
(1965) 11 AHC CK 0022

In the Allahabad High Court

Case No : Special Appeal No"s. 185, 186, 187, 228, 229 and 230 of 1965

Synthetics and Chemicals Ltd.

APPELLANT

Vs

Ram Asrey Lal and Others

RESPONDENT

Date of Decision : 22-11-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 4(2), 40, 6

Citation : AIR 1967 All 4

Hon'ble Judges : W. Broome, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : Jagdish Swarup and Vinod Swarup, for the Appellant; M.P. Bajpai, for the Respondent

Final Decision : Allowed

Judgement

W. Broome, J.—These six special appeals (three filed by Messrs. Synthetics and Chemicals Ltd. and three by the State of U. P.) are directed against a decision of Satish Chandra J., dated 29-3-1965, by which three writ petitions (Nos. 952,1161 and 1620 of 1961) were disposed of by a common judgment, and it will be convenient to deal with them together.

2. The petitioners in the three writ petitions are the cultivators of various plots of land in the villages of Madhopur Muafi, Nowgaon, Bitaura, Fatehganj West and Kurtara (district Bareilly, which are being acquired under the Land Acquisition Act for a Synthetic rubber factory to be set up by Messrs. Synthetics and Chemicals Ltd. Originally a combined notification under Sections 2 and 17(4) of the Act was issued on 2-4-1960 (published in the Gazette of 9-4-1960), followed by another notification dated 4-4-1960 u/s 40(2) of the Act, appointing the S. D. O., (II) of Bareilly to hold the inquiry that is necessary in the case of acquisition for a company. Thereafter an agreement was executed by the Company in accordance with Section 41 on 19-6-1960; and a notification u/s 6 was issued on 30-6-60 (published in the Gazette of 2-7-1960). At this stage a number of writ petitions were filed, challenging the various notifications that had been issued, and these

petitions were due to come up for hearing in March 1961. Meanwhile, however, the Government realised that there were certain legal flaws in the notifications that had been issued and accordingly passed orders on 23-2-1961, cancelling the earlier notifications u/s 4/17(4) and 6, dated 2-4-1960 and 30-6-1960 respectively, but maintaining the notifications u/s 40(2) dated 4-4-1960 with slight verbal modifications. On the same day (23-2-1961) a fresh notification under Sections 4/17(4) was issued; and the following day (24-2-1961) a fresh notification was issued u/s 6. The cancellation of the earlier notification and the issue of the fresh notification were all published together in the Gazette of 25-2-1961. As a result of these changes the earlier writ petitions became infructuous and were dismissed on 17-3-1961. In pursuance of the notification u/s 6 dated 24-2-1961 the Collector issued a notice u/s 9, calling for claims to compensation; and on 17-3-1961 a notification was published u/s 17(1) authorising him to take possession of the land on the expiry of 15 days from the date of that notice. Possession was accordingly taken and the land was handed over to the Company on 21-3-1961. The writ petitions with which we are at present concerned were filed on 3-4-1961, challenging the notifications that had been issued u/s 4/17(4), 6 and 17(1) on 23-2-1961, 24-2-1961 and 17-3-1961 respectively.

3. The following three points were argued before the learned single Judge :

(1) That the simultaneous combined notification u/s 4 and Section 17(4) of the Land Acquisition Act was illegal;

(2) That the declaration u/s 6 of the Act could not validly be made until the notification u/s 4 had been published in the Gazette and.

(3) That the inquiry contemplated by Section 40(2) of the Act could not be held prior to the issue of the notification u/s 4. The learned single Judge repelled the petitioner's arguments on the first two points, but agreed with them on the third point, holding that the inquiry made u/s 40(2) on the basis of the order dated 4-4-1960 was contrary to law because it had been made before there was any valid notification u/s 4. He further held that since the Government could not give its consent to acquisition for the company u/s 40 unless there had been a valid inquiry, the subsequent proceedings under Sections 6 and 9 were without jurisdiction. He accordingly quashed, the notification u/s 6 dated 24-2-1961 and the notification u/s 17(1) dated 17-3-1961 and directed the land to be restored to the possession of the petitioners forthwith.

4. Against this decision the Company (Synthetics and Chemicals Ltd.) and the State of U. P. have filed the present special appeals. The main argument advanced by Mr. Jagdish Swarup on the appellant's behalf is that there is nothing in the law to prevent an inquiry u/s 40(2) of the Land Acquisition Act being held before any notification is issued u/s 4 and that consequently the learned single Judge was wrong in holding that proceedings taken in the present case were vitiated by any legal flaw.

5. Mr. M.P. Bajpai, appearing for the petitioners-respondents, has sought to support the decision of the learned single Judge not only on the basis of the finding given in the petitioner's favour but also on other grounds His contention may be tabulated as follows:

(1) That inquiry held u/s 40(2) cannot precede the issue of a notification u/s 4.

(2) The simultaneous issue of notification u/s 4 and Section 17(4) is illegal.

(3) The simultaneous issue of notifications u/s 4 and Section 6 is illegal.

(4) The notifications issued under Sections 4 and 6 in the present cases are bad because they do not clearly specify the land that is to be acquired.

(5) As regards the land involved in writ petition No. 1620 of 1961 (giving rise to special appeal No. 185 of 1965) the notification u/s 17(1) dated 17-3-1961 and all subsequent proceedings are invalid because that land was already in the possession of the Government. The first of these contentions is the point on which the three writ petitions were allowed, Nos. (2) and (3) were raised before the learned single Judge, but were repelled by him. No. (4) does not appear to have been argued but is covered by the grounds set forth in the petitions. No. (5) was neither argued before the learned single Judge nor mentioned in the writ petition (No. 1620 of 1961) and we are not disposed to allow such a question to be agitated before us for the first time in special appeal.

6. We see no force in the fourth contention of Mr. Bajpai, viz. the suggestion that the impugned notifications under Sections 4 and 6 are bad because they do not give sufficient particulars to enable the land that is under acquisition to be identified. Reliance is placed on the decision given by one of us in *Ram Sewak Vs. State of U.P. and Others*, but that case is clearly distinguishable, as the notification u/s 6 that was held therein to be invalid for want of sufficient particulars made no mention of any map being available for inspection, showing the plots that were to be acquired In the present instance both the notification u/s 4 (Annexure E) and the notification u/s 6 (Annexure F), besides giving the acreage to be acquired and the name of the village where the land is situated, incorporate a note to the effect that "a plan of the land may be inspected in the office of the Collector Bareilly." Two different Division Benches of this Court have held this to be sufficient compliance with the requirements of the law vide *Civil Misc. Writ Petn. No.2502 of 1961. Shamsuddin v Govt. of U. P.* disposed of by Dwivedi, J. on 27-3-63 (All) after a reference had been answered by a Division Bench and Special appeal No. 323 of 1963, *Ranjit Singh v State of U. P.* decided on 8-10-1963 (All) With these decisions we are in respectful agreement and accordingly hold that the impugned notifications in the present case are not vitiated by any failure to disclose sufficient particulars.

7. With regard to the objections raised to the simultaneous publication (a) of the notifications u/s 4 and Section 17(4) and (b) of the notifications u/s 4 and Section 6, we see no reason to differ from the view expressed by the learned

single Judge. Mr. Bajpai has relied on an unreported decision of V. Bhargava and B. D. Gupta JJ in Civil Misc. Writ Petn. No. 1237 of 1959, *Ram Pratap Narain Singh v. Land Acquisition Officer, Deoria* decided on 21-9-1961 (All), in which the learned Judges, following an earlier unreported Division Bench decision in Special Appeal No. 26 of 1957, *Laxmi Narain Trivedi v. State of U. P.*, decided at Lucknow on 19-12-1959 (All), held that a notification u/s 17(4) could not legally be published simultaneously along with a notification u/s 4. But, as pointed out by one of us in *Baldeo Singh and Others Vs. State of Uttar Pradesh and Others*, , those decisions cannot be considered to be good law, in view of the Supreme Court pronouncement in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, which runs as follows :

"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 5-A 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 observation of procedure u/s 5-A is interposed between the two notifications. But where Section 5-A is not in the way there is no irregularity in publishing those notifications on the same day".

This leaves no room for doubt that in the pre sent case it was perfectly legal to publish both the notifications u/s 4 and the notification u/s 6 simultaneously on the same day (26-2-1961) And as was pointed out in *Baldeo Singh and Others Vs. State of Uttar Pradesh and Others*, if a Section 6--notification could be published along with a notification u/s 4, there is no logical reason why the Section 17(4) notification could not also be published simultaneously.

8. Having eliminated the subsidiary contentions raised by learned counsel for the respondents we are now left with the main question that arises for determination in this case, viz., whether the proceedings for the acquisition of the respondent's property for the benefit of the appellant Company stand vitiated because the notification u/s 4 (issued on 23-2-1961) followed the inquiry u/s 40(2) (held in April 1960) instead of preceding it.

9. The first thing to note in this connection is that there is no provision in the Land Acquisition Act that expressly forbids the holding of an inquiry u/s 40(2) before a notification is issued u/s 4. Our attention has been drawn to Section 39, which lays down that the provisions of Sections 6 to 27 (both inclusive) cannot be put into operation unless the previous consent of the Government has been obtained; and such consent, as is clear from Section 40, cannot be given until an inquiry is held either u/s 5-A or u/s 40(2). But it is nowhere stated that even the provisions of Section 4 cannot be put in force unless the previous consent of the Government, based on such an inquiry, has been obtained; the restriction imposed by Section 39 applies only to Sections 6 to 37. Of course if it is decided in a particular case that the inquiry contemplated by Section 40 is to be held u/s 5-A notification u/s 4 will be necessary before any action can be taken, because Section 5-A provides for objections by persons "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." But on the other hand, when in a particular case it is decided to dispense with the hearing of objections u/s 5-A and instead to hold an inquiry u/s 40(2), there seems to be no compelling reason why that inquiry should not be held before any notification u/s 4 has been issued. In case of urgency, where there is need for speedy acquisition, there are obvious advantages in holding the inquiry u/s 40(2) instead of u/s 5-A, for u/s 40(2) it is not necessary to hear objections from the persons whose plots are to be acquired vide *Abdul Kadir Laskar v. State of W Bengal* 69 Cal WN 1073. And if the Government decides that certain land ought to be acquired for a company and is further of opinion that the matter is urgent and that the protracted procedure entailed by an inquiry u/s 5-A should be avoided, it will inevitably have to direct an inquiry to be held u/s 40(2) before it issues any notification u/s 4. If the notification u/s 4 were to be issued first, it would require to be accompanied by a notification u/s 17(4), to prevent objections being filed u/s 5-A; but it is actually not possible to issue any notification u/s 17(4) before the inquiry has been held, because Section 17(4) falls within the series of Sections 6 to 37 which by virtue of Section 39 cannot be put in force without the Government's previous consent; based on an inquiry having been obtained. It seems to us that the Act was never intended to preclude the Government from resorting to the powers conferred by Section 17(4) in order to avoid the necessity for hearing objections u/s 5-A. in cases of acquisition for companies; and in our opinion it would be a mistake to interpret the various provisions of the Act in such a manner as to produce this result, when there is no compelling reason to do so. We see nothing illegal in the Government first entertaining a tentative, informal proposal that certain land should be acquired for a company, then directing an inquiry to be held u/s 40(2), and later on issuing a notification u/s 4 embodying a formal declaration of the proposal for acquisition of the land, accompanied by a notification u/s 17(4).

(9-A) Mr. Bajpai has tried to argue that the notification u/s 4 must precede the inquiry u/s 40(2) because that inquiry cannot be carried out without resorting to

the powers of entry, survey and digging or boring which are conferred by Sub-section (2) of Section 4 But we see no reason whatever to hold that such entry etc., would be necessary in every case; nor is there anything to show that any such necessity arose when the inquiry was carried out in the present case.

10. Alternatively Mr. Bajpai has argued that to permit an inquiry u/s 40(2) before any notification is issued u/s 4 will have the effect of making Section 4 completely redundant He contends that as soon as the Government, acting under Clause (1) of Section 40 is satisfied by the inquiry that the proposed acquisition is needed by the company for the construction of some work that is likely to prove useful to the public and thereupon proceeds to give its consent u/s 39, it will straightway be in a position to make a declaration u/s 6 that the Government is satisfied that any particular land is needed, for a company'", and there would be no point in issuing at that stage a notification u/s 4 stating that "it appears to the Government that land in any locality is needed or is likely to be needed for any public purpose It has to be conceded that in such circumstances the issue of the notification u/s 4 has little practical significance, but that, to our mind, does not mean that the procedure would be illegal or contrary to the scheme of the Act. It should be noted that proceedings u/s 40, when Section 5-A is excluded, are between the Government (represented by its officers) and the company alone; and there is no necessity for either the general public or the owners of the land to be taken into confidence or to be informed of the proposal for acquisition at that juncture But with the publication of the notification u/s 4 the proposal is given due publicity and all concerned are apprised of the likelihood of the land being acquired. It cannot be said, therefore, that the issue of a notification u/s 4 after an inquiry has been held u/s 40(2) is nothing but a more empty formality that serves no purpose whatsoever, and we cannot agree with Mr. Bajpai that the holding of such prior inquiry would render Section 4 redundant

11. The learned single Judge has given his decision in favour of the petitioner-respondents mainly on the strength of the following observation made by the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, :

"However, it is not correct to say that any defect in the notification u/s 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a company and the purpose has to be investigated u/s 5-A, or Section 40 necessarily after the notification u/s 4 of the Act."

This passage has been interpreted by the learned single Judge as a categorical pronouncement that an inquiry u/s 40(2) must in all cases follow the notification u/s 4 and can never precede it. It is to be noted however that the case which was being considered by the Supreme Court was one in which objections had been invited u/s 5-A and did not involve any consideration of the alternative mode of inquiry provided u/s 40(2) It is perfectly true that in the ordinary normal case, where there is no special urgency, the notification u/s 4 will naturally be issued first. The appropriate Government has to satisfy itself, either on the report

of the Collector u/s 5-A(2) or by an inquiry held as provided by Section 40 of the Act "that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities connected therewith or that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public" A report can be made by the Collector u/s 5-A(2) only after a notification u/s 4 of the Act has been issued. And since the question of holding an inquiry u/s 40 as to whether the land is required for the aforementioned purposes can only arise when the Company has decided that it will undertake the works mentioned in Clauses (1) (a) and (b) of that section, such inquiry will also normally come after a notification u/s 4 has been issued, as in many cases it may not be possible for the company to come to a decision without first taking advantage of the provisions of Sub-section (2) of Section 4 by doing "acts necessary to ascertain whether the land is adopted for such purpose. But this normal sequence may well be departed from in suitable cases If there is an urgent need for the acquisition to be carried out expeditiously without waiting for objections from the owners of the land to be heard and disposed of, and at the same time the land is such that the Company can come to a decision to acquire it with resorting to any of the procedures envisaged by Clause (2) of Section 4, there is nothing to prevent an inquiry u/s 40 being held first and a notification under Sections 4 and 17(4) being issued subsequently

12. To our mind the observations made by the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, merely expound the normal procedural sequence and should not be interpreted as excluding all possibility of variation from the form. Furthermore, even if it be taken that it was irregular to hold the inquiry u/s 40 before the notification u/s 4 had been issued, this would not be a fatal illegality and would not be sufficient to vitiate the acquisition proceedings, because no one can be said to have been prejudiced thereby.

13. The only other submission by Mr. Bajpai on behalf of the respondents in these appeals is that when the original notification u/s 4 (dated 2-4-1960) was cancelled on 23-2-1961, the notification issued u/s 40(2) on 4-4-1960 automatically became ineffective and of no avail; and consequently a fresh notification ought to have been issued and a fresh inquiry held u/s 40(2). This argument is based on the circumstance that this notification u/s 40(2) was worded "in continuation of notification No. 851-EP/XVIII-B-53-H-60 dated April 2, 1960" (which was the notification u/s 4 that was subsequently cancelled). But we fail to see how these words, which merely have a descriptive force, could make the validity of the Section 40(2) notification dependent on the validity of the earlier notification u/s 4. Mr. Bajpai relies on the opinion expressed by V. D. Bhargava, J., on 17-3-1961, while dismissing the earlier writ petitions as infructuous, that "if something has already been done, there will be no legal effect by virtue of notification after the notification has been cancelled and withdrawn." But if this phrase is to be interpreted to mean, as suggested by Mr. Bajpai, that the inquiry carried out u/s 40(2) in April, 1960 will have no legal

effect when the notification u/s 4, dated 2-4-1960 has been cancelled, we must express our respectful disagreement with such a proposition. We have already held that a notification u/s 40(2) can in suitable cases be made to precede the notification u/s 4. The notification u/s 40(2) dated 4-4-1960, therefore, had its own independent validity and could not be nullified or rendered inoperative by the mere fact that the earlier notification u/s 4 was cancelled.

14. The result is that we disagree with the reasons given by the learned single Judge for allowing the three writ petitions and further reject the additional arguments by which learned counsel for the respondents has sought to support the single Judge's decision. These special appeals are accordingly allowed with costs the order passed by Satish Chandra, J., on 29-3-1965 being set aside, and we direct that the three writ petitions shall stand dismissed with costs