
(2015) 04 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2578, 3142, 3148 and 3874/14

Pushpa Malpani and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 6 (1)

Citation : (2015) 04 RAJ CK 0144

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : J.P. Joshi, Senior Advocate assisted by Siddharth Joshi, for the Appellant; P.C. Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—These writ petitions assailing the declaration u/s. 6 of the Land Acquisition Act, 1894(in short "the Act") published vide notification dated 13.2.13, involve common questions of law and facts and therefore, were heard together and are being disposed of by this common order.

2. Since, S.B.C. Writ Petition No. 2578/14 was argued as lead case, the facts of the said case are being taken into consideration.

3. The relevant facts in nutshell are that the State Government issued a notification dated 3.8.10 under Section 4(1) of the Act, whereby for the purpose of developing a residential housing colony by Rajasthan Housing Board at Sri Ganganagar, the lands situated in various revenue villages namely, chak 1F Chhoti, Chak 3A Chhoti and Chak 4A Chhoti, were proposed to be acquired. The notification was published in the Rajasthan Gazette on 4.8.10 and in the newspapers on 16.10.10. However, an amended notification under Section 4 of the Act was issued by the State Government on 6.1.11 and the same was published in the Rajasthan Gazette on 7.1.11. The said amended notification was also published in two local newspapers having circulation in Sri Ganganagar

namely; Seema Sandesh and Rajasthan Patrika, Sri Ganganagar Edition, on 1.6.11. Thereafter, the Land Acquisition Officer, Special Duty, Urban Development and Housing Department, Government of Rajasthan, issued public notice on 10.10.11. The persons interested were directed to submit their objections against the proposed acquisition of the land in writing within a period of 30 days of publication of the notification before the Land Acquisition Officer. The petitioners herein alleged to have raised objections against the proposed acquisition by way of legal notice through their counsel on 14.11.11/23.11.11, which stood rejected and after consideration of the report made under Section 5A, the declaration u/s. 6 of the Act was issued by the State Government vide notification dated 29.10.12. The declaration issued as aforesaid was published in the Rajasthan Gazette on 6.11.12.

4. Precisely, the case set out by the petitioners in the writ petitions is that the notification under Section 4 was issued by the State Government on 16.9.10 and the amended notification was issued on 1.6.11 but the declaration under Section 6 has been issued on 29.10.12 and therefore, the declaration under Section 6 having been issued beyond the period of one year, by virtue of first proviso to Section 6 of the Act, the land acquisition proceedings stand lapsed. It is contended that though the petitioners raised the objections against the proposed acquisition, however, they were not extended an opportunity of hearing by the competent authority in defiance of the provisions of Section 5A of the Act and the objections raised were not decided and straightaway, the report was sent to the State Government in mechanical manner and therefore, the declaration issued under Section 6 of the Act deserves to be quashed for this reason also.

5. A reply to the show cause has been filed on behalf of the respondent-State of Rajasthan as also by the Rajasthan Housing Board, taking the stand that the notification under Section 4(1) of the Act was published in the Official Gazette and two daily newspapers and that apart, a public notice of the substance of the notification to be given at the convenient places in the locality was also issued on 10.10.11 and the last date of publication thereof is 3.11.11. Accordingly, it is submitted that the publication of the public notice dated 10.10.11 as on 3.11.11 shall be treated to be the last date of publication in terms of provision of Section 4(1) of the Act and therefore, the contention sought to be raised by the petitioners regarding declaration of the Section 6 having been issued beyond the period of limitation, is devoid of any merit. Regarding the objections raised by the petitioners in terms of Section 5A of the Act, the categorical stand taken by the respondents is that on 31.5.12, the Land Acquisition Officer issued notice to all concerned including the petitioner to attend his office either in person or through pleader for hearing of their objections on 18.7.12. It is submitted that the Resident Engineer, Rajasthan Housing Board, Hanumangarh in turn got all these notices served and sent the served notices alongwith his letter dated 19.6.12. The photo stat copies of the notices served are also placed on record. According to the respondents, the objections raised were duly considered by the Land Acquisition Officer and thereafter, the report containing his recommendation

on objections was forwarded to the State Government. It is submitted that the declaration under Section 6 has been issued by the State Government after due consideration of the report and disposal of the objections raised.

6. A rejoinder to the reply to the writ petition has been filed on behalf of the petitioner, taking the stand that the respondents in their reply to the writ petition have nowhere stated that the substance of the notification was affixed in the locality in presence of any witnesses and therefore, the mandatory provisions of Section 4 of the Act has not been complied with. It is submitted that even according to the respondents the notification under Section 4(1) was published in the Official Gazette on 7.1.11 and in newspapers having circulation in Sri Ganganagar namely, "Seema Sandesh" and "Rajasthan Patrika" on 1.6.11 and therefore, the limitation has to be counted from the date of publication of the declaration in the Official Gazette i.e. 7.1.11 or in any case, from 1.6.11 when the notification was published in two newspapers and if these two dates are taken into account, the issue of declaration on 29.10.12 shall be clearly barred by period of one year prescribed by proviso to Section 6 (1) of the Act. It is submitted that the respondents have tried to mislead this court by stating that the petitioner submitted the objections vide representation dated 23.11.11 whereas, the objections under Section 5A were in fact submitted by the petitioner before the Land Acquisition Officer on 18.7.12. It is denied that notice for hearing as alleged by the respondents was issued to the petitioner rather, only a date was intimated to the petitioner for submission of the objections, which were submitted by the petitioner on 18.7.12. It is reiterated that no notice giving an opportunity of personal hearing was extended to the petitioner.

7. By way of rejoinder to the reply filed on behalf of the respondent-State of Rajasthan, the petitioner has placed on record affidavit of one Shri Balraj Singh s/o Jogendra Singh, alleged to be President of Rajkiya Vidhyalaya Gram Chak 1F Chhoti at the relevant time, stating that the said public notice was not affixed by him at any place either in the school or in the locality. That apart, a certificate alleged to have been issued by the Head Master of a school to the effect that the notice dated 10.10.11 was not received by the school till 24.2.15, is also placed on record.

8. By way of additional reply, the respondents have clarified that there cannot be any Chairman in the Government Public School and the affidavit filed by the petitioner of Mr. Balraj Singh, who was Chairman of the Management Committee to look after the Mid-day Meal Scheme is of no consequence. It is submitted that in a Government Middle School, the head of the institution is Head Master/ Mistress and in the instant case, the notice bears the endorsement of Smt. Meena Jain, then Head Mistress of the Government Primary School Chak 4A Chhoti Sri Ganganagar. Regarding the affixation of the notice at various places in the locality, an affidavit of one Shri Satish Kumar Saini, Junior Supervisor, Rajasthan Housing Board has been filed.

9. Mr. J.P. Joshi, Senior Advocate appearing on behalf of the petitioner-Smt.

Pushpa Malpani, contended that admittedly, the notification under Section 4 of the Act was published in the Rajasthan Gazette on 4.8.10 and in the newspaper on 16.10.10 and the amended notification under Section 4 issued by the State Government 6.1.11 was published in the Rajasthan Gazette on 7.1.11 and in the newspapers on 1.6.11 and therefore, taking into consideration the last date of publication to be 1.6.11, the declaration under Section 6 issued by the State Government is ex facie beyond the period of one year as prescribed by proviso to Section 6 of the Act. Learned counsel submitted that even if the date of last publication, the public notice, is taken into consideration, the computation of one year has to be counted from the date of giving of the public notice and therefore, viewed from any angle, the declaration issued on 29.10.12 is beyond the period of one year and consequently, the land acquisition proceedings stand vitiated. In support of the contention, learned counsel has relied upon a decision of the Hon"ble Kerala High Court in the matter of Nanappan Konthi and Others Vs. District Collector, Kottayam and Others, AIR 1989 Ker 223 . Learned counsel submitted that no proof has been placed on record by the respondents showing that the public notice of the substance of the notification issued under Section 4 of the Act was given at convenient places in the locality and to the contrary, the affidavit of Shri Balraj Singh, the President of the Government Primary School Chak 4A, Chhoti and the certificate issued by the Head Master of the Government Secondary School, Telewala, placed on record by the petitioner make it abundantly clear that the public notice alleged to have been issued under Section 4 of the Act was never affixed on the notice board at the places specified in the said notice and thus, the condition of third mode of publication as provided for under Section 4 of the Act, having not been complied with, the land acquisition proceedings initiated, deserves to be quashed. Learned counsel submitted that before submitting the report in terms of provisions of Section 5A of the Act, no opportunity of hearing was extended by the Land Acquisition Officer to the petitioner. Drawing the attention of the court to the report submitted by the Land Acquisition Officer placed on record by the respondents, learned counsel submitted that a bare perusal of the report makes it clear that the objections raised by the petitioner have not at all been considered by the Land Acquisition Officer and thus, the declaration issued by the State Government after consideration of the said report as aforesaid, is not sustainable in the eyes of law.

10. Mr. V.R. Choudhary, learned counsel appearing for the petitioners in other three writ petitions, has adopted the arguments advanced by Mr. J.P. Joshi, learned Senior Advocate appearing on behalf of the petitioner-Smt. Pushpa Malpani.

11. On the other hand, Mr. P.C. Sharma, learned counsel appearing for the respondents submitted that the contention of the petitioners that the declaration under Section 6(1) of the Act was published beyond the period of limitation is absolutely devoid of any merit. Learned counsel submitted that as per the provisions of Section 4(1) of the Act, the date of the issuance of the notification under Section 4 shall be the date on which the last publication is made in the

manner as prescribed. Learned counsel submitted that admittedly, the declaration under Section 4(1) was published in Official Gazette on 7.1.11, and in the two local newspapers on 1.6.11 and thereafter, the public notice dated 10.10.11 to be published in the locality was lastly so published on 3.11.11 and thus, the declaration under Section 6 of the Act issued on 29.10.12 is well within one year, the period of limitation prescribed for publication thereof, in terms of first proviso to Section 6 of the Act. Learned counsel submitted that it is not the case set out by the petitioners in the petition that the public notice was not issued and published. Learned counsel submitted that the contention sought to be raised by the petitioners by way of rejoinder that the condition regarding the third mode of publication i.e. giving of the public notice of the substance of the notification in the locality has not been adhered to, cannot be permitted to be raised at this stage. Learned counsel submitted that the public notice placed on record bearing the dates clearly show that the public notice issued was lastly affixed in the locality on 3.11.11 and therefore, the period of limitation has to be counted from the last date of publication. Learned counsel submitted that attempt made by the petitioners to canvass before this court that the public notice was not affixed at the various places in the locality as specified, relying upon the affidavits of so called President of the school and the Head Master of the school obtained by the petitioners, is absolutely baseless. Learned counsel submitted that as clarified in the surrejoinder and additional reply, the Government Schools are not headed by the President and therefore, the affidavit of Shri Balraj Singh, procured by the petitioners has no bearing in the matter. Learned counsel submitted that the certificate alleged to have been issued by the Head Master of the Government Secondary School, Telewala, does not disclose as to on what basis and under what authority, the said certificate has been issued and as a matter of fact, it even does not disclose that the person issuing the certificate was the Head Master of any of the schools specified in the notice where the public notice issued under Section 4 of the Act was to be published. Learned counsel submitted that any act performed by the public authority is presumed to be done in accordance with law unless and until the contrary is proved and thus, the contention sought to be raised by the petitioners regarding non compliance of the condition regarding the publication of the public notice in the locality in terms of Section 4(1) of the Act is devoid of any substance. Learned counsel submitted that as per the case set out by the petitioner-Smt. Pushpa Malpani in the writ petition, she raised the objections against the proposed acquisition through their lawyer by way of notice dated 23.11.11 and therefore, the stand sought to be taken by the petitioner by way of rejoinder that as a matter of fact, the objections were raised on 18.7.12 and not on 23.11.11 runs contrary to the stand taken by the petitioner in the writ petition. Learned counsel submitted that as a matter of fact, vide notice dated 31.5.12 which was duly served upon all the objectors, they were directed to appear before the Land Acquisition Officer and avail the opportunity of hearing on the objections raised on their behalf and thus, the contention sought to be raised on behalf of the petitioners that on 18.7.12, they raised the objections and no opportunity of

hearing was extended to them, is absolutely false. Drawing the attention of this court to the report submitted by the Land Acquisition Officer to the State Government, learned counsel submitted that the objections raised have been duly considered and it also contains reasons as to why the objections raised are not found tenable.

12. I have considered the rival submissions and perused the material on record.

13. Indisputably, as per provisions of Section 4(1) of the Act, the last date of the publication of notification and the giving of public notice of the substance of the notification by different modes as prescribed, is considered to be the date of publication. It is also not disputed that the amended notification under Section 4(1) of the Act issued by the State Government on 6.1.11, was published in the Official Gazette on 7.1.11 and in the two local newspapers on 1.6.11. It is a matter of record that for compliance of third mode of publication as provided for under Section 4(1), the public notice of the substance of the notification to be given at convenient places in the locality was issued on 10.10.11. A perusal of the photo stat copies of the notices which were forwarded by the Resident Engineer, Rajasthan Housing Board to the Land Acquisition Officer after service, placed on record reveal that though the endorsement on the notices does not contain complete report regarding affixation but then, undoubtedly, the same bear signatures of recipients of the notices for affixation and endorsement on one of the notices, received from the office of the Divisional Commissioner, Bikaner, bears the date "3.11.11". It is well settled that official acts are presumed to be done properly and legally in accordance with the procedure laid down unless the contrary is proved on the basis of some cogent evidence on record. In the considered opinion of this court, the affidavit of one Shri Balraj Singh, alleged to be President of the School, placed on record, appears to be a procured document inasmuch as, the Government Schools are not headed by the President. A perusal of the said notice placed on record also bears signature of Smt. Meena Jain, then Head Master of Government Primary School, 4A Chhoti, Panchayat Samiti, Sri Ganganagar. Similarly, the certificate alleged to have been issued by the Head Master of the Government Secondary School, Telewala, in no manner, disclose as to at whose instance and under what authority, the said certificate has been issued by the Head Master of the school. It does not disclose as to how the person issuing the certificate was related to the process of publication of the public notice dated 10.10.11. In the considered opinion of this court, on the basis of such affidavit and the certificate, no conclusion or inference of non publication of the notice can be drawn. In any case, if the public notice issued is not published at one particular place out of many places specified in the notice, in no manner, it can have effect of vitiating the land acquisition proceedings as such, inasmuch as, ultimately, the purpose of issuing the notices is that the persons affected by the land acquisition proceedings may come to know about the proceeding initiated and enable them to raise objections thereto, if any. It is not even the case of the petitioners that on account of non publication of the notice at a particular place, they are prejudicially affected. In

this view of the matter, the contention sought to be raised by the petitioners by way of rejoinder that the condition regarding third mode of publication in terms of Section 4(1) of the Act is not complied with, to say the least, is absolutely devoid of any merit. In absence of any evidence showing that the publication has not been made in terms of the provisions of Section 4(1) of the Act and the date of last publication as disclosed by the respondents is not the actual date of last publication, the position emerging from the official record, has to be taken to be correct and thus, "3.11.11" has to be treated as the last date of publication in terms of provisions of Section 4(1) of the Act and consequently, the declaration issued under Section 6 of the Act, on 29.10.11, cannot be said to be beyond the period of limitation i.e. one year as provided for under first proviso to Section 6 of the Act.

14. In Nanappan Konthi's case (supra), relied upon by the counsel for the petitioners, the Kerala High Court observed that Section 4(1) makes it abundantly clear that the date of giving of public notice contemplated therein has to be treated as the date of publication of the notification. It is pertinent to note that in the said case, the public notice issued was published on the notice board of the Taluk Office on 12.3.87, however, in the notice board of the village office and in important places in the locality, it was published on 27.3.87. The court held that last date of publication being 27.3.87, the declaration under Section 6 of the Act ought to have been published on or before 26.3.88. Thus, the said decision does not help the petitioners in any manner, rather it supports the contention of the respondents.

15. Coming to the disposal of the objections raised by the petitioners against the proposed acquisition of the land in terms of Section 5A of the Act, it is to be noticed that in the writ petitions filed, the respondents have taken a categorical stand that they filed the objections pursuant to the notification issued by the State Government on 14.11.11/23.11.11 by way of legal notice and therefore, the stand sought to be taken by the petitioner-Smt. Pushpa Malpani by way of rejoinder that as a matter of fact, the objections were raised on 18.7.12 and not on 23.11.11, appears to be false to her knowledge. As a matter of fact, as per the mandate of provisions of Section 5A, the objections against the acquisition of the land are required to be made by the person interested in the land sought to be acquired within 30 days from the date of the publication of the notice under Section 4 of the Act and therefore, if the objections were raised by the petitioners on 18.7.12, the same having been filed beyond the period of 30 days, could not have been entertained. Moreover, the notice issued by the Land Acquisition Officer under Section 5A of the Act, duly served upon the objectors, placed on record, reveals that the notice to the objectors was issued to attend the office of the Land Acquisition Officer on 18.7.12 to avail the opportunity of hearing in respect of the objections raised and not for filing the objections. Thus, the contention of the petitioners that before considering the objections and submitting the report in terms of Section 5A of the Act, the opportunity of hearing was not extended to them by the Land Acquisition Officer, runs contrary

to the record and therefore, cannot be accepted.

16. Coming to the contention of the petitioners that their objections have not been dealt with by the Land Acquisition Officer while submitting the report to the State Government in terms of Section 5A of the Act, it is to be noticed that in the writ petitions filed, the petitioners have not questioned the legality of the rejection of the report submitted by the Land Acquisition Officer after consideration of their objections, however, since by way of rejoinder and during the course of arguments, the learned counsel for the parties have contended that their objections have not been dealt with by the Land Acquisition Officer, it is considered appropriate to consider the contention raised by the petitioners as aforesaid as well.

17. A perusal of the report submitted by the Land Acquisition Officer to the State Government reveals that the objections raised by the petitioners and others have been taken note of and disposed of by the Land Acquisition Officer in the following terms:

18. In the considered opinion of this court, the competent authority has adverted to the substance of the objections and the reasons recorded while holding the objections raised to be devoid of any substance, cannot be said to be capricious and perverse so as to warrant interference by this court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

19. In the result, the petitions fail, the same are hereby dismissed. No order as to costs.