
(1980) 03 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 84 of 1979

Samirmal Badichand

APPELLANT

Vs

State of Madhya Pradesh, Bhopal

RESPONDENT

Date of Decision : 13-03-1980

Acts Referred:

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

Citation : (1980) 03 MP CK 0013

Hon'ble Judges : R.K. Vijayvargiya, J;G.L. Oza, J

Bench : Division Bench

Advocate : S.D. Sanghi, for the Appellant; K.L. Goyal, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.—This petition has been filed by the petitioners-challenging a notification issued on 4th March 1978 u/s 4(1) of the Land Acquisition Act, 1894 and further proceedings in the matter and a direction is sought quashing the notification and further proceedings.

2. According to the petitioners they are the bhumiswamis of agricultural land situated at New Hospital Road, Jaora, district Ratlam, described below:

Khasra No. Area in Hectares. Land Revenue.

904 0.139

905 0.025 Rs. 59.14 paise.

906 0.822

It is alleged that the petitioners purchased the said lands in the year 1974 and developed it into a modern irrigated farm. The petitioners also keep she-buffaloes on this farm and intend to develop a modern dairy farm.

3. It is alleged that the respondent No. 1 on 4-3-1978 issued a notification No. 8/11/78/Sa.1/VII u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred

to as "the Act") and this was published in the Madhya Pradesh State Gazette dated 16-6-1978 Part I at page 446. In this notification it was stated that land measuring 0.809 hectares in village Jaora was required or likely to be required for the public purpose mentioned in the schedule "expansion of capacity of telephone exchange". It was further stated in this notification that provisions of section 5A of the Act would not apply in respect of this land as in the opinion of the State Government the provisions of section 17(1) of the Act applied to it.

4. It is alleged by the petitioners that Jaora is a town with a population of nearly 50000 and the entire town is divided into 22 municipal wards and each and every ward has 5 to 7 mohollas in it. There are thus about 110 mohollas in the town and each moholla is a compact unit. Having acquired a separate name and is known by that name and is a separate locality. According to the petitioners the land of the petitioners is situated in a locality known as New Hospital Road (formerly Pahadia Road) and in the notification Annexure A, referred to above, the locality where the land is required is not specified. It was only stated that land from village Jaora is required. Apparently, village Jaora is situated in district Ratlam and according to the petitioners this much of the description of the locality was not sufficient to enable them to know as to whether it was their land which may be required for acquisition or any portion of their land; and therefore it did not enable them to file an objection against the proposed acquisition.

5. It is 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 and it is further alleged that the State Government has also made rules in this connection u/s 55 of the Act and Rule 1 of these rules provides that immediately after publication of the notification u/s 4(1) of the Act the Collector shall as required by section 4(1) issue a notice stating that the land is needed or likely to be needed for the public purpose and all persons interested in the land would lodge within thirty days in writing a statement of their objections, if any, tattle proposed acquisition. And it is further required that such notice should be published at a convenient place in the locality concerned and copies of the notice shall be fixed up in the office of the Collector and in the nearest police station. It is alleged by the petitioners that all the requirements of this provision are mandatory.

6. According to the petitioners, the substance of the said notification published in the gazette was given on 2-8-1978 u/s 4(1) of the Act and a copy of the substance was published and the panchanama prepared on 2-8-1978 for the publication thereof has been filed by the petitioner. This notice issued by the Collector shows that persons concerned are called upon to file their objections on or before "27th July 1978" whereas this notice itself was issued on 2nd August 1978. It is also alleged that copies of the substance of the notification were not put up at the convenient places in the locality.

7. It is further alleged that on 24-6-1978, even before the publication of the

substance of the notification u/s 4(1) of the Act the respondent No. 1 issued another notification u/s 6 of the Act declaring that 0.809 hectares area of the said land belonging to the petitioners was required for public purpose, namely, expansion of the capacity of telephone exchange and this notification was published in the Madhya Pradesh State Gazette dated 14-7-1978.

8. It is further alleged that on 1-8-1978 a notice u/s 9(2) of the Act was issued to the petitioners requiring them to appear on 17-8-1978 before respondent No. 2 and to file their claim for compensation in respect of the said land. According to the petitioners they came to know about the acquisition proceedings about their land for the first time on 2-8-1978 when they saw a copy of Annexure "B" lying near their land and they immediately lodged their protest against the proposed acquisition by sending a telegram to respondent No. 2. The notice issued on 1-8-1978 was served on the petitioners on 4-8-1978 and on 16-8-1978 the petitioners appeared before the respondent No. 2 and inspected the file of this land acquisition case. On 17-8-1978 they engaged a counsel and sought time to file their objections to acquisition. On 31-8-1978 the counsel for the petitioners raised various objections to the said acquisition and ultimately the petitioners were heard on 31-3-1979 and the case was posted for orders on 11-4-1979.

9. It is further alleged by the petitioners that under orders dated 24-3-1979 by respondent No. 2 a warrant of possession in respect of the part of the said land was issued and in execution of that warrant the process server came on the land on 28-3-1979 and prepared a panchanama. In this panchanama it is stated that possession has been delivered of 0.809 hectares to Shri S.G. Jam, Junior Engineer Telegraph Ratlam and Shri G.L. Rathod, Telephone Inspector, Jaora. it is alleged by the petitioners that the notification issued u/s 4 of the Act is illegal as it is not in accordance with law because it does not specify the locality where the land is needed for acquisition and it is further stated that all further proceedings including the panchanama about delivery of possession are illegal and bad and the petitioners seek the quashing of these proceedings also.

10. The facts have not been disputed in the return. What is contended is that although Jaora may be a big town, but the mention of the locality as "Jaora" is enough. It is further contended that petitioner No. 1 had sufficient knowledge about the proposed acquisition.

11. It was contended by learned counsel for the petitioners that section 4 of the Act requires that whenever the Government is satisfied that land in any locality is needed a notification to that effect shall be published in the official gazette. It was contended that the purpose of this notification, and what has further been provided in sub-section (1) of section 4, goes to show, is that any person in that locality may raise objections to this acquisition if he wants to do so. And such objections have to be considered and disposed of. It was contended by learned counsel, therefore, that the mention of the locality in the notification is to indicate to the persons concerned as to where the land is required for acquisition so that it may be possible for the persons concerned to file any objections.

Admittedly, according to the petitioners, in the present case the only thing mentioned in the notification was "Jaora" and as it is not disputed that Jaora although for revenue purposes is recorded as a village, but is a big town consisting of a number of wards which have their own names and a population of about 50000. It was therefore contended that this notification issued u/s 4(1) dated 4-3-1978 does not indicate the locality where the land was needed for acquisition so that persons concerned may raise objections to such acquisition. Learned counsel for the petitioners in support of his contentions placed reliance on the decisions reported in *Khub Chand and Others Vs. State of Rajasthan and Others*, , *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, , *Munshi Singh and Others Vs. Union of India (UOI)*, , *State of Mysore Vs. Abdul Razak Sahib*, and *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, .

12. The learned Additional Government Advocate appearing for State, on the other hand, contended that the decision reported in *Christian Fellowship (Hospital) Rajnandgaon v. State of Madhya Pradesh* 1973 MPLJ 18 and the Full Bench decision in *Hajari v. State of M.P.* 1976 MPLJ 293 : 1976 JIJ 253 (F B) clearly lay down that where a village is specified in a notification u/s 4(1) it is sufficient and the notification will be held to be valid.

13. In *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, , it has been observed,--

The notification u/s 4(1) thus informs the public that land is required or would be required in a particular locality and there after the members of the public owning land in that locality have to make objections u/s 5-A the Government then makes-up its mind as to what particular land in that locality is required and makes a declaration u/s 6.

It is therefore clear that the purpose of section 4(1) of the Act is to give notice to the owners of properties in a locality that land may be required: for acquisition.

14. The Full Bench decision *Hajari v. State of M.P.*, on which reliance has been placed by the learned Additional Government Advocate, following the decision in *Christian Fellowship (Hospital) Rajnandgaon v. State of Madhya Pradesh* (supra) quoted with approval the passage,--

If the locality is a reasonably small one, like that of a village, the naming of such village as a "locality" is a sufficient compliance of section 4(1). But this does not necessarily imply that the naming of a city like Bhopal, would amount to a specification of a locality within the-meaning of the section. It all, therefore, depends on the nature of the locality where the land is situate in each particular case. The answer to the first question therefore, must be that village is a "locality" within the meaning of section 4(1) of the Act, having regard to the smallness of the area involved. The naming of a village as a locality in a notification,, issued under that section, therefore, does not render it invalid in any manner.

and it appears that as observed by their Lordships,--

This takes us now to the meaning of the word "locality" occurring in section 4(1). In *Christian Fellowship (Hospital) Rajnandgaon v. State of M.P. and others* (supra) the conclusion reached on this point is quoted in Para 6 above. In substance the conclusion is that a village is a locality having regard to its smallness. This conclusion was reached after referring to the meaning of the word "locality" given in the ordinary and legal dictionaries. The several meanings as well as the setting in which the word "locality" occurs indicate that this is substantially the correct meaning. "Locality" is a place with an area which is reasonably small and compact so that it has come to exist and be treated as one unit, a reference to which sufficiently identifies the area and the persons-therein. Ordinarily, the unit has acquired a name by which it is referred and understood.

the view in this case was accepted.

15. In *Christian Fellowship (Hospital) Rajnandgaon v. State of Madhya Pradesh* (supra) the learned Single Judge of this Court was dealing with a question which arose on account of a conflict in two Division Bench decisions as is clear from,--

At the time when the reference was made, there was a conflict of opinion prevalent in this Court, regarding the actual requirements of that section. One was the view taken by Shrivastava and Tare JJ. in *Iftikhar Ahmed v. State of Madhya Pradesh* laying down that the failure of the Government to specify the locality where the land is situate or an omission on their part to give particulars of the land sought to be acquired, in a notification u/s 4(1), renders the notification invalid and has the effect of vitiating the land acquisition proceedings. The other was that taken by Dixit, C.J. and Pandey J. in *Hiralal Jain v. State of Madhya Pradesh*, *Bhaiyalal Singh v. State of Madhya Pradesh* and *Anand Kumar Jain v. State of Madhya Pradesh*, holding that the notification u/s 4(1) being of an exploratory nature, the particulars of the land necessary for defining and identifying it need not be stated and, therefore, failure to furnish such particulars would not render the notification a nullity. The learned Judges, however, stated that the Government in a declaration u/s 6(1) of the Act, by virtue of sub-section (2) thereof, must give sufficient particulars of the land as also the district or other territorial division in which it is situate.

and in view of this conflict it appears that a difference arose between the two Judges constituting the Division Bench hearing the case--*Christian Fellowship (Hospital) Rajnandgaon v. State of M.P.* (supra) and on reference, the learned Single Judge answered the reference in the following words:

For the reasons stated by me, the answer to the reference should be as follows:

(i) The naming of a village as a locality is a sufficient compliance of the requirements of section 4(1) of the Land Acquisition Act, 1894, having regard to the smallness of the area ordinarily comprised in a village which, in the accepted meaning of the term, is a locality. It follows that the notification in question is,

therefore, not invalid for want of specification of the locality where the land is situate.

(ii) The petitioner, having been allowed to urge a ground as regards the alleged invalidity of the said notification u/s 4(1), viz., that the locality where the land is situate was not specified therein, the Court cannot now throw out the petition under Article 226 of the Constitution, merely on the objection that the ground was not taken in the petition.

(iii) The impugned notification not being invalid, the land acquisition proceedings arising therefrom, are not liable to be quashed by any writ, direction or order under Article 226 of the Constitution of India.

and in so doing the learned Judge accepted the view, taken by one Division Bench as it is observed,

I think, the decision in Iftikhar Ahmed's case (supra), in so far as it deals with this aspect, is still good law. In that case, Shrivastava J. speaking for the Court, had observed

It is true that at the stage when a notification u/s 4 of the Act is issued, the Government is not in a position to say definitely which particular piece of land is proposed to be taken. A survey to determine the land most suitable for the purpose and to fix its boundaries has to be undertaken. All the same, the locality, in which the land to be acquired is, has to be given. The "locality" should be reasonably a small one to show the whereabouts of the land.

If the locality is a reasonably small one, like that of a village, the naming of such village as a "locality" is a sufficient compliance of section 4(1). But this does not necessarily imply that the naming of a city like Bhopal, would amount to a specification of a locality within the meaning of the section.....

Thus, in substance this decision arising out of a difference of opinion is a verdict of one learned Single Judge holding the view of one Division Bench to be correct. The reasoning appears to be that the locality when it is a reasonably small one like that of a village, the naming of such a village as locality is sufficient compliance of section 4(1). It was also observed in the passage quoted above that it would not be sufficient compliance with section 4(1) of the Act if a city like Bhopal is named as the locality.

16. Following this decision the Full Bench in Hajari v. State of M.P. accepted the view of this judgment that naming of the village is sufficient compliance. It has been further observed in this Full Bench decision,

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 village as locality would be sufficient. However, in recent times some villages have been 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 village alone does not amount to naming the locality in view of the largeness of the village and in that context a small 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.

These observations clearly go to show that their Lordships realised that although according to their view villages in India are quite small, but still, in recent times some villages may have grown considerably so that the area within a big village may have been divided to create smaller units like Tolas or Mohallas and therefore their Lordships felt that in such a situation naming of the village alone may not amount to naming of the locality.

17. It appears that while considering a village as a small unit the residential part of the village only was in view although under the scheme of the revenue laws village means a tract of land. The definition of "Village" in sub-clause (z-5) of section 2 of the Madhya Pradesh Land Revenue Code reads:

(z-5) "village" means any tract of land which, before the coming into force of this Code, was recognised as or was declared as a village under the provisions of any law for the time being in force and any other tract of land which is hereafter recognised as a village at any revenue survey or which the State Government may by, notification, declare to be a village.

And it is because of this that the tract of land which at some time may have been included in one village may ultimately emerge into a township with yet smaller divisions which could be treated as units for the purpose of naming the locality as observed in the Full Bench decision itself. Apparently therefore, the mention of the locality in a particular case may depend upon the circumstances of that case as the purpose of the notification is to give an intimation to the people concerned that their lands may be acquired and if they want to, they may raise their objections to the proposed acquisition. In this view of the matter, it could not be doubted that when it was mentioned that land is needed in Jaora, it could not be said that it was enough as 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 has not been disputed that it consists of separate wards having their names and apparently therefore the mere mention of "Jaora" in the notification u/s 4 could not be said to be sufficient compliance with the provisions contained in section 4 of the Act.

18. Our attention was drawn to the decision reported in Babu Singh and Others Vs. Union of India (UOI) and Others, , and it was contended that where the

provisions of section 5-A of the Act have been dispensed with as the Government chose to apply the provisions of section 17(4), the notifications under sections 4 and 6 could be made simultaneously and section 6 notification could immediately follow the notification u/s 4: This having been held in this decision Babusingh and others v. Union of India and others it appears that the purpose, for which locality has to be mentioned in section 4(1) notification, is wiped out as the provisions u/s 5A have been dispensed with and there is no opportunity to the person concerned to file any objection to such acquisition. It was contended on behalf of the petitioners, on the other hand, that this decision in Babusingh and others v. Union of India and others only follows the decision in Smt. Somavanti and Others Vs. The State of Punjab and Others, and their Lordships have quoted with approval the observations made in Smt. Somawanti and others v. State of Punjab and others, wherein it is observed:

It is the last and final contention of the petitioners in these petitions that the notification under sections 4 and 6 cannot be made simultaneously and that since both the notifications were published in the gazette of the same date, that is August 25, 1961 the provisions of law have not been complied with. The argument is that the Act takes away from a person his inherent right to hold and enjoy that property and, therefore, the exercise of the statutory power by the States to take away such property for a public purpose by paying compensation must be subject to the meticulous observance of every provision of law entitling it to make the acquisition. It is pointed out that under sub-section (1) of section 4 the Government has first to notify that a particular land "is likely to be needed for a public purpose". Thereafter u/s 5A a person interested in the land has a right to object to the acquisition and the whole question has to be finally considered and decided by the Government after hearing such person. It is only thereafter that in a normal case the Government is entitled to make a notification under subsection (1) of section 6 declaring that it is satisfied "after considering the report, if any, made u/s 5A, sub-section (2)" that the land is required for a public purpose. This is the sequence in which the notifications have to be made. The reason why the sequence has to be followed is to make it clear that the Government has applied its mind to all the relevant facts and then come to a decision or arrived at its satisfaction even in a case where the provisions of section 5A need not be complied with. Undoubtedly the law requirements that notification under subsection (1) of section 6 must be made only after the Government is satisfied that particular land is required for a public purpose. Undoubtedly also where the Government has not directed under sub-section (4) of section 17 that the provisions of section 5A need not be complied with the two notifications, that is, under sub-section (1) of section 4 and sub-section (1) of section 6 cannot be made simultaneously. But it seems to us that where there is an emergency by reason of which the State Government directs under sub-section (4) of section 17 of the Act that the provisions of section 5A need not be complied with, the whole matter, that is, the actual requirement of the land for a public purpose must necessarily have been considered at the earliest stage itself

that is when it was decided that compliance with the provisions of section 5A be dispensed with. It is, therefore, difficult to see why the two notifications cannot, in such a case, be made simultaneously. A notification under sub-section (1) of section 4 is a condition precedent to the making of notification under sub-section (1) of section 6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of section 5A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day. In the case before us the preliminary declaration u/s 4(1) was made on August 18, 1961 and a declaration as to the satisfaction of the Government on August 19, 1961 though both of them were published in the Gazette of August 25, 1961. The preliminary declaration as well as the subsequent declaration are both required by law to be published in the official gazette. But the law does not make the prior publication of notification under sub-section (1) of section 4 a condition precedent to the publication of a notification under sub-section (1) of section 6. Where acquisition is being made after following the normal procedure the notification under the latter section will necessarily have to be published subsequent to the notification under the former section because in such a case the observance of procedure u/s 5A is interposed between the two notifications. But where section 5A is not in the way there is no irregularity in publishing those notifications on the same day.....

It therefore clearly lays down that a notification under sub-section (1) of section 4 is a condition precedent to the making of a notification under subsection (1) of section 6 of the Act.

19. That the notification u/s 4 is mandatory has been held in *Narinderjit Singh v. State of U.P.* (supra). The argument that when provisions of section 17(4) are made applicable and the provisions of section 5A have been dispensed with, the notification u/s 4(1) only remains a formality was considered by their Lordships in that decision and it was observed:

Learned counsel for the State has, however, contended that according to these decisions it is only when the persons interested can file objections u/s 5A that the public notice of the substance of the notification u/s 4(1) by the Collector would be necessary whereas in the present case the applicability of the provisions of section 5A have been dispensed with u/s 17(4) of the Act at the same time the notification u/s 4(1) was issued. It is wholly unnecessary that the interested parties should have the requisite information of the acquisition proceedings as they are not entitled to file objections u/s 5A. We are unable to accept such a contention. In our judgment the provisions of section 4(1) cannot be held to be mandatory in one situation and directory in another. Section 4(1) does not contemplate any distinction between those proceedings in which in exercise of the power u/s 17(4) the appropriate Government directs that the provisions of section 5A shall not apply and where such a direction has not been

made dispensing with the applicability of section 5A. It lays down in unequivocal and clear terms that both things have to be simultaneously done u/s 4(1), i. e., a notification has to be published in the official gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated. The scheme of section 4 is that after the steps contemplated under sub-section (1) have been taken the officer authorised by the Government can do the various acts set out in sub-section (2). It is not required u/s 17(4) of the principal Act that when a notification u/s 4(1) is issued the direction should be made simultaneously if the State Government so desires. Such an order or direction can be made even at a later stage. The effect of the direction made u/s 17(4) is that a declaration can be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4(1) and thereafter the Collector can take possession. But as mentioned before in a given case the appropriate Government may not consider it necessary to take action u/s 17(4) simultaneously with the notification u/s 4(1) and it may choose to invoke its provisions only at a later stage in view of any urgency that may crop up. Thus the construction of section 4(1) cannot be made to depend upon any action or direction which the State Government may choose to make u/s 17(4) of the principal Act. In our opinion section 4(1) has to be read as an integrated provision which contains two conditions; the first is that the notification in the official gazette must be published and the second is that the Collector has to cause public notice of the substance of such notification to be given. These two conditions must be satisfied for the purpose of compliance with the provisions of section 4(1).

It is therefore clear that in spite of the fact that section 17(4) is made applicable and section 5A has been dispensed with their Lordships ruled that section 4(1) is mandatory and it has to be complied with. In view of this it could not be said that when section 5A has been dispensed with compliance with section 4(1) is not necessary. As discussed earlier, in the present case section 4(1) has not been complied with on both the grounds: that in the notification published in the gazette the locality is not mentioned; and the substance of the notification was not properly published by the Collector in the locality. Thus the notification u/s 4 issued in this case could not be said to be a valid notification and that notification and the subsequent proceedings have to be quashed.

20. Learned counsel for the petitioners even took us through the requirement for public purpose and urgency. But in our opinion, as the proceedings are being quashed on the ground of non-compliance with section 4 of the Act itself, we do not think it proper to go into that question.

21. The petition is accordingly allowed. The notification issued by the State Government u/s 4 of the Land Acquisition Act, 1894, dated 4-3-1978 and the subsequent proceedings of acquisition are hereby quashed. The petitioners shall be entitled to costs of this petition. Counsel fee Rs. 200/-(two hundred) if

certified. The security amount deposited by petitioners be refunded after verification.