

(1986) 10 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 948 of 1986

Uday Kaushish

APPELLANT

Vs

The Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 23-10-1986

Acts Referred:

Citation : (1987) 31 DLT 181 : (1987) 12 DRJ 167 : (1987) RLR 73

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Advocate : Ramesh Chandra, N.S. Vashisth and R.M. Bagai, for the Appellant;

Judgement

Yogeshwar Dayal, J.

(1) This writ petition undirected against the two Notifications dated 12/2/1986. The first Notification is u/s 4 of the Land Acquisition Act, 1894 whereas the second Notification is u/s 6 read with Section 17 of the Land Acquisition Act, 1894 acquiring the land in dispute.

(2) Today the matter was at the show cause stage. However with the consent of learned counsel for the parties the same is being disposed of.

(3) The pertinent fact of the case is that both the Notifications are of the same date.

(4) The validity of the Notifications has been inter alia challenged on the ground that Notification u/s 6 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") could be issued only after the date of publication of Notification issued u/s 4 of the Act.

(5) The Notification u/s 4 of the Act was published in two newspapers-one on 28th February, 1986 and the other on 1st March, 1986. Section 4 of the Act (as amended) reads as under :-

"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 sub-soil ; to do all other acts necessary to ascertain whether the land is adapted for such purpose; 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."

(6) It is thus clear from Section 4 (as amended) that the date of publication of the Notification is the date on which either the Notification is published in the Official Gazette or in the newspaper last. In the present case we are proceeding on the assumption that the last date of publication is 1/3/1986, Therefore, the date of publication of Section 4 Notification is 1/3/1986. Sub-section (4) of Section 17 of the Act may also be examined in this connection :-

"17.(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and if it does so direct, a declaration made be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4, Sub-section (1)."

(7) It is clearly mentioned that Section 6 read with Section 17 declaration has to be issued after the date of publication of the Notification u/s 4. Since the date of publication of Section 4 Notification is assumed to be 1/3/1986 the declaration u/s 6 read with Section 17(4) could only have been issued after 1/3/1986. In the present case the declaration u/s 6 read with Section 17(4) has been issued on 12/2/1986 itself. Therefore, the declaration" u/s 6 on the basis of it is contrary and in violation of the provisions of Section 17(4) of the Act.

(8) It will be noticed that this Court in the decision reported as S.K. Gupta Vs.

The Union of India and Others, , had taken the view that simultaneous making of Notifications u/s 4 and Section 6 read with Section 17(4) was valid and this view was taken in view of the decisions of the Supreme Court in the cases reported as Smt. Somavanti and Others Vs. The State of Punjab and Others, and Vijay Cotton and Oil Mills Ltd. Vs. The State of Gujarat, . However, inspire of the aforesaid decisions of the Supreme Court the legislative authorities thought fit to amend not only Section 4 but also Section 17(4) of the Act. The effect of amendments in Section 4 and Section 17(4) is that the declaration u/s 6 read with Section 17(4) has to follow the date of publication of Section 4 Notification and can no longer be issued simultaneously.

(9) In view of the fact that the declaration issued u/s 6 of the Act which debarred the petitioner from making any objections u/s 5A of the Act is invalid, we have no option but to quash not only the Notification u/s 6 read with Section 17(4) of the Act but also the Notification of the same date issued u/s 4 of the Act.

(10) Since the petition succeeds on this short point we are not examining the other submissions made by the petitioner.

(11) The result is that the petition succeeds and the Notifications dated 12/2/1986 issued u/s 4 and Section 6 read with Section 17(4) of the Act are hereby quashed.

(12) In view of the quashing of the Notifications, respondents are restrained from taking possession of the land except in accordance with law. The petitioner is also entitled to costs which are assessed at Rs. 1,100.00.