

(1975) 12 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 35 of 1974

Hajari Ghasiram Mali

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-12-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 4(1), 4(1), 4(2)

Madhya Pradesh Land Revenue Code, 1959 — Section 1(1), 243, 4(1), 4(1), 6

Citation : (1976) MPLJ 293

Hon'ble Judges : J.S. Verma, J;G.G.Sohani, J;B.R. Dubey, J

Bench : Full Bench

Advocate : V.S. Samvatsar, for the Appellant; S.R. Joshi, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.

The petitioner seeks a writ for quashing the notification dated 812-1972 (Annexure A) u/s 4 (1) of the Land Acquisition Act (hereinafter referred to as the Act) on the ground that it does not satisfy the requirements of the provision and consequently the entire requisition proceedings. The petition came up for hearing before a Division Bench and reliance was placed on behalf of the petitioner on the decision of a Division Bench (Oza. and Muley JJ.) in Deva and another v. The State of M.P. and others Misc. Petition No. 63 of 1974 decided on 29-9-75 (Indore) to contend that a valid notification u/s 4 (1) of the Act requires the particular survey-number of each land to be specified therein and mention of the locality alone without specifying the survey numbers was insufficient. The Division Bench itself noticed the conflict between the decision in Deva's case (supra) and that of another Division Bench in Christain Fellowship (Hospital), Rajnandgaon v. State of M.P. 1973 MPLJ 18. Consequently, the case was referred for constitution of a larger Bench to resolve this conflict. This is how the whole case has been referred to us for decision.

The petitioner is a land-owner in village Bardha, tahsil Khategaon, district Dewas. The notification dated 8-12-1972 (Annexure A) published in Madhya Pradesh Gazette dated 2212 1972 issued u/s 4(1) of the Act stated that land was needed for extension of the Abadi in 43 villages specified therein. The area required in each such village was also specified. Village Bardha is one such specified village, wherein 2.63 acres were proposed to be acquired. The survey numbers of the particular lands were not specified. It was also stated that the provisions of section 5A of the Act would not apply in view of section 17 of the Act being applicable. A relevant extract of the notification relating to the petitioner is as follows:--

Thereafter the notification dated 7-5-1973 (Annexure B) containing the declaration u/s 6 of the Act was issued and was published in the Madhya Pradesh Gazette dated 18-5-1973. This declaration particularised the lands to be acquired with reference to the survey numbers and the petitioners land bearing Khasra No 107 situate in village Bardha having an area of O. 44 acres was specified therein. This petition under Article 226 of the Constitution was then filed on 6-2-1974 for quashing the notification and the acquisition proceedings.

Before we deal with the aforesaid question regarding the requirement of a valid notification u/s 4 (1) of the Act, which is the main controversy in this petition, we shall dispose of two other arguments which were advanced by the counsel for the petitioner to support this petition.

The first argument of Shri V.S. Samvatsar, learned counsel for the petitioner, is that ample unoccupied land being available for extension of the Abadi, the power under sub-section (2) of section 243 of the M.P. Land Revenue Code was not available to the State Government and consequently the provisions of the Land Acquisition Act were not attracted as provided in sub-section (3) of section 243. The argument is based on a question of fact, i.e. the availability of unoccupied land for purposes of Abadi in the village. The petitioner is rest content with alleging in para 12(c) of the petition that there is ample unoccupied land for purposes of extension of Abadi, and no attempt has been made to give any particulars of the unoccupied land which is alleged to be available. The respondents in their return have specifically denied this argument as false and have asserted that there is absolutely no unoccupied land available in the village for purposes of extension of Abadi. The respondents have also referred to their Annexure H which is the report dated 22-10-72 of a survey party and wherein it is stated that no unoccupied land is available and that private land is needed in the opinion of the Gram Panchayat for extension of the Abadi. In the absence of any particulars being given by the petitioner of the alleged available unoccupied land, no further consideration of this question is necessary. The respondents could do no better then to assert the negative. The foundation of the first argument of Shri Samvatsar being absent, the same is rejected.

The second argument of Shri Samvatsar is, that the substance of the notification u/s 4 (1) of the Act was not published at convenient places in the locality, in

addition to publication of the notification in the gazette, as required by the provision. This is also a question of fact. The respondents in para 5 at page 25 of the paper book have denied this averment of the petitioner as false and have further added that this requirement was fulfilled as shown in Annexure A, A-1, A-2 and A-3 which were contemporaneous records. The foundation for this argument being absent, the same is also rejected.

We shall now consider the main question requiring our decision. The argument of Shri Samvatsar, learned counsel for the petitioner is that section 4 (1) of the Act requires not only the locality where the land is situate but also the land with reference to the Khasra numbers to be specified in the notification. He relies on the decision of the Division Bench in Deva and another v. The State of M.P. and others which undoubtedly supports his contention. On the other hand, another Division Bench in Christian Fellowship (Hospital), Rajnandgaon v. State of M.P. and others, while dealing with this question held as follows:--

. . . . The view Taken in Iftikhar Ahmed Vs. State of Madhya Pradesh and Others, in so far as it lays down that an omission to give particulars of land in a notification u/s 4 (1) renders the notification invalid and, therefore, vitiates the entire land acquisition proceeding, can no longer be accepted as laying down good law. (Para 3)

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If the locality is a reasonably small one, like that of a village, the naming of such village as a "locality" is a sufficient compliance of section 4(1) . But this does not necessarily imply that the naming of a city like Bhopal, would amount to a specification of a locality within the meaning of the section. It all, therefore, depends on the nature of the locality where the land is situate in each particular case. The answer to the first question, therefore, must be that village is a "locality" within the meaning of section 4(1) of the Act, having regard to the smallness of the area invoked. The naming of a village as a locality in a notification issued under that section, therefore, does not render it invalid in any manner. (Para. 8)

The above quoted passages from the decision in Christian Fellowship (Hospital), Rajnandgaon v. State of M.P. and others (supra) occur in the opinion of A.P. Sen J., who was the third Judge to whom the case was referred on a difference between Naik J. and Shiv Dayal J. (as he then was) who constituted that Division Bench. The opinion of A.P. Sen J. therefore, constitutes the decision of that Division Bench, In this case it was clearly held that omission to give particulars of the land, where locality was specified did not render the notification u/s 4 (1) of the Act invalid and naming of the village, in view of the smallness of its area, as a locality is a sufficient compliance of section 4 (1) . There is thus a direct conflict on this point between these two Division Bench decisions. It is a matter of regret that the earlier Division Bench decision, which was reported in Christian Fellowship (Hospital) Rajnandgaon v. State of M.P. and others was not brought to

the notice of the Division Bench deciding Deva's case (supra) much later on 29-9 1975. What is more, the learned Deputy Government Advocate appearing for the State in Peva's case (supra) conceded this point in the petitioner's favour. It is obviously for this reason that the later Division Bench deciding Deva's case (supra) missed the earlier reported decision of another Division Bench and was misled into taking a contrary view on the same point without even referring to the earlier Division Bench division. We shall now consider the question on its merits.

Section 4 (1) of the Act is as follows :--

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, 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.

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The plain construction of this provision does not require particulars of the land to be given in the notification u/s 4 (1) and it only requires that the locality in which the land is needed should be specified. On a comparison with the words used in section 6 of the Act, there can be no doubt that the particulars of the land needed are required to be specified only in the declaration made u/s 6 of the Act. If the requirement of a valid notification u/s 1 (1) was the same as of that u/s 6, then there was no reason to use different words in these two provisions. This variance in the words used must, ordinarily, be taken as indicating different requirements under these two provisions. The same conclusion is also reached when the object of a notification u/s 4(1) is taken into account. It is settled, that at the stage of section 4 (1) there is only a proposal for acquisition which at the stage of section 6 becomes the decision of the appropriate Government. One object of the notification u/s 4 (1) is to notify the inhabitants of the locality that land from that locality is to be acquired for the specified public purpose and their interests are likely to be affected. Such notice is to enable all persons having any interest in the lands within the locality to object to the proposed acquisition u/s 5A and this right of objection is available under sub-section (1) of section 5A of the Act even in respect of "any land" in the locality. Thus, the right of objection is not confined only to the particular land in which the objector has an interest but extends also to "any land" in the locality. The reason is obvious. It is open to the inhabitants of the specified locality to show that lands in that locality or any particular land therein should be excluded from the acquisition proceedings and that the purpose can be fully achieved even by acquiring some other land. This result would be possible only if at that stage the location alone of the specified public purpose is decided and not its exact situation within the locality specified. The locality alone being notified, opinion of suitability can be formed in respect of any land within that locality taking into account the views of the inhabitants

therein. This can be done only if a firm decision with respect to particular survey numbers has to be taken after the notification u/s 4(1) . Another object of this notification is to permit the officers of the Government under sub-section (2) of section 4 to enter upon and survey any land in the locality and to do the other acts necessary. This survey is obviously to collect relevant data in order to decide which particular land in the locality is more suited for the purpose of acquisition. The Collector has then to submit his report as required by section 5A taking into consideration all this material and it is then that the appropriate Government takes the final decision which results in the declaration u/s 6 of the Act. It is only at the stage of this final decision of the Government that the land is, therefore, required to be particularised. Viewed from this angle as well, the object of section 4 (1) requires only the locality to be specified in the notification thereunder and it does not require the particulars of land within it to be specified. Thus, the plain construction of the language in sub section (1) of section 4, the setting in which the provision occurs, the subject-matter of the statute and the object of the provision all lead only to this conclusion.

In our opinion, the law on this point is also settled by the decision of the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, . The question for decision before the Supreme Court was: whether, the notification u/s 4 (1) exhausts itself after the first notification issued u/s 6 or the same remains alive to permit any further notification u/s 6 thereafter? Their Lordships observed that the answer to this question depended upon the construction of sections 4, 5A and 6 of the Act which are integrally connected. For this reason, their Lordship proceeded to construe these sections for the purpose of deciding that case and in doing so it was held as follows :--

As we have said already, the process of acquisition always begins with a notification u/s 4(1) . That provision authorises the appropriate Government to notify that land in any locality is needed or is likely to be needed for any public purpose. It will be noticed that in this notification the land needed is not particularised but only the locality where the land is situate is mentioned. As was observed by this Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, a notification u/s 4 of the Act envisages a preliminary investigation and it is only u/s 6 that the Government makes a firm declaration. The purpose of the notification u/s 4 (1) clearly is to enable the Government to take action u/s 4 (2) in the matter of survey of land to decide what particular land in the locality specified in the notification u/s 4 (1) it will decide to acquire. Another purpose of the notification u/s 4 (1) is to give opportunity to persons owning land in that locality to make objections u/s 5A.

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It seems to us clear that when such a report is received from the Collector by the Government it must give a decision on all the objections at one stage and decide once for all what particular land out of the locality notified u/s 4(1) it wishes to acquire.

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Reading sections 4, 5A and 6 together it seems to us clear that the notification u/s 4 (1) specifies merely the locality in which the land is to be acquired and then u/s 4 (2) survey is made and it is considered whether the land or part of it is adopted to the purpose for which it is required and maps are prepared of the land proposed to be taken. Then after objections u/s 5A have been disposed of the Government has to decide what particular land out of the locality specified in the notification u/s 4(1) it will acquire. It then makes a declaration u/s 6 specifying the particular land that is needed. (Para 15)

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Sections 4, 5A and 6 in our opinion are integrally connected. Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed. Section 5A provides for hearing of objections to the acquisition and after these objections are decided the Government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a declaration as to the particular land out of the locality notified in section 4 (1) which it will acquire.

.. ..

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 5A; the Government then makes up its mind as to what particular land in that locality is required and makes a declaration u/s 6.

.. ..

But as we read these three sections together we can only find that the scheme is that section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the Government what particular land out of that locality it needs. This is followed by its declaration u/s 6 specifying the particular land needed and that in our opinion completes the process... ..

At the stage of section 4 the land is not particularised but only the locality is mentioned", at the stage of section 6 the land in the locality is particularized.

(Emphasis supplied Para. 16.)

In this decision, their Lordships of the Supreme Court have expressly held that only the locality where land is situated is required to be mentioned in a notification issued u/s 4 (1) and it is not necessary to particularise the land needed therein, formation of that opinion being made only later at the stage of section 6 the above extracts from the decision are quoted to make it obvious that specifying

the locality alone is the only requirement of a valid notification u/s 4 (1) and this has been reiterated time and again in the decision. We are unable to appreciate how a contrary view can be taken so long as the decision in *State of M.P. v. Vishnu Prasad* (supra) remains good law. A.P. Sen J. in *Christian Fellowship (Hospital) Rajaandgaon v. Stats of M.P. and others* (supra) has relied on this decision also to reach the aforesaid conclusions. The contents of section 4 (1) remain the same. As such, it has to be seen whether any subsequent decision of the Supreme Court takes away the authority of this decision.

The later Division Bench taking the opposite view in *Deva's case* (supra) has relied on *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, to support its conclusion. We shall presently show that the decision in *Gunwant Kaur's case* (supra) cannot be read in that manner. In the first place, the decision in *Gunwant Kaur's case* was by a Bench of two Judges while the earlier decision in *State of M.P. v. Vishnu Prasad* (supra) was by a larger Bench of three judges. It is, therefore, reasonable to assume that the later decision of the Supreme Court would not be contrary to the earlier decision given by a larger Bench. That apart the decision in *Gunwant Kaur's case*, as we read it, does not enunciate the principle that a valid notification u/s 4(1) requires particularisation of the land with reference to the Khasra numbers, in addition to specifying the locality wherein the lands are situate. The facts of that case show that the notification u/s 4(1) also specified the Khasra number and mentioned the name of persons, who were shown as owners of different portions of land therein. It transpired that this specification was misleading since the original owner of the field number given had divided the field into several plots and had sold them to different persons before issue of the notification. Thus, the particulars given in the notification u/s 4 (1) misled the real owner on the date of notification, since it was reasonable to assume on the particulars given that only the persons named in the notification were to be affected and not the others. Factually the impression given by the notification was incorrect. A writ petition was filed in the Punjab High Court challenging the notification as vague but the same was dismissed in limine. The Supreme Court set aside the order of the High Court and remanded the case to the High Court for a fresh hearing. In fact the case was to be decided thereafter on remand and there was no final opinion given even on the facts of the case that the notification was vague. The observation made by the Supreme Court relate to the peculiar facts of that case and nowhere it is said that a valid notification u/s 4 (1) requires the land to be particularised in each case with reference to the Khasra numbers. The Division Bench deciding *Deva's case* (supra) has relied on an extract quoted therein from *Gunwant Kaur's case* which itself includes a passages as follows :--

Section 4 of the Land Acquisition Act does not expressly require the Collector to publish or make available the plans of the lands intended to be notified to the owners of the lands. But the acquiring authority is bound to publish sufficient information giving due notice to the owners of the lands that their properties are intended to be compulsorily acquired.

In our opinion, this extract only says that the notification u/s 4 (1) requires publication of "sufficient information giving due notice to the owners of the lands that their properties are intended to be compulsorily acquired." This only means that the object of giving notice to landowners in the locality must be achieved by the particulars given in the notification. Whether the particulars are insufficient in a given case, would be a question of fact. With utmost respect to the learned Judges deciding Deva's case (supra) we are unable to read Gunwant Kaur's case (supra) as enunciating the principle that a notification u/s 4 (1) of the Act is invalid unless it also specifies the particular Khasra number of each land intended to be acquired. The decision in Deva's case is only on this basis.

For these reasons, we are of the opinion that Deva's case is not correctly decided and it is, accordingly, overruled. We are also of the view that the conclusion stated in the opinion of A.P. Sen J. in *Christian Fellowship (Hospital) Rajnandgaon v. State of M.P. and others* that omission to give particulars of land in a notification u/s 4 (1) does not render the notification invalid and that specifying the "locality" in which the land is situate is sufficient compliance of the provision, is correct and we, accordingly, approve that decision on this point.

The learned counsel for the petitioner has referred to a Full Bench decision of the Allahabad High Court in *Bahori Lal Vs. Land Acquisition Officer and Others*, to support the contention that particulars of land must be mentioned in a notification u/s 4 (1) of the ACT. In our opinion, even though some observations at the end of para 24 of that decision do give such an indication, yet read along with para 23 such a conclusion is not reached. Later in *Nagar Mahapalika, Varanasi Vs. Durga Shankar and Others*, a Division Bench has construed the Full Bench decision to mean that naming the locality alone is enough and it is not necessary to specify the plot numbers therein. Thus, the view of the Allahabad High Court does not support the petitioner's contention. Two decision of the Punjab High Court in *Tulsa Singh Vs. The State of Haryana and Others*, and *Devi Singh and Others Vs. Haryana State and Others*, are also referred. The Punjab High Court relied on the above Full Bench decision of the Allahabad High Court and read it in a manner in which even the Allahabad High Court has not understood it. Moreover, it was on facts that the notification was found to be vague. It is, therefore, not necessary to deal further with these decisions.

This takes us now to the meaning of the word "locality" occurring in section 4 (1) . In *Christian fellowship (Hospital) Rajnandgaon v. State of M.P. and others* the conclusion reached on this point is quoted in para. 6 above. In substance the conclusion is, that a village is a locality having regard to its small ness. This conclusion was reached after referring to the meaning of the word "locality" given in the ordinary and legal dictionaries. The several meanings as well as the setting in which the word "locality" occurs indicate that this is substantially the correct meaning. "Locality" is a place with an area which is reasonably small and compact so that it has come to exist and be treated as one unit, a reference to which sufficiently identifies the area and the persons therein. Ordinarily, the unit

has acquired a name by which it is referred and understood.

One of the objects of the notification made u/s 4 (1) is to notify the inhabitants of the locality that they are likely to be affected by the proposed acquisition so that they may file objections, if any. This being one of the objects, the word "locality" must be construed to mean an area which is sufficiently small and compact so that naming it amounts to a notice to all inhabitants of that area. Since the locality is required to be named for identifying the area covered by it, it should be the smallest area which has acquired a name by which it is known already at the time of notification. Ordinarily, villages in India are quite small so that naming of a village as locality would be sufficient. However, in recent times some villages have grown considerably so that the area within a big village may have been divided to create smaller units therein such as Tolas or Mohallas. In a given case, it may be possible to show that naming the village alone does not amount to naming the locality in view of the largeness of the village and in that context a smaller area such as a Tola or Mohalla within the village has to be treated as locality. That, however, would be a question of fact in each case.

The result is that ordinarily naming the village would amount to specifying the locality unless it is shown in a particular case that the village specified is much too large to be treated as a locality, there being smaller units within that village and having a name, which can be more appropriately called a locality. This would, therefore, be a question of fact in each case and where a village is specified in the notification u/s 4 (1) , it would be presumed to be valid unless the person challenging its validity shows that in fact the village named does not amount to specifying the locality on the facts and in the circumstances of that case. We are, therefore, in agreement with the conclusion reached on this point by A.P. Sen J in *Christian Fellowship (Hospital) Rajnandgaon v. State of M.P. and others*. We would, however, add thereto what has been said herein by us. We find that substantially the same view has also been taken in *Nagar Mahapalika, Varanashi v. Durga Shankar*.

The settled rule of construction to be followed has been summarised in Justice G.P. Singh's "Principles of Statutory Interpretation" Second Edition at page 68 as follows:

It has already been seen that even ordinarily the meaning of a word is not to be taken in abstract but regard must be had to the setting in which the word occurs as also to the subject-matter and object of the enactment. However, in case of doubt these factors gain great prominence in selecting the true meaning out of the rival interpretation which may be reasonably open of such language.

The process adopted by us to reach the above conclusion is in consonance with this settled rule of construction.

With above conclusion reached by us as to the meaning of the word "locality" the notification issued u/s 4 (1) (Annexure A) must be presumed to be valid. It specifies the name of the village which ordinarily amounts to sufficient

compliance of section 4 (1) of the Act. The petitioner has not even alleged that naming the village in the present case does not amount to naming the locality. In fact that is not even his case. This being so, the main argument advanced on behalf of the petitioner also fails and is hereby rejected.

Consequently, this petition fails and is hereby dismissed. The aforesaid conflicting decisions of this Court having resulted on account of the lapse of the counsel for the State and that conflict also being noticed in the present case by the Court itself, counsel's fee to the respondents must be disallowed. The parties shall therefore, bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.