

(2015) 04 AHC CK 0062
In the Allahabad High Court
Case No : Writ C. No. 6543 of 2015

Chandra Veer Singh and Others

APPELLANT

Vs

Secretary Industrial Development and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Land Acquisition Act, 1894 — Section 11, 11A, 11-A, 16, 17

Citation : (2015) 4 ADJ 296 : (2015) 3 ALJ 627 : (2015) 111 ALR 305 : (2015) 4 AWC 3701 : (2015) 128 RD 727

Hon'ble Judges : Krishna Murari, J; Pramod Kumar Srivastava, J

Bench : Division Bench

Advocate : Tarun Agrawal and Ravi Kant, for the Appellant; S.K. Dubey, C.S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Krishna Murari, J.—By means of this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the notification dated 19-10-2013 issued under Section 4(1) of the Land Acquisition Act, 1894 (in short the "Act") as well as notification dated 30-10-2014 issued under Section 6(1) of the Act. A further writ of mandamus has also been claimed to restrain the respondents and its agent from taking the actual possession of the land in dispute covered by the said notifications.

2. We have heard Sri Ravi Kant, learned Senior Advocate assisted by Sri Imran Saeed for the petitioner, learned Advocate General assisted by Sri Ramesh Upadhyay, learned Chief Standing Counsel and Dr. Y.K. Srivastava, learned Standing Counsel for the State respondents.

3. Facts of the case, in short, necessary for the purpose of the dispute are as under:

"Petitioners claim to be the "bhumidhar" of different parcel of land situate in two

villages namely; Uravar Hashtaraf and Aslempur Nagla Kanhar, Tehsil and Pargana Sikohabad, district Firozabad. A notification under Section 4 of the Act was issued for alleged public purpose namely; to construct expressway from Lucknow to Agra in the official gazette of the State of Uttar Pradesh dated 19-10-2013. By the said notification, the land belonging to the petitioners situate in above two mentioned villages were sought to be acquired. The copy of the aforesaid notification was also published in two Hindi daily newspapers "Dainik Jagran" and "Hindustran" dated 25-10-2013. Thereafter, notices were issued under Section 5A of the Act to the tenure holders to file their objections. Notice specified 09-12-2013 as the date fixed for hearing of the objection. It has been alleged that some of the petitioners filed their objections, which were more or less similar in nature. Further case set up by the petitioners is that though all the petitioners were present in person on the date fixed but since neither the Additional District Magistrate nor the Special Land Acquisition Officer were present, no hearing took place on the aforesaid date. The declaration under Section 6 was published in the official gazette on 30-10-2014. The substance of the said notification was published in the newspapers on 15-12-2014."

4. First submission advanced by learned counsel for the petitioners is that impugned notification under Section 6 of the Act was published beyond the period of one year from the date of notification under Section 4 of the Act, hence, the same is null and void in view of proviso to Section 6 of the Act. It is also submitted that no publication of the substance of the aforesaid notification was ever made by beat of drum in the locality as mandated by Section 4 of the Act, hence, the acquisition is bad in law.

5. The factual assertion laying down the foundation for the basis of the aforesaid argument are contained in paragraphs 8 to 12 of the writ petition which are quoted hereunder:

"8. That on 19th October, 2013, the State Government published two notifications in U.P. extra-ordinary Gazette proposing to acquire land in Uravar Hashtaraf, Tehsil and Pargana Sikohabad, district Firozabad and Aslempur Nagla Kanhar, Tehsil and Pargana Sikohabad, district Firozabad.

9. That according to the aforesaid notifications, the land was needed for a public purpose, namely, for development of Access Controlled Express Way from Agra to Lucknow. It was further stated that a site-plan of the land may be inspected in the Office of the Collector, Firozabad.

10. That it may be stated here that the aforesaid state of fact contained in the notifications is absolutely wrong. No site-plans have been prepared so far.

11. That a copy of the aforesaid notification was published in two newspapers on 25th October, 2013, they were published in Dainik Jagran and Dainik Hindusthan of the aforesaid date.

12. That it may be further stated here that no publication by beat of drums was

ever made on the substance of the aforesaid notifications in the locality, as mandated by Section 4 of the Land Acquisition Act, 1894 ("the Act" for short).

6. An affidavit has been filed on behalf of the State respondents denying the allegations made in the writ petition. It may be relevant to quote the following paragraphs of the affidavit filed on behalf of the State:

"7. That, the notification under Section 4(1) of the Act, 1894 was issued for acquiring the land of village Uravar Hashtaraf and village Aslempur Nagla Kanhar, Tehsil and Pargana Sikohabad, district Firozabad for the development and construction of Access Controlled Expressway (Green Field) Project. The notification under Section 4(1) of the Act, 1894 was issued by the Collector, Firozabad on 07.10.2013. The notification dated 07.10.2013 was published in the official gazette of the government of U.P. on 19.10.2013.

8. That, after publication of the official gazette of the Government dated 19.10.2013, the notification was further published in two daily newspapers, namely "Dainik Jagran" and "Hindustan" on 25.10.2013. Both the daily newspapers are published from Agra and has a wide circulation within the adjoining district of Agra, which are included in the Agra Division.

9. That, after publication of the notification in the two daily newspapers having wide circulation, further steps were taken for issuing general public notice/Munadi on 30.10.2013. By public notice/Munadi dated 30.10.2013 it was directed to be served on the village Pradhan of the concerned village, which was done actually on 07.11.2013. It was published and pasted on the notice board of the Tehsildar Office of Tehsil Shikohabad and for the office of Block Development Officer, Shikohabad. It was further directed that the notice be served and pasted on the Panchayat Bhawan of the village/Vidyalaya Bhawan, Block and Tehsil including the Nazarat of the Collector and the notice be pasted on the notice board of the office of such places. The notice on the official notice board of the Block Development Officer, Firozabad was served and pasted on the notice board on his office on 01.11.2013. Similarly, the notice was received in the office of Tehsildar, Shikohabad on 01.11.2013, and it was pasted on the notice board of the Tehsil on 01.11.2013. The Munadikarta, Ramesh, Chaukidar of the village put his signature after Munadi on 07.11.2013 and has also obtained the signatures of villagers as witnesses of the public notice/Munadi. The Process Server, Saurabh Kumar and Rajendra Babu, filed their report dated 07.11.2013 before the Additional Collector (Land Acquisition), agra stating therein that the Munadi has been done on 07.11.2013 in the village Uravar Hashtaraf and similar public notice/Munadi was done in respect of village Aslaimpur Nagla Kanhar on 07.11.2013. In respect of village Aslaimpur Nagla Kanhar, the Block Development Officer and the Tehsildar were served with the notice to be put up and pasted on the notice board on their office on 01.11.2013 and the Munadi/notice was served on the Village Pradhan, Kusma Devi on 07.11.2013 in the presence of villagers as witness.

10. That, as stated hereinabove, the notification in the official gazette under Section 4(1) of the Act, 1894 was done on 19.10.2013 and it was published in the two daily newspapers on 25.10.2013 with a further publication by public notice/Munadi in the village concerned on 07.11.2013 including the publication by pasting on the notice board of the office of Block Development Officer, Tehsildar Shikohabad, Vidyalaya Bhawan and the Panchayat Bhawan of the village.

11. That, the notification under Section 6(1) of the Act, 1894, which has been made on 30th October, 2014 and was published in the official gazette on 30th October, 2014, is well within the period of one year from the last date of publication of public notice. The last date of publication in the present case is to be taken as on 07.11.2013, on which date the public notice was given to the villagers by Munadi and service on the village Pradhan and other persons and was pasted on the Vidyalaya Bhawan, Panchayat Bhawan. For this purpose a reference may be made to Section 4 of the Land Acquisition Act, 1894, which provides that "the last date of such publication and the giving of such public notice, being hereinafter referred to as the last date of publication of the notification". Thus it is clear that the last date of publication of the public notice is 07.11.2013. In view of the aforesaid factual position, the one year from the last date of publication of the public notice would be 07.11.2014. Notification under Section 6(1) of the Act, 1894 published in the official gazette on 30.10.2014 is well within a period of one year. By no stretch of imagination it can be said that the notification under Section 6(1) of the Act, 1894 has been issued after lapse of one year. Thus the submission and contention of the petitioners is misconceived and not based on correct facts.

12. That, after receiving the public notice in the village by way of Munadi, the villagers filed their respective objections before the Additional District Magistrate (Land Acquisition), Agra.

13. That, the petitioners have made effort before this Hon''ble Court in the writ petition to influence the Hon''ble Court by saying that the notification under Section 6(1) of the Act, 1894 has been done after the lapse of one year of the notification issued under Section 4(1) of the Act, 1894.

14. That, in the notification published under Section 6(1)/16 of the Act, 1894 issued on 30th October, 2014, it has specifically been mentioned that the notification was issued by the Collector, Firozabad on 07.10.2013, which was notified in the official gazette on 19.10.2013 and thereafter, Munadi was done on the spot on 07.11.2013.

15. That, thus it is clear that it is established from the record that last notification under Section 4(1) of the Act, 1894 was done on 07.11.2013 and notification under Section 6(1) of the Act, 1894 was done on 30.10.2014, which is well within the period of one year. The original records are available with the respondent authorities, which may be perused by the Hon''ble Court, if

necessary."

7. Before proceeding to consider the submission, it may be relevant to quote Section 4(1) of the Act which reads as under:

"4. (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

8. It may also be relevant to quote Section 6 of the Act which reads as under:

"6 Declaration that land is required for a public purpose.--(1) Subject to the provisions of Part VII of this Act when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4 sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4 sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place

where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

9. A plain reading of the aforesaid provisions of the Act goes to show that whenever the appropriate Government feels necessity of need of a land for any public purpose, it is under an obligation to publish the notification in the official gazette and in two daily newspapers having circulation in the locality out of which one newspaper should be in regional language and also to give public notice of substance of such notification at convenient place in the locality. After complying the mandate of Section 5A of the Act and upon receipt of the report of the Collector, the Government is required to proceed under Section 6(1) of the Act. Clause (ii) of Section 6(1) of the Act provides that no declaration in respect of any land covered by notification under Section 4(1) after enforcement of the Amendment Act, 1984 can be made after expiry of one year from the date of publication of notification. The Amendment Act, 1984 was enforced on 24-09-2004. Thus after 24-09-2004 no declaration under Section 6 of the Act can be made after expiry of period of one year from the date of publication of notification under Section 4(1) of the Act.

10. In other words, a declaration is required to be made under Section 6(1) of the Act within one year from the date of publication of notification under Section 4(1) of the Act. The submissions of learned counsel for the petitioners that notification was published beyond the period of one year is based on the allegation that no publication by beat of drums was made and thus in accordance with the Section 4(1) of the Act, the last date of publication is 19-10-2013 and that under Section 6(1) of the Act was published in newspapers on 15-12-2014 and thus was beyond the period of one year.

11. A plain reading of Section 4 and 6 of the Act suggests that under Section 4 a notification is required to be published in the manner laid down in the Section itself. However, under Section 6 a declaration has to be first made and the same is to be published in the manner provided under Section 6(2) of the Act. The first proviso to Section 6(1) lays down time limit of one year within which declaration is to be made. It is significant to note that there is no time limit prescribed for publication of the declaration so made since the first proviso to Section 6(1) only provides time limit for declaration and not for publication. The Apex Court in the case of AIR 2002 SC 187 , after considering the provisions of Section 4 and 6 and 11A of the Act has drawn a distinction between the words "Declaration" and "Publication" used in Section 4 and 6 of the Act and 11-A of the Act. It has been observed in paragraph 12 as under:

"12. In our view the wordings of Sections 4, 6 and 11-A leave no room for doubt that the Land Acquisition Act made a distinction between a "declaration" and

"publication". To be noted that under Section 4 the notification has to be published. Again under Section 11-A the period of two years has to be computed from the date of "publication of the declaration". As distinct from this under the first proviso to Section 6(1) a "declaration" cannot be made after the expiry of one year from the date of "publication of the notification under Section 4". The word "published" in clauses (i) and (ii) of the first proviso to Section 6(1) refers to the publication of notification under Section 4. A plain reading of Section 6 shows that a distinction is made between a "declaration" and a "publication". Viewed from this angle the wording of the first proviso to Section 6(1) becomes important. The proviso lays down that no declaration (under Section 6) shall be made after expiry of three years [under clause (i)] where the notification under Section 4 is published before the commencement of the Land Acquisition (Amendment) Act, 1984 and after expiry of one year [under clause (ii)] where notification under Section 4 was published after commencement of the Land Acquisition (Amendment) Act, 1984. Thus the proviso clearly talks of "publication" in respect of notification under Section 4 and then provides a time for "making of declaration" under Section 6. The legislature is purposely omitting to use the words "publication of declaration" in the proviso to Section 6."

12. It may also be relevant to quote the following observations made by the Hon'ble Apex Court in the case of *Eugenio Misquita and Others Vs. State of Goa and Others*, AIR 1997 SC 3939 : (1997) 8 JT 317 : (1997) 6 SCALE 328 : (1997) 8 SCC 47 : (1997) 4 SCR 362 Supp : (1997) 2 UJ 761 : (1997) AIRSCW 3871 : (1997) 9 Supreme 125 :

"7. It is now well settled that the last of the dates in the series of the publications made under Section 4(1) of the Act is the relevant date to reckon the starting point of limitation for the purpose of proviso to Section 6(1)(ii). Now, the question is which is the relevant date to reckon the last date for the purpose of clause (ii) of the first proviso to Section 6(1). In other words, whether the modes of publication prescribed under Section 6(2) obviously for the purpose of reckoning limitation under Section 11-A of the Act have any part to play in the matter of computing the period prescribed under clause (ii) of the first proviso to Section 6(1).

8. According to the learned counsel, the limitation prescribed under clause (ii) of the first proviso to Section 6(1) has to be construed with reference to the different dates/modes of publication prescribed under Section 6(2) of the Act. In support of this submission, learned counsel refers to the judgments of this Court rendered on Section 4(1) of the Act holding that the last of the dates of such publication in the series is the relevant date for computing the period of limitation under clause (ii) of the first proviso to Section 6(1).

9. Let us examine whether the learned counsel is right in his submission. As seen from the above extracts of relevant provisions, while Section 4(1) commands publication of notification under that Section. Section 6 speaks of the declaration being made to the effect that any particular land is needed for public purpose or

for a company. There are judicial decisions that have interpreted the word "made" to mean "published" for the reasons stated in those decisions. Therefore, strictly speaking, but for those judicial decisions the date of making of the declaration under Section 6(1) will be the relevant date for reckoning the period of limitation. However, in the interest of general public, the courts have taken the view that the declaration made will stand accomplished only when it is published. This publication has, therefore, nothing to do with the publication referred to in Section 6(2) of the Act which is for a different purpose, inter alia, for reckoning the limitation prescribed under Section 11-A of the Act. This construction is supported by the language employed in Section 6(2) of the Act. In particular, the word "hereinafter" used in Section 6(2) will amply prove that the last of the series of the publication referred to under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11-A. The language employed in second proviso to Section 6(1) also supports this construction. Therefore, the contention of learned counsel cannot be accepted.

10. This is also the view taken by this Court in *Krishi Utpadan Mandi Samiti's* case. The learned Judges framed the question thus: (SCC p. 499, para 4)

"4. The question, therefore, is that which date of the publications in three steps i.e. publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years limitation prescribed in clause (i) of the proviso to Section 6(1) of the Act."

11. It may be noted that this Court in that case was considering a case which arose before the coming into force of the Amending Act 68 of 1984. The case on hand has arisen after the Amending Act 68 of 1984. The case on hand has arisen after the Amending Act 68 of 1984. The only difference is the period of limitation: for the cases arising before the Amending Act it was three years and one year for the cases arising after the Amending Act. Otherwise, the principle is the same. The learned Judges after referring to the relevant provisions observed thus: (SCC pp. 499-500, paras 4 and 5)

"The question, therefore, is that which date of the publications in three steps i.e. publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years limitation prescribed in Clause (i) of the proviso to Section 6(1) of the Act. Prima facie, it gives an impression that the last of any of the three steps puts in motion, the running of limitation of three years.

* * * *

So it is necessary to understand the scheme and policy of the Act to get the crux of the question.

* * * *

It would be seen that the purpose of notification under Section 4(1) is an intimation to the owner or person having an interest in the land that Government

exercised the power of eminent domain in relation to his land and for public purpose his land is needed or likely to be needed: puts an embargo on his freedom to deal with the land as an unencumbered land and also pegs the price of the land prevailing as on that date. It also is a caveat to the Collector to make the award under Section 11 as well as to determine the market value prevailing as on the last of the dates to be the date and the award should be made within a period prescribed by Section 11-A, lest the entire acquisition shall stand lapsed. The word "hereinafter" is for such purposes as well as for the purpose of determination of the compensation under Chapter III of the Act as well. Therefore, the word hereinafter referred to as the last date of the publication of the notification is the date from which the prevailing prices of the land is to be computed etc."

* * * *

The last date under Section 6(2) shall be the date for the purposes "hereinafter referred to" would be not for computing the period of three years prescribed in clause (i) of the proviso to Section 6(1) of the Act as it was already done, but purposes to be followed hereinafter. Otherwise language would have been "hereinbefore done". Sub-section (2) as such did not prescribe any limitation within which the declaration under Section 6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award under Section 11 or in computation of the period prescribed in Section 11-A. The publication of the declaration in two daily newspapers having circulation in the locality one of which is in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is a procedural part. It appears that these publications are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose under Section 6(1) and also to provide limitation to make the award under Section 11-A is for the purpose of making the award and if the Collector fails to do so, the entire proceeds under Sections 4(1) and 6(1) shall stand lapsed. If this consistent policy of the Act is understood giving teeth to the operational efficacy to the scheme of the Act and public purpose the Act seeks to serve, we are of the considered view that publication in the Official Gazette already made under clause (i) of proviso to sub-section (1) of Section 6 is complete, as soon as the declaration under Section 6(1) was published in the Official Gazette. That will be the date for the purpose of computation of three years period from the last of the dates of the publication of the notification under Section 4(1). The procedural ministerial acts prescribed under sub-section (2) are only for the purpose of the procedure to be followed "hereinafter", in other words, the steps to be taken subsequent to the publication of the declaration under Section 6(1) of the Act. We cannot agree with Shri Rana, the learned Senior Counsel, that the date of making the declaration by the Secretary to the Government or the authorised officer is the date for computing period of three years. Equally, we cannot agree with the learned counsel for the respondents, Shri Upadhyay, that publication of the substance being the last date from which

the period of three years needs to be computed. Acceptance of either contention would easily defeat the public policy under the Act by skillful manner of management with the lower level officials."

13. Thereafter, the Court proceeded to analyze the scheme and policy of the Act as under:

"16. The above view of this Court lends support to the view that for the purpose of calculating the limitation prescribed under clause (ii) of the first proviso to Section 6(1), it is not the last of the publication in the series that should be taken into account, but the publication that was made in the first instance under Section 6.

17. In the light of the law laid down by this Court, we have no hesitation to hold that the declaration published under Section 6 of the Act was well within one year and the challenge to the same has been rightly rejected by the High Court. However, the view taken in the judgment of the High Court under appeal that the relevant date for reckoning the period of limitation will be the date of making of the declaration under Section 6, may not be correct. As held in *Krishi Utpadan Mandi Samiti's* case, mere making of declaration is not enough. The making of declaration under Section 6 is complete for the purpose of clauses (i) and (ii) of the first proviso to Section 6(1) when it is published in the official gazette."

14. It may also be relevant to quote the ratio of the decision of the Hon"ble Apex Court in the case of *The General Manager, Department of Telecommunications, Thiruvananthapuram Vs. Jacob Kalliath (Dead) by Lrs. and Others*, AIR 2003 SC 1308 : (2003) 3 JT 522 : (2003) 3 SCALE 549 : (2003) 9 SCC 662 : (2003) 3 SCR 214 : (2003) AIRSCW 1308 : (2003) 3 Supreme 694 :

"We have carefully considered the submissions of the learned counsel on either side. The Division Bench seems to have committed a patent error, despite the decision of this Court reported in *Eugenio Misquita v. State of Goa* (which does not appear to have been brought to its notice) on a literal construction of Section 11-A of the Act, by proceeding on a hypothesis that if the Collector who was obligated to make an award under Section 11 within a period of two years from the date of the publication of the declaration, the entire proceedings for the acquisition of the land shall lapse, completely overlooking the mandate contained in sub-section (2) of Section 6 that of the various modes of publications envisaged therein, the last of any of the three modes in the series should be taken to be the date of publication and consequently taken into account for purposes of making the award as laid down in Section 11-A. While applying the ratio in *Krishi Utpadan Mandi Samiti v. Markand Singh* this Court in *Eugenio Misquita* observed at SCC p.52, para 9 as hereunder:

"This publication has, therefore, nothing to do with the publication referred to in Section 6(2) of the Act which is for a different purpose, inter alia, for reckoning the limitation prescribed under Section 11-A of the Act. This construction is supported by the language employed in Section 6(2) of the Act. In particular, the

word "hereinafter" used in Section 6(2) will amply prove that the last of the series of the publication referred to under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11-A. The language employed in second proviso to Section 6(1) also supports this construction.

That apart, the words "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration" leave no room for any assumptions to the contrary. Thus, the view taken by the High Court in this case not only runs counter to the mandate of law enacted by Parliament, but is opposed to the dicta of this Court and consequently does not merit our acceptance."

15. The law as enunciated by the Hon"ble Apex Court quoted hereinabove clearly lays down that the declaration must be made within one year from the date of publication of the notification under Section 4 and for the purpose of calculating the limitation prescribed under clause (ii) of proviso to Section 6(1) of the Act, it is not the last in the publication of the series which should be taken into account but the declaration that was made in the first instance under Section 6.

16. The next question which immediately arises for consideration is starting point of limitation of one year prescribed by clause (ii) of proviso to Section 6. Section 4(1) of the Act has already been quoted above. It prescribes three modes of publication of the intent of the Government viz. (i) official gazette, (ii) two daily newspapers having circulation in the locality, one of which should be in regional language; (iii) public notice of the substance of such notification at convenient place in locality. By Amending Act No. 68 of 1984 it was provided that last of the dates of the publication and public notice shall be referred to as the date of publication of the notification. Thus the Statute has itself prescribed that out of the three prescribed modes of publication the last of the dates of such publication and the giving of public notice shall be taken as the date of publication of notification under Section 4(1) of the Act.

17. Hon"ble Apex Court in the case of Eugenio Misquita (Supra), has answered the issue by observing in paragraph 7 (quoted above) that it is the last date in the series of publication made under Section 4(1) which is the starting of limitation for the purpose of proviso (ii) to Section 6(1) of the Act. Same view has been taken by a Division Bench of this Court in the case of Sahara India Commercial Corp. Ltd. and Others Vs. State of U.P. and Others by observing in paragraph 96 of the reports as under:

"The proviso (ii) of Sub-section (1) provides that no declaration, in respect of any particular land covered by a notification under Sub-section (1) of Section 4, shall be published after the commencement of the Land Acquisition (Amendment) Act, 1984, after the expiry of one year from the date of publication of the notification. The date of publication of notification is provided by the same amendment of 1984, to section 4 (1) to be the last of the dates of the publication under Sub-

section (1) of Section 4, and the giving of such public notice. Sub section (1) of Section 4 provides for three different methods of publication. The notification has to be published in the Official Gazette and in two daily newspapers circulated in the locality of which at least one shall be in the regional language. Further, the Collector is required to cause public notice of the substance of such notification to be given at convenient places in the said locality. By Act No. 68 of 1984, it was provided that the last of the dates of such publication, and giving of such public notice, is to be referred to as the date of publication of the notification. The last of the dates of the publication in the present case being the date on which the notice was published in the locality on 6.11.2004, by beat of drums is thus to be treated as the last of the dates of publication for the purposes of counting limitation under the proviso (ii) to Section 6(1) of the Act."

18. Now coming to the facts of the present case, according to the petitioners, there was no publication by beat of drums in the locality and the last date of publication under Section 4 was 25-10-2013 when it was published in two local Hindi daily newspaper. However, the affidavit filed by the respondents clearly asserts that publication by beat of drums in the village took place on 07-11-2013. The State respondents along with their counter affidavit have filed documents certifying that Munadi was done. The documents contains the signature of Gram Pradhan and as also that of the "Munadi Karta" and also of two witnesses. The document certifies that notices were served on the interested persons and were pasted on the Panchayat Bhawan, Tehsil Officer and the Collectorate and also a "Public Munadi" was done. The document is counter signed by Additional District Magistrate (Land Acquisition). The allegations of "public notice/Munadi" are contained in paragraph 10 of the affidavit of the State. In the rejoinder affidavit, there is no specific denial of the allegations. Denial of the same in the rejoinder affidavit is vague and evasive and what has been stated is that the contents are not admitted and the correct facts have already been stated in the foregoing paragraph of this affidavit. In the foregoing paragraph of the rejoinder affidavit though the contents of the certificate have been tried to be denied on various grounds but they do not inspire much confidence.

19. In view of the allegations made in the pleadings of the parties, we are of the considered opinion that public notice was given and "Munadi" by beat of drums was effected in the locality on 07-11-2013 which is to be taken as the last date of publication of notification under Section 4 of the Act. Undisputedly, the publication of declaration under Section 6 in the official gazette is dated 30-10-2014.

20. In view of above facts and discussions, we are constrained to hold that publication under Section 6 was made well within one year from the date of notification under Section 4 of the Act and the arguments advanced by learned counsel for the petitioners in this regard are devoid of merits and have no force.

21. The second argument advanced on behalf of the petitioners is that notice

under Section 5A was never served upon the landholders and no hearing took place under Section 5A of the Act inasmuch as on the date fixed neither the Additional District Magistrate nor the Special Land Acquisition Officer were present and thus the so called report sent by the Collector based upon which the State Government made a declaration vitiates the sanctity of publication.

22. Section 5-A of the Act reads as under:

"5-A. Hearing of objections.--(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be."

23. Section 5-A empowers the interested persons to object to the acquisition of the land. However, there is limitation of 30 days prescribed from the date of issuance of the notification of filing objection.

24. In the case of *Munshi Singh and Others Vs. Union of India (UOI)*, AIR 1973 SC 1150 : (1973) 2 SCC 337 : (1973) 1 SCR 973 , the Hon''ble Apex Court emphasised upon the importance of Section 5-A and observed in paragraph 7 as under:

"7. ...Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

25. Again in *State of Punjab and Another Vs. Gurdial Singh and Others*, AIR 1980 SC 319 : (1980) 2 SCC 471 : (1980) 1 SCR 1071 , the Hon''ble Apex Court observed as under:

"it is fundamental that compulsory taking of a man''s property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

26. In a recent decision in the case of Raghbir Singh Sehrawat Vs. State of Haryana and Others, AIR 2012 SC 468 : (2011) 13 SCALE 260 : (2012) 1 SCC 792 : (2012) AIRSCW 240 , the Hon'ble Apex Court after referring to its earlier decisions on the issue observed in paragraphs 39 and 40 as under:

"39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

27. It is thus clear that proceedings under the Land Acquisition Act are based on the principle of eminent domain of the State and Section 5-A is the only protection and remedy available to that person whose land is sought to be acquired. It is a minimal safeguard afforded to him by the Statute to protect himself by pointing out to the authority concerned that not only the acquisition is arbitrary but namely, "public purpose" for which the land is being acquired is absent or the acquisition is malafide. Hearing contemplated under Section 5-A is necessary to enable the Collector to deal effectively with the objections against the proposed acquisition and make a report which forms the basis for the Government to take a final decision on the objection and only thereafter a declaration under Section 6 can be made. Section 5-A(2) which represents statutory embodiment of the rule of audi alteram partem gives an opportunity to the person whose land is sought to be acquired, to make an endeavour to convince the Collector that his land is not required for public purpose as specified in the notification under Section 4 or that there are other valid reasons for not acquiring the same. Thus a proper hearing to the objector assumes significant importance.

28. In the case in hand, the petitioners themselves have alleged in paragraph 16

that after receiving notices under Section 4 of the Act, some of the petitioners filed written objection and they all were present on 09-12-2013, the date fixed for hearing. The allegations made by the petitioners that all of them were present at the time of hearing is sufficient to establish that they had full notice. The allegations made in the writ petition that no hearing was given has been denied in the affidavit filed on behalf of the State respondents. It has been categorically mentioned in paragraph 18, 19 and 20 that the petitioners appeared and participated in the hearing. It may be pertinent to quote the above paragraphs which read as under:

"18. That, it is relevant to point out here that at the time of hearing though the petitioners appeared before the Additional District Magistrate (Land Acquisition) and participated in the hearing, but did not adduce any evidence in support of their claim. The Additional District Magistrate (Land Acquisition) proceeded with the matter and after hearing the contention of the parties, decided the matter/objections on the basis of record.

19. That, the hearing took place in respect of both the villages and the petitioners, including other objectors, participated in the hearing. In the village Aslaimpur Nagla Kanhar only three objections were received by the respondent authorities, which were also disposed of.

20. That, the contention of the petitioners that they were not heard while deciding the objections under Section 5-A of the Act, 1894, is wrong and misconceived."

29. Though in paragraph 15 of the counter affidavit the averments are denied but again the denial is evasive and does not inspire much confidence. From an overall assessment of fact, the picture that emerges out is that all the petitioners were present on the date fixed for hearing and participated in the proceedings.

30. Further a perusal of the objection filed by the petitioners and the report dated 10-12-2013 which has been brought on record along with the affidavit of the State respondents clearly goes to show that the objections which were raised were appropriately dealt with and report was made after due application of mind. A perusal of the report made on 10.12.2013 goes to show that the objections raised in respect of the acquisition on the allegation that there are "abadi" standing thereon, there are borings and the land was irrigated have been duly taken note of by the Additional District Magistrate (Land Acquisition) while considering the objections. It is pertinent to mention here that most of the objections did not contain any ground or reason to point out why the acquisition was bad, unwanted or arbitrary or there was no public purpose. The objections mainly pertained to valuation of the land which was in the domain of objections to be filed under Section 9 of the Act. The report indicates that the petitioners were given opportunity but they did not adduce any evidence.

31. It has been stated in the report that keeping in view the public purpose of constructing the expressway it was not desirable to exempt the land from

acquisition proceedings and quantum of compensation to be paid will be determined after obtaining the valuation report in accordance with the law and the provisions of the Act.

32. While considering the objection under Section 5-A the Collector is not required to arrive at any decision like a court. He has only to submit the case for decision of the appropriate Government together with the record of the proceedings held by him and a report containing his recommendation on the objections, relying upon which the Government takes its decision under Section 6 of the Act. It is true that for making the report the Collector is required to follow the procedure prescribed under Section 5-A of the Act and to give the objector an opportunity, and after hearing all such objections and making such further inquiry, as he thinks necessary to make a report of his recommendation on the objections.

33. In such view of the matter, the report on the objections along with recommendation satisfies the test. All the petitioners were present in person on the date of hearing. A perusal of the report goes to show that objections of the petitioners were properly dealt with, heard and the report along with the recommendation was made after due application of mind. We are satisfied that the report dated 10.12.2013 was made in full compliance of mandatory directions of Section 5-A of the Act. Thus the second submission advanced on behalf of the petitioners also does not merit consideration.

34. No other ground has been raised or pressed before us.

35. In view of above facts and discussions, we find no merit in the writ petition and the same accordingly stands dismissed.

36. However, in the facts and circumstances, there shall be no order as to costs.