

(2009) 05 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : LPA OW No. 60 Of 2007 CMP No. 91 Of 2007 & Letters Patent Appeal
No.60 Of 2007,CMP No.91 Of 2007

J & K Housing Board & Anr.

APPELLANT

Vs

Kanwar Sanjay Krishan Koul & Ors.

RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5

Citation : (2010) 2 SriLJ 572

Hon'ble Judges : Barin Ghosh, C.J and Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : F.A.Natnoo, D.C.Raina, N.A.Choudhary, Advocates appearing for the Parties

Judgement

1. The subject matter of the writ petition, which has been allowed by the judgment and order under appeal, was acquisition by the appellants of a

plot of land belonging to the writ petitioners, in respect whereof recourse to provisions of Section 17 of the State Land Acquisition Act, 1990 had

been taken. The Writ Court felt that before proceeding further, requirement of Section 5A of the State Act had not been complied with and,

accordingly quashed the Section5A proceedings as well as proceedings taken subsequent thereto.

2. In terms of the provisions contained in Section 17 of the State Act, the publication, necessary for exercise of power granted thereby, can be

issued on expiry of 15 days from the date of publication of the notice mentioned in subsection (1) of Section 9 of the State Act. There is no dispute

that before the time of publication of notice under subsection (1) of Section 9 of the Act matures, requirements of Section 5A of the Act are

required to be complied with. The last proviso to Section 17 authorizes dispensation of compliance of the provisions of Section 5A of the Act. The power so granted by the said proviso had not been exercised in the instant case.

3. The notification under subsection (1) of Section 4 of the State Act was published by affixation thereof at a convenient place of the locality where

the land is situated on 17th May, 2003. This is the requirement of clause (a) of subsection (1) of Section 4 of the Act. The notification was

published in two daily newspapers on 4th June, 2003, but one of them was not a newspaper published in regional language, which is the

requirement of clause (c) of subsection (1) of Section 4 of the Act. The later publication was admittedly made after expiry of 15 days from the date

of the former publication. On 11th June, 2003, a corrigendum was issued for enlarging the area of acquisition. Admittedly, this corrigendum was

not published in any newspaper. It is contended that the said corrigendum was sent to the Tehsildar concerned on the date of issue of the

corrigendum but, admittedly, it is not known whether this corrigendum was at all notified in the manner as prescribed in clause (a) of subsection (1)

of Section 4 of the Act. An objection was filed under Section 5A of the Act by the writ petitioners/respondents, which was sent from New Delhi on

24th July, 2003 and received by the Collector on 30th July, 2003. In the meantime, the Collector prepared his report and approached the

Government for obtaining clearance of the Government before proceeding with the publication of declaration under Section 6 of the Act. On that

premise, i.e., that the Collector has already approached the Government, the objection under Section 5A of the Act so received by the Collector

was not considered by him and he held out that the same was belated.

4. For reasons given in the judgment and order under appeal, the learned Judge has not accepted this contention to be sustainable. The learned

Judge felt that even at that stage it was well within the competence of the Collector to go into the merits and substance of the said objection and,

thereupon, to proceed further and it was inappropriate on the part of the Collector to reject the said objection on the ground that the same was

belated, having particularly taken note of the fact that by that time the State had not expressed its opinion as is required to be expressed for

enabling issuance of the declaration under Section 6 of the Act.

5. In the present appeal, the appellant is seeking to justify its action by placing a very narrow and short sighted interpretation to subsection (1) of

Section 5A of the State Act. It is being contended that in terms of the provisions contained therein, the moment 15 days time expires after

publication of the notification under subsection (1) of Section 4, as mandated in clause (a), i.e., by local publication, the right to file objection

ceases, is the mandate of law. While making such submissions, it has not been contended that the Collector had confined itself only to the original

notification and had not included the corrigendum which, there appears to be no evidence, to have been published even in terms of clause (a) of

subsection (1) of Section 4 of the Act. It is true that time of 15 days, as mentioned in Section 5A, for filing objection starts running from the date of

publication of the notification under subsection (1) of Section 4 of the Act in the manner provided in clause (a) thereof but, at the same time, the

obligation as prescribed in clause (c) of subsection (1) of Section 4 of the Act has not been done away with. Compliance of provisions of clauses

(a) and (c) are requirement of law. It is not either of them, but both of them. Section 5A of the Act also repeats the same. If both of them have not

been complied with, then the mandate of subsection (1) of Section 4 of the Act has not been complied with. In such event, the time to file objection

under subsection (1) of Section 5A of the Act will not start running at all. If the mandates of both the clauses (a) and (c) of subsection (1) of

Section 4 of the Act are complied with, it may there be urged that in such a situation, the time will start running from the date of publication under

clause (a) of subsection (1) of Section 4 of the Act. In the instant case, the facts narrated above would amply demonstrate that the mandate

contained in clause (c) of subsection (1) of Section 4 of the Act has not yet been complied with, for, no publication in a newspaper published in

regional language has yet been published.

6. Consequently, the conclusion would be that the proceedings, as mandated to be launched, has not been launched. As a result, it would not be

appropriate on our part to hold that the learned Judge was in error to hold that it was unjust on the part of the Collector not to consider the

objection received by him on 30th July, 2003 within which time the Government had not expressed any opinion as regards declaration to be issued

under Section 6 of the Act, and merely the Collector had approached the Government for that purpose.

7. We would have concluded the matter thus but the observation made by us above, may lead to misunderstanding for we have only dealt with the manner up to this stage which is appropriate for this case and, accordingly, we would like to clarify a little further.

Subsection (1) of Section 5A of the Act is as follows:

Hearing of objections

(1) Any person interested in any land which has been notified under section 4, subsection (1), as being needed or likely to be needed for a public purpose [xxx] may within 2[fifteen days] 3 [after such land is notified in the manner prescribed in clause (a) of subsection (1) of section 4 as being needed or likely to be needed for a public purpose,] object to the acquisition of the land or of any land in the locality, a object to the acquisition as the case may be.

A person interested in land, which has been notified under Section 4 subsection (1), according to Section 5A, is entitled to object to the acquisition of the land. The words used, which are of prime importance, are ""notified under Section 4, subsection (1)"". The notification, therefore, is required to be notified under subsection (1) of Section 4 of the Act and not as contemplated in either of the clauses of subsection (1) of Section 4. As aforesaid, subsection (1) of Section 4 requires two notifications; one to be published by affixation in locality and the other by publishing in daily newspapers, one of which shall be in regional language. Therefore, until such notification are published, there is no intention conveyed that the land is likely to be needed for the purpose mentioned in the notification. The time for filing objections, according to subsection (1) of Section 5A, however, starts running from the date of publication of the notification in the manner prescribed in clause (a) of subsection (1) of Section 4 of the Act, i.e., by affixation in the locality. At the same time, in the event, the notification is not published in due compliance with all the mandates contained in subsection (1) Section 4 of the Act, by affixation and also newspaper publications, the intention that the land is needed, or likely to be needed, is not fully expressed and conveyed.

8. The Land Acquisition Act is such an Act which must be given strict

construction. In the event, in terms of clause (a) of subsection (1) of Section 4 of the Act the notification is published on a date and one month later the same is published in the newspapers in terms of clause (c) subsection (1) of Section 4 of the Act, it may be construed that since the provisions contained in subsection (1) of Section 4 of the Act have been complied with, the time to file objection under Section 5A of the Act will run from the date of publication of the notification under clause (a) subsection (1) of Section 4 of the Act. However, in such event, publication of the notification in terms of clause (c) of subsection (1) of Section 4 of the Act would become a mere formality. We do not think that the purpose and of object of requiring such publication was intended to be a mere formality. The object of publication in terms of clause (c) subsection (1) of Section 4 of the Act is also to intimate the people, who are likely to be affected by the notification. There is no certainty that all the people likely to be affected would be in the locality on the date of publication of the notification by affixation. In order to inform them, those who may not be there in the locality that the land is likely to be acquired, the requirement of publication of the notification in newspaper, as contemplated in clause (c) of subsection (1) of Section 4 of the Act, has been mandated. Therefore, a person who comes to know that the land is likely to be acquired by reading the newspaper publications, his door for filing objection under section 5A of the Act, cannot be shut on the ground that he has come after expiry of 15 days from the date of publication of the notification under clause (a) of subsection (1) of Section 4 of the Act.

9. We, accordingly, conclude the matter and dismissed the appeal.