

(1993) 12 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 3237 of 1988

Kanguli Naik

APPELLANT

Vs

Banapur Notified Area Council and Others

RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6(1)

Citation : (1994) 1 OLR 143

Hon'ble Judges : S.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : J.N. Mohanty, S.K. Sahoo, N.K. Mohapatra, A. Swain and P.K. Mohanty, for the Appellant; R.K. Mohapatra, B. Routray, S.S. Das, U.K. Samal and Pradipta Mohanty and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mohanty, J.—Revenue Department Notification u/s 4(1) and 6(1) of the Land Acquisition Act, 1894 in respect of a place of land measuring 162 decimals out of plot No. 116 under khata No. 40 in Revenue mouza Bodhapur within Banapur Notified Area Council, are under attack in this proceeding. The land is sought to be acquired for construction of a fish market by the said Council.

2. Harijan community of mouza Raghunathpur were adjudged as owners of the survey plot comprising 160 decimals area in civil litigation in 1979. State Government issued the notification u/s 4(1) on 24.11.1987 and 6(1) on 9.8.1988. Claiming himself to be belonging to Harijan community of the village, the petitioner is assailing the acquisition in writ jurisdiction.

3. Mr. Mohanty for the petitioner attached the land acquisition proceeding mainly on the ground that the notifications u/s 4 and 6 have not been published in daily newspaper and public notices of the substance thereof have not been given in the locality as required under said sections. His other grounds are that the proceeding is then outcome of ill motive of Shri R K. Ram, the then Chairman of

the Council and that the plot is badly needed for the Harijan community of Raghunathpur.

4. Mr. Mohapatra for the Council and the learned Additional Government Advocate for the State, on the other hand, submitted that the procedures laid down in sections 4 and 6 of the Act have been duly complied with : that the acquisition is for a public purpose; and that four persons representing the Harijan community having in the mean- while sold the entire plot in favour of one Nalini Kanta Patnaik (opp, party No. 1.1), the writ case cannot be maintained by the petitioner.

5. At the hearing it was not disputed that the Revenue Department notification u/s 4(1) dated 24-11-1987 was published in two newspapers, i. e. Kalinga Mail dated 10-12-1987 and Janabhasa dated 11-12-1987, in the Extraordinary issue of Orissa Gazette on 23-12-1987 and the declaration u/s 6(1) of the Act issued by the Revenue Department on 9-8-1988 was published in the Extraordinary Gazette on 6-9-1988. Ex facie the notifications are in conformity with the provisions of the Act. Declaration u/s 6 has also been issued within time. Therefore, the only questions which need examination are whether the notifications u/s 4(1) and 6(1) have been published in two daily newspapers circulating in the locality and whether "public notices of the substance of the notification under said section have been given at convenient places in the said locality as mentioned in said section.

6. The learned Additional Government Advocate produced the concerned land acquisition record of the Revenue Department at the hearing. On a perusal of the same it transpires that Revenue Department forwarded copies of the notifications u/s 4(1) and 6(1) to the Director, Information and Publications with a request to publish the same in two local daily newspapers. The Government record contains the newspaper cuttings of Kalinga Mail dated 10-12-1987 and 21-8-1988 and Janabhasa dated 11-12-1987 and 23-8-1988. Neither the Revenue Department indicated the names of the newspapers nor there is any communication on record from the Director. Information and Publications or any material on record that Kalinga Mail and Jana- bhasa are either two daily newspapers or that they are circulating in the locality They may be two local daily newspapers but may not be under circulation in the locality in which the land in question is situate. Under the law the provisions of the Act are to be strictly construed and it is incumbent upon the State to place on record materials indicating publication in two daily newspapers circulating in the locality, but no such material is brought to our notice.

7. As to giving of public notice of the substance of the notification u/s 4(1) at convenient places in the locality, the serving officer has endorsed on the back of the notice that he visited mouza Bodhapur on 3-2-1988, read over and explained the contents of the notice to the villagers, obtained the signature of some of them on the back of the notice and affixed a copy of the notice in the mouza. It may be recalled here that the land in question is situate in mouza Bodhapur and

it belongs to the Harijan Community of village Raghunathpur. It seems both these mouzas come within Banapur Notified Area Council. It is apparent from the above that the villagers of mouza Raghunathpur have not been given the required notice. That apart, the serving officer does not indicate where exactly he affixed a copy of the notice.

8. As to the public notice required to be given u/s 6(2), the endorsement of the serving officer on the back of the notice indicates that he visited mouza Bodhapur on 29-9-1988, acquainted the villagers the contents of the notice, and obtained signatures of some witnesses. Significantly he does not mention that he affixed a copy of the notice anywhere in the mouza. Thus it may at best be said that the villagers of Bodhapur were given notice and not the villagers of Raghunathpur whose Harijan community are the adjudged owners of the land in question.

9. Twin requirements of publication of notifications in Official Gazette and substance of notifications at convenient places in the locality are mandatory, being essential and integral part of the sections 4 and 6 of the Act. The purpose of publication of the notification u/s 4(1) is to give an intimation to the public concerned that their lands may be acquired and if they want they may raise their objections to the proposed acquisition. Similarly publication of the declaration u/s 6(1) has importance because it shall be conclusive evidence that land is needed for a public purpose and after the declaration the State Government may acquire the land in the manner appearing in rest of the provisions of the Act. Consequently strict compliance as to publication of the two notifications at convenient places in the locality is of paramount importance. The word "locality" appearing in sections 4 and 6 must be construed to mean an area which is sufficiently small and compact so that naming it or any publicity in that area would amount to notice to all the inhabitants of that locality. It is common knowledge that names of revenue mouzas lose their significance and are gradually forgotten by passage of time once they are included in an urban body like a municipality or a notified area council which is divided into wards. Further, the words convenient places appearing in the two sections clearly imply that the notices in the locality are to be given at more than one place.

10. Since the two revenue mouzas are included in the Notified Area Council, they must be consisting of separate wards with specific names. Now advertent to the mode of service of the notices as stated above, it is seen that the serving officer has not indicated as to where exactly he affixed the copy of the notice relating to the notification u/s 4(1), and copy of the notice u/s 6(2) has not at all been affixed in the locality, — much less at convenient places. In above connection reference may be made to a decision of Karnataka High Court in Balagouda Nijagouda Patil Vs. State of Karnataka, by a Division Bench consisting of Hon'ble M.N. Venkatachaliah, J. (as he then was). In that case the serving officer had reported that the public notice was affixed in the village and did not even say as to which precise part of the land the notice came to be affixed. To this

background it is held that the statement that the notice was affixed to the land is not understandable and conveys no meaning. The requirement of the section as to the publication of the substance of the notification at convenient place connotes a definite idea and is intended to serve an important purpose. One can understand a claim that a notice containing substance of the notification was affixed to some identifiable landmark in the locality. The report of serving officer must specify the place of publication. Ultimately their Lordships observed that it was difficult to say whether publication by affixture to the land was done and held that public notice had not been published in the locality in accordance with law and the land acquisition proceeding therefore, stood vitiated on this account.

11. On above analysis of the facts of the case and the question of law, we feel constrained to hold that the notifications u/s 4(1) and 6(1) have not been published in two daily newspapers circulating in the locality and the public notice of the substances of the notification u/s 4(1) and declaration u/s 6(1) have not been given at convenient places in the locality and on these grounds the land acquisition proceeding stands vitiated. We, therefore, quash the impugned notifications. It is open to the State Government to come up with fresh notifications for acquisition of the land in question if the public purpose subsists.

The writ application is accordingly allowed. No costs.

D.P. Mohapatra, J.

I agree.