided for preparation and publication of notice; Section 38 provided for issuance of notice of to the owner/occupier of land proposed to be acquired and; Section 42 provided for the notification of its sanction of a given scheme, are mandatory. It was held as under:--

"33. Since the given provisions do not merely provide for the framing of the scheme simpliciter but also provide for acquisition of property to enable the execution of the scheme and since no person can be deprived of his property without being heard and one cannot ask for hearing unless he knows that he is being deprived of his property so, by necessary implication a notice of the intention of the authorities of acquiring of given person's property is impliedly necessary to enable him to bring to the notice of the concerned authority his objections against the acquisition of his property. Hence such provisions as provide for notice, raising of objections and personal hearing in support of the objection would be mandatory in character.

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35. In the light of the above, we may observe that so far as the provisions of sections 36 , 38 and sub-section (1) of section 40 of the Act are concerned, this Court would be reluctant to subject the said provision to the scrutiny and analysis of the kind in order to judge their mandatory or directory character in view of the pronouncement of their Lordships in regard to the provisions of sections 4 and 5-A of the Land Acquisition Act [sections 38 and 40(1)] which to

an extent contain the elements of the provisions of section 4 so far as the question of giving of notice to the affected persons is concerned and of section 5-A of the Land Acquisition Act in so far as the filing of objections and hearing thereof is concerned, which provisions have been held to be mandatory by their Lordships. The relevant decisions of their Lordships holding the provisions of section 4 and section 5-A of Land Acquisition Act as mandatory are :-- Biswanath Khemka vs. EmperorAIR 1945 67 (Federal Court) ; Biswanath Khemka vs. EmperorAIR 1945 67 (Federal Court) , and Biswanath Khemka vs. EmperorAIR 1945 67 (Federal Court) .

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38. For the reasons aforementioned, we hold that the provision of Section 36 , in so far as it provides for publication of the notice as such and not the frequency thereof, is mandatory in character because the scheme is prepared for the convenience and welfare of the inhabitants. They are vitally interested in knowing as to what the scheme is. Therefore, the publication of the scheme to bring the same to their notice is vitally essential to enable them to bring their view point regarding the scheme to the notice of the concerned authorities. Equally essential and mandatory is the requirement of notice of the proposed scheme of acquisition to the landowners and occupiers of the land and building which are proposed to be acquired so that they may put in their objections....."

(Emphasis supplied)

32. In Harbans Singh and others v. The State of Punjab and others, 1996(3) PLR 711, a Division Bench of this Court, relied upon Supreme Court judgment in Phagwara Improvement Trust v. The State of Punjab,, 1991(1) PLR 458 and held that the publication of notification under Section 36(2)(a) of the Act in the newspapers and in the Official Gazette is mandatory but its frequency is not so.

33. In Biswanath Khemka vs. EmperorAIR 1945 67 (Federal Court) , the Constitutional Bench of the Hon"ble Supreme Court observed:

"7. In the eleventh edition of the well known treatise,-Maxwell on Interpretation of Statutes, are to be found at p. 362 onwards certain guidelines laid down for determining whether a particular Statute or Statutory Rule is imperative or directory. "Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other manner, no doubt can be entertained as to the intention"; that is to say, such a requirement would be imperative. At p. 364 it is stated: "The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

8. A few principles may now be extracted with advantage from the seventh edition of Craies on Statute Law:

"When a statute is passed for the purpose of enabling something to be done, and

prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory. (P. 62)

It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed... That in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory." (P. 262)"

34. A Constitutional Bench of the Hon^{ble} Supreme Court in *Biswanath Khemka vs. Emperor* AIR 1945 67 (Federal Court) , observed as under :

"32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance

should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential".

35. There is absolute prohibition of publication of a notification under Section 42 of the Act beyond three years of the first publication of notification under Section 36 of the Act. Since the prohibition is absolute, the publication of notification within three years is mandatory. Though the serving of notice as provided in Section 38 is mandatory but the time during which the notice is required to be served cannot be said to be mandatory. The time period to serve notice under Section 38 is only directory.

36. The time to publish notification under Section 42 is relatable to the first publication of notification under Section 36 of the Act. There is no reference to the notice under Section 38 of the Act in Section 42 of the Act. The purpose of the notification under Section 36 , and that of notice under Section 38 of the Act is to apprise the land-owners of the purpose of acquisition and providing an opportunity to submit objections to the acquisition. The filing of objections and the consideration thereof is mandatory and not the frequency thereof in view of the judgments mentioned above. What is mandatory is requirement of serving of a notice and granting an opportunity of hearing and not the period during which such objections have to be invited. No penal consequences can be culled down if the notice is not served within 30 days on the reading of Section 38 of the Act nor Section 38 prohibits serving of a notice after 30 days. The mandatory requirement is publication of the notification within the outer limit of three years from the date of publication of the first publication under Section 36 of the Act. Therefore, serving of a notice with 30 days under Section 38 of the Act is directory and failure to serve notice within the said time will not render the acquisition proceedings as void. The substantial compliance of directory provisions is sufficient satisfaction of the requirements of the Act and the purpose of the notices to be served under Section 38 of the Act.

37. In the present case, a public notice under was issued on 19.10.2010 for hearing of objections on 20.10.2010. Some of the land owners have received public notice as well. Such process satisfies the requirement of serving of notice under Section 38 of the Act.

38. In view of the above, we do not find any merit in the present petitions.

Hence, the same are dismissed.