

(1983) 01 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 10688 of 1975

Jhalani Iron and Metal Works

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 4(1), 5A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143
Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 4(1), 5A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 4(1), 5A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143
Constitution of India, 1950 — Article 226

Citation : (1983) 01 AHC CK 0045

Hon'ble Judges : Satish Chandra, C.J;B.D. Agarwal, J

Bench : Division Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—M/s. Narnai Mal Janki Dass are the bhumidhars of plot No. 478 M (one Bigha 13 biswas) situated in village Dhargal, district Meerut. They made purchase of this land by registered deed of sale dated 5th March, 1963. A factory was set up in the name of M/s. Jhalani Iron and Metal Works in the area which is surrounded by boundary walls. On the application made by the Petitioner, the Sub Divisional Officer, Ghaziabad made a declaration on November 4, 1970 u/s 143 of the U.P. ZA and LR Act, 1950, to the effect that the said plot is not held for purposes of agriculture etc. and that, it is held instead for industrial purposes. On May 17, 1974 the State Government issued a notification u/s 4(1) of the Land Acquisition Act for acquiring ten biswas out of this plot. The public purpose specified is planned development of the area by the U.P. State Industrial Development Corporation Limited, Kanpur. This was followed by a notification

made u/s 6 read with Section 17(1) of the Land Acquisition Act dated May 30, 1975. The Petitioner contends that the notification u/s 4(1) was not published in the locality nor was any notice served upon them and, as a result, the Petitioner was prevented from raising objection u/s 5A of the Act. Aggrieved the Petitioner filed this petition under Article 226 of the Constitution for the notification dated May 17, 1974 and May 30, 1975 being quashed.

2. Learned Counsel for the Petitioner contends that the proceeding relating to the acquisition of the land in question is vitiated since there was no publication made of the substance of the notification u/s 4(1) of the Land Acquisition Act in the locality nor was any notice served upon the Petitioner. It is submitted that in consequence the Petitioner could not avail of the opportunity provided u/s 5A for raising objection against the notification issued u/s 4(1). The Petitioner came to know of the proceeding much later when an objection was filed u/s 9(2) on September 4, 1975. It is also submitted in this connection that earlier too there was notification u/s 4(1) for acquisition of the entire plot No. 478 M issued on January 2, 1965. The Petitioner had objected on 23rd January, 1965 against the same on ground that a factory was under construction on this land and the plan for the purpose had been sanctioned by the Prescribed Authority under the U.P. (Regulation of Buildings Operations) Act, 1958. The land was released from acquisition on the Petitioner's objection. Despite notice, counter affidavit has not been filed by any of the Respondents in the instant case. The facts averred in the writ petition, therefore, remain uncontroverted.

3. Section 4(1) of the Land Acquisition Act requires publication of notification in the Gazette indicating the intention of the Government or the Collector that the land is needed for a public purpose and it further requires that a notice of substance of such notification should be given at convenient place in the locality. The State Government of Uttar Pradesh had framed rules in this respect, which are contained in paragraph 415 of the U.P. Revenue Manual which lay down the mode of publication in the locality. According to that provision the substance of the notification issued u/s 4(1) is required to be published in the locality by pasting notice at the convenient places in the locality and by proclamation by beat of drum in the locality and if possible notice of the notification should also be served on the affected persons, whose property is likely to be needed for public purposes. In *Khub Chand and Others Vs. State of Rajasthan and Others*, it was held that the requirement of publication in the Gazette and in the locality u/s 4(1) of the Act was mandatory. It was further held that if a notification was issued u/s 4 without complying with the mandatory direction the notification could be void and the land acquisition proceeding taken in pursuance thereto would be equally void. In *State of Mysore Vs. Abdul Razak Sahib*, a notification u/s 4 was published in the Gazette on August 17, 1961. No notice as required by that Section was published in the locality till November 1/9, 1961. Abdul Razak, whose land was sought to be required, filed objection on December 4, 1961. His objection was entertained and he was allowed to lead evidence. After considering his objection a notification u/s 6 was issued acquiring his land. The Supreme

Court held that the time stipulated by Section 5A(1) is mandatory and that even if any objection is filed after the expiry of that stipulated period of time, the same does not condone the effect of non publication of the substance of the notification u/s 4(1) in the locality. It was laid down in this case:

...in the case of a notification u/s 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided u/s 5A, which is a very valuable right.

4. This was reiterated by the Supreme Court in the case of Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, . These decisions were followed in Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another, and also by a Full Bench in Rattan Singh and Another Vs. The State of Punjab and Others, .

The position may have been different in case Section 5A had been dispensed with. The Land Acquisition (U.P. Amendment and Validation) Act, 1974 has provided that in the case of any land to which by virtue of the direction of the State Government u/s 17(4) the provisions of Section 5A are dispensed with, the publication of the substance of the notification u/s 4(1) in the locality is not required to be made. In the instant case, however, Section 5A not being dispensed with, the requirement of publication of the substance in the locality had necessarily to be observed. The Petitioner was deprived of the valuable right of raising objection u/s 5A due to the non publication in the locality. The proceeding for acquisition in pursuance of the impugned notifications is, consequently, rendered void.

5. The petition, therefore, succeeds as is allowed. The notifications dated May 17, 1974 and May 30, 1975 are quashed. There will be no order as to costs.