
(2013) 03 GAU CK 0083
In the Gauhati High Court
Case No : Writ Petition (C) No. 229 of 2012

Mcleod Russel India Ltd. and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2014) 1 GLT 315

Hon'ble Judges : P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : N. Dutta, Ms. A. Verma, Mr. B. Gogoi, Mr. P. Nayak and Mr. M. Das, for the Appellant; B.L. Sinha, G.A., Mr. P.S. Dekha, Learned Addl. Sr. G.A. and Mr. U. Rajbongshi, S.C., P.W.D., for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—Aggrieved by the illegalities, which have allegedly been committed in the acquisition proceeding, covered by L.A. Case No. DRA 97/2009, the writ petitioners, who are lease holders of the land, in question, have put to challenge, with the help of this writ petition, made under Article 226 of the Constitution of India, the entire acquisition proceeding on the ground that the acquisition proceeding suffers from breach of several mandatory requirements of the provisions embodied in the Land Acquisition Act, 1894 (in short, the "L.A. Act"). The admitted facts, as discernible from the materials on record, are as under:

(i) For the purpose of acquiring the land, which forms the subject-matter of the present writ petition, an order was, on 09.03.2010, made by the State Government to the effect that the land, in question, was likely to be needed for public purpose, namely, construction of Trans-Arunachal Highway NH-52(B). A notification was accordingly published in the official Gazette, on 27.12.2010, informing the people, in general, that the land, in question, was likely to be needed by the Government for the said public purpose. A public notice, as contemplated by Section 4 of the Land Acquisition Act, is claimed to have been issued, in this regard, on 03.04.2010, and the said public notice was followed by

publication of the Notification in two newspapers on 08.05.2010 and 09.05.2010, the Notification, on 08.05.2010, having been published in an Assamese daily newspaper, which is run under the name and style of Dainik Janasadharan", and the other Notification having been published, on 09.05.2010, in an English daily newspaper, which is run under the name and style of The Sentinel".

(ii) Thereafter, an order was made, on 30.01.2011, by the Collector, Dibrugarh District, observing, inter alia, that since the statutory period for laying objection against the proposed acquisition of the land, in question, had already elapsed u/s 4(1) of the L.A. Act, no hearing, as envisaged by Section 5A of the L.A. Act, was required. This was followed by order, dated 28.01.2011, issued by the State Government, which is the appropriate authority, for publication of necessary declaration, u/s 6(1) of the L.A. Act, as regards acquisition of the land, in question. A "declaration", in this regard, was accordingly published on the same date (i.e., 28.01.2011) in official Gazette.

(iii) Thereafter, public notices, under Sub-section (2) of Section 6 of the L.A. Act, are claimed to have been published, on 10.03.2011, containing the requisite declaration. The public notices aforementioned were followed by publication of the Notification in the said two newspapers, namely, Dainik Janasadharan and The Sentinel, the Notification, in The Sentinel, having been published on 09.02.2012 and the Notification, in Dainik Janasadharan, having been published on 10.02.2012.

(iv) However, the Notifications, u/s 4 as well as u/s 6, were published in English Language in both the said daily newspapers, though one of the said two newspapers, namely, "Dainik Janasadharan", is, otherwise, an Assamese daily newspaper.

(v) Even before the Notifications, containing declaration, as required by Section 6 of the L.A. Act, were published in the said two daily newspapers and even before the public notices, in terms of the requirements of Section 6 of the L.A. Act, were issued, as mentioned hereinbefore, the petitioners, who are lease holders of the land, in question, came with the present writ petition alleging to the effect, inter alia, that on or around 10.11.2011, respondent No. 3, namely, Executive Engineer, Public Works Department (in short, "PWD"), National Highway Division, Dibrugarh, handed over to the petitioners (who are lease holders of the land, which, as indicated above, forms the subject-matter of this writ petition) a communication, in writing, issued by the Government of Assam, on 30.09.2010, which revealed that the Government had submitted a draft declaration, u/s 6(1) of the L.A. Act, for acquiring the land in question.

(vi) On making of the present writ petition, an interim order was passed, in the writ petition, on 19.01.2012, directing that the petitioners' possession over the land, described in the Schedule to the writ petition, should not be disturbed. It was after passing of this interim order that the Notifications, making declarations u/s 6 of the L.A. Act, were published, on 09.02.2012 and 10.02.2012, as

mentioned above, in the two daily newspapers, namely, The Sentinel and Dainik Janasadharan, respectively.

2. The respondents have resisted the writ petition by contending, inter alia, that the land acquisition proceeding, in question, has been initiated, because of public purpose and there has been no infirmity in the acquisition proceeding. The respondents have, however, not disputed the material facts, which we have indicated above except the fact that while the respondents claim that public notices had been issued u/s 4 as well as u/s 6 of the Land Acquisition Act, the petitioners dispute the same.

3. In the light of the admitted facts, therefore, we proceed to decide this writ petition.

4. We have heard Mr. N. Dutta, learned Senior counsel, appearing for the writ petitioners, and Ms. B.L. Sinha, learned Government Advocate, appearing for respondent No. 1. We have also heard Mr. P.S. Deka, learned Additional Senior Government Advocate, appearing for respondent Nos. 2 and 4, and Mr. U. Rajbongshi, learned counsel, appearing for respondent No. 3.

5. Appearing on behalf of the writ petitioners, Mr. Dutta, learned Senior counsel, has pointed out that, in the case at hand, an order was made, on 09.03.2010, by the State Government in exercise of its powers u/s 4(1) of the L.A. Act and this was followed by the publication of a Notification in the Official Gazette on 27.12.2010 and that this Gazette Notification ought to have been followed by publication of the Notification in two daily newspapers circulating in the locality in which the land is located and, at least, one of the two daily newspapers ought to have been in the regional language and it is, thereafter (i.e., after publication of the Notification in the two daily newspapers, one of which ought to have, at least, in the regional language) that the public notices, as contemplated by Section 4, ought to have been issued. However, the Notifications, in respect of the order made under Sub-section (1) of Section 4 of the L.A. Act, were, points out Mr. Dutta, published subsequent to the public notice, which a Collector is required, in terms of the provisions of Section 4(1) of the L.A. Act, to publish by incorporating therein the substance of the Gazette Notification and, further points out Mr. Dutta, though such a public notice is required to be published/displayed at a convenient place in the locality concerned, as contemplated by Section 4, the public notice was not published/displayed.

6. Thus, what Mr. Dutta points out is that the public notices, as contemplated to be published by a Collector, in terms of the provisions of Sub-section (1) of Section 4 of the L.A. Act, ought to have followed the publication of the Notification in the two daily newspapers as mentioned hereinabove. However, in violation of the provisions, so made under Sub-section (1) of Section 4, the Collector, contends Mr. Dutta, claims to have issued the public notice before the Notification, in respect of the order made by the State Government, was published u/s 4(1), in the said two daily newspapers. This apart, points out Mr.

Dutta, Section 4(1) requires that out of the two daily newspapers, circulating in the locality concerned, at least, one shall be in the regional language. The official language, in the State of Assam, submits Mr. Dutta, is Assamese in Brahmaputra valley and since the land, in question, is located in Brahmaputra valley, one of the Notifications, published in the said two daily newspapers, ought to have been in Assamese language, but both the Notifications were published in English language in the said two newspapers, though one of the said two newspapers, namely, "Dainik Janasadharan", is a daily newspaper in Assamese language.

7. More importantly, further points out Mr. Dutta, the public notice, which was to be published by the Collector, was made over, in the light of the materials placed on record, to the local Gaonbura (i.e., village headman), but there is neither any affidavit nor any material on record to show that the gaonbura had, in turn, given/displayed the public notice at convenient places of the said locality.

8. Thus, contends Mr. Dutta, learned Senior counsel, there have been a number of lapses committed and the law, on the subject, was turned, twisted and violated, while making public the order/Notification, as envisaged by Sub-section (1) of Section 4 of the L.A. Act.

9. Pointing out to the alleged illegalities committed in making declaration in terms of the provisions of Section 6 of the L.A. Act, Mr. Dutta, learned Senior counsel, submits that the Notification, relating to declaration, which is required to be published under Sub-section (2) of Section 6, was not published in the regional language and, in this case, too, the public notice was given by the Collector contrary to the requirements of Sub-section (2) of Section 6 inasmuch as the public notice had been given before requisite Notifications, u/s 6, were published, in terms of Sub-section (2) of Section 6, in two daily newspapers.

10. The whole acquisition proceeding, therefore, according to Mr. Dutta, suffers from serious infirmities, incorrigible irregularities and deserves to be set aside and quashed inasmuch as violation of mandatory requirements of Sections 4 and 6 of the L.A. Act, contends Mr. Dutta, has been committed right from the inception of the proceeding and, when the foundation of the acquisition proceeding suffers from serious illegalities and breach of mandatory requirements of law, the declaration, which was made by virtue of Section 6 of the L.A. Act, cannot survive, particularly, when the mandatory requirements of Section 6, too, have not been followed by the respondents.

11. Attempting to repel the submissions made on behalf of the petitioner, Mr. Rajbongshhi, learned counsel, submits that the construction of the National Highway, in question, is strategically important and, in such circumstances, this Court may not interfere with the acquisition proceeding.

12. As far as Mr. P.S. Deka, learned Senior Government counsel, and Mrs. B.L. Singha, learned Government counsel, are concerned, their submissions are to the effect that the respondents have not suppressed any material fact and have placed everything on record. The two learned Government counsels passionately

submit that even if the materials on record reveal some lapses on the part of the respondents, yet, considering the purpose for which the land, in question, is being acquired, the acquisition proceeding be not interfered with by this Court.

13. While considering the present writ petition, it needs to be carefully noted that notwithstanding the fact that the right to property has ceased, under our Constitution, to be a "fundamental right", Article 300A has been introduced into the Constitution by Constitution (44th Amendment) Act, 1978, as a "right to property" and Article 300A states that no person shall be deprived of his property save by authority of law.

14. Since a person cannot, in the light of the constitutional provisions embodied in Article 300A, be deprived of his property except by authority of law, it would, extended logically, mean that if a person has to be deprived of his property, then, this deprivation has to be in accordance with the law and not contrary thereto. Because of the fact that the Constitution regards right to property as a Constitutional right, though not a fundamental right, it naturally follows that when a person is deprived of his right to hold on to his property, it is incumbent, on the State, to ensure that the procedure, prescribed by law, is meticulously and strictly adhered to or else, the right to property, as recognized by Article 300A, would become an empty formality and the real spirit, behind embodying the provisions of Article 300A, would wholly stand defeated.

15. In the backdrop of the Constitutional assurance to protect an individual's "right to property" except as provided by law, let us consider and examine the provisions of the LA Act relating to the issues raised in the writ petition, the core issues being whether the procedure, which has been prescribed by Section 4 read with Section 6 of the LA Act, has or has not been followed in the manner in which it ought to have been followed and, if there has been non-compliance of the procedure prescribed by Section 4 and 6, whether such non-compliance would make the acquisition bad in law and liable to interference by Courts, more so, when the procedure, which Section 4 and Section 6 of the Land Acquisition Act prescribes, as regards acquisition of land, is a composite procedure and the procedure being mandatory in nature?

16. Situated thus, when we consider Section 4, we notice that Section 4 reads as under

4. Publication of preliminary notification and powers of officers thereupon.-

(1) Whenever it appears to the Collector of the District that land in any locality is needed or is likely to be needed for any public purpose or for a Company, 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.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by the Collector of the District in this behalf, and for his servants and

workmen, to enter upon and survey and take levels of any land in such locality; to dig or bore into the subsoil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and lines by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

17. Close on the heels of Section 4, Section 6 reads;

6. Declaration that land is required for a public purpose.-

(1) Subject, to the provisions of Part VII of this Act, when the Commissioner is satisfied, after considering the report, if any, made u/s 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5A, Sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such

public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

18. A bare reading of Section 4, as a whole, shows that under Sub-section (2) of Section 4, it becomes lawful for any officer to enter upon the land, sought to be acquisitioned, and do what is indicated by Sub-section (1) of Section 4 provided that the procedure, prescribed for publication of the preliminary notification in respect of the land (which is sought to be acquired), has been scrupulously followed. Conversely speaking, if the procedure, as prescribed by Sub-section (1) of Section 4, is not scrupulously adhered to, the legislation does not permit any further progress of the acquisition, which is commenced by publication of the preliminary notification in terms of Sub-section (1) of Section 4.

19. Similarly, Sub-section (2) of Section 6 lays down the procedure for declaration that the land is required for a public purpose and Sub-section (3) makes it clear that if the declaration is made in accordance with law, such a declaration shall be conclusive evidence that the land is needed for public purpose and, on making of such declaration, the appropriate Government may acquire the land in a manner as has been prescribed in the succeeding provisions of the LA Act.

20. Here again, what becomes clear is that if the declaration, in respect of the land, is not made by scrupulously adhering to the provisions of Sub-section (2) of Section 6, then, the declaration would not be clothed by the expression "conclusive evidence that the land is needed for a public purpose". Logically extended, this would mean that if the publication of the preliminary notification is not in accordance with law, the appropriate Government cannot acquire the land, more particularly, if the appropriate Government commits breach of the requirements of law as embodied in Section 6 of the Land Acquisition Act.

21. Bearing in mind what have been indicated above, when we revert to Section 4, we notice that Section 4 lays down that when it appears to the appropriate Government that a land 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 notification, so published in the official Gazette, shall be published in two daily newspapers, which have circulation in the locality, where the land is located, and out of these two newspapers, one newspaper shall, at least, be in the regional language. The provisions, so embodied in Sub-section (1) of Section 4, show that once it appears to the appropriate Government that a land is

needed or is likely to be needed for a public purpose or for a Company, the Government shall publish a notification, in this regard, in the official Gazette and the same notification has to be published in two daily newspapers, circulating in that locality, and one of these newspapers shall be in the regional language meaning thereby that the notification, which is published in the official Gazette, has also to be published in one of the daily newspapers in the regional language, i.e., the language used in the locality, where the land is situated. In short, the provisions, contained in Sub-section (1) of Section 4, show that publication of the notification, in the official Gazette, commonly called "preliminary notification", has to be followed by publication in the two daily newspapers.

22. What logically follows from the above discussion is that if the preliminary notification has not been published at all in a daily newspaper, circulating in the locality, in the regional language, then, the very purpose of publication of the preliminary notification would stand defeated.

23. Sub-section (1) of Section 4 further shows that after the notification has been published in the official Gazette followed by publication of the notification in the newspapers as mentioned hereinbefore, the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

24. Thus, the public notice, which a Collector is required to cause to be given, containing substance of the notification, as indicated hereinbefore, has to succeed the publication of the notification in the two daily newspapers and not precede the publication of the notification in the daily newspapers. Speaking a little more explicitly, the Collector cannot cause public notice to be given unless a notification, same as the notification in the official Gazette, has already been published in the two daily newspapers circulating in the locality in the manner as has been pointed out hereinbefore.

25. In the present case, there is no dispute that the preliminary notification, required to be published u/s 4, was published in the official Gazette on 27.12.2010 and the publication of the preliminary notification, in the official Gazette, was not followed by publication of the preliminary notification in the newspapers; rather, a public notice, as the respondents contend, was given by the Collector, on 03.04.2010, and it was, then, that the preliminary notification, which was to be published in the two daily newspapers, came to be published, the publication of the notification being, on 08.05.2010, in "Dainik Janasadharan" and, on 09.05.2010, in "The Sentinel".

26. Thus, though publication of the preliminary notification in the newspapers ought to have preceded publication of the public notice by the Collector, the case at hand shows that the public notice is claimed to have been given by the Collector even before the notification, in tune with the preliminary notification, was published in the newspapers.

27. Thus, the manner in which the steps, for publication of the preliminary

notification, ought to have been taken, have not been taken in the present case. This apart, the preliminary notification, in both the newspapers, were contrary to the mandate of Section 4 inasmuch as the preliminary notifications were published in the two daily newspapers aforementioned in English language; whereas it is the admitted case of the parties concerned that the regional language of the locality concerned is Assamese and, thus, here again, there was a breach of the condition, which has been prescribed by Sub-section (1) of Section 4 for validly acquiring land.

28. Moreover, there is, admittedly, no material on record to show that the public notice, containing the substance of the preliminary notification, which the Collector was required to give, was published in the locality at all inasmuch as the Collector made over the said notice to the local Gaonburah for publication. There is neither any report from the Gaonburah nor any affidavit by Gaonburah or any other person proving that the public notice was, in fact, published by the Gaonburah or anyone in the locality concerned.

29. Clearly, therefore, one shall have no hesitation, and we have no hesitation, in concluding that the procedure, prescribed by Sub-section (1) of Section 4, with regard to the publication of the preliminary notification, has not been scrupulously followed. Far from this, the procedure stands breached and mutilated, while publishing the preliminary notification.

30. Coupled with the above, though Sub-section (2) of Section 6 makes it clear that the declaration, which Section 6 contemplates, has to be published in the same order in which a preliminary notification, under Sub-section (1) of Section 4, is required to be published in the sense that when the appropriate Government is satisfied that the land, in question, is needed for public purpose or for a Company, a declaration to that effect shall be made under the signature of the Secretary to such Government or of some officer duly authorised, in this behalf, and that this declaration has to be published in the official Gazette and, upon publication of the declaration in the official Gazette, the declaration/notification has to be published in two daily newspapers circulating in the locality in which the land is situated, and out of the two daily newspapers, one shall, at least, be in regional language and, then, only the Collector shall cause public notice to be given in the same manner as is required to be given under Sub-section (1) of Section 4. It may be noted, in this regard, that the publication of declaration/notification in two daily newspapers need not necessarily be after publication of the declaration/notification in Official Gazette, it may be simultaneous publication also.

31. In the present case, the declaration to be made, u/s 6(2), was published, on 28.01.2011, in the official Gazette and though the notification, relating to the declaration, so published in the official Gazette, ought to have been followed by publication of the declaration/notification in the two newspapers as contemplated by Sub-section (2) of Section 6 and then, the public notice, containing the substance of the notification, ought to have been published, or the public notice,

containing the substance of the notification, ought to have been simultaneously published with the newspaper publication, the reality, admittedly, is that the declaration/notification, in the case at hand, has been published in the two newspapers after the public notice is claimed by the respondents to have been given inasmuch public notice is claimed to have been given on 10.03.2011 and the declaration/notification was published, in The Sentinel, on 09.02.2012 and, in "Dainik Janasadharan", on 10.02.2012. This apart and same as in the case of preliminary notification, as prescribed by Sub-section (1) of Section 4, none of the two declarations/notifications, in the newspapers, was published in the regional language. In fact, the public notice is not even shown to have been published inasmuch as the public notice, same as in the case of Sub-section (1) of Section 4, is claimed to have been given to local Gaonburah; but there is no material showing that the Gaonburah has, in turn, published the public notice containing the requisite declaration.

32. In support of his submission that the public notice, which a Collector is required to give, cannot precede publication of preliminary notification in the daily newspapers as envisaged by Sub-section (1) of Section 4, Mr. Dutta has placed reliance on Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal,

33. In support of his contention that the twin requirements of publication of public notice and the preliminary notification, in the daily newspapers, are mandatory, Mr. Dutta has referred to the case of Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others,

34. In support of his submission that the presumption or the inference that an owner may have knowledge of acquisition from some source other than the ones, which have been mentioned in Section 4, is impermissible in law and it would amount to non-compliance of the obligation, imposed by Section 4, Mr. Dutta has placed reliance on Syed Hasan Rasul Numa and others Vs. Union of India and others,

35. In support of his case that the language, which is employed in the public notice, as contemplated by Sub-section (2) of Section 6, shall be in the regional language of the locality, Mr. Dutta has placed reliance on Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others,

36. Let us, now, take note of the authorities, which Mr. Dutta has relied upon. It is noteworthy, in this regard, that, in Raja Ram Jaiswal (supra), the Supreme Court held that there cannot be a valid acquisition unless a notification is published in the official Gazette and substance of such notification is published in the locality. It was urged that the publication of the public notice, in the locality, need not necessarily follow publication of the notification in the official Gazette and that publication of the public notice, in the locality, may precede the publication of the notification in the official Gazette, because what is important is the decision to acquire land and the notification and/or publication of the public

notice are mere formal expressions of the decision of the Government to start acquisition proceeding, contrary to the provisions of Section 4 and 6, which prescribe that the public notice of the substance of preliminary notification, to be given by the Collector, has to be valid publication of the notification and, in order to have a validly published public notice by the Collector, the public notice has to be subsequent to the publication of the preliminary notification in the two daily newspapers and not prior thereto. The relevant observations, made in this regard, at para 16, read as under:

Assuming that a Notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a Notification in the Official Gazette follows. In *Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others*, it was held that a Notification under Sec. 4A of the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a Notification u/s 4.

(Emphasis supplied)

37. Turning to the contention that publication of preliminary notification in the Official Gazette and/or publication of the public notice is a mere expression of the decision of the Government to acquire a given plot of land and that exact sequence of publication of the notifications, as envisaged by Section 4, need not be mandatorily followed, we may pause here to point out that the Supreme Court, in *Raja Ram Jaiswal (supra)*, held as under:

Therefore assuming that a Notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate Notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Sec. 4(1) further requires that the Collector shall cause public notice of the substance of such Notification to be given at convenient places in the said locality." The expression "such Notification." in the latter part of Sec. 4(1) and sequence of events therein enumerated, would clearly spell out that first the Government should reach a decision to acquire land, then, publish a Notification under Sec. 4(1) and, simultaneously or within a reasonable time from the date of the publication of the Notification, cause a notice to be published containing substance of such Notification meaning thereby that Notification, which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the Notification. The submission of Mr. Kacker does not commend to us.

(Emphasis supplied)

38. What follows from the above discussion is that the Collector cannot cause

public notice of the substance of the preliminary notification to be given at convenient places, in the locality concerned, before the preliminary notification is published in the official Gazette followed by the publication of the preliminary notification in two daily newspapers, circulating in the locality, out of which one shall, at least, be in the regional language.

39. In *Narindrajit Singh and Ranjit Singh (supra)*, it has been held, in explicit terms, by the Supreme Court that the notice to be given by the Collector is mandatory and unless notice is given in accordance with the provisions contained therein, the entire acquisition proceedings would stand vitiated. It was further held, in *Narindrajit Singh and Ranjit Singh (supra)*, that the twin requirements of publication of preliminary notification, in the official Gazette and also publication of the public notice, are mandatory. The observations, appearing in this regard, at Para 2 and 3 of *Narindrajit Singh and Ranjit Singh (supra)* read as under:

2. The law as settled by this court is that such a notice under second part of Section 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated. We may refer in this connection to *Khub Chand v. State of Rajasthan*. In that case this court pointed out that the object is to give intimation to a person whose land is sought to be acquired of the intention of the officer to enter the land. u/s 4(2) such a notice is a necessary condition for the exercise of the power of entry. Non-compliance with that condition makes the entry unlawful. In *State of Mysore v. Abdul Razak Sahib* no notices as required by Section 4(1) of the Act were published in the locality till after the lapse of about 10 weeks. The question for consideration was whether the Notification issued u/s 4 was a valid one. This court held that in the case of a Notification u/s 4 the law has prescribed that in addition to publication of a notice 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 Act cannot be said to have been complied with. The purpose behind such a notice was that interested persons should know that the land is being acquired so as to prefer any objections u/s 5A which confers a valuable right.

3. Learned counsel for the State has, however, contended that according to these decisions it is only when the persons interested can file objections u/s 5A that the public notice of the substance of the Notification u/s 4(1) by the Collector would be necessary whereas in the present case the applicability of the provisions of Section 5A have been dispensed with u/s 17(4) of the Act at the same time the Notification u/s 4(1) was issued. It is wholly unnecessary that the interested parties should have the requisite information of the acquisition proceedings as they are not entitled to file objections u/s 5A. We are unable to accept such a contention. In our judgment the provisions of Section 4(1) cannot be held to be mandatory in one situation and directory in another. Section 4(1) does not contemplate any distinction between those proceedings in which in

exercise of the power u/s 17(4) the appropriate Government directs that the provisions of Section 5A shall not apply and where such a direction has not been made dispensing with the applicability of Section 5A. It lays down in unequivocal and clear terms that both things have to be simultaneously done u/s 4(1) i.e. a Notification has to be published in the Official Gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such Notification at convenient places in the locality in which the land is situated. The scheme of Section 4 is that after the steps contemplated under sub-section (1) have been taken, the officer authorised by the Government can do the various acts set out in sub-section (2). It is not required u/s 17(4) of the principal Act that when a Notification u/s 4(1) is issued the direction should be made simultaneously if the State Government so desires. Such an order or direction can be made even at a later stage. The effect of the direction made u/s 17(4) is that a declaration can be made u/s 6 in respect of the land at any time after the publication of the Notification u/s 4(1) and thereafter the Collector can take possession. But as mentioned before in a given case the appropriate Government may not consider it necessary to take action u/s 17(4) simultaneously with the Notification u/s 4(1) and it may choose to invoke its provisions only at a later stage in view of any urgency that may crop up. Thus the construction of Section 4(1) cannot be made to depend upon any action or direction which the State Government may choose to make u/s 17(4) of the principal Act. In our opinion Section 4(1) has to be read as an integrated provision which contains two conditions: the first is that the Notification in the Official Gazette must be published and the second is that the Collector has to cause public notice of the substance of such Notification to be given. These two conditions must be satisfied for the purpose of compliance with the provisions of Section 4(1).

(Emphasis supplied)

40. Pausing here for a moment, it may be pointed out that the manner of publication of preliminary notification, as prescribed by Section 4(1), is same as publication of declaration prescribed by Section 6(2). Consequently, the sequence of publication as given in Section 4(1) is as much mandatory as in the case of Section 6(2), Extended logically, it would mean that the notification, in both the cases, shall be, first, published in the official Gazette and, thereafter, the notification has to be published in two local dailies, circulating in the locality, and the publication of the notification in two daily newspapers, circulating in the locality, shall be followed by public notice of the substance of "such notification" by the District Collector.

41. In the case at hand, it is clear that the public notice by the Collector had been given before the publication of the notification in the daily newspapers. This apart, the fact remains that, in the present case, there is nothing on record to show that any public notice was given by a Collector as contemplated u/s 4(1). Moreover, no notification in the regional language was, admittedly, published in

any of the said two newspapers. Thus, mandatory provisions of Section 4(1) were given a complete go-by in every conceivable manner. The provisions of Section 4(1) having not been complied with, the question of publication of valid declaration, as contemplated by Section 6(2), does not arise. Furthermore, even in the light of the provisions of Section 6(2), the declaration suffered from some infirmity as the preliminary notification, too, suffered.

42. The fact that the owner may have the knowledge of the intended acquisition from some source other than the ones, which have been contemplated by Section 4 or Section 6, would, nonetheless, amount to noncompliance of Section 4 or Section 6, as the case may be. In the case at hand, when no notice was given in the regional language of the locality concerned, in any of the said two daily newspapers, Section 4 must be held to have not been followed and the acquisition proceeding, initiated u/s 4, must be held to be without jurisdiction and non est in law. This apart, even the mandatory requirements, as regards declaration, have, for the reasons already assigned, also not been followed in the present case.

43. Mr. Dutta has rightly sought to derive support from the case of Syed Hasan Rasul Numa (*supra*), wherein the Supreme Court has held, at Para 13 and 14, as follows:

13. There is a broad basis for the view that we have taken from the decisions of this Court although on the provisions of other enactment. Section 4(1) of the Land Acquisition Act. 1894 provides for publication of the Notification in the official Gazette and in two daily newspapers circulating in that locality where the land is situated of which at least one shall be in the regional language. Section 4(1) further provides that the Collector shall cause public notice of the substance of such Notification to be given at convenient places in the said locality. In *Khub Chand v. State of Rajasthan* Subba Rao, C.J.. while construing the object and scope of Section 4(1) expressed the view that provisions of the section requiring public notice are mandatory and the legislature thought that it was absolutely necessary that the owner of the land should have a clear notice of the proposed acquisition. It was said that the fact that the owner may have notice of the particulars of the intended acquisition by any other means does not serve the purpose of Section 4 and does not absolve the obligation to follow the method of publication of the Notification. It was also observed that the Notification issued u/s 4(1) without complying with the mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would also be void. This view has been reiterated in a number of subsequent decisions of this Court. In *Collector (District Magistrate), Allahabad v. Raja Ram Jaiswal* most of the earlier decisions have been referred to and the view taken in *Khub Chand* case has been reiterated.

14. In the instant case, the notice has been published only in the local newspapers, namely, the Daily Pratap, the Hindustan Times, the Statesman, the Indian Express and the Navbharat Times. This is only one of the three means of

publication provided u/s 4(1) and it apparently falls short of the mandatory requirements of the section. Since the provisions of the Section 4(1) have not been complied with, the notice in question has no validity and the action taken pursuant thereto has also no validity.

(Emphasis supplied)

44. Section 4(1) prescribes the method of publication and also prescribes what shall be the language of the Notification. In Kunwar Pal Singh (*supra*), the declaration was made by beating of drums in the locality. This apart, the notice was given and the notice was found to have employed a language, which did not satisfy the requirements of Section 6. In such circumstances, the Supreme Court observed, at para 20, thus:

22. The statement of Smt. Nisha Goel made in the counter-affidavit filed by her on behalf of Respondents 1, 2 and 3 that the declaration of public notice by last mode u/s 6(2) of the Act by beat of drums in the locality on 13.8.1985 manifestly is wrong and on the face of it contrary to the contents of the notice (Annexure R-2) filed by her with the affidavit. This notice dated 13.8.1985 was issued by the Land Record Inspector, Block Rohta, Tehsil Meerut, in response to the letter of MDA dated 9.8.1985 and that of the District Land Acquisition Officer, Meerut, dated 1.8.1985. The relevant substance of the notice reads as under:

The land described in the enclosed list situate in Village Dantal, Block Rohta, Tehsil Meerut has been acquired by Meerut Development Authority for its residential scheme and letter for obtaining its possession has been received on 12.8.1985 at 3 p.m. and intimation of which has been given today, 13.8.1985 in Village Dantal to all farmers and residents concerned of the village by beat of drums and in loud voice that Notification had been published on 19.7.1985, 25.7.1985 in daily newspapers, Meerut Samachar, Janta Express and Hamara Yugand Government Gazette. Since the land has been acquired for the residential scheme of Meerut Development Authority, no farmer should change the nature of rights in the land and the possession of acquired land will be taken on 16.3.1985.

(Emphasis added)

45. Further-more, emphasizing the necessity to follow the mandatory provisions prescribed by Section 6(2), the Supreme Court observed, in para 16 of Kunwar Pal Singh (*supra*), as under:

16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular

act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act.

(Emphasis added)

46. Though in *Fukan Rabha and Others Vs. State of Assam and Others*, decided on 07.09.2012, it has been held by a Division Bench of this Court that the notification, to be published in the regional language, shall be in the official language of the State, we do not propose to make any comment on this aspect of the law inasmuch as the official language of a State need not necessarily be the language of the inhabitants of a particular region of the State; whereas Section 4(1) as well as Section 6(2) of LA Act cautiously uses the expression "regional language" and makes it mandatory that the notification, in one of the two daily newspapers, circulating in the locality concerned, shall be in the regional language.

47. In the result and for the reasons discussed above, this writ petition succeeds. The impugned Notifications, dated 9.3.2010 and dated 28.01.2011, which gave rise to land acquisition proceeding covered by DRA/97/09, shall accordingly stand set aside and quashed. The respondents are, however, left at liberty to resort to acquisition proceeding, in accordance with law, if so required.

48. With the above observations and directions, this writ petition stands disposed of. No order as to costs.