
(1990) 12 MAD CK 0024
In the Madras High Court

J. Mohanlal and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-12-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : (1991) 256 MLJ 1

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The petitioners have come up before this Court challenging the Government Order in G.O.Ms. No. 708, Transport

Department, dated 5.7.1988, under which a declaration u/s 6 of the Land Acquisition Act has been issued, to acquire the piece of land for the

purpose of construction of a bus, terminal by the respondent Pallavan Transport Corporation.

2. Originally when the writ petition was taken up for hearing and arguments were heard for some time, it was thought by this Court that it would be

better that the Pallavan Transport Corporation also should have been impleaded as party respondent and as such the Pallavan Transport

Corporation, Madras is impleaded as a party - respondent as per the order in W.M.P. No. 14268 of 1990 dated 6.7.1990.

3. During the course of arguments, it was found that it is necessary to challenge the notification u/s 4(1) of the Land Acquisition Act made on

7.7.1983 and as such the petitioners herein have raised additional grounds challenging the Notification made u/s 4(1) of the Land Acquisition Act

(hereinafter referred to as the "Act") itself. However, the respondents are opposing the same by filing the counter - affidavit.

4. The short facts are: The petitioners herein are the joint owners of the property situate at No.114, Karaneeswarar Koil Street, Mylapore, Madras 600 004. It seems that originally the land was owned by certain persons and the petitioners herein purchased the property on 2.12.1985 and on 17.3.1986 under two sale deeds. Pursuant to the above sale deeds, mutation in the revenue records was effected. Before the purchase of the land by the petitioners herein, Notification u/s 4(1) of the Act under G.O.Ms. No. 793, Transport Department, dated 7.1.1983 had been issued stating that the land to the extent of about 9 grounds 1337 sq.ft. is required, for the construction of the Pallavan Transport Corporation Bus Terminal. It is stated in the affidavit filed in support of the petition that the Notification u/s 4(1) of the Act did not mention the names of all the owners whose names are then found in the revenue register, that the Notification u/s 4(1) mentioned only the name of Mrs. Sayed Meeran and Ram Lakshmi Raman and E.K. Murthy, that pursuant to the sale in favour of the petitioners, notices for Section 5-A enquiry were issued to them by the second respondent, and that the petitioners had also taken part in that enquiry. During the said enquiry, the petitioners had pointed out that the land in question was a residential area and a bus terminal is a different one from a bus stop or a bus stand and it was also pointed therein that the place is not at all suitable for locating the bus terminal because a Corporation Primary School is located immediately on the Northern side of the above property and that it is surrounded by other primary middle and high/higher secondary schools in the nearby vicinity. It is also stated in the affidavit that the road is very narrow, that if a bus terminal is located there, it will endanger the public life, and traffic congestions would occur and that same will become public nuisance. It is further stated in the affidavit that the third respondent herein, after due verification, has found an alternative site near the Queen Mary's College as the most suitable and economical for the respondent Corporation. It is also stated that it was pointed out that there are bus terminals. In Foreshore Estate, Mandavalli and Vivekananda House, all within a kilometre distance and it would be a waste of public money to locate a bus terminal at the said property. It is further alleged in the affidavit that the suit property is used for residential purpose, that the petitioners had applied for construction of flats for low income and middle class families, that the Madras Metropolitan

Development Authority has already sanctioned the plan for building the said flats. It is further stated in the affidavit that Section 4(1) Notification

was not published in the place in which the land is sought to be acquired and at convenient places as per the procedure prescribed under the Land

Acquisition Act and the rules framed thereunder. It is further alleged in the affidavit that it was pointed out that since an alternative site had already

been selected and that already five years had elapsed, declaration u/s 6 of the Act cannot be made as it is barred by limitation. It seems that in

spite of the objections raised by the petitioners, declaration u/s 6 of the Act was issued by the first respondent in G.O.Ms. No. 708, Transport

Department, dated 5.7.1988.

5. Though the petitioners challenged the declaration made u/s 6 of the Act technically, in the prayer of the writ petition, the grounds raised in the

affidavit by the writ petitioners show that they are almost challenging the Section 4 Notification itself. The first ground raised in the affidavit filed in

support of the petition is that the Notification u/s 4(1) was defective as it was not issued to the persons who are all interested in the land sought to

be acquired and that there was no simultaneous publication of the acquisition proposal u/s 4(1) Notification as contemplated under the Land

Acquisition Act and Rules. It is also stated that the Section 4(1) Notification has been published on 2.7.1983 and that the Section 6 declaration

ought to have been issued on or before 26.7.1986, that the Section 6 declaration was published only on 15.7.1988 which is beyond the statutory

period of three years. It is also stated in the affidavit that acquisition Notification u/s 4(1) of the Act did not say that the compensation for the land

will be paid from the public revenue, that it was silent about it and that Part VII procedure required for a Corporation have not been followed, the

acquisition is bad in law. It is also stated that the land in question is earmarked by M.M.D.A. for the purpose of middle class dwelling houses and

therefore no acquisition could be made against the statutory decision of M.M.D.A. It is also stated in the affidavit that the very fact that the word

"Bus terminal" used in the acquisition proceedings makes, it very clear that the land is going to be used for industrial purpose like repairing,

maintenance, servicing of vehicles, parking etc. It is further alleged in the affidavit, the land required is not at all suitable for locating a bus terminal

and that adjoining the land sought to be acquired, there is a Corporation Primary School, and that the location of a bus terminal adjacent to the

School would endanger the life of the children.

6. As I have already stated that these are the contentions raised in the affidavit filed in support of the petition by the writ petitioners originally. An

additional affidavit was filed in W.M.P. No. 23453 of 1990 raising additional grounds in which it is stated that the mandatory requirement u/s 4 of

the Act has not been complied with. It is also stated in the said petition that the failure to take out individual notices to the owners of the property

within the knowledge of the acquiring authority vitiates the acquisition.

7. Two counter - affidavits have been filed by the respondents. One against the main writ petition challenging the declaration u/s 6 of the Act and

the other against the miscellaneous petition filed praying to amend the prayer as well as the contentions raised by the petitioners questioning the

Section 4(1) Notification. It is claimed in the counter-affidavit that admittedly the petitioners are the purchasers subsequent to Notification u/s 4(1)

of the Act and as such the writ petition is not at all maintainable. It is further claimed in the counter - affidavit that originally in the Notification u/s

4(1) of the Act, the name of Ram. V. Lakshmi Ratnam the Registered holder, Mrs. Syed Meeran, the name of the present owner and E.K.

Moorthy, and the name of the interested person have been mentioned. It is further stated that since the name of the registered holder has been

wrongly mentioned as Ram. V. Lakshmi Raman, necessary errata was published in the Tamil Nadu Government Gazette dated 21.12.1983

correcting the name of the Registered holder as Ram. V. Lakshmi Rathnam, It is stated in the counter - affidavit that notice under Sections 4(1)

and 5 - A of the Act were published in the locality on 27.3.1984, 7.4.1984, 10.4.1984 and 11.4.1984 at Sub Registrar's Office, Taluk Office,

Collector's Office and Special Deputy Collector's Office, that during the Section 5 - A enquiry, one J.M.A. Mohamed Ismail, J.M.A Fawzia,

Tmt. Ruckyal Bibi have filed their objections stating that they are also interested persons having right over the property, that their objections were

communicated to the Pallavan Transport Corporation and that after obtaining remarks from the said Transport Corporation the objections were

overruled. But before the aforesaid Section 5 - A proceedings, the above

mentioned land owners filed a petition before the IX Assistant Judge, City Civil Court, Madras in O.S. No. 7069 of 1984 on 17.9.1984, and they obtained an interim order in I.A No. 16983 of 1984. In the said order, the Court ordered status quo till 21.9.1984 and it was extended from time to time and it was closed on 1.2.1985. The said suit was dismissed on 8.7.1987 for non - prosecution and as such the stay was in force till the disposal of the case on 8.7.1987. It is further stated in the counter - affidavit that when the remarks offered by the requisitioning body were communicated to the owners of the property, it was brought to the notice of the respondents that they have sold the property to the petitioners, that the petitioners in their letter dated 24.9.1987 have represented that they have purchased the property In question from the previous owners and made a request for the withdrawal of the gazette notification. It is further stated that in view of the sudden change of ownership of the property, Section 5 - A enquiry was posted on 22.10.1987, objections raised by the petitioners were communicated to the requisitioning body again on 3.11.1987, remarks were communicated to the petitioners and that final orders were passed in the Section 5 - A enquiry on 11.2.1988 and were served on the petitioners on 1,9.2.1988 and a draft declaration has been approved on 6.7.1988, which is impugned in the writ petition. It is further stated in the counter - affidavit that two enquiries u/s 5 - A of the Act were conducted, one attended by the erstwhile owners and the other by the present owners. It is further stated in the counter - affidavit that the petitioners contentions alleging that the area is a residential one, that it cannot be put to use for industrial purpose and that the place is not suitable for locating a bus terminal, cannot at all be accepted since the Madras Metropolitan Development Authority itself has located that the site is suitable for locating the bus terminal by letter dated 22.4.1983 addressed to the Executive Engineer, Pallavan Transport Corporation, Madras -

28. It is further stated in the counter - affidavit that the contentions of the petitioners that they have already applied for construction of flats for low income middle class families is only an afterthought. It is further stated in the counter - affidavit that the draft declaration u/s 6 of the act has been issued by the Government after observing all the formalities under the Land Acquisition Act, and as such it is not illegal. It is further stated that it is

not correct to state that Section 6 declaration is barred by limitation, because a suit was pending at that time and it was dismissed only in the year 1987 as stated supra. It is further stated that while the Notification u/s 4(1) of the Act was issued, the petitioners were not the owners of the property in question, that as per the particulars available in the Taluk records, the names of the Registered holder, the present owner and the receiver of the property have been mentioned in the Section 4(1) notification dated 27.7.1983 and as such the petitioners cannot question the activities which tookplace when they were not the owners of the property then. It is further claimed in the counter - affidavit that the Notification u/s 4(1) has been approved by the Government on 7.7.1983, that the same has been published in the Tamil Nadu Government Gazette on 27.7.1983, that the same had been published in the locality on 28.9.1983, that the declaration u/s 6 of the Act ought to have been published before 27.6.1986, that the stay obtained by the then owners in O.S. No. 7069 of 1984 on 17.9.1984 ended in dismissal only on 8.7.1987, and that adding the period covered by injunction i.e., 3 years as per the provisions of the Land Acquisition Act, the declaration u/s 6 has been published within the time. It is further claimed in the counter - affidavit that the Transport Corporation, though it is registered under the Companies Act, 1956 is a company fully owned and controlled by the Government of Tamil Nadu, the acquisition of lands for such company cannot therefore be made in accordance with provisions of Part VII of the Land Acquisition Act and that the correct procedure would be to acquire the lands following the procedure laid down under Part II of the said Act. It is further claimed in the counter - affidavit that the writ petition filed by the petitioners is not maintainable in view of the fact that Section 4(1) Notification has not been challenged in the writ petition.

8. As I have already stated another counter affidavit has been filed by the respondents, against the filing of additional grounds by the petitioners. It is further claimed in this counter - affidavit that the two miscellaneous petitions filed by the petitioners are not maintainable, either in law or on facts, that the petitioners have no right to challenge the Section 4(1) Notification that is after filing of the counter affidavit in the above writ petition, that the said amendment petition has been filed after the writ petition came up for final hearing and after the completion of the arguments on the side of

petitioners and as such the miscellaneous petitions are liable to be dismissed as belated and unsustainable. It is further claimed in the counter -

affidavit that after the dismissal of the suit, the subsequent purchasers the petitioners herein have sent their objections and that their objections were

also heard in an enquiry u/s 5 - A. It is also stated that assuming that the provisions of Section 4 have not been complied with, the petitioners

herein, having received notice u/s 5 - A of the Act and participated in the Section 5 - A enquiry cannot raise those pleas. It is further claimed in the

counter affidavit that if the petitioners have pointed out the defects they would have been remedied immediately, that the petitioners have no right to

amend the prayer at this stage and seek to quash the Section 4(1) Notification also along with declaration u/s 6, that if any amendment is permitted,

it can only be considered as a fresh relief made on this date and in view of the long lapse of time such a relief cannot be granted. It is further stated

that the petitioners cannot come to this Court now to set the whole clock back by 7 years without any valid explanation, that no ban order has

been issued by the Government against the establishment of bus terminal by the side of schools, that the land in question was inspected by the

Secretaries to Government, Housing and Urban Development and the Transport Department and they have taken a decision to pursue the

acquisition proceedings. It is also stated that the Madras Metropolitan Development Authority also had stated that the site is suitable for the

establishment of a bus terminal, that the original Notification u/s 4(1) of the Act was published on 27.7.1983, that since the Registered Holder's

name was wrongly published as Ram V. Lakshmi Raman an errata was published on 21.12.1983, that in the meanwhile the Land Acquisition

Officer's Office was shifted to Chepauk, Madras - 5 and that the change of address was notified in the Gazette on 7.3.1984. In Paragraphs 14

and 15 of the counter - affidavit the State explained the dates on which notices u/s 4(1) of the Act were published and how there is no delay in the

publication of Section 6 declaration.

9. A reply affidavit has been filed by the petitioners. It is stated that the petitioners have purchased the property from the heirs of one J.M. Abdul

Aziz, and that the original owner Lakshmi Rattan sold the property to the said Abdul Aziz about 40 years ago, that notice was not given to all the

owners of the property, that individual notices have not been given to all the nine sharers. It is further stated in the reply affidavit that the said

Section 4(1) Notification does not mention the correct name of the owner, that as bona fide purchasers in possession, the petitioners were made

parties by issuing notice and that they participated in the said enquiry. It is further alleged in the reply affidavit that though Section 4(1) Notification

was published in the Gazette on 27.7.1983, notices for Sections 4(1) and 5 - A were said to be published in the locality between the dates

27.3.1984 and 11.4.1984, and that there is an inordinate delay in the publication of the notices. It is further stated that the publication of the notice

is not simultaneous nor within 30 days or within a reasonable time, that the mandatory provision of Section 4(1) of the requirement of the substance

of Notification being published was not complied with, that the property under acquisition is not at all suitable for locating a bus terminal, that the

area is a primarily residential zone where a bus terminal can be set up only with the special sanction of the Authority under Act. It is further shown

in paragraphs 6 to 8 the reply affidavit the number of schools are situated in that area and how the lives of the children will be in danger. It is also

stated in the reply affidavit that the Government itself has given directions that action should not be taken for the acquisition of the lands for bus

depots by the side of colleges, schools etc., that it will be arbitrary executive action not to follow the statutory direction, that the M.M.D.A. itself

has suggested the minimum extent of one hectare for a bus terminal and that in view of the delay caused the Transport Corporation has already

shifted the Dr. Ambedkar Bridge Terminal to Dr. Radhakrishnan Salai and by the side of the I.G.'s office. It is further stated in the reply affidavit

that the very purpose of the acquisition of the petitioners' property was to shift the bus terminal from Dr. Ambedkar Bridge which is already

achieved and a most suitable place near the I.G.'s office on Dr. Radhakrishnan Road is the present, terminal, It is further stated that the mandatory

requirement of Section 4 has not been complied with, that the failure to take up individual notices to the owner of the property within the

knowledge of the acquiring - authority vitiates the acquisition. It is further stated that the acquisition for locating a bus terminal by the side of the

schools will be against the violation of executive directions.

10. Mr. M. Raghavan, the learned senior counsel appearing for the petitioners contends that the substance of notification was not published as

required u/s 4(1) of the Act within a reasonable time. He further contends that the acquisition of the land for the Transport Corporation is bad

when the entire revenue comes out of public revenue. The learned senior counsel further points out that the Government issued executive directions

not to acquire lands, near schools and colleges and that the present acquisition is in violation of executive directions and that the Government

should not be allowed to violate the executive directions issued by it. The learned senior counsel further points out the Development Control rules

and contends that this is primarily a residential purpose and that a bus terminal should not be located there. The learned senior counsel also refers

to the decision in Kammarapalli Gangaram v. Tahsildar Metpally (1983) 1 An.W.R. 354 in Nandakumar v. State of Tamil Nadu 1986 Writ. L.R.

164 and in P. Venkatarathinam Naidu v. State of Tamil Nadu represented by its Commissioner and Secretary, Housing, Madras - 9 and Ors.

1990 T.L.N.J. 264 for the proposition that the delay in publishing the substance of notification u/s 4(1) of the Act vitiates the acquisition. The

learned Senior counsel also points out that the writ petition has been filed immediately after declaration u/s 6 of the Act. 11. The learned Advocate

General appearing for the State points out that originally notification u/s 4(1) of the Act was published in the Gazette on 27.7.1983, that two errata

were published on 24.11.1983 and on 21.12.1983 and that the substance of the notification was published on 27.3.1984 and as such it cannot be

said that there is delay in the publication of the substance of notification u/s 4(1) of the Act.

11. The learned Advocate General has pointed out that sufficient opportunity was given to the petitioners and their objections were heard. The

learned Advocate General relies upon the decision in Tamil Nadu Housing Board v. Shanmuga Sundara Nadar 1985 Writ.L.R. 55 in State of

Mysore v. V.K. Kangan AIR 1975 S.C. 2191 and in Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others, , for the proposition that

the delay in publishing the substance of notification in this case will not vitiate the proceedings. The learned Advocate General points out that the

petitioners herein were not the owners of the property on the date of publication of the notification u/s 4(1) of the Act and as such they cannot be

said to be aggrieved about the correct compliance of the simultaneous publication of the notification u/s 4(1) of the Act. He further argues that this

Court should not allow the petitioners for amending the prayer, after a period of seven years from the date of filing of the main writ petition. With

regard to the declaration u/s 6 of the Act, the learned Advocate General points out that the civil suit was pending till 8.7.1987 and declaration u/s 6

of the Act was made well within the time. He further points out that the acquisition of the land for the purpose of bus terminal can be made under

Part II of the Land Acquisition Act and relies upon the decision in *Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others*, , where it

has been held that Part VII of the Act need not be followed in such cases. He also refers to the decision in *Chinnamma v. State of Tamil Nadu*

represented by *Secretary to Government, Housing and Ors.* 1985 Writ. L.R. 109, for the same proposition.

12. Mr. M. Raghavan, the learned senior counsel replying to the arguments of the learned Advocate General contends that Part VII of the Act has

to" be followed for acquiring the property for companies and relies upon the decision in *Valjibhai Muljibhai Soneji and Another Vs. The State of*

Bombay (Now Gujarat) and Others, . The learned senior counsel further contends that the subsequent purchasers can maintain the writ petition,

relying upon the decision in *Gunwant Kaur v. Bhatinda Municipality*, AIR 1970 S.C. 502 and in *V. Pramila and Ors. v. The State of Tamil Nadu*

and Anr., Writ Appeal Nos.1304 to 1306 of 1987 dated 12.9.1990. The learned senior counsel further argues that there is no delay in asking for

amending the prayer and that the technicality should not stand in the way in such matters. He further relies upon the decision in *Sri Satya Narain*

Singh Vs. District Engineer, P.W.D. and Another, , that with regard to the substance of publication of notification after four months, there is delay

and it is enough to quash the notification u/s 4(1) of the Act. He relies upon the decision in *Collector (District Magistrate) Allahabad and Another*

Vs. Raja Ram Jaiswal, for the proposition that the substance of the notification has to be published immediately and it is mandatory. He also refers

to the decision in *P. Venkatarathinam Naidu v. State of Tamil Nadu and Ors.* 1990 T.L.N.J. 264 He further points out that the mere participation

in the Section 5 - A enquiry will not take away the right of the petitioners and that the non-publication of Notification u/s 4(1) of the Act vitiates the

acquisition proceedings. The learned senior counsel further argues that the executive directions have to be followed strictly and that the state cannot be allowed to act against them.

13. I have carefully considered the arguments of Mr. M. Raghavan, the learned senior counsel appearing for the petitioner and the learned

Advocate General appearing for the State. With regard to the contention raised by the learned senior counsel appearing for the petitioner that the

acquisition of the land is bad since the said acquisition has not been done following Part VII of the Land Acquisition Proceedings, I think that this

contention has to be rejected summarily in view of the Judgment of the Supreme Court which is reported in *Manubhai Jehtalal Patel and Another*

Vs. State of Gujarat and Others, . In that case, the Supreme Court has held that even where land is acquired for a company, the State Government

has the power to acquire land for a public purpose from the revenue of the State. If the declaration 6, which is impugned here is scrutinised, it is

clear that the entire amount of compensation has to be paid out of the public revenue. As such, the contention raised by the learned senior counsel

that the said acquisition is bad since Part VII of the Land Acquisition Proceedings have not been followed is not correct.

14. However, Mr. M. Raghavan, the learned senior counsel relies upon an unreported Judgment of the Division Bench of this Court in *L.N.*

Venkatesan v. The State of Tamil Nadu represented by the Secretary to Government, Housing and Urban Development Department, Madras and

Ors. W.P. No. 10351 of 1982 etc., dated 8.1.1988 and contends that in that case the Division Bench has held that in a case of acquisition by

Housing Board, Part VII of the Land Acquisition Act should be followed. In that case, the Division Bench has held that having regard to the

express language used in the second proviso of Sub-section (1) of Section 6 of the Land Acquisition Act, where the acquisition is for the local

authority, the entire compensation cannot come out of public revenue. The learned Judges have observed as follows:

...If, in law there is a clear distinction between the revenues of the State as opposed to the revenue of a local authority, it is that which should form

part of the declaration in view of the legal requirement under the second proviso to Section 6(1) of the Act...

The learned Judges referred to Form 5 - A, Form 5 - C and Form 5 - D and held that it is a case of non - compliance of second proviso to Sub-

section (1) of Section 6 of the Act. I am of the view, that the case on hand is distinguishable on facts from the case which is mentioned above. As

held by the Division Bench of this Court, that was a case of an acquisition for the "local authority". However, in view of the dicta laid down by the

Supreme Court referred to supra and in view of the language contained in the impugned declaration before me, I do not see any infirmity on this

ground. The decision relied upon by the learned senior counsel in Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat)

and Others, is not applicable to the facts of the case on hand. In that case, it was held by the Supreme Court that the Acquisition made for the

benefit of the Corporation, though for public purpose, is bad because no part of the compensation is to come out of the public revenue and the

provisions under Part VII of the Land Acquisition Act were not complied with. But here the facts of the case are almost similar to the facts of the

case in Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others, . As such, I am of the view that the contention of the learned senior

counsel appearing for the petitioner has no force on this aspect.

15. The substantial objection raised by the learned Advocate General, appearing for the State is that the petitioners herein are the subsequent

purchasers and as such they cannot maintain the writ petition. It is true that the petitioners have purchased the property only after the Notification

u/s 4(1) of the Act. In my view, this cannot be a uniform rule. It depends upon the facts of each case. In fact, a Division Bench of this Court in V.

Pramila and Ors. v. The State of Tamil Nadu and Anr. Writ Appeal Nos. 1304 to 1306 of 1987, dated 12.9.1990 was concerned with a case of

a petitioner who purchased the lands subsequent to the Notification u/s 4(1) of the Act and when the earlier writ petition were dismissed on the

ground of laches, the Division Bench reversed the order of the learned single Judge and allowed the writ appeals. It seems the decision of the

Supreme Court in Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, , also supports this view. In the above

mentioned decision, the Supreme Court has observed as follow:

...we are unable to hold that merely because they had purchased the lands after

the issue of the notification u/s 4 they are debarred from challenging the validity of the notification, or from contending that it did not apply to their lands...

So I am not able to agree with the contention of the learned Advocate General that the writ petition has to be dismissed on the ground of laches

and the petition for the amendment of the prayer also has to be dismissed. When the petitioners have filed the writ petition, it is seen that though

originally they asked for quashing the declaration u/s 6 of the Act, the grounds raised in the; affidavit filed in support of the petition show that they

are attacking the notification u/s 4(1) of the Act only. As such, the objection taken by the learned Advocate General is very technical. If the facts of

the case are considered it cannot be said that the petitioners' case has to be thrown out on the ground of laches. It is seen that the petitioners have

come to this Court, as soon as the declaration u/s 6 is made and that is the only time under which they could come and it has been done so.

Though the petitioners have raised grounds in the affidavit filed in support of the petition attacking the notification u/s 4(1) of the Act, in the prayer,

unfortunately they have asked the relies one for setting aside the declaration u/s 6 of the Act. When the said mistake was pointed out during the

course of arguments the petitioners have immediately filed a petition to amend the prayer in the writ petitioner, attacking the notification u/s 4(1) of

the Act. So, considering the facts of the learned Advocate General are well founded on this aspect. It is not a case where this Court is setting back

the clock seven years back. The notification u/s 4(1) has been made in the year 1983 and that the declaration u/s 6 of the Act has been made only

in the year 1988, since a civil suit was pending and as such the petitioners have come before this Court, lit the earliest, challenging the declaration

u/s 6 of the Act. When the present writ petition was taken up for hearing, during the course of arguments, they chose to amend the prayer

challenging the notification u/s 4(1) of the Act. In fact, the petitioners could question it now only because admittedly, they are the subsequent

purchasers of the property, subsequent to the notification u/s 4(1) of the Act.

16. It is well settled that the publication of substance of the notification u/s 4(1) of the Act is mandatory. It has to be seen on the facts of this case,

whether there is such a delay in publishing the notification. According to the

learned senior counsel for the petitioner, the delay in publishing the substance of the notification vitiates the acquisition proceedings. In *Nandakumar v. State of Tamil Nadu* 1986 W L.R. 164, a Division Bench of this Court has held that the interval between the two acquisition proceedings should not be too long and it should be done simultaneously or at the immediate possible time after the notification u/s 4(1) of the Act. In that case, the Division Bench has held that an interval of six months between the publication of Gazette and the locality would constitute unjustifiable delay and in such circumstances quashed the notification u/s 4(1) of the Act. The judgment of the Division Bench in the above mentioned case has been approved recently by a Division Bench of this Court in *V. Pramila and Ors. v. The State of Tamil Nadu and Anr.* Writ Appeal Nos. 1304 to 1306 of 1987, dated 12.9.1990. Anr. Division Bench of this Court in *P. Venkatarathinam Naidu v. State of Tamil Nadu* 1990 T.L.N.J. 264 : W.A. No. 38 of 1986, dated 13.6.1990 has also affirmed the decision of the Division Bench of this Court stated supra in *Nandakumar v. State of Tamil Nadu* represented by the Secretary to Government, Housing and Urban Development, Madras - 9 1986 Writ. L.R. 164. It is seen from the judgment of the Division Bench of this Court, stated supra, that it had taken note of the decision in and in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, , and has held that six months of interval is fatal to the notification under Section 4(1) of the Act." On the facts of the case on hand, it has to be seen whether then; is delay as contended by Mr. M. Raghavan, the learned senior counsel appearing for the petitioner or there is no delay as contended by the learned Advocate General. In this case, notification u/s 4(1) of the Act has been published on 27.7.1983. An errata has been published on 21.12.1983. According to the learned Advocate General, the substance of the acquisition was published on 27.3.1984. In the earlier part of this order, I have given the dates on which the substance of the publication has been published in various offices. As I have already stated the date of Publication in the Gazette is 27.7.1983 and as admitted by the learned Advocate General, the date of publication of the substance of the notification is 27.3.1984 it is more than six months and as such the dicta laid down by the Division Bench of this Court in the above mentioned squarely applies to the facts of the case on

hand. Even if the contention of the learned Advocate General that the errata has been published on 27.12.1983 is taken into account there is a

delay of more than four months. In this case, no explanation has been offered as to why continuance of action was kept of. I do not think the

shifting of an office to some other place can be an explanation for not publishing the substance of notification. It is seen that the original notification

u/s 4(1) of the Act was published in the month of July, 1983 and up to November, 1983, nothing has happened. Then the Government came up

with an errata in December, 1983 and the publication is made in March, 1984. If these are taken into account on the facts of the case, I am of the

view, the two decisions of the Division Bench of this Court, as mentioned supra, one in Nandakumar v. State of Tamil Nadu 1986 WL.R. 164 and

the Ors. in P. Venkatarathinam Naidu v. State of Tamil Nadu represented by its Commissioner and Secretary, Housing, Madras - 9 and 2 Ors.

1990 T.L.N.J. 264 will squarely apply to the facts of the case. Accordingly, I am of the view that the non-publication of the substance of the

notification u/s 4(1) within a reasonable time vitiates the acquisition proceedings.

17. Further, "what is the effect of publication of an errata" has been considered by the Supreme Court in Hindustan Oil Mills Ltd. and Another Vs.

Special Deputy Collector (Land Acquisition), . In that case, the Supreme Court has held that it cannot be contended always that if the notification

is amended, the last one only has to be taken into account. The Supreme Court has further held that the matter has to be considered on matters on

terms of relevant notifications. In the above mentioned case, the name of the owner as well as the details of the land were wrongly notified

originally and then they were amended later. In such circumstances, in deciding which of the notifications has to be taken into account, the Supreme

Court has observed (at p 735) as follows:

...wherever there are notifications u/s 4 by way of amendments, it cannot be said that it is only the last of them that can be taken as effective

notification u/s 4. Where there is a notification u/s 4 which purports to be by way of an amendment, the question whether it is really one rectifying

certain errors in the earlier one or whether its nature is such as to totally change the entire completion of the matter would have to be considered on

the terms of the relevant notifications...

In this case also, it is seen that in the original notification, the names of the original owners did not find a place. In the earlier portion of this order, I have already narrated how the notification has come to be published. From that, it is seen that the names of the original owners were wrongly published in July, 1983. It was later amended by an errata in December, 1983 only. In that errata the names of the persons from whom the petitioners purchased the land appeared. As such, when the notification u/s 4(1) of (the Act was published, originally a totally wrong description of the names of the real owners of the land was made. If the judgment of the Supreme Court in Hindustan Oil Mills Ltd. and Another Vs. Special Deputy Collector (Land Acquisition), , is taken into consideration, it can be said that it is only the first notification has to be taken into account and not the errata. Even assuming for a moment that the errata has to be taken note of in this case, in my view, there is a delay as I have said earlier, which vitiates the acquisition proceedings.

18. It is not an answer to say that the petitioners have taken part in Section 5 - A enquiry and as such the notification u/s 4(1) is not vitiated. This argument has been negated by the Division Bench of this Court in P. Venkatarathinam Naidu v. State of Tamil Nadu, Rep. by its Commissioner and Secretary, Madras - 9, 1990 T.L.N.J. 264 wherein the Division Bench has referred to the decision of the Supreme Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , where it has been held that it cannot be said that where the person against whom acquisition proceedings are prosecuted files his objections, the purpose behind publication of a notice in the locality u/s 4(a) is achieved and that the failure to give public notice in the locality need not be so treated as fatal to the proceedings, and that it is not also not possible to accept that the person concerned would not suffer any prejudice by the failure of the Government to publish a notice in the locality, if he is able to file detailed objections against the proposed acquisition.

19. The other point which has to be considered is with regard to the directions of the Government regarding the suitability of land for acquisition for the purpose of a construction of a bus terminal. On 4.11.1987, the Deputy Secretary to the Government, Madras has written a letter to the Collector of Madras, with reference to certain norms to be followed for acquiring

the land for the purpose of a bus terminal for State Transport

Corporation and it reads as follows:

Copy of letter No.35867/G2/75 - 19 dated 4.11.1977 from the Deputy Secretary to the Government, Madras - 9 addressed to the Collector of

Madras, Madras - 5.

Sub: Land Acquisition - Land Acquisition for State Transport undertaking for bus terminals bus depots and workshops - instructions.

With reference to a proposal for alienation of land for one of the State Transport undertakings for locating a bus terminal the Government have

decided that action should not be taken for acquisition of lands for bus depots by the side of Colleges, Schools, Hospitals, and Courts. I am

directed to request that the decision of the Government may be borne in mind while formulating land acquisition proposals for bus terminals depots

workshops...

Referring to the letter mentioned above Mr. M. Raghavan, the learned senior counsel for the petitioner contends that the site is adjoining to a

primary school and there are many schools in and around in that area and it is not a proper place for locating a bus terminal. The learned senior

counsel further argues that once the Government has prescribed certain norms to be observed for the acquisition, they should not get over those

norms and the State Government itself should not violate those norms. The learned senior counsel further refers to the decision in Achhelal Singh

and Others Vs. State of Bihar and Others, , in which a Division Bench has held that ignoring of circulars is not justified and if it is ignored", it has to

be held as mala fide. The Division Bench has further observed as follows:

Government Circulars reflecting the need for striking a balance between the injury, annoyance and inconvenience that would be caused to persons

whose land is proposed to be acquired and the good it may do to those for whose benefit it is acquired and the cost involved in the acquisition

should be followed while selecting land for acquisition. Ignoring of such instructions and insistence on the part of the authorities in acquiring the

proposed land without even considering the reports by the officers recommending acquisition of alternative and equally suitable land offered by the

persons affected would show mala fides in initiating the proceedings...

20. Though I am not able to subscribe to the view that acquiring such lands itself is tainted by mala fide, since the Government has prescribed

certain norms, in my view, they should be followed their instructions strictly. From the records produced before me, I find a letter of the Deputy

Secretary to the Government dated 9.12.1980 wherein the Deputy Secretary to the Government has clearly stated that the sites in S.No.2345/2

and 2345/7 (part) are not suitable for locating the bus terminal.

21. In K. Gangaram v. Tahsildar, Metpally (1983) 1 An. W.R. 354 it has been held as follows:

...Violation of the administrative instructions issued by the Government which constitute a quasi - law on the subject is clearly justiciable and the

citizens can obtain redress in a given case if those instructions are disregarded without any justifiable ground.

Surely, on the facts and circumstance of the case, I am of the view that the instructions of the Government have been disregarded without any

justifiable ground. It is also proved by the records produced before me especially the correspondence exchanged, regarding the declaration u/s 6

of the Act, between the heads of Departments.

22. It is seen from a perusal of the records before me, that steps have been taken to locate two bus stands one near the Lady Wellington College,

Madras and the other near Light House, Madras. Though this letter has been written subsequent to the declaration u/s 6 of the Act was made, this

Court can take note of the fact that there are suitable other sites available for the acquisition and even one of the Secretaries to the State has

written to the Managing Director of the Pallavan Transport Corporation to this effect on 9.12.1988. Whether the suggestion of the Secretary to the

Government has to be accepted or not is a different matter. The fact seems to be that, there are other sites which are more suitable than the

present one. If this is taken along with the letter dated 19.7.1987 prescribing certain norms to select the site for bus terminal, I am of the view that

it is vitiated. The Supreme Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , while holding that the action of the

State Executive must be governed by rule of law and must be informed by reason observed as follows:

The existence of the power of Judicial review however depends upon the nature (of) and the right involved in the facts and circumstances of the

particular case, it is well settled that there can be ""malice in law"" existence of such ""malice in law"" is part of the dimension of the rule of relevance

and reason as well as the rule of fair play in action.

It is seen from the records produced before me that there is a difference of opinion between the Departmental Heards with regard to the location

of the bus terminal and the suitability of the land, and such, lam of the view the Government has not considered the matter carefully, taking note of

the pros and cons in acquiring the particular property of the petitioners for locating the bus terminal. Apart from that, as I have already stated that

executive directions, or the Government orders or the department instructions have to be followed strictly by the authorities concerned, and should

not ignore them. It is an admitted fact that near the property to be acquired, there is a primary school and there are so many schools in and around

that area. So, on the ground that the Government has not followed the norms prescribed by it for acquiring a bus terminal, the acquisition has to go.

23. The view I have taken, I do not think it is necessary to refer to all other decisions referred to by Mr. M. Raghavan, the learned senior counsel

appearing for the petitioner and the learned Advocate General appearing for the State.

24. In the result, the notification u/s 4(1) of the Act dated 7.7.1983 published in the Gazetteon 27.7.1983 the errata dated 21.12.1983 and the

declaration u/s 6 of the Act in G.O.Ms. No. 708, Transport Department dated 5.7.1988 shall stand quashed and the writ petition will stand

allowed. However, there will be no order as to costs.