
(2012) 04 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9839 of 2011

Pushpa Devi Maloo

APPELLANT

Vs

Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Railways Act, 1989 — Section 20A, 20A(1), 20A(4), 20E, 20E(1)

Citation : (2012) 4 RLW 3472 : (2012) 3 WLN 42

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Prakul Khurana, for the Appellant; Zakawat Ali, Advocate, for the Respondent-State and Mr. P.C. Sharma, Advocate, for the Respondent No. 2 to 4., for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This petition has been filed with the prayer that the notification dt. 06.11.2008, published under Sec. 20A(1) of the Railways Act, 1989 (hereinafter "the Act of 1989") be declared lapsed in view of the failure of the competent authority to notify the declaration under Sec. 20E(1) of the Act of 1989 within a period of one year thereafter. The further relief prayed for is that consequent to the lapsing of notification dt. 06.11.2008, further proceedings for acquisition of the petitioner's land be declared without authority of law and the award dt. 25.02.2011 be declared null and void. The facts of the case are that the petitioner is the owner of land bearing Khasra Nos.1541, 1542, 1543, 1544, 1549, 1550 and 1551 in Ward No. 3 of Abaadi area, Gram Naraina, Tehsil Fulera, District Jaipur. It is submitted that the Ministry of Railways (Railway Board), Central Government vide notification dt. 06.11.2008, issued under Sec. 20A(1) of the Act of 1989 in the official Gazette of India Extraordinary, Part II, Section 3, Subsection (ii), notified its intention/proposal to acquire the petitioner's land for public purpose. The substance of the notification dt. 06.11.2008 was published in two local newspapers one "Rajasthan Patrika" and the other "Dainik Bhaskar" on

21.06.2009 and 22.06.2009 respectively i.e. seven and half months after the date of publication of the notification in the Gazette - as the petitioner's counsel emphasised. On 20.07.2009, the petitioner submitted detailed objections to the acquisition of her land. However, the said objections were disposed of on 07.08.2009 which according to the petitioner was without application of mind to the substance of the objections raised by her. It is submitted that the Central Government thereafter followed up the notification dt. 06.11.2008 and its publication in two local newspapers on 21.06.2009 and 22.06.2009 respectively by way of a notification dt. 23.01.2010 under Sec. 20E(1) of the Act of 1989 and issued a declaration that the petitioner's land was to be acquired for the purpose mentioned in Sub-Section 1 of Section 20A of the Act of 1989. The petitioner submits that she filed objections on 03.11.2010 and 08.11.2010 before the LAO (SDO), Sambhar Lake, District Jaipur objecting to the legality and maintainability of the acquisition proceedings on the allegation that with the elapsing of period of one year from the date of notification under Sec. 20A(1) of the Act of 1989 on 06.11.2008, proceedings under Sec. 20E(1) of the Act of 1989 and declaration thereunder on 23.01.2010 were wholly vitiated and contrary to the specific provisions of the Act of 1989. The said objections of the petitioner were however rejected by the LAO vide order dt. 20.01.2011. It is on record that subsequent to the rejection of the petitioner's objections dt. 03.11.2010 and 08.11.2010, an award came to be passed on 25.02.2011. The present petition was filed on 02.06.2011.

2. The counsel for the petitioner has founded his case of challenging the acquisition proceedings on the submission that in terms of Section 20E(3) of the Act of 1989 where in respect of any land, a notification has been gazetted under Sub-Section 1 of Section 20A for its acquisition, but no declaration under Sub-Section (1) of Section 20E has been made within a period of one year from the date of gazetting of that notification, the said notification under Sec. 20A(1) is to cease to have any effect with the consequence of legal abandonment of the acquisition proceedings. Counsel would submit consequent to the chronology of the case wherein notification under Sec. 20A(1) of the Act of 1989 was gazetted on 06.11.2008 and the declaration under Sec. 20E(1) was made on 23.01.2010, the entire acquisition proceedings qua the petitioner's land were thereafter vitiated having lapsed in view of Sub-Section 3 of Section 20E of the Act of 1989. Counsel would further submit that the publication of the substance of notification under Sec. 20A(1) under Sub-Section 4 thereof is of no effect for the purposes of determining the period of one year as provided for under Sub-Section 3 of Section 20E of the Act of 1989. Counsel further submits that the publication of the substance of the notification under Sub-Section 1 of Section 20A in terms of Sub-Section 4 thereof cannot be the point of terminus for computing the period of one year within which the declaration has to be made.

3. In reply, the counsels for the respondents have submitted that under the scheme of the Act of 1989, the publication of the substance of the notification under Sec. 20A(1) in two local newspapers of which one is to be vernacular is

integral to notification under Sec. 20A of the Act of 1989 and without publication in newspapers as provided for the process under Sec. 20A of the Act of 1989 is not complete. It has been submitted that for the purpose of filing objection by the persons interested in the land sought to be acquired, the period has to be reckoned not from the date of the gazetting of the notification under Sec. 20A(1), but from the date of publication of the substance of the notification under Sec. 20A(1) in two local newspapers. It is submitted that a holistic reading of Section 20E(3) would indicate that the period of one year within which the declaration has to be made under Sec. 20E(1) is to be reckoned from the date of the publication of the notification under Sec. 20A(1) and that publication as of necessity has to be construed as the publication under Sub-Section 4 of Section 20A i.e. the substance of notification under Sec. 20A(1) in two local newspapers one of which is to be in the vernacular language. It is submitted in the aforesaid context that the substance of the notification under Sec. 20A(1) has been published in the "Rajasthan Patrika" and "Dainik Bhaskar" on 21.06.2009 and 22.06.2009 respectively and thus the period of one year for the purpose of declaration under Sec. 20E(1) has to be reckoned from the last of the aforesaid dates. It is submitted that so reckoned, the declaration under Sec. 20E(1) having been notified on 23.01.2010, it was well within the period of one year from the date of publication of the substance of the notification under Sec. 20A(1) and therefore nothing irregular and illegal can be attributed to the acquisition proceedings under the Act of 1989 qua the petitioner's land which has since been acquired and vested in the State Government under the award dt. 25.02.2011. Counsel for the respondents have relied upon the judgment of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 6097/2010, titled Raghjibhai Kanjibhai Kharsan vs. Union of India & Anr., decided on 17.01.2011, wherein it was held that the period for the purpose of computing one year within which a declaration under Sec. 20E(3) of the Act of 1989 has to be made is from the date of publication of the substance of the notification under Sec. 20A(4) of the Act of 1989 in two newspapers.

4. Counsel for the petitioner however would submit that the judgment of the Gujarat High Court in the case of Raghjibhai (Supra) is not the correct enunciation of law and would for this purpose seek to refer to a judgment of the Hon'ble Supreme Court in the case of Dedicated Freight Corridor Corporation of India vs. Subodh Singh & Ors., Civil Appeal No. 2794/2011, decided on 30.03.2011.

5. I have heard the counsel for the parties and perused the writ petition as also the replies thereto.

6. I am of the considered opinion that in the scheme of the Act of 1989, the notification under Sec. 20A(1) even while being gazetted is mandatorily required to be published in two local newspapers one of them being in the vernacular language and without publication of the substance of the notification in the two newspapers as aforesaid, the process under Sec. 20A of the Act of 1989 is not

complete. The publication of the substance under Sec. 20A(1) integral to the commencement of the land acquisition proceedings under the Act of 1989.

7. Consequently, for the purpose of a declaration under Sec. 20E(1), the period of one year within which such a declaration has to be made is to be reckoned from the date of publication of the substance of notification under Sec. 20A(4) in two local newspapers which completes the Section 20A of the Act of 1989 process. The language of Section 20E(3) of the Act of 1989 also mandates that a declaration under Sec. 20E(1) has to be made within one year from the publication of the acquisition proceedings under Sec. 20A(4) of the Act of 1989. Publication of the notification is under Sec. 20A(4) of the Act of 1989 and has to be contra-distinguished from the gazetting of the notification under Sec. 20A(1) of the Act of 1989 and not confused with it. Hence Section 20E(3) of the Act of 1989 also provides that the period will be reckoned from the date of publication of the notification. I find no force in the contention of the counsel for the petitioner that the publication of the notification referred to Sub-Section 3 of Section 20E of the Act of 1989 pertains to the gazetting of the notification with reference to Section 20A(1) of the Act of 1989 and not to publication thereof under Sec. 20A(4) thereof. If the notification under Sec. 20A of the Act of 1989 were to be complete only on being gazetted, there would be no requirement in Sub-section 4 of Section 20A of the Act of 1989 of its publication. In my considered view, the word publication under Sub-Section 3 of Section 20E of the Act of 1989 refers to the publication under Sub-Section 4 of Section 20A of the Act of 1989.

8. In the aforesaid context, the substance of the notification under Sec. 20A(1) of the Act of 1989 having been published on 21/22.06.2009 and the declaration under Sec. 20E(1) having been made on 23.01.2010 well within one year, it is wholly valid, legal and regular and no legal deficiency can be attributed thereto. This view also finds support in the judgment of the Gujarat High Court in the case of Raghjibhai (Supra), As far as the contention of the counsel for the petitioner with regard to the judgment of the Hon"ble Supreme Court in the case of Dedicated Freight Corridor Corporation of India (Supra) is concerned, I am afraid that the said judgment is of no succour to the petitioner as the said judgment only seeks to interpret Section 20E(1) of the Act of 1989 with reference to the making of an award under Sec. 20F(2) of the Act of 1989 and has no manner of concern or relation to the interpretation of Section 20A(1) and Section 20A(4) of the Act of 1989 juxtaposed to Section 20E(3) of the Act of 1989. The issue in the present writ petition is totally foreign to the matter before the Hon"ble Supreme Court.

9. For the aforesaid reasons, I am of the view that there is no force in the present petition and the same is liable to be dismissed. Stay application also liable to be dismissed.