

(1989) 08 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 14935 of 1988

Garg Farms and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Forest Act, 1927 — Section 4, 4A

Land Acquisition Act, 1984 — Section 17(1), 17(2), 17(4), 4, 4(1)

Citation : (1989) 2 AWC 1137

Hon'ble Judges : R.K. Gulati, J;A.N. Varma, J

Bench : Division Bench

Advocate : H.S. Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This petition raises a question as to the interpretation of Section 4(1) of the Land Acquisition Act (as it stands after the Land Acquisition (Amendment) Act, 1984). The contention urged in support of the petition by the learned Counsel was that if the Collector causes public notice of the substance of the notification issued u/s 4(1) of the Act after the publication thereof in the official gazette and two daily newspapers, the entire proceedings u/s 4(1) would be completely invalidated. We have to consider the correctness of this submission, before, however, we examine the contention we may briefly set out the essential facts.

2. The Petitioners claim to be tenure-holders of the various plots situate in villages Mandola and Nanu, District Ghaziabad. These plots are among the numerous plots which are the subject-matter of the impugned notifications issued by the State Government under Sections 4 and 6 of the Land Acquisition Act. The notifications are dated respectively February 25, 1988 and July 7, 1988. The notifications state that the land mentioned therein was urgently needed for a public purpose, namely, the construction by the National Thermal Power Corporation Ltd. of a 400 KV Sub-Station and staff quarters. The Respondents

assert that in connection with the construction of the said Sub-Station, it was proposed to acquire a total area of 109.6625 acres of land situate in the aforesaid two villages of district Ghaziabad. The project in pursuance of which the land was sought to be acquired was designed to transmit and regulate the supply of electricity of 400 KV to the northern region of the State of Uttar Pradesh, State of Haryana, Union Territory of Delhi, State of Punjab, State of Rajasthan and a portion of the State of Himachal Pradesh- It is claimed that the project was of great national importance undertaken to cater to the needs of electricity to the vast region covering the aforesaid States. The notification dated February 25, 1988 issued u/s 4(1) was published in the two daily newspapers having circulation in the concerned locality on March 10, 1988 and in the official gazette on March 26, 1988. The public notice of the substance of the notification was given by the Collector at convenient places in the said locality on March 8, 1988. In the notification dated February 25, 1988 issued u/s 4(1) it was also stated that on account of the urgency of the matter the provisions of Section 5-A of the Act shall not apply. Thereafter a notification dated July 7, 1988 was issued u/s 6(1) of the Act stating that the Government was satisfied that the land mentioned in the notification issued u/s 4(1) was needed for the aforesaid public purpose. This notification was duly published in the official gazette, two local newspapers and by means of a public notice given by the Collector, respectively on August 13, 1988, July 19, 1988 and July 21, 1988.

3. It appears that in pursuance of the aforesaid notifications possession was taken by the State Government through the Special Land Acquisition Officer over about 70% of the area of the land acquired thereunder. The possession memos dated December 7, 1988 are on record. Some of the affected land-holders, however, resisted and filed this petition on August 5, 1988. In the petition the validity of the aforesaid notifications was assailed initially on two grounds. First, that the Respondents had not caused any public notice of the substance of the notifications issued under Sections 4 (1) and (6) at convenient places of the locality. Second, that there was no such urgency as to justify doing away with the provisions of Section 5-A of the Act. In the course of arguments, however, and after receiving copies of the affidavits filed by the Respondents the learned Counsel did not press the first point. He, however, submitted that the notification issued u/s 4(1) was not published in the three modes, namely, publication in the gazette, two newspapers and public notice of the substance of the notification required to be made by the Collector in the concerned locality in the order in which they were required to be made under that provision. The submission in particular was that inasmuch as the publication of the substance of the notification was caused to be made by the Collector by giving public notice in the locality on March 8, 1988, that is prior to the publication of the notification in the official gazette and newspapers, the notification dated February 25, 1988 was rendered completely void.

4. In order to appreciate the submissions made at the Bar by the learned Counsel for the Petitioner and the learned Advocate General appearing for the

Respondents, it will be convenient to have a look at the relevant provisions. Section 4(1) of the Land Acquisition Act (as it stands after its amendment by the Central Act No. 68 of 1984) provides:

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.

5. The legislative scheme reflected by an analysis of this provision seems to be this: First the Government takes a decision that the land is or is likely to be needed for a public purpose and it records that decision. Thereafter the Government takes steps to notify its decision by publishing the same in the three modes prescribed u/s 4(1). These consist of publication of the notification in the gazette and two newspapers having circulation in the locality as well as giving of a public notice of the substance of the notification at convenient places in the concerned locality. Now the term "notification" which has been subject of so much of discussion at the Bar has not been defined in the statute. The language used in Section 4(1), however, is "a notification to that effect shall be published", which in the context suggests that the term implies a formal expression or record of the decision of the Government that the land is needed or is likely to be needed for a public purpose. Having recorded its decision the Government takes steps for publishing its decision in the manner prescribed u/s 4(1). It does so by dispatching the copies of the notification to the Government Press (for publication in the Official Gazette), the two newspapers circulating in the local area, and the Collector for causing public notice of the substance of the notification to be given at convenient places in the concerned locality. It is not difficult to see that though the notification may be dispatched by the Government simultaneously to the three agencies concerned with the publication of the notification or the substance thereof, the dates of actual publication of the notification may differ as in the present case they did. It is this contingency which the legislature appears to have had in mind and consequently it added the words "the last of such dates..." in Section 4(1). These words are explicit and unambiguous. They obviously mean whichever is the last of the dates of publication of the notification or giving of public notice shall be treated as the date of the publication of the notification. The words also irresistibly indicate that the Legislature did not rule out the possibility of the publication of the notification in the three modes not taking place strictly chronologically, that is, in the sequence in which they are mentioned in Section 4(1). Strict adherence to the sequence in which the modes of publication appear in Section 4(1), is, to our mind, wholly discounted by the language employed by the law makers vide the

words "the last of the dates..." in Section 4(1). Had the legislative intent been to make the sequence mandatory it would simply have stated that the date of the giving of public notice by the Collector shall be treated as the date of the publication of the notification. So upon plain terms of Section 4(1) the contention stands negated.

6. We are fortified in our conclusion by the observations made by the Supreme Court in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, , construing Section 4(1) (as it stood prior to its amendment) their Lordships observed thus at page 1723 (paragraph 3):

It may be noticed at once that Section 4(1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the official Gazette or immediately thereafter. Publication in the Official Gazette and public notice in the locality are two vital steps required to be taken u/s 4(1) before proceeding to take the next step of entering upon the land u/s 4(2). The time factor is not a vital element at Section 4(1) and there is no warrant for reading the words simultaneously or immediately thereafter into Section 4(1). Publication in the Official Gazette and public notice in the locality are the essential elements of Section 4(1) and not the simultaneity or immediacy of the publication and the public notice. But, since the steps contemplated by Section 4(2) cannot be undertaken unless publication is made and public notice given as contemplated by Section 4(1), it is implicit that the publication and the public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally contemporaneity may involve a gap of time and by the very nature of the things, the publication in the Official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by a long interval of time. What is necessary is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to any one.

(emphasis added)

However, whatever may have been the legal position as to the sequence in which the notification u/s 4(1) had to be published, after the amendment of that provision there can be no manner of doubt that if the notification has been published in accordance with the three modes prescribed u/s 4(1), the variation in the sequence in which the publication takes place, shall not invalidate the notification. We cannot accept the contention of the learned Counsel for the Petitioners that the notification the substance of which the Collector is required

to publish in the locality is the gazette notification. The distinction between the notification and its publication must be borne in mind. As mentioned above, the notification is but a record or formal expression of the decision of the Government. The notification, in our considered view, cannot be read synonymously with the extract of the gazette notification. It is another matter that a notification as a formal expression of the decision of the Government to acquire the land becomes effective only upon its being published in the modes prescribed u/s 4(1) of the Act. But from that it does not follow that the Collector cannot publish the decision of the Government before the same is published in the Official Gazette.

7. Learned counsel for the Petitioner, however, relied heavily on the decision of the Supreme Court in the case of the Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, . Particular stress was laid by the learned Counsel on paragraph 16 of the judgment which is extracted below. The submission was that the passage quoted below contains a binding statement of the law on the subject, namely, that the giving of public notice by the Collector cannot precede the publication of the notice in the gazette. Paragraph 16 of the judgment reads thus:

Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette, where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows. In Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, it was held that a notification u/s 4-A of the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published it is of no effect. Logically, the same view must be adopted for a notification u/s 4. Therefore assuming that a notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Section 4(1) further requires that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The expression such notification in the latter part of Section 4(1) and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification u/s 4(1) and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. The submission of Mr. Kacker does not commend to us.

In order to appreciate the implications of the aforesaid observations it will be

necessary to bear in mind an important fact. The Supreme Court was construing Section 4(1) which at the time when the notifications were under challenge before the Supreme Court stood as follows:

4(1). Whenever it appears to the appropriate Government or Collector 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. The provision has since undergone radical changes which have already been noticed hereinabove. At the time relevant for the decision of the case before the Supreme Court there was no requirement for publication of the notification in newspapers. Further the crucial words "the last of the dates of such publication and the giving of such public notice..." were not there as part of Section 4(1). We have already given our reasons for holding that these words clearly contemplate that the sequence of the publication of the notification in the three modes is not material and its disturbance would not invalidate the notification and we does not prose to repeated the same.

9. The decision cited by the learned Counsel is therefore, distinguishable on that ground alone. However, if we bear in mind the factual background in which the question was being examined by their Lordships of the Supreme Court in the above case as well as the precise argument which their lordships were dealing with in the paragraph quoted above, it would be apparent that the Supreme Court has not held what the learned Counsel for the Petitioners wanted this Court to accept.

10. The factual position in the Supreme Court case was that Raja Ram Jaiswal (the Respondent) in the appeal before the Supreme Court, was the owner of plot No. 26 having an area of 2865 sq. yard over which he wanted to construct a sound proof and air conditioned cinema theatre. Hindi Sahitya Sammelan which had its office in the close vicinity of that land did not like that and it opposed the move of having a cinema in that locality from the beginning. It appears to have succeeded in persuading the Government to issue a notification dated February 6, 1975 u/s 4(1) of the Land Acquisition Act. The notification was published in the gazette dated February 15, 1975 and a notice dated March 6, 1975 was also served on Raja Ram Jaiswal the substance of this notification was published in the locality about the same time. In the notification, however, the land sought to be acquired was mentioned as plot No. 62 admeasuring 8265 sq. yds. Subsequently, on 22-3-75 a corrigendum dated March 13, 1975 was published in the gazette whereby the gazette notification dated February 15, 1975 was sought to be corrected by reading plot No. 26 instead of plot No. 62 and the area sought to be acquired as 2865 sq. yds. instead of 8265 sq. yds. It was by this corrigendum that for the first time the land of Raja Ram Jaiswal, namely, plot No. 26 was mentioned as required by the Government for a public purpose, namely, extension of the Hindi Sanghralay of the Hindi Sahitya Sammelan, Prayag. Of

this notification no public notice was given at all at any time.

11. On the above facts the notifications issued under Sections 4 and 6 were challenged before the High Court by Raja Ram Jaiswal, inter alia, on the ground that no public notice was given of the substance of the notification whereby plot No. 26 was sought to be acquired by the Government. This High Court allowed the petition of Raja Ram Jaiswal and quashed the impugned notification on the ground that there was non-compliance of the mandatory provisions of Section 4(1), namely, publication of the substance of the notification in the locality by the Collector. It was this judgment which was under challenge before the Supreme Court at the instance of the Collector.

12. It was in the above factual background that the learned Counsel for the Hindi Sahitya Sammelan which had been permitted to intervene in the appeal before the Supreme Court advanced an argument that public notice of the substance of the notification in the concerned locality need not necessarily follow the publication of the notification in the official gazette but it may even precede it. This argument was obviously founded on the fact that the public notice of the substance of the notification dated February 6, 1975 had already been given prior to the issue of corrigendum dated March 13, 1975. But as already noted the public notice was given only of that notification which mentioned plot No. 62 and not plot No. 26. As far as plot No. 26 was concerned admittedly public notice of the substance of the notification concerning that plot had not been given at all either before or after the issue and publication of the corrigendum. The argument was rejected by the Supreme Court with the observations quoted in paragraph 16 which has already been extracted hereinabove.

13. Having given the matter our anxious and careful consideration to the observations made by the Supreme Court quoted above in Raja Ram Jaiswal's case, we are clearly of the opinion that the observations do not support the Petitioner's contention. The Supreme Court has observed that the expression "such notification" in the latter part of Section 4(1) and the sequence of events therein enumerated spell out that first the Government should reach a decision to acquire land, then publish a notification u/s 4(1) and simultaneously or within a reasonable time from the date of publication of the notification cause a notice to be given containing substance of the notification. These observations were made in the context of the fact that the public notice in that case had preceded even the decision of the Government to acquire plot No. 26. The decision was taken on March 13, 1975 and thereafter the notification was published on March 22, 1975. Obviously there could be no occasion for giving public notice in the locality concerned by the Collector even prior to the formation of the opinion by the Government to acquire the land, namely, plot No. 26 in that case. It was because of this vital circumstance that the Supreme Court rejected the argument advanced on behalf of the Hindi Sahitya Sammelan and ruled that the process must begin with the decision of the Government to acquire the land and thereafter the same should be published with the sequence in which the various

modes of publication were mentioned. In the absence of the words "the last of such dates of publication" added to Section 4(1), their Lordships ruled that the various steps for publication should take place in the order in which they are mentioned in Section 4(1). This decision is thus clearly distinguishable both on facts as well as because of the significant legislative changes made in Section 4(1) of the Act. In *State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others*, cited by the learned Advocate General their Lordships of the Supreme Court distinguished the decision in *Raja Ram Jaiswal's* case because of the peculiar facts of that case.

14. The upshot is that the impugned notifications are not invalidated merely because the Collector caused, public notice of the substance of the notification under the latter part of Section 4(1) to be made prior to the issue of the publication of the notification in the gazette and in the newspapers.

15. That brings us to the second question argued by the learned Counsel for the Petitioner. The submission was that the fact that the notification u/s 6 was issued on July 7, 1988, that is, nearly four months after the issue of notification u/s 4(1) of the Act clearly demonstrates that there was no such real urgency as to warrant dispensing with Section 5-A procedure.

16. We are unable to agree. The land is being acquired for the construction of 400 KV Sub-station by the National Thermal Power Corporation Ltd., for feeding a huge area covering the northern region of the State of Uttar Pradesh, the State of Haryana, Union Territory of Delhi, States of Punjab and Rajasthan and a portion of Himachal Pradesh. The project is stated to be of great national importance and is designed to cater to the needs of electricity over a vast area of the country. The decree of urgency attaching to such a project can scarcely be doubted and is writ large. It is, besides, covered by Sub-Section (2) of Section 17 also which enables the appropriate Government to acquire immediate possession of any land where the same is needed for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity. Sub-section (4) of Section 17 provides that in the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply. That being so, it is impossible to hold that the Government could not have formed the opinion that the present was a case in which Section 5-A ought not to apply. If we are right in our conclusion that the Government had material on the basis of which it could have legitimately formed the opinion that the matter was one of urgency covered by Sub-section (2) of Section 17, the purpose being inherently such as did not brook any delay bound to be caused by inviting objections u/s 5-A, the direction issued by the State Government u/s 17(4) that the provisions of Section 5-A shall not apply, cannot be invalidated merely on the ground that subsequent to the formation of that opinion there was a gap of four months between the issue of notification u/s 4(1) and that u/s 6(1) of the Act.

17. We think that, in the facts and circumstances of the present case, the decision of the Government to dispense with the requirement of Section 5-A cannot be characterised as arbitrary or otherwise improper. Learned counsel for the Petitioner cited a few decisions including Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, in support of his contention that the delay in the issue of notification u/s 6(1) was sufficient to invalidate the direction issued by the Government u/s 17(4). We have examined those decisions and find that each case turned on its own facts. None of them was concerned with the kind of purpose for which land has been acquired in the present case. As observed above, the purpose in the present case is inherently urgent.

18. In the premise, the petition fails and is dismissed. The interim orders are discharged.