
(2011) 01 AHC CK 0297

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 75539 of 2010

Tukman Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Advocates Act, 1961 — Section 2(1)

Land Acquisition Act, 1894 — Section 4I

Railways Act, 1989 — Section 2(26), 20A, 20A(1), 20A(4), 20D

Citation : (2011) 2 ADJ 220 : (2011) 3 AWC 3083

Hon'ble Judges : F.I. Rebello, C.J.;Vineet Saran, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard learned Counsel for the parties.

2. The Petitioner is a person interested in respect of the land set out in the notification dated 3.11.2010 published in the Gazette of India on 9.11.2010 u/s 20A of the Railways Act 1989, as amended by the Railways (Amendment) Act, 2008, (hereinafter referred to as the "Railways Act").

3. According to the Petitioner, in terms of Section 20A(4) of the Railways Act, the substance of the notification was published in the Newspapers, namely, Dainik Jagran and Amar Ujala on 18.12.2010. Considering that the substance of the notification was published in daily Newspapers on 18.12.2010 and that the date of publication of notification of Gazette of India was 9.11.2010, hence interested persons including Petitioner have been prevented from filing objections, as it was beyond the period of 30 days and as such, the notification dated 3.11.2010 is liable to be set aside.

4. The case of the Petitioner is that Respondent No. 4 did not comply with the provisions of the Railways Act and wants to acquire the land belonging to the farmers without giving any notice to them and without giving opportunity to be

heard to the interested persons, as such legal rights of the Petitioner and other interested persons have been infringed.

5. In sum and substance, the argument of the Petitioner is that the failure to publish the substance of the notification in daily Newspapers before the expiry of 30 days from the date of publication in the Government Official Gazette would result in grave illegality and arbitrariness on the part of the authority concerned, and consequently, the notification dated 3.11.2010 published in the Government Official Gazette dated 9.11.2010 is liable to be quashed and set aside.

Learned counsel relied on several judgments and the provisions of the Land Acquisition Act to contend that those judgments and provisions of the Land Acquisition Act will have to be read in the context of the legal issues, which arise in the present petition.

6. On behalf of the Respondent No. 2, an affidavit has been filed by the Chief Project Manager, Sri R.S. Khurana. It is stated that the Petitioner, till date, has not filed any objection u/s 20D and, hence, the question of not considering the objections by the competent authority does not arise. The entire acquisition process undertaken by the answering Respondent is for the purposes of creation of a Dedicated Freight Corridor, which is of national importance. It is further set out that time period of 30 days is to be counted from the date of publication of notice in the local Newspapers and not in the Gazette. All those who have filed their objections within 30 days of publication of the said notice in the Newspapers i.e. 30 days from 18.12.2010, have been given opportunity to be heard by the Competent Authority. It is further set out that notification u/s 20A of the Railways Act was published in the Newspapers on 18.12.2010 and objections u/s 20D will normally be accepted within 30 days from the date of publication which, in the present case is 17.1.2011. However, if the Petitioner submits his objection u/s 20(D) of the Railways Act upto 25.1.2011, the same shall be considered by the competent authority as per law. It is, therefore, submitted that the petition is liable to be dismissed.

7. The issue for our consideration is the true intent, scope and the interpretation of Sections 20A(1), 20A(4), Section 20D(2) as also Section 20E of the Railways Act. For the purpose, we may gainfully refer the aforesaid Sections, which read as under:

20A. Power to acquire land, etc.:

(1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land.

(2) Every notification under Sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

(3) The State Government or the Union territory, as the case may be, shall, for

the purposes of this section, provide the details of the land records to the competent authority, whenever required.

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.

...

20D. Hearing of objections, etc.:

(1) Any person interested in the land may, within a period of thirty days from the date of publication of the notification under Sub-section (1) of Section 20A, object to the acquisition of land for the purpose mentioned in that subsection.

(2) Every objection under Sub-section (1), shall be made to the competent authority in writing, and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.-For the purposes of this sub-section, "legal practitioner" has the same meaning as in Clause (i) of Sub-section (1) of Section 2 of the Advocates Act, 1961.

(3) Any order made by the competent authority under Sub-section (2) shall be final.

20E. Declaration of acquisition.:

(1) Where no objection under Sub-section (1) of Section 20D has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under Sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification, that the land should be acquired for the purpose mentioned in Sub-section (1) of Section 20A.

(2) On the publication of the declaration under Sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under Sub-section (1) of Section 20A for its acquisition, but no declaration under Sub-section (1) of this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect.

PROVIDED that in computing the said period of one year, the period during which any action or proceedings to be taken in pursuance of the notification issued under Sub-section (1) 20A is stayed by an order of a Court shall be excluded.

(4) A declaration made by the Central Government under Sub-section (1) shall not be called in question in any Court or by any other authority.

8. We may also refer to the definition clause of notification as set out in Section 2(26), which reads as under:

2 (26) "notification" means a notification published in the Official Gazette.

9. Can the interpretation sought to be given by the Petitioner be said to be the correct interpretation, namely, that the period of 30 days for filing objections commences not from the date of publication in the Gazette but from the date of publication of substance of notification in the Newspapers, and if so, what is the effect of publication of the substance of the notification in the daily Newspapers after 30 days of publication of the substance of the notification in the official Gazette?

10. Learned Counsel has relied on several judgments and the provisions of the Land Acquisition Act in support of his contention, which we will now consider. The judgment in *Nutakki Sesharatanam Vs. Sub-Collector, Land Acquisition, Vijayawada and others*, is for the proposition that if the substance of notification is not published in the locality within 40 days as required, such non-compliance renders the acquisition bad in law. *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, is for the proposition that publication of the substance of the notification in the locality in the official Gazette is a mandatory requirement and failure to do so would result in declaring the acquisition proceedings illegal and also for the proposition that the authority must exercise the powers in good faith. *State of Mysore Vs. Abdul Razak Sahib*, is for the proposition that publication of the notification in the locality is mandatory, failure to do so would result in the acquisition proceeding being rendered illegal and the same has to be quashed, as in the absence of such notification, the interested persons may not be able to file their objections against the acquisition proceedings and they would be deprived of their right of filing objections u/s 20A of the Railways Act. *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, is for the proposition that the compliance of Section 4(I) of the Land Acquisition Act is mandatory and non-compliance would vitiate the entire acquisition proceedings. These judgments, in our opinion, are of no assistance, as they have considered the cases considering the provisions of the Land Acquisition Act.

11. The scheme of the provisions of the Land Acquisition Act is different from the provisions of Railways Act. Under the Land Acquisition Act, there are mandatory requirements and on failure to comply with the provisions, the acquisition proceedings would stand vitiated. Can those principles be applied under the scheme for acquisition for the Railways, under the Railways Act.

12. Section 20A(1) of the Railways Act requires publication of the notification on satisfaction by the Central Government that the land is required for a public purpose. Under the definition clause, the word "notification" is defined to mean

"a notification published in the Official Gazette". Therefore, the requirement of Section 20A(1) is firstly the satisfaction and secondly, the notification must be published in the official Gazette declaring the intention for acquisition of such land. There is no dispute that such an exercise has been done.

The next requirement is that the competent authority shall cause the substance of the notification to be published in two local Newspapers. The Competent Authority has been defined u/s 7A of the Railways Act to mean "any person authorized by the Central Government, by notification, to perform the functions of the Competent Authority for such area as may be specified in the notification. It would, thus, be clear that u/s 20A(1) of the Railways Act, the notification is to be published by the Central Government on satisfaction and under Sub-section (4) in the Competent Authority to publish the substance of the notification in the Newspapers. It is trite law that if an Act requires something to be done in a particular manner, the same has to be done in that manner and failure to do so would result in vitiating all the acquisition proceedings.

13. u/s 20D(1) of the Railways Act, objections are required to be filed within a period of 30 days from the date of publication of the notification under Sub-section (1) of Section 20A of the Railways Act. These objections have to be heard by the Competent Authority. If the sub-section is read literally, it would mean that 30 days would commence from the date of publication of notification in the official Gazette and not from the date of publication by the competent authority in the local Newspapers. Section 20D, however, contemplates hearing of objections by the Competent Authority. The objections have to be heard by the Competent Authority. If that be the case, the publication in the local Newspapers after a period of 30 days after publication of notification in the official Gazette would be a futile exercise. Section 20A(4) would be redundant as it would serve no purpose.

14. In spite of this language used in Section 20D(1) of the Railways Act, it is possible to read the period of 30 days from the date of publication of substance of notification in the two local Newspapers u/s 20A(4) and not the notification in the official Gazette u/s 20A(1) for the purpose of filing objections.

Rules of Interpretation require that an interpretation be given to give effect to the legislative intentment. The legislative intentment is to allow a person interested to file objections, which can be considered by a competent authority. If an inference is drawn, which defeats this intentment, the same would clearly defeat the object for which the provision is made. The Court has to read the provision in such a manner so that the object and intent of the Act are fulfilled rather than to strike down the provisions, as the publication in official Gazette is mode of publication which cannot be disputed. A literal interpretation of the provision of Section 20A(1) and Section 20D(1) leads to the conclusion that the objections are to be filed within 30 days of the publication of the notification in the Gazette. The question is whether this was the intent of the Legislature.

15. An ordinary citizen, considering the mode of publication in the Gazette would ordinarily not be aware of the publication and there being no other mode of publication would result ordinarily in denying to the person aggrieved the right of filing the objection as he would not be aware of the same. If the object is to file objection, that pre-supposes the interested person is aware of the notification, then the literal interpretation cannot be sustained. An aggrieved person would not ordinarily know that a notification for acquisition of his land has been published in the official Gazette. Section 20D(1) of the Railways Act, as such, would be rendered infructuous and the consequences would be that the land would be acquired without an opportunity, to the persons interested to file their objections. In our opinion, such an interpretation, which defeats the very purpose for which the provision is made for filing and hearing objections will have to be rejected. Therefore, an interpretation which allows filing of objections, which can be heard, will have to be considered. Is it open to the Court to read Section 20D with Section 20A(4) as the object which is to give a hearing can be achieved by holding that the 30 days time for filing objection is from the date of publication of substance of notification in two Newspapers. So read, then the land owner or person interested whose land is sought to be acquired would have notice of the substance of the notification and can take steps to challenge the said notification. If any other view is taken, it would defeat the very object, purpose and intent of the Act.

16. If we don't read the provisions of Section 20D(1) into Section 20A(I), then the entire object of the legislature would be frustrated. When a legislature enacts law, the Court presumes that the legislature enacts laws which are honest, fair and equitable and that the legislative process is influenced by considerations of justice and reason. Accordingly, an interpretation leading to such an unjust, inequitable, harsh and absurd result must be rejected. In *Seaford Court Estates Ltd. v. Asher* (1949) 2 All ER 155 (CA), Lord Denning observed "When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the construction task of finding the intention of the Parliament,... and then he must supplement the written word so as to give "force and life" to the intention of the legislature,... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases." This judgment was considered by the Supreme Court in *Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another*, wherein the Court added some words into the rule in order to save the same from offending Article 14.

The question before the Court always is does the plain literal interpretation produces an absurd or manifestly unjust result which could never have been intended by the legislature. In that event, the Court might fine tune the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The Courts must construe provisions of statutes

consistent with the constitutional mandate and principles to avoid a provision being rendered unconstitutional.

17. Ordinarily, the Court assumes that the entire legislative process is influenced by considerations of justice and reason, and avoids a construction which is inequitable or onerous or operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason. Where the plain literal interpretation of a statutory provision produces a discriminatory or incongruous or manifestly absurd or unjust result which could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even "do some violence" to it, so as to achieve the obvious intention of the Legislature and produce a rational construction. [See Bhudan Singh and Another Vs. Nabi Bux and Another, K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others,

18. On the touch stone of these principles, the provisions, in our opinion, which would otherwise be arbitrary, in the sense, that to deprive a person of his property without giving him opportunity would have resulted in holding that Sections 20A and 20D are arbitrary, though the legislature had made a provision knowing the consequences of non-hearing, The hearing of objections as presently provided on a literal construction would in fact give no relief or right of hearing to the person aggrieved. In this context, the only proper view would be the view which we have expressed in the earlier part of our judgment to read Section 20D with Section 20A(4).

19. The view which we have taken is also fortified by the stand taken by the Respondents themselves. The Respondents realizing, that a literal construction of the provisions would lead to an absurdity, have specifically set out that period of filing the objection is not from the date of notification published in the official Gazette but from the date of publication of the substance of the notification in the daily Newspapers.

20. Considering the above discussions and the stand taken by the Respondents, the Petitioner can yet file his objections upto 25.1.2011 as set out by the Respondents themselves and if so filed, the objections to be heard and disposed of by the competent authority according to law.

21. Petition stands disposed of accordingly.