
(1992) 07 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 931 of 1980

Baga Ram

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-07-1992

Acts Referred:

Rajasthan Land Acquisition Act, 1953 — Section 4(1)

Citation : AIR 1993 Raj 60 : (1992) 2 RLW 432

Hon'ble Judges : J.R. Chopra, J

Bench : Single Bench

Advocate : I.R. Chaudhary, for the Appellant; S.K. Vyas, for the Respondent

Final Decision : Allowed

Judgement

J.R. Chopra, J.—The contention of the petitioner is that his father Bastiram's land situated in Chak No. 10 BPM in three squares bearing No. 203/404 to 205/404 and 203/ 4072 to 205/460 shown in the attached plan and filed as Annexure 1 with the writ petition is sought to be acquired.

2. The contention of the petitioner is that no notice as required by Section 4(1) of the Rajasthan Land Acquisition Act of 1953 (hereinafter referred as the "Act" of 1953) was issued and published in the Rajasthan Gazette. No notice as required by Section 5(a) of the aforesaid Rajasthan Land Acquisition Act, 1953 was given to, the father of the petitioner and without complying with these two provisions a notice for compulsory acquisition of the land was issued u/s 6 of the Act of 1953 against a dead person because his father has already expired on 20th of December, 1979 and notification u/s 6 was issued on 14-2-1980. The petitioner came to know about these proceedings from the notice of the Tehsildar issued by the Land Acquisition Officer in the name of the deceased. He has therefore, prayed that in spite of the fact that the land is required to be acquired for the construction of a public road, these acquisition proceedings are void issued and deserves to be quashed qua the petitioner because of the noncompliance of the provisions of Section 4(1) read with Section 45(4) of the

Act as also for non-compliance of the Provisions of Section 5(a) of the aforesaid Act. In this respect Mr. Chaudhary drew my attention to a Division Bench decision of this Court rendered in Dr. Laxmi and Others Vs. The State and Others, wherein para 20, it has been held that provisions of Section 4(1) of the Act of 1953 are mandatory in character. The provision of Section 45(4) are also mandatory and their non-compliance renders the proceedings initiated in pursuance thereof is void.

3. My attention was next drawn to a decision of their Lordships of the supreme Court rendered in Khub Chand and Others Vs. State of Rajasthan and Others, wherein their Lordships of the Supreme Court have held that issuance u/s 4(1) of the Act of 1953 is mandatory and if this provision has not been complied with the acquisition proceeding will be void and all proceedings taken in pursuance of these provisions will also be void. My attention was next invited to a single Bench decision of this Court rendered in Bhimaram v. State of Rajasthan, reported in 1977 WLNC 497 wherein it has been held that a declaration u/s 4(1) of the Act must be made and once it is made, a report u/s 5(a) has to be submitted and that can only be legally submitted after giving an opportunity to the petitioner to raise objections against the proposed acquisition. In this case no notice u/s 5(a) was given to the petitioner's father and therefore, he had no opportunity to object and notice u/s 6 was issued after his death. The learned Judge has held that the declaration u/s 6 in such circumstances is without proper legal authority, having been issued in disregard of the mandatory requirement of the law and therefore, it deserves to be quashed.

4. A notice in favour of a dead person cannot be treated as a valid notice. Issuance of such a notice cannot be treated as a proper compliance of Section 6 of the Act. In this respect Mr. Chaudhary drew our attention to a Division Bench decision of this Court rendered in D.B. Civil Writ Petition No. 1666/86 Viramdayal v. State of Rajasthan and eleven more writ petitions which were decided by a common order by their Lordships vide their judgment dated 25-1-89.

5. The State has not filed any reply to controvert these submissions, now when the case was finally argued a request was made that time be given for filing reply. This request is highly delayed and therefore, in view of these lacunas pointed out hereinabove, the acquisition proceedings undertaken qua the petitioner are void, and therefore, they are quashed qua the petitioner. If the respondents feel that an acquisition of the land of the petitioner is essential for a public purpose, they may undertake fresh proceedings but the present proceedings cannot be sustained.

6. The writ petition is allowed and the acquisition proceedings taken for acquisition of the land of the petitioner's father which has now devolved on the petitioner as regards disputed land through a notice u/s 6 of the Act of 1953 Annex.2 dated 23rd of January, 1990 which was published in the Rajasthan Gazette dated 14th of February, 1990 qua the petitioner are hereby quashed. The parties are left to bear their own costs.