

(1992) 04 AHC CK 0053

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20569 of 1991

Ram Kumar Bhatia and others

APPELLANT

Vs

The State of U.P. and others

RESPONDENT

Date of Decision : 10-04-1992

Acts Referred:

Constitution of India, 1950 — Article 134, 14

Land Acquisition Act, 1894 — Section 17(4), 4(1), 5A, 6(2)

Citation : AIR 1993 All 14

Hon'ble Judges : Om Prakash, J;A.P. Singh, J

Bench : Division Bench

Advocate : Rajeev Goswami, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—All the petitioners are tenure-holders and their different Khasra numbers are situate in village Brindaban Bangar, district Mathura. By a common notification issued under S. 4(1) of the Land Acquisition Act (briefly, the Act) on 30-6-1990 and published in the official gazette on 18-8-1990 acquisition proceedings to acquire their Khasra numbers as specified in the said notification for a public purpose, namely, for planned housing development in Brindaban town, district Mathura through the Mathura Brindaban Development Authority, Mathura were initiated. Since their Khasra numbers are sought to be acquired under a common notification, all these petitions are being disposed of by a common judgment.

2. Whereas the facts of the cases of Ram Kumar Bhatia and others and Usha Devi and others and the rival submissions of the parties made therein are similar, the facts of the case of Smt. Kiran Devi are somewhat different.

3. Therefore, first we deal with the cases of Ram Kumar Bhatia and others and Usha Devi and others. The tenure holders in these two petitions seek quashing of the notifications, issued under Ss. 4(1) and 6(1) tenure- holders have raised

several pleas in the petitions, learned counsel for these tenure-holders made following submissions only for quashing the aforesaid notifications:

1. that publication of the notification under S. 4(1) of the Act in the newspapers having preceded the gazette notification, rendered the notification to be invalid;
2. that the acquisition proceedings are vitiated, as no opportunity of personal hearing as envisaged by S. 5A of the Act, was given to the tenure-holders;
3. that notification under S. 6(1) of the Act was issued without application of mind and, therefore, that is invalid; and
4. lastly, Sri Goswami, learned counsel for the petitioners urged that they were discriminated against others and, therefore, the acquisition proceedings are violative of Art. 14 of the Constitution.

4. We take up these submission seriatim.

5. The first question for consideration is whether the notification under S. 4(1) initiating acquisition proceedings will be rendered invalid if publication thereof in the newspapers precedes the publication in the official gazette. It is not in dispute that notification (Annexure No. 2 to the petition) under S. 4(1) was issued on 30-6-1990 and that was published in the gazette on 18-8-1990. So far as the publication in the newspapers is concerned, it is averred by the petitioners that it was published only in one newspaper on 2-7-1990. In the counter-affidavit it is stated that whereas the notification under S. 4(1) was published in daily Amar Ujala on 2-7-1990, the same was published in the other newspaper daily Jagat Time on 1-7-1990. However, it remains undisputed that the publication in the newspaper preceded the publication in the gazette. Without stressing much on the question whether notification under S. 4(1) was published in two or one newspaper, Sri Goswami urged that notification under S. 4(1) became invalid, inasmuch as that was published in the newspaper prior to gazette notification. He submits that S. 4(1) enjoins upon the respondents to publish the notification in the gazette first and publication of the notification in the newspapers and of the public notice of the substance of such notification should be made in the same sequence as stated in sub-sec. (1) of S. 4 of the Act. S. 4(1) says that whenever the Government takes a decision that land in any locality 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 in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification). Relying on the language employed in S. 4(1), Sri Goswami urges that the notification under S. 4(1) is required to be published first in the official gazette, then in two daily newspapers and then public notice of the substance of such notification shall be caused to be given by the Collector at convenient places in the locality.

6. Can S. 4(1) be interpreted to mean that it prescribes the sequence of the publication and of giving public notice of the substance of the notification in the locality? The term "notification" has not been defined in the Statute. The language used in S. 4(1), how-ever, is "a notification to that effect shall be published", which in the context suggests that the term implies a formal expression or record of the decision of the government that the land is needed or is likely to be needed for a public purpose. Having recorded its decision, the government takes steps for publishing its decision in the manner prescribed under S. 4(1). Once a decision to acquire the land is taken by the government, copies of the notification and of public notice of the substance of the notification can be simultaneously dispatched to the various agencies, since such a course is not prohibited by law, for being published in the official gazette and in the newspapers and for giving public notice of the substance of the notification in the locality. After the notification is issued that has to be dispatched to the government press and to two daily newspapers for being published and the Collector shall cause public notice of the substance of the notification to be given at convenient places in the locality. Once the copies of the notification are dispatched to the government press and to the two daily news-papers for being published and the steps are taken by the Collector to cause public notice of the substance of the notification to be given at convenient places, it is for these three separate agencies to act further. In which order these three agencies act upon -- this cannot be foreseen or visualised and, there-fore, the Legislature inserted the words "the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of publication of the notification" in sub-sec. (1) of S. 4 by the Act No. 68 of 1984. Once the copies of the notification are dispatched to the government press and to two daily newspapers, such agencies are free to publish them in any order. S. 4(1) neither provides any machinery to enable the Collector to ensure that the publication of the notification in the gazette precedes the publication of the notification in the two daily newspapers nor does this section enjoin upon the Collector to monitor after dispatch of the copies of the notification that the government areas is quick enough to publish the notification in the gazette prior to the publication in the newspapers. This is why S.4(1) does not indicate that publication in the gazette should precede other modes. Also S. 4(1) does not enjoin upon the Collector to with hold the dispatch of the copies of the notification for publication in the newspapers until notification is published in the gazette. Since sequence of the publication and of giving of the public notice cannot be predicated, last date of such publications and giving of such public notice is made to the date of the publication of the notice by the amending statute. However publication by all modes as given in S. 4(1), is mandatory. If the submission of Sri Goswami is accepted that publication has to be made in the same order as stated in S. 4(1), then the expression "last of the dates of such publication and of giving of such notice to be hereinafter referred to as the date of the publication of the notification" occurring at the end of S. 4(1) will lose its entire efficacy. We, therefore, see no substance in the first submission of Sri Goswami that S. 4(1)

prescribes any mandatory sequence of publication and of giving public notice of the substance of the notification. No provision of law can be interpreted by stretching it's language too far. If the language is clear then the golden rule is to read the section as it is without importing words into or subtracting words from it. As already pointed out once the copies of the notification are dispatched to the government press and to two daily newspapers for being published and steps are taken for giving public notice of the substance of the notification simultaneously, it will not only be difficult but impracticable for the Collector to monitor the three agencies entrusted with the job of publishing and giving public notice of the substance of the notification in the locality statute has to be interpreted reasonably in such a way as to cause no violence to its language and make the provision workable. Considering that it would be difficult to ensure that publication in gazette precedes the other two modes, the Legislature by amending S. 4(1) clarified that the last date of triple modes of the publication will be the date for the publication. It must, therefore, be held that S. 4(1) does not prescribe any order or sequence of publications and of giving public notice.

7. To buttress his submissions, Sri Goswami vehemently relied on Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, . To appreciate whether or not this decision is an authority on the proposition that publication of notification in official gazette should always precede the other mode of publication and giving of the public notice, it would be appropriate to state the facts of the case of Raja Ram Jaiswal (supra). In this case notification under S. 4(1) was issued on 6-2-1975 and that was published in the official gazette in regard to plot No. 62 on 15-2-1975. Corrigendum dated 13-3-1975 was published in the gazette on 22-3-75 to read plot No. 62 admeasuring 8265 sq. yd. as plot No. 26 admeasuring 2865 sq. yd. Notice under S. 5A was served on Raja Ram Jaiswal (land holder) on 6-3-1975 calling upon him to file objection if any, it will be seen from these facts that notification under S. 4(1) published in the Official Gazette on 15-2-1975, did not relate to plot No. 26 admeasuring 2865 sq. yds. but to plot No. 62 admeasuring 8265 sq. yds. Public notice of the substance of the corrigendum was not at all given in the locality. Notice under S. 5A was served only two days before the date fixed for filing objections. The tenure holder Raja Ram Jaiswal was not the owner of plot No. 62 but of plot No. 26 only. The High Court struck down the notification dated 6-2-1975.

On the facts, the Supreme Court had to conclude in para 10 on page 1627;

"In the latter notification dated Feb. 6,1975, the land proposed to be acquired was shown to be plot No. 62 admeasuring 8265 sq. yds. Admittedly notice of the substance of this notification was not published in the locality. The petitioner had nothing to do with land bearing plot. No. 62 admeasuring 8265 sq. yds. As the previous notification was cancelled, he had nothing to worry about the second notification which has no relevance to the plot belonging to him. The corrigendum dated March 13, 1975 was issued and published in the Official Gazette dated March 22, 1975 correcting the plot number and the area and the

correct entry was to be in reference to plot No. 26 and area to be acquired was to be 2865 sq. yds. Admittedly, there was no notice of publication of the substance of the notification dated February 15, 1975 nor of the corrigendum dated March 22, 1975 in the locality. The High Court was, therefore, right in holding that in respect of the latter notification and corrigendum, no notice was published in the locality and latter part of S. 4(1) was not complied with."

8. Thus the notification in the case of I Raja Ram Jaiswal (*supra*) was struck down on entirely different set of facts.

9. The matter may be looked at from a different angle also. Whatever construction was put by the Supreme Court in the case of Raja Ram Jaiswal (*supra*) that was on un-amended S. 4(1). S. 4(1) was substantially amended by Act No. 68 of 1984. After the amendment of the provision there can be no manner of doubt that if the notification has been published in accordance with the three modes prescribed under S. 4(1), variation in the sequence in which the publication takes place shall not invalidate the notification. Before the amendment in S. 4(1) there were only two modes of publication namely, publication of the notification in the Official Gazette and the public notice of the notification was required to be given by the Collector in the locality. After the amendment, publication is required by a third mode also i.e. publication of the notification in two daily newspapers circulating in that locality. The amended section itself provides as to which will be the date of publication inasmuch as it says "the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification". Indication of the date of publication in the amended S. 4(1) implies that publication may be made in any order but such variation will not vitiate the publication.

10. Sri Goswami, therefore, cannot successfully assail the validity of the notification under S. 4(1) on the ground that the publication thereof in the newspapers preceded the publication in the Official Gazette. Similar view was taken by this Court in *M/s. Garg Farms, Delhi and others Vs. State of U.P. and others*, in which Raja Ram Jaiswal (*supra*) was discussed threadbare but was distinguished.

11. Then comes the second submission. Sri Goswami says that the opportunity under S. 5A is not an idle formality and as no opportunity of personal hearing was afforded to the petitioners, acquisition proceedings were vitiated. In para 8 of the petition of Ram Kumar Bhatia, it is averred that no opportunity whatsoever has been given by the Land Acquisition Officer in the proceedings under S. 5A of the Act. There is no specific averment that the opportunity of personal hearing was not given. In para 10 of the relevant counter-affidavit, it is clearly stated that under S. 5A of the Act regular hearing was done and counsel was deputed and more than thirteen dates were fixed by the Land Acquisition Officer. The dates have been reproduced in the said paragraph. When the notice is given, it is for the petitioner either to appear personally or to depute his counsel. The

petitioners chose to depute counsel to put their case before the Land Acquisition Officer and, therefore, this objection is wholly unsustainable.

12. Then it is submitted that notification issued under S. 6(1) of the Act was issued without applying the mind. This submission is made on the premises that the declaration dated 5-6-1991 made under S. 6(1) of the Act (Annexure No. 3 to the petition), states that notification under S. 4(1) referred to the provisions of S. 17(4), meaning thereby that opportunity as envisaged by S. 5A, was dispensed with resorting to S. 17(4). Sri Goswami urges that factually the position is different, inasmuch as the notification under S. 4(1) never dispensed with the provisions of S. 5A. Since S. 17(4) occurred in the declaration under S. 6(1) contrary to the facts, Sri Goswami infers that the declaration under S. 6(1) was mechanically issued without applying the mind stating wrong facts. It is true that in the declaration under S. 6(1), reference was wrongly made to S. 17(4) and realising that mistake, the State Government hastened to issue a corrigendum dated 24-6-1991 (Annexure No. 3 to the petition) correcting the errors. Simply because S. 17(4) was mistakenly referred in the declaration under S. 6(1), the inference of non-application of mind while making declaration under S. 6(1), is not warranted. It is to be importantly noted that such mistake occurred only in Hindi version of the declaration under S. 6(1). English version of the declaration dated 5-6-1991 under S. 6(1) is Annexure No. 6 to the counter-affidavit filed in the case of Usha Devi and others from which it is manifest that no such mistake was committed therein. So the fact is that the mistake occurred only in the Hindi version. Since English version of the declaration dated 5-6-1991 is free from such defect, it cannot be said that the notification under S. 6(1) was issued without applying mind.

13. Lastly Sri Goswami took us to Annexure No. 4-A to the petition of Ram Kumar Bhatia and others on the point of discrimination and urged that before issuing notification under S. 4(1), the respondents also wanted to acquire Khasra Nos. 226 and 227 belonging to Swami Sachchita Nand Ashram, who purportedly made an application that the said Khasra numbers be kept out of consideration for acquisition. The said Ashram also submitted a site plan for approval. Then a resolution was passed approving the site plan with a rider that the said plots would be used only for residential purposes and that in case whole or part of the land was ever proposed to be transferred, then the Development Authority, Mathura would have the preferential right of purchase. Indisputably, no acquisition proceedings were initiated in respect of the aforesaid plots belonging to Ashram, inasmuch as they never formed part of the notification issued under S. 4(1). Acquisition proceedings commence from the date of publication of notification under S. 4(1) and not before. Whereas acquisition proceedings were initiated in respect of the land of the petitioners, no acquisition proceedings were initiated with regard to the Khasra numbers of the Ashram and, therefore, the two are not similarly situated. Even if it is assumed that the petitioners and Ashram are similarly situated, it is to be borne in mind that the land belonging to the Ashram is for the use of larger community in contradistinction to the private

use of the petitioners. This also puts the petitioners and Ashram on different footing. Having constituted different classes in that sense, Art. 14 of the Constitution cannot be said to be violated.

14. Sri Goswami to support the plea of discrimination relied on *Surya Lal Yadav and Others Vs. State of U.P. and Another*, . The facts of this authority are entirely different and, therefore, ratio of this authority can in no case be applied to the case in hand. In *Surya Lal Yadav (supra)*, acquisition proceedings were initiated by having issued notification under S. 4(1) of the Act in respect of plots Nos. 61, 66, 12, 41, 42, 43 and 44 inter alia. After the notification under S. 4(1) having been issued, Special Land Acquisition Officer as a matter of policy decided that the plots in which houses are situated and plots which belong to small cultivators who will be rendered landless consequent upon acquisition, should not be acquired. This being so, plots Nos. 12, 41, 42 and 43 were excluded as houses were situated thereon. The contention of the petitioners in *Surya Lal Yadav (supra)* whom plots Nos. 61 and 66 belonged to, contended that upon inspection it was found that their houses were situated on the said plots, yet acquisition proceedings were not dropped in respect of those plots, whereas they were dropped in respect of other plots in which houses were situated. This is how the petitioners having owned plots Nos. 61 and 66 pleaded discrimination as against those who owned plots Nos. 13 and 41 to 44. On those facts, this Court accepted the plea of the petitioners who owned plots Nos. 61 and 66 that they were discriminated against similarly situated persons. This authority is, therefore, misplaced before us and no advantage can be taken by the instant petitioners.

15. For the reasons set out above the validity of the notifications issued under Ss. 4(1) and 6(1) of the Act cannot be doubted and is upheld.

16. Then, we take up the last case of *Smt. Kiran Devi*. The only common link between her case and others is that common notifications under Ss. 4(1) and 6(1) had been issued but the pleas set up by her in her writ petition are quite different. It is averred by her in para 5 of the writ petition that no notification under S. 4(1) was ever published and that only notice purporting to have been issued under S. 6(2) of the Act, was issued on 27-6-1991. So the plea is that neither notification under S. 4(1) nor was the notification under S. 6(1) ever published and that only notice under S. 6(2) (Annexure No. 2 to the petition) was abruptly issued against her. This fact is denied in the counter-affidavit. In the writ petitions of other tenure holders, publication of the aforesaid notifications issued under Ss. 4(1) and 6(1) which include the plots of the petitioners also has not been challenged but only the validity of the notification under S. 4(1) was challenged. It clearly shows that the notifications were duly published. No submission at all was made before us by the counsel for the petitioner on the date of hearing in support of the case. While vacating adinterim order by order dated 22-3-1992, we already rejected the submission of the counsel for the petitioner for not giving opportunity and held that opportunity under S. 5A had been duly afforded to the petitioner which she availed by having

engaged counsel to press objections which were disposed of on merits by Special Land Acquisition Officer.

17. In the result, all the three petitions fail and are dismissed. The adinterim orders passed in the first two writ petitions stand vacated (adinterim order in the last writ petition was already vacated by order dated 22-3-1992). There shall be no order as to costs.

18. As the decision does not involve a substantial question of law as to the interpretation of the Constitution, we decline to certify as prayed orally under Art. 134A of the Constitution.

19. Petitions dismissed.