

(2008) 08 MP CK 0056
In the Madhya Pradesh High Court

Executive Engineer, M.P. Housing Board and Others	APPELLANT
Vs	
Shri Kant Mishra and Others	RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17, 4, 5A, 6

Citation : (2009) ILR (MP) 21 : (2009) 1 MPHT 162 : (2008) 4 MPLJ 384

Hon'ble Judges : Sushma Shrivastava, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.

The writ petitions were preferred before the Single Bench assailing acquisition of the land at Village, Padara, Tehsil Huzur, District Rewa. The land was acquired for the purpose of residential scheme by M.P. Housing Board. Notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), was issued on 26-9-2005 by the Collector cum Ex-Officio, Dy. Secretary, Govt. of M.P., Revenue Department. The following notification u/s 4(1) was issued:

SCHEDULE -----					
Description of land	Officer authorized	Detail of	-----		
under Sub-section	public	District Tehsil	City/	Approx. (2)	3 of Section 4 purpose
Village	area	in	Hectares		
			(1)	(2)	(3)
(4)	(5)	(6)	-----		
Rewa Huzur Padara	10.594	Executive Engineer Construction Suaran	Hectares		
M.P. Housing Board	work of Tola Division,	Rewa Residential Scheme			

The notification was challenged on the ground that it is vague and consequently, illegal. The learned Single Judge has allowed the writ petitions holding that neither the Khasra numbers nor the names of the land owners, whose lands are

sought to be acquired in the village, are mentioned in the notification. At the same time it has been held by the learned Single Judge that Section 4(1) does not require the "identity of the land" which may ultimately be required to be specified with too many details but it casts upon the Government a duty to specify the locality in which the land is needed. The notification u/s 4 of the Act and the acquisition proceedings pursuant thereto have been quashed. Dissatisfied thereby the M.P. Housing Board has preferred these writ appeals.

It is submitted by Shri R.K. Samaiya, learned Counsel appearing for appellants that in the notification which was issued not only the name of village, i.e., "Padara" was mentioned but name of the locality "Suarantola" has also been mentioned beside Tehsil "Huzur", District "Rewa", thus the notification is in compliance of Section 4(1) of the Act, it cannot be said to be vague. There is no requirement to mention the survey numbers or name of owners of lands at the stage of issuance of notification u/s 4 of the Act, as the very purpose of issuance of notification u/s 4 is to make survey for the purpose of assessing the suitability and to make the mind finally "which land would be suitable in the locality for the purpose of acquisition". Counsel has further submitted that in *Narendrajit Singh v. State of U.P.* (1970) 1 SCC 125, the notification issued u/s 4 of the Act did not contain the name of the locality, Tehsil or District and in *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, there is wrong quoting of the notification u/s 4 of the Land Acquisition which was not quashed by the Apex Court in the case of *Narendrajit Singh* (supra). In the later decision also *Om Prakash Sharma and Ors. v. M.P. Audyogik Kendra Vikas Nigam and Ors.* (2005) 10 SCC 306, aforesaid decisions have been followed in which it has been laid down that it is not possible to give the survey numbers at the stage of notification u/s 4 of the Act.

Shri A.M. Trivedi, Sr. Counsel with Shri S.K. Mishra, and Shri Dilip Pandey, Counsel for respondents/owners of land, have submitted that notification has been rightly quashed as similar notification was quashed in *Narendrajit Singh's* case (supra) and in *Mohd. Shaft's* case (supra) which decisions have been followed by the Apex Court in *Om Prakash Sharma and others* (supra). The notification issued is quite vague and has been rightly quashed by the learned Single Judge relying upon the aforesaid decisions.

The first question which arises for consideration is whether it is possible to give the specific survey numbers and the name of the owners at the stage of issuance of notification u/s 4 of the Act. Section 4 of the Act is quoted below:

4. Publication of preliminary notification and powers of officers thereupon.- (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 or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification 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 notification").

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line, by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

It is apparent from Sub-section (1) of Section 4 of the Act that only locality in which the land was likely to be needed for any public purpose, is required to be mentioned. Sub-section (2) of Section 4 provides that thereupon after issuance of notification under Sub-section (1) of Section 4, it shall be lawful for any officer to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line, by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crops, fence or jungle. Thus, Section 4 provides a first step towards acquisition of land. The main purpose of the notification is to take the preliminary proceedings. The notification is of exploratory character and discloses tentative intention. After discharging the functions u/s 4, the authorised officer is required to make report under Sub-section (4) of Section 4. At the stage of Section 4, Govt. may not in fact possessing all the necessary details which are dependent upon the survey on which it can decide which land in the locality would be suitable for the public purpose. Investigation into necessary data provided u/s 4(2) empowered the entry to carry out various operations mentioned therein on any land in such locality. Only after such survey is made, Govt. can decide, which particular land in the locality is adapted or suitable for

the public purpose.

The Apex Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, has also observed that the purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out whether land is suitable for the purpose of execution. It is only u/s 6 that a firm declaration has to be made with proper description and area so as to be identifiable. The Apex Court has laid down thus:

The purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary action adapted for the purpose for which it was sought to be adapted for the purpose for which it was sought to be acquired. It is only u/s 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal u/s 4 becomes the subject-matter of a definite proceeding for acquisition under the Act.

At the stage of Section 4 land is not particularized but only the locality is mentioned in which the land is or likely to be acquired. Section 4 specifies the locality followed by objections and working of the mind by the Government, what particular land, out of that locality would it needs. The Apex Court in *Babu Barkya Thakur (supra)*, has further observed thus:

Section 4 specified the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed.

The notification u/s 4(1) thus informs the public that land is required or would be required in a particular locality and thereafter the members of the public owning land in that locality have to make objections u/s 5-A.

But as we read these three sections together, we can only find that the Scheme is that Section 4 specified the locality,...followed by objections and making up of its mind by the Government what particular land out of that locality it needs;

At the stage of Section 4, the land is not particularised but only the locality is mentioned.

Thus, it is clear that at the stage of notification u/s 4 only locality is required to be mentioned not the survey numbers or the names of the owners of the land, as it is not possible to meet these particulars without entering into the exercise contemplated in Sub-section (2) of Section 4.

In *Narendrajit Singh (supra)*, which has been followed in *Mohd. Shaft (supra)* and *Om Prakash Sharma (supra)*, the notification which was quashed by the Apex Court was mentioned in Para 2 not in Para 4 of the report in (1970) 1 SCC 125. The aforesaid notification in Paras 2 and 4 of the *Narendrajit Singh (supra)*, contained the notification which came for consideration before Their Lordships of the Apex Court, Para 2 containing notification u/s 4 is quoted below:

2. The facts relevant for the disposal of the appeals are as follows. On October 15, 1960 the Government of Uttar Pradesh issued a notification purporting to be one u/s 4(1) of the Land Acquisition Act, 1894 to the effect that "the land mentioned in the Schedule is needed for a public purpose". The notification further showed that "the Governor being of opinion that the provisions of Sub-section (1) of Section 17 of the said Act are applicable to the land, is further pleased under Sub-section (4) of the said section to direct that the provisions of Section 5-A of the Act shall not apply". The Schedule to the notification reads as follows:

8. "SCHEDULE" -----
District Pargana Mauza Approximate For what purpose area required
----- For the
rehabilitation of displaced families from East Pakistan, under the Ministry of
Rehabilitation, Government of India.
----- Note: The plan
of the land may be inspected in the office of the Collector, Rampur.

In Para 4 of Narendrajit Singh's case (supra), Their Lordships of the Apex Court quoted the notification issued under Sub-section (1) of Section 17 to take possession of the land. The relevant portion of Para 4 of Narendrajit Singh's case (supra), is quoted below:

4. The case being one of urgency the Governor was further pleased under Sub-section (1) of Section 17 of the Act to direct the Collector of Rampur, though no award u/s 11 has been made, on the expiration of the notice mentioned in Sub-section (1) of Section 9, to take possession of the land, being waste or arable land mentioned in the Schedule for a public purpose.

9. "SCHEDULE" -----
District Pargana Mauza Approximate For what purpose Remarks Area
----- Rampur
Bilaspur Gokal 125 acres For the rehabilitation Nagri of East Pakistan displaced
families under the Ministry of Rehabilitation, Government of India.

The Apex Court in Para 8 of Narendrajit Singh's case (supra), dealt with and held the "locality", where the land was needed was not specified. The Pargana, Mouza and approximate area were kept vacant which was the position in the notification issued u/s 4 quoted in Para 2 of the Narendrajit Singh's report. The notification which is reproduced in Para 4 of the report of Narendrajit Singh's case in (1970) 1 SCC 125, was not adversely commended upon by the Apex Court in Narendrajit Singh's case (supra), as in it District, Tehsil, Mouza and Area were mentioned. The Apex Court in Narendrajit Singh's case, in Para 8 has dealt with the aforesaid notification u/s 4 of the Act mentioned in Para 2 of the report of (1970) 1 SCC 125, thus:

8. Section 4(1) does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the lands is needed. In the instant case, the notifications suffer from a very serious defect in that the locality where the lands were needed was not specified. The notification merely showed that lands mentioned in the Schedule were needed. The Schedule in its turn though it contained the headings District, Pargana, Mauza and approximate area, gave no particulars of the same and all that was mentioned by way of a note was that the plan of the land might be inspected in the office of the Collector of Rampur. As no details were given, the only indication about the locality of the lands was possibly the locality of the District of Rampur inasmuch as the plan of the land was to be found in the office of the Collector of the same district. Certainly the Act did not intend that all the persons owning land in a district should rush to the Collector's office to find out whether his lands were covered by the notification.

Obviously, notification which was quashed by the Apex Court in Narendrajit Singh's case (supra), did not mention the names of District, Pargana, Mouza and area, consequently, it was quashed. The Apex Court has laid down that Section 4(1) does not require that identity of the land which may ultimately be acquired should be specified only the locality should specified in which the land is needed. Locality does not mean that particulars of the land have to be mentioned.

In Mohd. Shaft's case (supra), in Para 13, notification issued in Narendrajit Singh's case (supra) was quoted but it was not the notification which was quashed in the case of Narendrajit Singh's case (supra). It was notification u/s 17 referred to in Para 4 of Narendrajit Singh's case, reported in (1970) 1 SCC 125. Para 13 of Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, , is quoted below:

13. In Narendrajit Singh v. State of U.P., while dealing with the requirement of a valid notification u/s 4 of the Act, this Court observed that the defect of non-mention of the locality where the proposed land was situated in the notification was a very serious defect vitiating the notification. In that case, the Schedule attached to the notification issued under Sections 4(1) and 17(1) of the Act read as follows:

"SCHEDULE" -----
District Pargana Mauza Approximate For what purpose Remarks area
----- Rampur
Bilaspur Gokal 125 acres For the rehabilitation Nagri of East Pakistan displaced families under the Ministry of Rehabilitation, Government of India.

This Court opined that though Section 4(1) does not require the identity of the land which may ultimately be acquired to be specified with too many details but it undoubtedly casts upon the Government a duty to "specify the locality in which the land is needed". In Narendrajit Singh's case, this Court also repelled the

argument identical to the one raised by Mr. Thakur that since detailed particulars of the land had been given in the notification issued u/s 6(1) of the Act, the absence of those particulars consequence. The Court said:

In our view the defect in a notification u/s 4(1) cannot be cured by giving full particulars in the notification u/s 6(1).

It is apparent from aforesaid Para 13 of Mohd. Shaft's case (supra) that notification quoted in the para was not quashed by the Apex Court in Narendrajit Singh's case (supra), but the notification which was quashed was mentioned in Para 2 of the report of Narendrajit Singh (supra). The notification of Narendrajit Singh's case (supra), mentioned in Para 13 of Mohd. Shaft's case (supra), was not adversely commented upon by the Apex Court in Para 8 of the report of (1970) 1 SCC 125 in Narendrajit Singh (supra), as in it name of District, Tehsil and Mouza and also the area were clearly mentioned. Thus, on facts we cannot accept the submission raised by the respondents' Counsel that a similar notification was quashed by the Apex Court in Narendrajit Singh's case (supra). In Narendrajit Singh's case, the notification which was quashed u/s 4 was quite vague in which names of district, tehsil and mouza were not mentioned, it was quoted in Para 2 of the report.

The notification which was quashed by Their Lordships in the Mohd. Shaft's case (supra), is quoted below:

2. The Schedule to the notification provided as follows:

SCHEDULE -----							
Particulars of land under public area	Authorised in	Details of District Section 4(2)	Tehsil City	Approximate purpose	Officer Hectares	(1)	(2) (3)

(4)	(5)	(6)	-----				
Mandsaur Construction	Mandsaur	Mandsaur	229 Executive Board,	Residential Engineer	M.P. Housing		Ratlam

The Apex Court has quashed the aforesaid notification in Mohd. Shaft's case (supra), for the reason mentioned in Paras 11 and 12 quoted below:

11. The High Court found that Mandsaur is no more a small village but a municipal ward having a population of more than 80,000 people and is spread over an area of 25 sq. kms. and the absence of the details of the land or the locality where the same is situate, vitiates the notification for non-compliance with the provisions of the Act.

The description of the land in the notification issued under Sections 4(1) and 17(1), in our opinion, is very cryptic. Not only no Khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of Mandsaur which is spread over an area of 25 sq. kms. and is divided into various Municipal wards, against the "locality" is wholly insufficient description and the

respondent or anyone else could not have come to know from that description whether 2.298 hectares of land which was required for acquisition included the land belonging to him or not. The non-disclosure of the "locality" with precision, invalidates the notification and renders the publication of notice a meaningless formality.

Their Lordships clearly made distinction between small village and a big city district head quarter like Mandsaur divided into 35 wards having large population and area of 25 sq. kms. Consequently, the notification was held to be vague. Mandsaur is a district place, divided into 35 municipal wards, even locality was not mentioned. Mere mention of "Mandsaur" which was spread over at 25 sq. kms. was held to be insufficient description of locality.

The ratio of Narendrajit Singh's case and Mohd. Shaft's case (supra), is that in notification u/s 4 of the Act locality with precision should be mentioned not identity of the land. Too many details of land are not to be given. In Om Prakash Sharma (supra), also, the decision of Mohd. Shafi 's case (supra), has been relied upon which is based on Narendrajit Singh's case (supra). In Om Prakash Sharma's case (supra) in Para 5 notification of Mohd. Shaft's case has been quoted which was with respect to Mandsaur, the district place divided into various municipal wards, locality of Mandsaur was not mentioned. Thus, we are unable to agree with the submissions raised by the Counsel for respondents/owners of land that similar notification was quashed in Mohd. Shaft's case (supra).

In Bai Malimabu and Others Vs. State of Gujarat and Others, , the Apex Court held that when the land is mentioned that includes super-structure, it is not the requirement of law to mention the structure if any in the notification u/s 4. The Apex Court in Babu Singh and Others Vs. Union of India (UOI) and Others, , laid down that the statement of public purpose u/s 4(1) notification is more comprehensive setting out details of improvement works, while the one set out u/s 6(1) notification is more precise and restricted in terms. u/s 4, broad and understandable statement has to be made of public purpose.

Thus, the ratio of the decisions of the Apex Court consistently is that locality should be mentioned with precision not the precise identity of the locality at the stage of notification u/s 4 of the Act. Similar is the view expressed by several High Courts. In Abdul Jabbar v. State of West Bengal ILR (1967) 1 Cal 157, it was laid down that the notification u/s 4 is merely exploratory or preliminary in nature and the exact area to be acquired need not be particularised at that stage, but it is otherwise with the declaration u/s 6 which is issued after the Government has applied its mind to the exact area and location of the lands which are needed for the purpose of and are, therefore, acquired. Delhi High Court in Rajkumar and Anr. v. The Union of India and Ors. ILR (1974) 2 Del 81, has laid down that at the stage of notification u/s 4(1), it is not absolutely necessary that Government should have particularized the land. In Bahadur Singh v. Union of India ILR (1976) 1 Del 375, it was laid down in Para 68, that it is not necessary that each and every items of the land should be mentioned in

the notification u/s 4 which means that survey numbers are not required to be mentioned. A Division Bench of Allahabad High Court in Chandan Singh Gosain Vs. State of U.P. and Another, , following the decision of Narendrajit Singh's case (supra), held that plot numbers and other details are not necessary to be mentioned in the notification issued u/s 4 of the Act. Only the locality is to be mentioned which by very purpose of Section 4 can be mentioned. A Division Bench of Calcutta High Court in Jogendra Nath Chatterjee and Others Vs. State of West Bengal, , held that neither the plots nor their boundary has to be specified in notification u/s 4(1), but, the locality must be stated. In Lal Bahadur and Others Vs. The State of U.P. and Others, , Allahabad High Court held that when the notification u/s 4(1) did not mention the details about the purpose of the plots or their boundaries, the notification could not be held to be vague as other sufficient particulars were mentioned.

In the light of the principles laid down in the aforesaid decisions of the Apex Court and other decisions, coming to the notification issued u/s 4 in the instant case, it is apparent that name of the Village "Padara" has been mentioned, name of Tehsil Huzur, name of District Rewa has also been mentioned. Not only that "mohalla", i.e., precise locality where the land is situated at Village Padara has also been mentioned as "suarantola". Name of Village is Padara as apparent from Bhu Adhikar Evam Rin Pustika and Khasra Entry (P-2) filed by the petitioner, in W.P. No. 14387/06 and from certificate of Tehsildar (A-4) placed on record, from documents, it is clear that Suarantola is one of the locality of the Village Padara. It is obvious from name itself "Tola" means the smaller place as compared to the village, thus, mention of Suarantola in Village Padara is for precise locality. In the notification the particulars of the locality enjoined u/s 4(1) of the Act, has been mentioned with quite precision in the instant case. It was not possible to give any further details before survey was undertaken and finally mind was made up by the State Government before making the survey u/s 4(2) of the Act. Thus, the notification issued u/s 4 in the instant case, mentioning the name of the district, tehsil and village and particularly tola (mohalla) of the village cannot be said to be the vague notification. It was not necessary to give the survey numbers and the names of the owners in the notification issued u/s 4 of the Act.

In our opinion, the notification issued u/s 4 in the instant case is valid, it cannot be said to be vague. Notification and acquisition proceedings taken pursuant thereto cannot be said to be invalid, consequently, we have no hesitation in setting aside the impugned order passed by learned Single Judge quashing the notification. Impugned order passed by learned Single Judge is hereby set aside.

We hold the impugned notification issued u/s 4(1) of the Act and the proceedings taken thereunder to be valid. Writ appeals are hereby allowed. We leave the parties to bear their own costs as incurred.