
(1974) 02 AHC CK 0026

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 6843 and 7436 of 1973

Shrimati Daya Wati and Another

APPELLANT

Vs

Collector, Saharanpur and Another

RESPONDENT

Date of Decision : 07-02-1974

Acts Referred:

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

Citation : AIR 1975 All 202

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : S.J. Haider, for the Appellant; Girdhar Nath, for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—These are two writ petitions challenging the land acquisition proceedings taken by the Collector, Saharanpur, for acquiring land for purposes of extension and development of Har Ki Pairi at Hardwar and for widening the road in front of Har Ki Pairi, Hardwar. Two notifications, one dated 18th July, 1973, and the other dated 5th July, 1973, issued by the Collector of Saharanpur, were published in the Gazette dated 4th August, 1973, u/s 4(1) of the Land Acquisition Act. The proceedings initiated under these two notifications have been impugned in these two writ petitions.

2. In Writ Petition No. 6843 of 1973, there are 24 petitioners including Smt. Kamal Rani whose property which includes land and building, is sought to be acquired by the Collector for the purposes of extension and development of Har Ki Pairi. Smt. Dayawati and Smt. Krishnawati are two petitioners in Writ Petition No. 7423 of 1973. Their land and building standing thereon is sought to be acquired under the impugned notification dated 5th July, 1973, for the purpose of widening the road in front of Har Ki Pairi from Tonga Stand to J. K. House. The Gazette notifications on 4th August, 1973, invited objections from the affected persons u/s 5-A of the Act but the publication of the substance of the gazette notification in the locality was made on 28th and 29th August, 1973. Individual

notices were also served on the petitioners. The petitioners filed objections which were considered and a report was submitted to the State Government u/s 5A of the Act. Meanwhile the petitioners filed the present writ petitions challenging the validity of the land acquisition proceedings. During the pendency of the writ petitions, notifications u/s 6 were issued and published in the extraordinary U. P. Gazette in December and January.

3. Sri S.J. Hyder, learned counsel for the petitioners, has urged that Section 4(1) of the Land Acquisition Act, 1894, was not complied with in the present case inasmuch as the substance of the notifications published in the official gazette was not given publicity in the locality. Therefore the notifications issued u/s 4(1) were invalid and the petitioners' land or building could not legally be acquired. Section 4(1) and Section 5A of the Land Acquisition Act, as amended in its application to Uttar Pradesh, are in the following words:--

"4 (1). Whenever it appears to the appropriate Government or the Collector that land in any locality is needed or is likely to be needed for any public purpose, notification to that effect shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

5-A. Any person interested in any land which has been notified u/s 4, Sub-section (1) as being needed or likely to be needed for a public purpose or for a Company may, within 21 days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be." Section 4(1) requires publication of notification in the gazette indicating the intention of the Government or the Collector that the land is needed for a public purpose and it further requires that a notice of substance of such notification should be given at convenient places in the locality. The State Government of Uttar Pradesh has framed Rules in this respect, which are contained in paragraph 415 of the U. P. Revenue Manual which lay down mode of publication in the locality. According to that provision the substance of the notification issued u/s 4(1) is required to be published in the locality by posting notices at the convenient places in the locality and by proclamation by beat of drum in the locality and if possible notice of the notification should also be served on the affected persons whose property is likely to be needed for public purpose. Thus two things namely publication in the gazette and publication of the substance of the notification in the locality in the manner aforesaid are required to be done before the land or property of a person is acquired under the Act. In *Khub Chand and Others Vs. State of Rajasthan and Others*, it was held that the requirement of publication in the gazette and in the locality u/s 4(1) of the Act was mandatory. It was further laid down that if a notification was issued u/s 4 without complying with the mandatory directions, the notification would be void and the land acquisition proceedings taken in pursuance thereto would be equally void. The law is thus settled that if Section 4(1) is not complied with inasmuch as the publication of the substance of the notification is not made in the locality the acquisition proceedings which may be

taken pursuant to the notification issued u/s 4(1) may be rendered invalid.

4. The question then arises, whether the aforesaid requirement was complied with in the instant case. The counter-affidavit filed on behalf of the State does not give any necessary details. The learned standing counsel has, however, produced the original record of the land acquisition proceedings from the Collector's office. On a perusal of the records, I find that the two notifications in the instant case issued u/s 4(1) of the Act were published in the U. P. Gazette dated 4th August, 1973. It appears that the Gazette could not be available to the Land Acquisition Officer, Saharan-pur, till 2nd August, 1973. On that date he received copies of the Gazette, thereupon he directed that steps be taken for publication of notice in the locality. In pursuance to that direction notices giving the substance of the notifications u/s 4(1) of the Act were published in the locality on 28th and 29th August, 1973. In addition to the proclamation of the notice individual notices were also served on the petitioners. The notices served on the petitioners and published in the locality required the interested persons to file written objections within 21 days of the publication of the notifications dated 5th and 18th July, 1973. Thus the interested persons were required to file objections within 21 days of the publication of the gazette notification, namely, 4th August, 1973, although the period provided for filing objections had already expired. All the petitioners in the two petitions except Smt. Kamal Rani, however, filed objections. These objections were considered and report u/s 5A was submitted to the Government. These facts would show that though Section 4(1) of the Act was not strictly complied with, the petitioners' objections were considered u/s 5A of the Act.

5. Learned counsel for the petitioners contended that since Section 5A of the Act prescribes statutory period of limitation for filing objections within 21 days and since in the instant cases the publication of the substance of the notification was itself done after the expiry of 21 days, the entire proceedings for acquiring the petitioners' land were rendered invalid. He placed reliance on *State of Mysore Vs. Abdul Razak Sahib*, .

6. In *State of Mysore Vs. Abdul Razak Sahib*, , a notification u/s 4 of the Land Acquisition Act was published in the Gazette on 17th August, 1961, but no notices as required by that section were published in the locality till November 1 and 9, 1961. Abdul Razak whose land was sought to be acquired filed his objection on 4th December, 1961. His objection was entertained and he was allowed to lead evidence. After considering his objection a notification u/s 6 of the Act was issued acquiring his land. Abdul Razak thereupon filed a writ petition under Article 226 of the Constitution challenging the validity of the land acquisition proceedings before the Mysore High Court. The writ petition was allowed by the High Court and thereupon the State of Mysore preferred appeal before the Supreme Court. The Supreme Court upheld the judgment of the High Court. Their Lordships of the Supreme Court considered Sections 4 and 5A of the Act and held that Section 4(1) of the Act prescribes two requirements namely (1)

a notification has to be published in the Official Gazette and (21) the Collector must give public notice of the substance of that notification at convenient places in the concerned locality. After referring to Section 5A of the Act their Lordships observed:--

"Section 5A empowers the interested person to object to the acquisition of any land but his objection should be filed within 30 days from the date of the issue of the notification. Any objection filed thereafter need not be considered as the same is filed after the time stipulated u/s 5-A(1)."

The above observations made by the Supreme Court shows that the time stipulated by Section 5-A(1) is mandatory. If any objection is filed after the expiry of that stipulated period of time the same is not required to be considered as that is no objection in the eye of law.

7. Abdul Razak had filed his objection beyond the stipulated statutory period and that objection had been considered by the State Government before the issue of notification u/s 6 of the Act. But even then the Supreme Court was of the view that if opportunity to file objection within the stipulated period of time as contemplated by Section 5A of the Act was not given, the notification issued u/s 4 was rendered invalid. This is further clear by the following observations:--

"With the above background we have to consider the scope of Section 4(1). Under certain circumstances publications in the Official Gazette are presumed to be notice to all concerned. But in the case of a notification u/s 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided u/s 5A, which is very valuable right."

The law laid down by the Supreme Court" is thus clear that unless the two requirements laid down in Sub-section (1) of Section 4 are complied the notification issued u/s 4 would be vitiated. In the instant cases admittedly the notifications issued u/s 4(1) were published in the U. P. Gazette dated 4th August, 1973 but the substance of those notifications was published in the locality after the expiry of the statutory period of objection, namely, 21 days. In that situation the law laid down in State of Mysore Vs. Abdul Razak Sahib, is fully applicable to the present case and the two notifications issued u/s 4(1) of the Act are illegal.

8. The learned Advocate General contended that since the petitioners' objections were entertained and considered on merits, no prejudice was caused to them. In any case the time-limit of 21 days contained in Section 5A of the Act could be

extended by the Collector to file objection. The time limit u/s 5A was fixed by the legislature so that objections could be settled in a speedy manner without any undue delay. It was open to the Collector to extend that time for filing objections as was done in the present case and in that situation any defect in publication of the substance of the notification in the locality need not affect the validity of the notification issued u/s 4(1) of the Act. He placed reliance on a judgment of a learned Single Judge of the Lucknow Bench of this Court in Writ Petition No. 265 of 1969 (All.) (Mr. James Stephens v. The Collector, Kheri, decided on 4th March, 1971).

9. It is true that all the petitioners except Smt. Kamal Rani had filed objections and those objections were not rejected on the ground that they had been filed beyond time, instead the Land Acquisition Officer treated the objections within time and considered them on merits. A report u/s 5A in respect of those objections was also submitted to the State Government and thereupon the two notifications u/s 6 of the Act were issued during the pendency of the writ petitions. The question then arises whether the publication of the substance of the notification in the locality and the filing of the objections after the extended period of time would validate the notification issued u/s 4(1). As already noted similar situation prevailed in Abdul Razak's case AIR 1973 SC 2361. The Supreme Court also noted the fact that Abdul Razak had filed an objection but the judgment does not indicate as to whether that objection was rejected or considered by the authorities. Learned counsel for the petitioner as well as the learned Advocate General has produced a copy of the paper book of the Supreme Court relating to the case of Abdul Razak. A perusal of the writ petition and the affidavit filed by the Under Secretary to the Government of Mysore and the grounds of appeal before the Supreme Court make it amply clear that Abdul Razak had filed an objection and that objection had been considered by the authorities. Moreover Abdul Razak had been given opportunity of producing evidence also. Abdul Razak was thus given full opportunity as contemplated u/s 5A of the Act but even in that situation the Supreme Court held that the provisions of Section 4(1) were not complied with because publication of the notice in the locality which was mandatory requirement was not done inasmuch as the publication of the notice was done beyond 30 days of the publication of the notification under Section 4(1) of the Act in the Gazette. The facts available in the present case are not different with the facts of State of Mysore Vs. Abdul Razak Sahib, . Their Lordships of the Supreme Court were conscious of this aspect. The Supreme Court while narrating facts expressly noted that Abdul Razak had filed objection. But even then the Supreme Court held that the notification u/s 4(1) was invalid. The law laid down by the Supreme Court is binding and I see no justification to distinguish the case of Abdul Razak on the ground that the Collector had extended time for filing objection. In the instant cases the publication of the substance of the notification was not done in the locality within 21 days from the date of the publication of the notification in the gazette, the notifications issued u/s 4(1) of the Act were therefore rendered

illegal and the respondents are not entitled to take any further steps for acquiring the petitioners' land and property pursuant to those notifications. The petitioners' land and property is sought to be compulsorily acquired by the Collector. The Collector and the State Government have got power to acquire the petitioners' land and property but it is well settled that whenever right of property is involved the law must be complied with strictly. In the present case the authorities have not complied with the requirement of law, therefore, the notifications issued u/s 4(1) of the Act are rendered illegal.

10. The learned Advocate General urged that compliance of Section 4(1) of the Act by publication of the notice of the substance of the notification in the locality was physically impossible in the instant cases as the copy of the Gazette containing the notifications, dated 4th August, 1973, was not available to the Collector or the Land Acquisition Officer at Saharanpur before 22nd August, 1973. The gazette is published by the State Government and if the machinery of the Government did not move speedily and the Gazette notifications were not available to the Land Acquisition Officer or the Collector, Saharanpur, within the time to comply with the law, the State Government cannot take advantage of its own faults and defects in its machinery. Once the gazette notification was published in the gazette it is presumed under the law that everybody has knowledge of that. Moreover the law required the respondents to publish notice of the substance of the Gazette notifications before the expiry of the stipulated period of objection so that the affected person could file objections. Once the law required that the publication of the notification in the locality should be done before the expiry of the stipulated period of time it must be complied with strictly. In a case where property of a citizen is compulsorily acquired by the State it is extremely essential that the law must be strictly complied with and if the authorities of the State failed to comply with the law they will have no sanction or authority to acquire a citizen's property. The excuse for non-compliance with the requirements of the provisions of Section 4(1) as urged by the learned Advocate General can hardly be a ground under the law to dispense with the requirement of law contained in Section 4(1) of the Act.

11. The case of Mr. James Stephens decided by Hon'ble K. B. Srivastava, J. stands on a different footing. In that case the land of Mr. Stephens was sought to be acquired and for that purpose notification u/s 4(1) was issued. It appears that Mr. Stephens had gone out of India at the time when the publication of the notice was done in the locality. Subsequently, when Mr. Stephens returned to India he made an application to the State Government for opportunity of filing objections. The State Government accepted his request and directed the Land Acquisition Officer to allow Mr. Stephens opportunity to file objection and to consider the same. Mr. Stephens thereupon filed objection but no opportunity was given to him as required by Section 5A of the Act, and a notification u/s 6 was issued and the land was acquired. Thereupon Mr. Stephens filed a writ petition in the Lucknow Bench challenging the validity of the land acquisition proceedings. One of the grounds raised was that he had not been given

opportunity of hearing as required by Section 5A of the Act. The learned Judge recorded a finding that there was clear violation of the principles of natural justice inasmuch as Mr. Stephens was entitled to opportunity of hearing with regard to his objection u/s 5A. The Land Acquisition Officer failed to give to him the necessary opportunity and therefore he could not produce evidence in support of his objection. In that situation an argument was advanced on behalf of the State Government that since Mr. Stephens' objections had been filed after the expiry of the statutory period of 21 days, those objections were no objections in the eye of law, therefore, he was not entitled to any opportunity of hearing. K. B. Srivastava, J. repelled the contention and observed that what was given by the State Government by one hand could not be taken by the other hand. The learned Judge further observed that it was open to the State Government to waive the delay in filing objections and to extend the time for filing objections. The law laid down in the case of James Stephens in my opinion does not lend any support to the respondent's case. In that case publication of notification was done in the locality in the manner required by Section 4(1) of the Act within time but since Mr. Stephens was out of India, he was given opportunity to file his objections. In the instant case, the publication in the locality was not done within time giving opportunity to file objections. There is difference in the two situations--in the case of Mr. Stephens publication of notice in the locality had been done within 21 days of the publication of Section 4(1) notification in the Official Gazette, thus the requirement of Section 4(1) was complied with, while in the instant cases the situation is otherwise -- admittedly Section 4(1) was not complied as publication in the locality was made after 21 days of publication of the Gazette notification u/s 4(1) of the Act.

12. The requirement of publication of the notice in the locality at convenient places was again considered by the Supreme Court in the case of Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, . The Supreme Court reiterated the law laid down in State of Mysore Vs. Abdul Razak Sahib, and quashed the land acquisition proceedings in the case of Narendrajit Singh on the ground that the requirement of Section 4(1) was not complied with as no publication of the notice of the Gazette notification was done in the locality. In Narendrajit Singh's case AIR 1973 SC 552 the State Government had applied Section 17(4) and dispensed with the provisions of Section 5A with the result the opportunity of filing objections by affected persons whose land was sought to be acquired had been taken away by the Government. None of the affected persons had any right to file any objection but even in those circumstances the Supreme Court laid emphasis on the compliance of Section 4(1) of the Act. The argument raised on behalf of the State that since no objections were required to be filed, the absence of the publication of notice in the locality was of no consequence as none of the affected persons was prejudicially affected because they had no right to file objection was repelled, and the Supreme Court again emphasised that the absence of public notice of the substance of the notification issued u/s 4(1) of the Act in the locality rendered the notification illegal and all the subsequent

steps taken pursuant to that notification were void. In view of the law laid down by the Supreme Court in the case of Narendrajit Singh it is difficult to accept the contention of the learned Advocate General that no prejudice was caused to the petitioners as they had filed objections, therefore, requirement of Section 4(1) was substantially complied with.

13. In the result both the petitions are allowed. The two notifications issued u/s 4(1) of the Land Acquisition Act dated 5th July and 18th July, 1973, are quashed. The petitioners are entitled to their costs.