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**(1989) 03 MP CK 0003**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 514 of 1984**

Mohammad Shafi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision :** 11-03-1989

**Acts Referred:**

Land Acquisition Act, 1894 — Section 17(1), 4, 4(1), 6

**Citation :** (1989) J LJ 501

**Hon'ble Judges :** S.K. Dubey, J; A.G. Qureshi, J

**Bench :** Division Bench

**Advocate :** S.D. Sangbi and M.L. Agarwal, for the Appellant; S.K. Kulshrestha, Government Advocate for State, R.G. Waghmare, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Dubey, J.—By this petition, filed on 24-8-84, the petitioner seeks a writ for quashing the notification dated 12-4-84 issued u/s 4 (1) and section 17(1) of the Land Acquisition Act, 1894 (for short, the Act), published in the M. P. Gazette dated 20-4-84 annexed as annexure-6 and a notification dated 16-6-84 (Annexure 7-B) issued u/s 6 of the Act published in the M. P. Gazette dated 27-4-84. On the ground that these notifications do not satisfy the requirements of the provisions of sections 4 and 17 of the Act and consequently, the entire acquisition proceedings are null and void.

2. According to the petitioner, his name has been mutated by the Revenue Authorities as Bhumiswami over the disputed land. Originally, the land belonged to one Ramtirth, who was the Bhumiswami of the land, who, before his death, executed a will in favour of the petitioner and on the basis of the will, the Revenue authorities ordered mutation, though the right of mutation has been challenged by Kanchanbai, the widow of the deceased, and Ramgopat, the brother of the deceased Ramtirth. An appeal is pending in this behalf. To satisfy that he has got an interest in the disputed land, the petitioner has annexed the copies of the khasra entries after the mutation, and the orders of the Revenue

Courts. The land admeasuring 2.298 hectares is situated in Mandsaur, tahsil and district Mandsaur. This is also not in dispute that Mandsaur is now no more a small village but is a big city, divided into 35 municipal wards, having the population of more than 80,000 people and spread over an area of about 25 square kilometres. In the notification, the locality was not described with precision. Therefore, the description of the locality as "Mandsaur" was not sufficient to enable the petitioner to know as to whether the land, which is being required for acquisition, was the land belonging to the petitioner, or any other land. Hence the petitioner could not file any objection against the proposed acquisition. Thus, the notification, which has not described the land with sufficient precision, is illegal and void; and as a consequence of that, all subsequent proceedings are void.

3. The Madhya Pradesh Housing Board (respondent No. 3), which is a corporate body established u/s 3 of the Madhya Pradesh Grih Nirman Mandal Adhiniyam, 1972 (for short, "the Adhiniyam"), took steps for compulsory requisition of the land in dispute for the execution of its housing scheme in the manner provided in the Adhiniyam. Hence, the State of Madhya Pradesh issued a notification dated 12th April, 1984 u/s 4(1) and section 17 (1) of the Act, for acquiring the land. The details given in the Schedule are described as under :--

4. The petitioner also alleged that earlier to this, a notification u/s 6 of the Act (Annexure 5 dated 22-3-84) was issued, which gave all particulars of the land and the locality but as no notification u/s 4 of the Act was issued, the same was withdrawn by notification dated 16-4-84 (annexure 7-A). The petitioner further alleged that section 4 of the Act requires that after a notification is published in the official gazette, the Collector shall cause a public notice of the substance of such notification to be given at convenient places in the locality concerned. But no such notice was published at convenient places in the locality concerned nor the copies of the notice were affixed in the office of the Collector and in the nearest police station. The requirement of section 4 of the Act is mandatory, which having not been complied with, all subsequent proceedings are illegal and void.

5. The petitioner also alleged that the exercise of the powers of urgency dispensing with the enquiry u/s 5 A of the Act is without application of mind because the Housing Board has not framed any housing scheme for its requisition and the land is not waste or arable land needed for public purpose by the Housing Board. Therefore, the State Government could not have exercised the powers u/s 17(1) of the Act as the disputed land is having its compound wall and constructions, as described in para 3 of the petition. The acquisition of the land is at the instance of the Chairman of the Housing Board at whose instance a letter was written by the Engineer of the Board, and the State Government acted upon it without application of mind and issued a notification under sections 4 (1) and 17 (1) of the Act, the land is not being acquired for any public purpose.

6. The State Government has filed the return to the petition denying the

allegations and raising a preliminary objection about the locus standi of the petitioner that the petitioner has no right or interest in the petition. The land in dispute originally belonged to one Ramtirth and after his death, his widow, Smt. Kanchanbai, and his brother, Ramgopal are his legal heirs. Along with the return, the State Government also filed a number of documents and orders of the Revenue Authorities to show that the petitioner has no right, title or interest in the land in question. It has also been contended that though there are constructions over some parts of the land but the said constructions are unauthorised and are encroachments. The land was originally entered in the Revenue records as agricultural land; the Housing Board had already prepared a scheme for construction of houses for residential purposes and that the notifications were issued only after the proposals were received from the Housing Board.

7. It may be stated here only that no material received by the State Government from the Housing Board for acquiring the land was placed before this Court in support of the contentions raised by the State Government, to show that any resolution was passed or a housing scheme was prepared by the Housing Board under the provisions of the Adhiniyam. The Housing Board (respondent No. 3) has not filed any return but when a show-cause notice was issued, a reply to the show cause notice was filed by the Housing Board, which has been adopted as its return to the petition. The Housing Board has also raised objection about the locus standi of the petitioner. It has also filed two letters (Annexure R-10 and R-11) written by the Executive Engineer to the Land Acquisition Officer and to the State Government wherein, it has been stated that on 3-9-83, the Chairman of the Housing Board took round of the city and during the course of the round, he gave instructions to acquire the land situated near the the Bus Stand, which is in the heart of the city. The land is required for the housing scheme and shops under the self housing scheme. The Chairman of the Housing Board also desired from the State Government that the possession of land be taken by invoking the urgency provisions. Except these two letters, neither the State Government nor the Housing Board has placed any material on record for invoking the special powers of urgency,

8. In the return, it was also alleged that the possession of the land has been taken, vide Annexure R-13, on 5-6-84 by the Housing Board. This fact has been suppressed by the petitioner. Hence, the petition deserves to be dismissed. The land is vested in the State free from all encumbrances. The declaration made u/s 6 of the Act that the land is required for a public purpose, is the conclusive evidence u/s 6 (3) of the Act that the land is needed for a public purpose.

9. After hearing Shri S. D. Sanghi, Learned Counsel for the petitioner; Shri S. K. Kulshreshtha, learned Government Advocate for the State; and Shri R. G. Waghmare, Learned Counsel for respondent No. 3 at the outset, we may say that it would not be proper for us to deal with the question of right, title or interest of the petitioner in this petition as the proceedings between the petitioner and the

widow and brother of the deceased Ramtirth are pending in the Revenue Court. Our decision may affect the proceedings pending in the Revenue Court in respect of right, title or interest of those parties. But in the facts of the case, in our opinion, the objection of the respondents is neither tenable nor can it entitle the petitioner to deny the relief. u/s 3 (b) of the Act, the petitioner is an interested person and, therefore, he is entitled to come to the Court impugning the notifications, which affect him. Merely because the heirs of the original Bhumiswami have not filed any objections or challenged the notifications, whose rights inter se with the petitioner are yet to be adjudicated upon, the locus standi of the petitioner to ventilate his grievances is not affected.

10. Now we deal with the contention of the petitioner regarding the validity of the notification issued u/s 4 (1) and 17 (1) of the Act. A bare perusal of the notification shows that it does not give the description of the locality with sufficient precision. The facts have not been disputed in the return that Mandsaur is a big city, having the population of more than 80,000 people, divided into 35 municipal wards and spread over an area of about 25 kilometres. The object of issuing notification u/s 4 (1) of the Act is to notify the inhabitants of the locality concerned that the land from that locality is to be acquired for the specified public purpose and their interests are likely to be affected and that if they have got any objection to the proposed acquisition, they may prefer their objections. The other object of the notification is to permit the officers of the Government under sub-section (2) of section 4 of the Act to enter upon and survey any land in the locality and to do all other necessary acts. The purpose of this survey is to decide which particular land in the locality is suitable for acquisition. After this, the Collector submits his report, as required by section 5 of the Act.

11. Shri Sanghi, Learned Counsel for the petitioner, contended that the notification published u/s 4(1) of the Act is not in accordance with the provisions of that section, which are mandatory, and only on this ground, the said notification deserves to be quashed. Learned Counsel placed reliance on the decisions in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, ; *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, , *Hajari v. State of M. P.* 1976 JLJ 253 (FB) and *Sameermal and another v. State of M. P.* 1981 JLJ 601 (DB).

12. On the other hand, Learned Counsel for the respondents contended that the land is required for a public purpose and that the Court can take judicial notice of the fact that the provisions of housing accommodation in these days is becoming the matter of national urgency. The object of describing the locality in the notification u/s 4 (1) of the Act is to give an intimation to the people concerned of the locality that their land is being required and if they want to, they may raise their objections to the proposed acquisition. Thus, the petitioner had the intimation of the acquisition of the land in question though the locality has not been described with sufficient precision.

13. Shri Waghmare, Learned Counsel for respondent No. 3, the Housing Board,

demonstrated before this Court that Khasra numbers were given in the earlier notification which was later on cancelled. In the said notification (annexure 65), the name of the village was given as Mandsaur and it was also mentioned therein that the maps of the land, which is proposed to be acquired, may be inspected in the office of the Collector, Mandsaur. As this notification Annexure-5 was issued u/s 6 of the Act without issuing a notification u/s 4 of the Act, the same was cancelled. Thereafter, another notification was issued on 12-4-84 in relation to the same land, though in this notification in the schedule, survey No., ward No. etc. of the locality are not mentioned but it is mentioned that the maps of the land, which is proposed to be acquired may be inspected in the office of the Collector, Mandsaur. Therefore, the petitioner had sufficient opportunity to raise objections, if any, against the proposed acquisition. Moreover, as the enquiry u/s 5-A of the Act has been dispensed with, detailed description of the locality is not fatal. Learned Counsel also contended that looking to the public purpose and paucity of the housing accommodation and when the land has been properly vested u/s 17 (1) of the Act, and possession thereof has been taken over, this Court would not interfere on the technicality, in the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Reliance was placed on a decision of the Punjab and Haryana High Court in *Narinjan Singh and Another Vs. State of Punjab and Another*, .

14. After hearing the counsel, we are of the opinion that the contention of the Learned Counsel for the respondents cannot be accepted. The earlier notification, which was later on cancelled, has no relevance. The notification dated 12-4-84 issued u/s 4 (1) of the Act, does not give any indication with regard to the locality. The Full Bench of this Court in 1976 JLJ 253 (*supra*), while considering the object of section 4 (1) of the Act observed :--

One of the objects of the notification made u/s 4 (1) is to notify the inhabitants of the locality that they are likely to be affected by the proposed acquisition so that they may file objections, if any. This being one of the objects, the word "locality" must be construed to mean an area, which is sufficiently small and compact so that naming it amounts to a notice to all inhabitants of that area. Since the locality is required to be named for identifying the area covered by it, it should be the smallest area, which has acquired a name by which it is known already at the time of notification. Ordinarily, villages in India are quite small so that naming of a village as locality would be sufficient. However, in recent times-some villages have grown considerably so that the area within a big village may have been divided to create smaller units therein such as Tolas or Mohallas. In a given case, it may be possible to show that naming the locality in view of the largeness of the village and in that context, a smaller area such as a Tola or Mohalla within the village has to be treated as locality. That however, would be a question of fact in each case.

In the case of *Sameermal* (*supra*), the Division Bench of this Court, after considering the law enunciated by the Apex Court, while considering the case of

"Jaora", which is a smaller town than Mandsaur held that it could not be doubted that land is needed in Jaora, but it could not be said that "Jaora" is one of those small villages, where mention of the name of the village is sufficient. This town has a Municipality and it is not disputed that it consists of separate wards having their names and apparently, therefore, mere mention of "Jaora" in the notification u/s 4 of the Act, it could not be sufficient compliance with the provisions contained in section 4 of the Act. The Division Bench thus quashed the notification u/s 4 (1) of the Act.

15. The contention of Shri Waghmare, Learned Counsel for respondent No. 3 Housing Board that the petitioner had notice and could have preferred objections, can also not be accepted as the Apex Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , while considering the validity of notification u/s 4 of the Act, and after considering the earlier cases in Babu Barkya Thakur Vs. The State of Bombay and Others, , Khub Chand and Others Vs. State of Rajasthan and Others, , State of Mysore Vs. Abdul Razak Sahib, , and Narendra Bahadur Singh and Another Vs. State of Uttar Pradesh and Others, , held as under :--

A bare perusal of section 4 (1) clearly shows that in order to comply with the statutory requirements therein set out, a notification stating therein the land, which is needed or is likely to be needed for a public purpose has to be published in the official Gazette. The second part of the sub-section provides that the Collector has to cause public notice of the substance of such notification to be given at convenient places in the locality in which the land proposed to be acquired is situated. Both the conditions are mandatory. As a notification u/s 4 (1) initiates the proceedings for acquisition of land and uses the expression "shall", the mandate of the Legislature becomes clear and, therefore, the infirmities therein cannot be wholly overlooked on the specious plea that the Courts do not interdict at the stage of a mere proposal.

It could not be urged that since the underlying purpose behind publication of a notice in the locality is to give an opportunity to the person interested in the land to object to the acquisition, where in a case, the purpose is achieved as in the instant case, the petitioner having filed his objections, the failure to publish the substance of the notification in the locality need not be treated fatal and cannot invalidate the proceedings. The submission, as presented is very persuasive and but for binding precedents, the Supreme Court would have accorded considerable attention to it. But the Supreme Court would not whittle down a mandate of legislation recognised by a long line of decisions solely depending upon the facts of a given case. Further, the submission is predicated upon an assumption that the sole purpose behind publication of substance of notification in locality is to make requirements of section 5-A functionally effective. The assumption is not well founded.

Therefore, the contention of Shri Waghmare, Learned Counsel for respondent No. 3, that the petitioner had notice and could have preferred objections even

without the description of the locality, cannot be accepted and we are of the view that the notification issued u/s 4 (1) of the Act was not in accordance with the mandatory provisions of section 4 (1) of the Act describing therein the locality. The said notification being not in conformity with section 4 (1) of the Act is invalid and it deserves to be quashed.

16. The other contention of the Learned Counsel for the petitioner that while dispensing with an enquiry u/s 5-A of the Act and invoking the special provisions of urgency, there was no application of mind as there was neither any resolution of the Board nor was there any public purpose and the powers u/s 17 (1) of the Act could not have been exercised because the said land is not waste or arable land. There are constructions over the land and even if some part of the land is cultivable, the notification u/s 17 (1) of the Act declaring that section 5-A of the Act will not apply, is invalid. Learned Counsel placed reliance on the decisions in *Sarju Prasad Shah v. State of U. P. and others* AIR 1965 SC 1963 , *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another* , *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others* , *Jagannath Prasad v. State of M. P.*, and *S.K. Gupta Vs. The Union of India and Others* , .

17. Shri Waghmare, Learned Counsel for respondent No. 3, contended that for exercising the powers u/s 17 (1) of the Act, the State Government is the sole arbiter of the question as to whether or not there is a case of urgency. The opinion of the Government in regard to the existence of urgency is subjective and not objective. The Court will not normally enquire whether or not there were sufficient grounds for forming an opinion u/s 17 (4) of the Act. There is material, however meagre it may be, for invoking the urgency clause as the land is required for the housing scheme and for providing housing accommodation to the inhabitants, therefore, it cannot be said that in these circumstances, the decision of the State Government in resorting to section 17 (1) of the Act and in dispensing with compliance with section 5-A of the Act, was unwarranted as judicial notice of the fact can be taken that provision for housing accommodation is becoming a matter of national urgency. Learned Counsel placed reliance on a decision of the Apex Court in *State of U.P. Vs. Smt. Pista Devi and Others* , . Learned Counsel also contended that as declaration u/s 6 of the Act has been made, it is a conclusive proof and evidence of public purpose u/s 6 (3) of the Act. The declaration is not colourable. As such, now it cannot be gone into as the petitioner has not discharged the burden of proving mala fides or colourable exercise of powers. Learned Counsel relied on the decisions in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, and *Land Acquisition Collector and Another Vs. Durga Pada Mukherjee and Others* , .

18. After giving our careful consideration to the submissions made by the Learned Counsel, we are of the opinion that in the facts of the case, the urgency provision could not also have been invoked. This is not in dispute that the land is being acquired for housing scheme. Respondent No. 3 is a statutory and a corporate body established u/s 3 of the Adhiniyam. Housing scheme has been

defined in section 2 (9) of the Adhiniyam, which reads as under:--

Housing scheme" means a housing scheme made under this Act and included a land development scheme prepared u/s 34.

Chapter VI deals with the housing scheme from sections 31 to 34. The Housing Board is empowered to undertake housing scheme but the Chairman is not the Board. The Board is constituted u/s 4 of the Act, which consists of the Chairman appointed by the State Government and other members enumerated therein. The Board did not pass any resolution to undertake a housing scheme. Chapter VI is very exhaustive. No material has been placed, till the date of the arguments, that any resolution was passed by the Board for undertaking the scheme or even if the resolution is passed, any housing scheme has been prepared. Merely a letter written by the Executive Engineer of the Board to the Land Acquisition Officer, at the instance of the Chairman, is not, in our opinion, sufficient for acquisition of the land in question u/s 49 of the Adhiniyam. No doubt, section 49 of the Adhiniyam gives power to the Board to take steps for compulsory requisition of any land or interest therein required for execution of a housing scheme in the manner provided under the Act and the acquisition of any interest therein for the purpose of the Adhiniyam shall be deemed to be acquisition for the "public purpose" and the Board will be deemed to be a legal authority for the purpose of the Act.

19. It cannot be denied that providing housing accommodation and acquisition of land for housing scheme is a "public purpose". But, where is the scheme when there was such a hot contest, the Board was bound to place the material before this Court to show that before proceeding for acquisition, a scheme had already been prepared in accordance with the provisions of the Adhiniyam. The State Government did not consider at all this aspect of the matter and dispensed with the enquiry u/s 5 A of the Act. Besides this, the State Government also did not consider as to whether the land in question is waste or arable land. The notification issued u/s 4 (1) and section 17 (I) of the Act did not say at all that the land is waste or arable land. Waste and arable land is "sine qua non" for exercising the powers u/s 17 (1) of the Act even if the first condition that the acquisition of the land is urgently needed and the question of urgency depending upon the subjective determination of the Government, cannot be gone into and may not be made a justiciable matter; but the question whether the land is waste or arable land, is an objective fact and u/s 17 (4) of the Act, the Government is required to form an opinion in regard to this objectively, before exercising its special powers u/s 17(1) of the Act for dispensing with the enquiry u/s 5-A of the Act. A Division Bench of this Court in 1969 JLJ 267 (supra) after placing reliance on the decisions of the Apex Court in *O. Rm. M. Sp. Sv. Firm Vs. The Commissioner of Income Tax-Madras*, and *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, , held that when the question whether the land is waste or arable is not determined objectively by the State, after application of its mind, such notification is illegal or ultra vires. No material has been placed in the

case by any of the respondents to show that the land, which is needed for a public purpose, is waste or arable land. On the other hand, there are specific pleadings as contained in para 3 of the petition that the land is enclosed on its western side by a "pakka" compound wall and on the remaining three sides by a wire fencing; there are several "pakka" and "kachcha" structures, shops, etc. built and standing on the land. There is also a tennis Court and a "pakka" well and "baodi" on the land. The entire land is surrounded on its eastern, western and southern sides by public roads. This averment is also supported by the spot inspection report (Annexure R-2) dated 3-3-84 by the Land Acquisition Officer, which also speaks of constructions and the boundary wall. Merely because the land originally was agricultural land, Khasra numbers are given to it and the land is not diverted for non-agricultural purposes, it will not make the land as arable land. May be these constructions by way of encroachments, which is the subject matter yet to be decided, but in no case, it can be imagined that the land is waste or arable land. The respondents have also not placed any material before this Court that the land is a waste or arable land and the submission made in the petition in para 3 is not correct. No material has been placed before this Court that while exercising powers u/s 17 (1) of the Act and issuing notification u/s 17 (4) of the Act, the State Government applied its mind and for forming an opinion for issuing a notification u/s 17 (1) of the Act, there was material before it. Therefore, we are of the opinion that the notification issued u/s 17 (1) of the Act is invalid as the petitioner has discharged his burden and demonstrated that the land is neither waste nor arable.

20. In view of our holding that the notification issued u/s 4 (1) and 17 (1) of the Act is invalid and deserve to be quashed on the ground of non compliance with the provisions of the Act, all subsequent proceedings in pursuance of the notification are also quashed.

21. In the result, this petition is allowed. The notifications issued by the State Government dated 12-4-84 and 16-4-84 under sections 4 and 17 of the Act and the subsequent notification issued u/s 6 of the Act dated 16-4-84 and all subsequent proceedings in pursuance to these notifications are hereby quashed. In the circumstances of the case parties shall bear their own costs of this petition. The amount of security deposit, if any, be refunded to the petitioner, after verification.