

(2001) 11 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13779 of 2000

Sanjay and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

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

Citation : (2002) 1 RCR(Civil) 836

Hon'ble Judges : N.K. Sodhi, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Hemant Sarin, for the Appellant; Sanjay Vashisth, DAG, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—An area measuring more than 40 acres of land including that of the petitioners in villages Fatehpur, Adampur and Tikri was acquired by the State of Haryana under the Land Acquisition Act, 1894 (for short the Act) for a public purpose, namely, "for the development and utilisation of land as Sector road/residential, commercial between sector No. 47, 49 and 50 Gurgaon". The notification u/s 4(1) of the Act was published in the Official Gazette on 26.8.1997. It was also published in two daily newspaper viz. "National Herald" dated 6.9.1997 and "JVG" Times" dated 3.9.1997. The substance of the notification was also published in the locality on 13.9.1997. Since the last of these publications was made on 13.9.1997, the notification u/s 4(1) of the Act will be deemed to have been published on this date. Thereafter, the State Government made a declaration u/s 6(1) of the Act and the same was published in the Official Gazette on 13.10.1998. It was also published in two newspapers on 29.9.1998 and 1.10.1998. The substance of the declaration was also published in the locality on 22.9.1998. The last of these publications was made in the Official Gazette on 13.10.1998 and, therefore, the declaration is deemed to have been made on this date. It is this acquisition which is now under challenge

in this petition filed under Article 226 of the Constitution.

2. We have heard counsel for the parties and are of the view that the writ petition must succeed. The notification u/s 4 of the Act was published on 13.9.1997 whereas the declaration u/s 6 of the Act was made on 13.10.1998. In other words, the declaration was made after the expiry of more than one year from the date of publication of the notification u/s 4(1) of the Act. This is in clear contravention of the mandatory provisions of the proviso to Section 6(1) of the Act. The mandate of the proviso is that no declaration in respect of any particular land covered by a notification u/s 4(1) of the Act shall be made after the expiry of one year from the date of the publication of the notification. In this view of the matter, the declaration made on 13.10.1998 cannot be sustained.

3. In all fairness to the learned Deputy Advocate General, we must notice his submission. He contended that the provisions of Section 6 of the Act are not mandatory in nature and that they are only directory and, therefore, even if the declaration was made beyond the period of one year from the date of publication of the notification u/s 4 of the Act, the same would not be invalid. He relied upon a judgment of the Supreme Court in *State of Haryana and Another Vs. Raghubir Dayal*, . We have carefully gone through this judgment and find that it does not support the contention advanced by the learned State Counsel. In *Raghubir Dayal's* case (supra), the declaration u/s 6 of the Act had been made within one year of the publication of the notification u/s 4(1) of the Act. The substance of the declaration in the locality had not been published and the question that arose before the Lordships was as to whether the declaration would be invalid. The High Court set aside the declaration on that ground holding the provisions of section 6(2) of the Act to be mandatory. The decision of the High Court was reversed and it was held that the provisions of Section 6(2) of the Act are directory in nature and if the substance of the declaration had not been published in the locality, the declaration would not become invalid on that score. This judgment is of no help to the respondents in the present case.

4. In the result, the writ petition is allowed and the impugned declaration made in the official Gazette on 13.10.1998 quashed qua the petitioners. There is no order as to costs.