
(2012) 05 RAJ CK 0036

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 566 of 2012

Pushpa Devi Maloo

APPELLANT

Vs

Land Acquisition Officer, SDO and Others

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4, 4(1), 4(2), 5A
Railways Act, 1989 — Section 2(26), 20A, 20A(1), 20D, 20E

Citation : AIR 2012 Raj 146

Hon'ble Judges : Arun Mishra, C.J.; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Prakul Khurana and Sanjay Jhawar, for the Appellant; P.C. Sharma and S. Zakawat Ali, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Jain, J.—Heard the learned counsel for the parties. The petitioner/appellant has preferred this special appeal against order of single Bench dated 2nd April, 2012, whereby the writ petition filed by the petitioner challenging notification dated 6.11.2008 issued u/s 20A(1), notification dated 23.1.2010 issued u/s 20E(1) of the Railways Act, 1989, award dated 25.2.2011 and order dated 20.1.2011, has been dismissed.

2. Brief facts of the case are that respondent Railway Ministry (Railway Board) issued a notification dated 6th November, 2008, under sub-section (1) of Section 20A of the Railways Act, 1989 (for short "the Act") declaring its intention to acquire land in dispute for public purpose and for execution of a Railway project. The said notification was published in the Gazette of India. Extraordinary, dated 6.11.2008. It was also published in two daily local newspapers i.e. "Rajasthan Patrika" and "Dainik Bhaskar" dated 21st June, 2009 and 22nd June, 2009 in terms of sub-section (4) of Section 20A of the Act. Thereafter, objections were preferred on 20th July, 2009. which were disposed off by the competent officer vide order dated 7th August, 2009. Thereafter, a declaration was issued u/s

20E(1) of the Act vide notification dated 21st January, 2010, which was published in the Gazette of India dated 23rd January, 2010. The petitioner filed objections before the Land Acquisition Officer on 3rd November, 2010 and 8th November, 2010, the said, objections were considered and rejected, vide order dated 20th January, 2011, Thereafter, award was passed on 25th February, 2011 and writ petition was preferred before single Bench on 2nd June, 2011 with the following prayer:

(i) Issue appropriate writ/order/direction quashing and nullifying the impugned notification dated 6.11.2008 published u/S. 20A(1) and the impugned notification dated 23.01.2010 published u/s. 20E(1) of the Act. Annexures 1 and 4.

(ii) Issue appropriate writ/order/direction declaring the impugned land acquisition proceedings as without authority of law and the consequential passing of award dated 25.02.2011 as null and void. Annexure No. 11.

(iii) Issue appropriate writ/order/direction quashing the order dated 20.01.2011 passed by the Respondent No. 1. Annexure No. 6

(iv) Grant such further relief/reliefs which in the facts and circumstances of this case may do complete justice to the petitioner.

(v) Allow the Writ Petition with costs.

(vi) Pass any other order/direction, which this Hon''ble Court deems appropriate.

The respondents filed their reply to writ petition, wherein it was submitted that acquisition proceedings were completed in accordance with law and award has already been passed.

The learned single Judge after considering submissions of the parties and examining the matter, dismissed the writ petition. Hence petitioner has preferred this special appeal.

3. The submission of learned counsel for the appellant is that declaration issued u/s 20E(1) of the Act was required to be issued within a period of one year from the date of publication of the notification, as required under sub-section (3) of Section 20E of the Act. He has submitted that the notification under sub-section (1) of Section 20A of the Act was issued on 6th November, 2008, whereas notification u/s 20E(1) of the Act was issued on 21st/23rd January. 2010. Therefore, it is clear that it was issued after expiry of a period of one year. Therefore notification issued on 21st January. 2010. published in Gazette of India on 23rd January, 2010 was contrary to sub-section (3) of Section 20E of the Act. Therefore, it was wholly illegal and without jurisdiction and the same is liable to be quashed. He also submitted that declaration u/s 20E itself was illegal and without jurisdiction. Therefore, order dated 20th January, 2011 rejecting the objections of the petitioner and passing of award on 25th February, 2011 were also liable to be quashed and set aside being illegal and without jurisdiction. He has submitted that learned single Judge has committed an illegality in

interpreting the provisions of Sections 20A and 20E of the Act. He has submitted that from sub-section (3) of Section 20E of the Act, it is clear that a period of one year has to be computed from the date of notification published under subsection (1) of Section 20A of the Act and not from the publication of notification under sub-section (4) of Section 20A of the Act. He therefore submitted that the learned single Judge was not right in dismissing the writ petition of the petitioner, the impugned order passed by single Bench is, therefore, liable to be set aside. In support his submission, he relied upon a decision of Hon''ble Apex Court in Dedicated Freight Corridor Corporation of India Vs. Subodh Singh and Others,

4. Learned counsel for the respondents defended the impugned order passed by single Bench and prayed for dismissal of the intra-court appeal. It is submitted that the notification issued under sub-section (1) of Section 20A of the Act was not only to be notified in the Gazette of India but it was liable to be published in two local newspapers, as required under sub-section (4) of Section 20A of the Act. Since, the notification under sub-section (1) of Section 20A was published in two local newspapers i.e. "Rajasthan Patrika" and "Dainik Bhaskar" on 21st June, 2009 and 22nd June, 2009. therefore, limitation of one year prescribed under sub-section (3) of Section 20E of the Act, will start from the last date of publication of notification in daily newspapers in a vernacular language and from the said date, the notification under sub-section (1) of Section 20E of the Act was issued in time. In support of his submission, he referred a decision of Gujarat High Court in Ragh Ji Bhai Kan Ji Bhai Kharsan v. Union of India (Special Civil Application No. 6097/2010) decided on 17.1.2011.

5. We have considered the submissions of learned counsel for the parties and examined the impugned order passed by single Bench and other documents available on record.

6. Before considering the submissions of the parties, it would be appropriate to consider the case law cited at the Bar.

7. In Dedicated Freight Corridor Corporation of India v. Subodh Singh & Ors. (AIR 2011 SC (Civ) 992)(supra), their Lordships of Hon''ble the Apex Court was considering the provisions relating to determination of amount payable as compensation u/s 20F of the Act of 1989. While interpreting Section 20F(2) of the Act, the Hon''ble Apex Court held that the period of one year for making award stipulated u/s 20F(2) of the Act is to be reckoned from date of publication of notification in the Official Gazette. So far as period of one year for issuing declaration under sub-section (3) of Section 20E read with sub-section (4) of Section 20A of the Act of 1989 are concerned the same was not under consideration before the Hon''ble Apex Court. Therefore, the judgment referred by learned counsel for the appellant is not applicable in the facts and circumstances of the present case.

8. In Ragh Ji Bhai Kan Ji Bhai Kharsan v. Union of India (supra), the Gujarat High

Court considered the similar provision i.e. sub-section (3) of Section 20E read with subsection (1) of Section 20A and also publication of the notification in the newspapers and held that the period of one year enunciated under sub-section (3) of Section 20E of the Act is to be reckoned from the date of publication of the notification in the newspapers and not in official gazette. Para 10 of the judgment is reproduced as under:

10. The Court has found the submissions of the learned advocate for the railway acceptable, and is convinced of the fact that in the matter of publication of the notification u/s 20E(3) of the Act, the period is to be reckoned from the date of publication of the notification in a newspaper and not in an official gazette".

We are of the view that Gujarat High Court has correctly interpreted the provisions of Section 20E(3) of the Act.

9. In Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, their Lordships of the Hon''ble Apex Court while considering the similar provisions of the Land Acquisition Act, held, that when statute provides various modes of publication of the notification, then there is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. Their Lordships held that the period of two years referred in Section 11A shall be computed by counting from the last of the publication dates, as per the prescribed modes of publication. Paras 16 & 17 of the judgment are reproduced 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 therefor in the Act.

17. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the declaration u/s 6. In ordinary course, therefore, when the Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A. the proceedings will lapse. The period of two years referred in Section. 11-A shall be computed by counting from the last of the publication dates, as per the prescribed modes of publication.

(Emphasis supplied)

10. The Hon"ble Apex Court in The Special Deputy Collector, Land Acquisition C.M.D.A. Vs. J. Sivaprakasam and Others, considered the provisions of Sections 4 & 5A of the Land Acquisition Act and the purpose of publication of the notification u/s 4(1), which is *pari materia* with present Section 20A of the Act of 1989 and in para 21, held as under:

21. The purpose of publication of the notification is twofold: First is to ensure that adequate publicity is given so that the landowners and persons interested will have an opportunity to file their objections u/s 5-A of the Act. Second is to put the landowners/occupants on notice that Government officers will be entering upon the property for carrying on the activities enumerated in Section 4(2) of the Act. Section 4(1) before its amendment in 1984, required publication of the preliminary notification only in the Official Gazette and public notice of the substance of the notification at convenient places in the locality.

11. So far as facts of the case are concerned the same are not in dispute that the notification u/s 20A(1) of the Act was issued and published in the Gazette of India on 6th November, 2008. The said notification was published in two local newspapers on 21st June. 2009 and 22nd June. 2009 in vernacular language, as required under sub-section (4) of Section 20A of the Act. The notification u/s 20E(1) of the Act was issued on 21st January, 2010 and it was published in the Gazette of India on 23rd January, 2010. For ready reference, Section 20A and Section 20E of the Act are reproduced as under:

20A. Power to acquire land, etc.-- (1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land.

(2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

(3) The State Government or the Union Territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required,

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language."

"20E. Declaration of acquisition.-- (1) Where no objection under sub-section (1) of section 20D has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, the competent authority shall, as soon as may be submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification, that the land should be acquired for the purpose mentioned in sub-section (1) of section 20A.

(2) On the publication of the declaration under sub-section (1), the land shall

vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 20A for its acquisition, but no declaration under sub-section (1) of this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 20A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

12. The main emphasis of learned counsel for the appellant is on the words "published under sub-section (I) of Section 20A "used in sub-section (3) of Section 20E of the Act. According to learned counsel for the appellant, the period of one year has to be reckoned from the date of notification published in Gazette of India under sub-section (1) of Section 20A of the Act and that of publication of notification in two local newspapers one of which was to be published in a vernacular language, is not relevant.

13. As per sub-section (1) of Section 20A of the Act, it is prescribed that where the Central Government is satisfied that for a public purpose any land is-required for execution of a special railway project, it may, by notification, declare its intention to acquire such land. The "notification" is defined u/s 2(26) of the Act and it means a notification published in Official Gazette. As per sub-section (2) of Section 20A, every notification under sub-section (1) shall give a brief description of the land and of the special railway project for which the land is intended to be acquired. As per sub-section (3) of Section 20A the State Government or the Union Territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required. As per subsection (3) of Section 20A, the competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language. No doubt that the proceedings for acquisition has to be started by issuing notification under sub-section (1) of Section 20A of the Act declaring the intention of Central Government in respect of land sought to be acquired for public purposes for special railway project but its later part and procedure is prescribed under sub-sections (2), (3) and (4). As per sub-section (2) of Section 20A, it is necessary that every notification shall give a brief description of a land. The State Government or the Union Territory is required under sub-section (3) of Section 20A of the Act to provide the details of the land records to the competent authority. As per sub-section (4) of Section 20A of the Act. the competent authority shall cause the substance of the notification to be published in two local

newspapers, one of which shall be in a vernacular language.

14. A conjoint reading of sub-sections (2) to (4) of Section 20A makes it clear that unless a notification, which is issued under subsection (1) gives a brief description, as required under sub-section (2) and unless the details thereof is furnished to the competent authority, as required under sub-section (3) and unless the said notification is published by the competent authority in two local newspapers, one of which shall be in a vernacular language, the proceedings u/s 20A of the Act cannot be said to be completed. If any of the chain between sub-sections (1) to (4) of Section 20A is missing then the notification issued under sub-section (1) can be declared as illegal or vitiated. The notification which is issued and published in Gazette of India under sub-section (1) is required to be published in two local newspapers also by the competent authority under sub-section (4) one of which shall be in a vernacular language also. Therefore, the period of one year used in sub-section (3) of Section 20A of the Act will commence from the date of publication of two local newspapers, one of which shall be in a vernacular language under sub-section (4) of Section 20A and not from the publication of notification in Gazette of India alone under subsection (1) of Section 20A of the Act.

15. Now we examine the contention of learned counsel for the appellant that the words "published under sub-section (1) of Section 20A for its acquisition" used in subsection (3) of Section 20E are concerned, the later part of this sub-section (3) has used the words "within a period of one year from the date of publication of that notification". These words "from the date of publication of that notification" make it abundantly clear that the notification has to be published not only in the Gazette of India, as required under sub-section (1) but it has to be published under sub-section (4) of Section 20A of the Act. If the notification was not required to be published in two daily newspapers, one, in vernacular language, then there was no necessity to, introduce sub-section (4) in Section 20A and further there was no necessity to use word, "publication of that notification" in sub-section (3) of Section 20E of the Act. The legislature has intentionally used the word "publication" in sub-section (3) of Section 20E. If notification was required to be published in Gazette only, then using of word "notification" was sufficient, as word notification has already been defined u/s 2(26) that, it means notification published in the Official Gazette. Therefore, the limitation of one year for the purpose of issuance of declaration for acquisition u/s 20E of the Act will commence from the date of last publication of the notification in two local newspapers, one which shall be in a vernacular language. It is pertinent to mention that unless the notification is published in two local newspapers, one of which shall be in a vernacular language, the publication of notification under sub-section (1) of Section 20A cannot be said to be completed. In these circumstances, we find no force in the submission of learned counsel for the appellant. Since notification u/s 20A(1) was issued on 6th November, 2008, it was published in two local newspapers including a paper in a vernacular language on 21st June, 2009 and 22nd June, 2009 and notification/declaration u/

s 20E of the Act was issued on 23rd January, 2010, therefore, it was well within time. The period of limitation of one year in the present case will commence from 22nd June. 2009. The notification u/s 20E was issued on 21st January, 2010 and it was published in Gazette of India on 23rd January. 2010 therefore, it was well within time, the same view has been taken by the learned single Judge while dismissing the writ petition of the petitioner. We find that the reasons assigned by learned single Judge are absolutely legal and justified and no interference in the same is called for.

16. Learned counsel for the appellant also submitted that the notification was earlier issued for land to be acquired for Chomu, Mujamabad and Phulera but another or the second notification was issued only in respect of Chomu and Mujamabad and not for Phulera. The petitioner is aggrieved only in respect of land situated in Phulera and since there is no second notification for Phulera therefore, proceedings are vitiated. We do not find any substance in the submission of learned counsel for the appellant in this regard. There is no bar in issuing another or second notification. He is required to challenge the notification on the basis of relevant provisions of law. He has not pointed out any illegality in issuance of the notification. Therefore, we find no force in this submission also. In view of above discussion, we do not find any merit in this special appeal and the same is, accordingly, dismissed. Stay application as well as Application No. 13539/2012 also stand disposed of.