
(1990) 11 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 84 of 1983

State of Punjab and Another

APPELLANT

Vs

Des Raj Mehta and Others

RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

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

Citation : (1991) 99 PLR 139

Hon'ble Judges : J.V. Gupta, C.J.; R.S. Mongia, J

Bench : Division Bench

Advocate : H.S. Riar, A.A.G, for the Appellant; M.L. Sarin and Jaishree Thakur, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—This judgment disposes of L. P. A. No. 84 of 1983 as well as L. P. A. No. 32 of 1983. Both these appeals have been filed by the State of Punjab against the judgment of learned Single Judge. It may be stated here that the notifications under the Land Acquisition Act were quashed by the learned Single Judge in C W P No. 1931 of 1974 against which L. P. A No. 84 of 1983 has been filed. The same notifications were under challenge in C. W. P. No. 1437 of 1974 and since in The earlier writ petition the same notification had been quashed, the learned Single Judge allowed that writ petition also and quashed the notification qua the petitioners in that case. L P. A. No. 52 of 1983 has been filed by the Stats of Punjab against that judgment which was ordered to be heard with L P. A. No. 84 of 1983 by the admitting Bench.

2. The learned Single Judge held that there had been no publication of the substance of the notification u/s 4 of the Land Acquisition Act in the locality and allowed the writ petition so far as the petitioners were concerned

3. The point of law which arises for determination in these appeals is that if there is non-compliance of the mandatory provisions of Section 4(1) of the Land

Acquisition Act (hereinafter called the Act) to the extent that there is no due notice of the substance of the notification in the locality and still the objections u/s 5A of the Act are filed by the land owners, whether the acquisition is vitiated ipso facto or only if prejudice is shown by the land owners, only then the acquisition is vitiated.

4. It will be relevant at this stage, to appreciate arguments of the respective parties, to reproduce Section 4 of the Act :-

"4, Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the (appropriate Government) that land in any locality (is needed or) is likely to be needed for any public purpose (or for a company), 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 the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.)

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the subsoil

to do all other acts necessary to ascertain whether the land is adapted for such purposes ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ; to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so."

5. Learned counsel for the appellant submitted that the only purpose of the notification u/s 4 of the Act in the Official Gazette as well as in the daily newspapers and of public notice of the substance of the notification in the locality is to give an opportunity to the land owners and other interested persons to file objections u/s 5A of the Act against the proposed acquisition of the land by the State Government. He went on to submit that if the land owners come to know about the land acquisition through a publication in the Gazette or the newspaper

and they file objections u/s 5-4 of the Act, the acquisition cannot be set aside merely on the ground that the substance of the notification was not published in the locality as no prejudice is caused to the land owners since they have had the opportunity of filing the objections which is the purpose of the notification under section 4 of the Act. In other words, the learned counsel submitted that unless there was prejudice shown by the land owners, the acquisition could not be set aside merely on the ground of non- publication of the substance of the notification in the locality.

6. The learned counsel for the respondent land owners, on the other hand, submitted that the provisions of Section 4 of the Land Acquisition Act have been held to be mandatory and if there is non- compliance of the mandatory provisions, no prejudice need be shown. He further submitted that it is wrong on the part of the State counsel to argue that the only purpose of the notification u/s 4 was to apprise the land owners regarding the intention of the Government to acquire the land so that land owners could file objections, if any, to the proposed acquisition. According to the learned counsel, if that was the only purpose, then wherever urgency provisions u/s 17 of the Act were invoked by the State Government dispensing with the requirement of Section 5A of the Act regarding filing objections, then in that case, no publication of the substance of the notification is required in the locality as no objections are required to be filed. According to him, the Apex Court had held otherwise that even in cases where urgency provision had been invoked the publication of the substance of the notification was required to be done in the locality. He cited *Narinderjit Singh v. The State of U. P. A. I. R. 1973 S. C. 352*, in support of his contention. The learned counsel also cited *Khub Chand and other v. State of Rajasthan A. I. R. 1967 S. C. 104*, for the proposition that provisions of Section 4 of the Act are mandatory.

7. After bearing the learned counsel for the parties at length we are of the view that there is no force in the contention of the learned counsel for the appellant and the arguments of the learned counsel for the respondents are well merited. We find that the purpose of the publication of the substance of the notification in the locality is not only that the land owners can file objections but it is also to enable and permit the State Government to enter upon the land for the purpose of survey and for taking levels or to dig or bore into the sub-soil etc. This is clear from the reading of Section 4(7) of the Act *ibid*. The learned counsel for the respondent has rightly relied on the dictum of the Supreme Court in *Khub Chand's case (supra)* that the provisions of Section 4 of the Act are mandatory and it is now well settled that in case of non-compliance of mandatory provisions, no prejudice need be shown. The learned counsel for the respondent is right in submitting on the basis of the Supreme Court judgment in *Narinderjit Singh's case (supra)* that only purpose of notification u/s 4 was not to enable the land owners to file objections, as even where urgency provisions had been invoked by the State Government u/s 17 of the Act; there was still need to publish the substance of the notification in the locality. The Supreme Court in the

above said case, where the urgency provision had been invoked by the State Government set aside the notification as the substance of the notification u/s 4 tad not been published in the locality.

8. To be fair to the learned counsel for the appellant, we may state that he cited some authorities, i. e. Dalbir Singh and Ors. v. The State of Haryana 1989 P. L. J, 02. Mahal Singh and Ors. v. The State of Punjab (1974) 76 P. L. R. 770 and Bishna alias Bhhan Singh v. The State of Punjab 1980 P. L. J. 510, to contend that unless prejudice is shown, the acquisition could not be set aside. We have perused these cases and we find that in all these cases, there was in fact publication of the substance of the notification in the local by but it bad been delayed and the land owners had filed objections u/s 5A of the Act These were not cases of non publication at all in the locality. These cases do not help the appellant.

9. For the reasons recorded above, these appeals fail and we dismiss. No orders as to costs.