
(1983) 08 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 21 and 183 of 1982

Urban Improvement Trust and Others

APPELLANT

Vs

Balveer Singh and Others

RESPONDENT

Date of Decision : 22-08-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Rajasthan Urban Improvement Trust Act, 1959 — Section 101(1), 52, 52(1), 52(2), 52(3)

Citation : AIR 1985 Raj 71

Hon'ble Judges : S.K. Mal Lodha, J;K. Bhatnagar, J

Bench : Division Bench

Advocate : H.N. Calla, for the Appellant; M.C. Bhandari and K.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—These two special appeals Nos. 21/82 and 183/82 have been filed by (1) Urban Improvement Trust, Jodhpur (for short "the Trust") and (2) State of Rajasthan and the Special Officer, Town Planning Department, Jodhpur respectively against the judgment dt. April. 30, 1981 of the learned single Judge, by which he allowed Civil Writ Petn. No. 13 of 1975 (Reported in ILR (1981) 31 Raj 656 : AIR 1982 NOC 30 filed by the petitioners-respondents Balveer Singh and eleven others and declared the Notification Annexure 18 dt. June 3, 1974 invalid and quashed the acquisition proceedings. As both the appeals are directed against the judgment dt. April. 30, 1981 and involve identical questions and were heard together, we consider it proper to dispose them of by a common judgment.

2. Balveersingh and eleven others who are respondents in both the appeals, will hereinafter be referred to as the petitioners. They filed the writ petition challenging the acquisition proceedings of their land u/s 52 of the Rajasthan Urban Improvement Act (No. XXXV of 1959) (hereinafter referred to as the Act") The petitioners purchased some Hand situate on the western side of the road

leading from Circuit House to Ratanada Crossing, by a sale deed dt. Oct. 13, 1971 from His Highness Shri Gajesingh of Jodhpur for constructing houses for their own residence. They submitted an application on May 9, 1972 to the Secretary of the Trust for sub-division, reconstitution and improvement of the plots. A plan was submitted along with the application showing the proposed sub-division. The prescribed fee of Rs. 25/- was also deposited by letter dt. Sept. 5, 1972, the Secretary of the Trust asked the petitioners to get the land in dispute converted into Abadi land. The petitioners sent a reply vide letter dt. Oct. 3, 1972 stating that the land is not an agricultural land, but is an urban land and reference was made to various documents. The Secretary sought further information by his letter dt. Nov. 22, 1972. No communication was received by the petitioners till Dec 31, 1973. A Notification No. F15(3) (N.A./Group/ 2173 dt. Mar. 6, 1973 was published in the Rajasthan Gazette Part VII (Kha) page 3 dt. April 19, 1973, u/s 32(1) of the Act. It was mentioned in the Notification that the Trust has decided to frame a scheme in respect of the land mentioned therein, which includes the land of the petitioners. In the Notification (Annex. 6), it was also stated that the scheme and the plan and other information are available in the office of the Trust and they can be seen there. Captain Ratanlal (petitioner 5) and Raghuveer Singh (Petitioner 10) went to the office of the Trust to see the said scheme and the plan, but they were not available. According to the petitioners, the scheme and the plan were not available to corroborate the advertisement published in Hindi daily paper "Daily Tarun Rajasthan" dt. July 15, 1973 marked as Annex. 7. The petitioners received notice Annex. 8 dt. June 28, 1973 on July 7, 1973 u/s 52(2) of the Act calling upon them to show cause within 30 days why the land described therein be not acquired. In the notice, it was stated that the land is required for the purpose of improvement and for the provision of residential-cum-shopping scheme. The area of the land mentioned in the notice was 19,260 Sq. yds. In the advertisement published in "Daily Tarun Rajasthan" dt. July 15, 1973, the land mentioned to be required for the scheme is about 1,00,000 sq. yds. The petitioners' land is 19,263 sq. yds. Captain Ratan Lal (petitioner 5) again visited the office of the Trust to see the scheme and the plan but the same were not available at that time also. Thereafter, the petitioners submitted an application by registered post asking for certain information. Captain Ratanlal (petitioner 5) and Raghuveersingh (petitioner 10) submitted an application on July 31, 1973 for copies of certain documents in respect of the said scheme and offered to deposit Rs. 50A as an advance for the cost thereof. This application was entertained, but the amount was not accepted. The sum of Rs. 50/ was remitted by M.O. but no copies were supplied. The petitioners then submitted objections to the show cause notice (annex. 8) to the Sub-Divisional Officer, Town Planning Department, Jodhpur. The objections were heard by the Special Officer. The petitioners were not aware of the decision of the objections. No information was sent by the State Government to the petitioners. Before submitting the report the petitioners were not afforded any hearing. It has been averred by the petitioners that during the hearing, which was held on Sept. 6, 1973 before the Special Officer, the Secretary of the Trust admitted that there

was no scheme prepared till then, though a resolution for framing the scheme was passed as far back as on Jan. 27, 1973. Copy of the Resolution has been placed on record marked as Annex. 11. Vide Gazette Notification Anx. 12, dt. Sept. 11, 1973, published in the Rajasthan Gazette Extraordinary dt. Sept. 14, 1973, the Government declared that the Trust was framing a scheme known as "Bhagati-ki-kothi Ratanada Scheme" within the area of approximately 69,69,600 sq yds. or 1,440 acres. The scheme included the land situate in the east as well as in the west side of the Circuit House to Ratanada Road. Further Notification Anx. 13, dt. Sept. 12, 1973 was published in the Gazette Part VI Kha dt. Sept. 14, 1973. This Notification u/s 32(2) of the Act extended time for six months. The petitioners submitted objections Anx. 15 to the said scheme on Nov. 17, 1973. The objections were heard by the Chairman of the Trust on Dec. 14, 1973, but no decision was communicated. It is said by the petitioners that the Chairman of the Trust submitted the scheme for sanction and approval of the State Government by its letter dt. Jan. 4. 1974. The Government of Rajasthan published in the Rajasthan Gazette dt. Feb. 21, 1974 that the scheme submitted by the Trust has been approved vide Notification No. F 15(3) N.O./2/73 dt. Jan. 29, 1974. By letter Anx. 16 dt. Feb. 1, 1974 the petitioners were informed that their application has been rejected. They were also informed that their application for sub-division has been rejected on the ground that they had failed to submit the required information and also because of the fact that the site is under compulsory acquisition for a scheme of the Trust No. 6A. The petitioners again submitted objections by registered post on May 15, 1974. The Government issued Notification No. F 6 (13) T.P./73/132 dt. June 3, 1974 published in the Rajasthan Gazette Part 1(k) dt. Oct. 10, 1974, whereby the land described therein, including the land of the petitioners, was acquired u/s 52(1) of the Act. The petitioners' land is mentioned at item No. I in the said Notification. It was stated in the said Notification that the land was being acquired on the representation of the Trust for improvement of the urban area of Jodhpur City and the scheme marked is No. 6A and that the land will vest in the State Government free from all encumbrances with effect from the date of the publication of the Notification in the Rajasthan Gazette. The petitioners have stated that the Notification Anx. 18 does not contain the names of all the petitioners and some names have wrongly been mentioned. In addition to this, it was also submitted that even in the land on the west side of the road mentioned in Anx. 6, land shown as F, F1, F2, F3 and F4 in lay-out plan Anx. 20, measuring about 18,440 sq. yds. has been omitted to be acquired under the alleged scheme, and, thus, according to them, the scheme, if any, falls through. The petitioners filed the writ petition seeking the following reliefs :

"(a) that the Notification dt. 6-3-1973 (anx. 6) be quashed;

(b) that a writ of certiorari be issued to the respondents, quashing and setting aside the acquisition proceedings commenced with Notification dated 6-3-73 annexure 6 and ending with Notification dt. 3-6-1974 (Annexure 18) published in Rajasthan Gazette dt. 10-10.1974;

(c) that the proceedings taken in pursuance of Notice dt. 28-6-1973 (annexure 8) be declared null and void;

(d) that it be declared that Sub-section (6) of Section 53 of Rajasthan Urban Improvement Act, 1959 (Act No. 35 of 1959) is discriminatory and be quashed;

(e) that it be declared that the action of the State Government in approving the report of Respondent 3 as also the report of respondent 2 without hearing the petitioners violates fundamental rules of natural justice. The Notification dt. 3-6-1974 is thus illegal and the steps taken in pursuance thereof be quashed;" The writ petition was contested by the Trust as well as the State of Rajasthan by filing separate replies. The grounds challenging the acquisition proceedings were denied.

3. The learned single Judge, after considering the submissions, that were made before him, has recorded the following findings :--

(1) that the provisions contained in Section 52(2) of the Act with regard to service of notice are mandatory;

(2) that the non-compliance of the provisions of Section 52(2) amounts to illegality, which vitiates the acquisition proceedings and the notice published u/s 52 (1) of the Act;

(3) that the scope of Section 101(1)(e) of the Act does not extend to the cases of illegality;

(4) that in view of the mandatory provisions of Section 52(2) and in view of the legislative policy and object behind it, the question of prejudice has no relevance;

(5) that the Notification u/s 52(1) would not be rendered invalid, because of any subsequent resolution passed by the Trust and the validity of the Notification is to be judged in the light of the facts and circumstances as they existed at the time of the issuance of the Notification.

4. In view of the aforesaid conclusions, the learned single Judge allowed the writ petition vide his order dated April 30, 1981 and declared the Notification Annex. 18 as invalid and the acquisition proceedings were quashed.

5. State of Rajasthan and the Special Officer. Town Planning Department, Jodhpur have filed D. B. Civil Special Appeal No. 183 of 1982. In that appeal the Trust, through its Secretary has been made respondent No. 13 and the petitioners in the writ petition were impleaded as respondents Nos. 1 to 12. The Trust lodged D. B. Civil Special Appeal No. 21 of 1982, in which the petitioners in the writ petition were joined as respondents Nos. 1 to 12 and the State of Rajasthan and the Special Officer, Town Planning Department Jodhpur have been arrayed as respondents Nos. 13 and 14 respectively.

6. We have heard Mr. H. N. Calia, learned Government Advocate appearing for the appellants in each of the aforesaid appeals and Mr. M. C. Bhandari learned

counsel for respondents Nos. 1 to 12.

7. Mr. H. N. Calla, learned Government Advocate has raised the following contentions before us :--

(1) that that part of Section 52(2) of the Act dealing with service of the notice upon the owner of the land and any other person, who in the opinion of the State Government, may be interested therein, is mandatory, the other part relating to the publication in the official Gazette at least 30 days in advance and pasting of it at some conspicuous place in the locality it is only directory;

(2) that in view of Section 101(d) of the Act for failure to serve a notice on the petitioners, when no substantial injustice has resulted from such failure," the Act or proceedings under the Act, cannot be questioned and as such the Notification Anx. 18 should not have been quashed.

(3) that the learned single Judge ought not to have interfered in exercise of writ jurisdiction under Article 226 of the Constitution when the matter related to the non-publication and non-pasting of the notice, as the objections had already been filed by the petitioners (owners).

(4) that the Notification Anx. 18 could not have been quashed in its entirety. It could at the most be quashed to the extent of 19263 sq yrds of land, which is said to be owned by the petitioners; and

(5) that the learned single Judge was not right in holding that the notification Anx. 18 is violative of Article 14 of the Constitution and, therefore, liable to be struck down.

8. We proceed to examine each of the aforesaid contentions ad seriatim.

9. The first question that, therefore, crops up for determination is whether the learned single Judge was right in holding that the whole of the provisions of Section 52(2) of the Act are mandatory. The learned single Judge has expressed himself in this connection as follows: --

".....Not only it is essential that service of the notice has to be effected individually on all the owners and persons interested, but a publication of notice in the Official Gazette and pasting thereof in the locality is essential. Non-compliance of the provision would amount to an illegality, which will vitiate acquisition proceedings and the notice published u/s 52(1)."

10. It will be useful here to read Section 52 of the Act : --

"52. Compulsory acquisition of land.--(1) Where on a representation from the Trust (or otherwise) it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land by publishing in the official Gazette a notice specifying the particular purpose for which such land is required and stating that the State Government has decided to acquire the land in pursuance

of this section.

(2) Before publishing a notice under Sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein to show cause, within such time as may be specified in the notice, why the land should not be acquired. Such notice shall be individually served upon the owner of the land and any other person who in the opinion of the State Government may be interested therein. It shall also be published in the Official Gazette at least 30 days in advance and shall be pasted on some conspicuous place in the locality, where the land to be acquired is situate. Such publication and pasting of notice shall be deemed as sufficient and proper service of notice upon the owner of the land and upon all other persons who may be interested therein.

(3) Within the time specified in the notice, the owner of the land or any other person interested therein may show cause and make objections, why the land should not be acquired. Every such objection to the notice given under Sub-section (2) shall be made in writing to the Officer on Special Duty or any other officer appointed by the State Government for the purpose. Such Officer shall give the objector an opportunity of being heard, either in person or by pleader, and after hearing all such objections and after making such enquiry as he deems necessary, shall submit the case for the decision of the State Government together with the record of the proceedings, held by him and a report containing his recommendations on the objections. Thereafter the State Government may pass such orders as it deems fit. The decision of the State Government thereon shall be final.

(4) When a notice under Sub-section (1) is published in the official Gazette, the land shall on and from the date of such publication. vest absolutely in the State Government free from all encumbrances,

(5) Where any land is vested in the State Government under Sub-section (4), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under Sub-section (5), the State Government may take possession of the land and may for that purpose use such force as may be necessary.

(7) After the land has been acquired and its possession taken the State Government shall on payment of the amount of interest thereon and of all other charges incurred by the State Government in this connection, transfer it to the Trust or to any other prescribed authority or department for the purpose for which it is acquired.

Provided that such transfer of the land may be made to the Trust or to any other

prescribed authority or the Department of the Government without recovering any amount--

(i) where the State Government is satisfied that any such land is urgently needed by the. Trust, prescribed authority or Department of the Government for carrying out improvement under the Act immediately, or

(ii) where any such land is intended to be allotted free of charge to the Scheduled Castes, Scheduled Tribes or to person entitled u/s 31 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) to possess a site for a residential house in the "abadi" of the Urban area free of charge.

(8) Any notice issued or published by the State Government under this section may also be issued or published for and on behalf of it by any officer subordinate to it, so authorised."

Section 53 of the Act deals with compensation for compulsory acquisition of land. Sub-section (6) of Section 53 lays down the principles for the guidance of the Collector for determining the amount of compensation. It will be profitable to reproduce Clause (b) of Sub-section (6) of Section 53 of the Act : --

"(b) the value of the land shall be taken to be the market value of the land on the date on which the notice calling upon the owner to shew cause why the land should not be acquired is issued under Sub-section (2) of Section 52 hereinafter referred to as "the date of notice", such market value being determined on the basis of the use of the land on that date;"

A reading of Section 52 shows that after the publication of a notice under Sub-section (1) of Section 52, the land vests absolutely in the State Government free from all encumbrances on or from the date of the publication as provided in Sub-section (4) of Section 52 of the Act. Sub-section (2) of Section 52 of the Act provides that before publishing notice under Sub-section (1), the State Government is required to issue show cause notice to the owners of the land and also to any other person, who in the opinion of the State Government, may be interested therein. Para 2 of Section 52(2) lays down that notice should be served upon the owners as well as any-other person interested in the land. It is significant to note that the word "shall" has been used, so far as the service of the notice upon the owners and any other person interested in the land is concerned for, the words used are "such notice shall be individually served upon the owners of the land and any other person who may be interested in the opinion of the State Government." Para 2 of Section 52(2) further shows that the notice shall "also" be published in the Official Gazette and that too at least 30 days in advance. In addition to this, there is a further requirement that the notice should be pasted on some conspicuous place or locality near the land to be acquired. In regard to pasting also, the word "shall" has been used. A deeming provision is contained in this para of Section 52(2), which says that when the notice is published in the official Gazette and it is also pasted on some conspicuous place of the locality, such publication and pasting shall be deemed

as proper service of the notice on the owner of the land and upon all other persons, who may be interested in the land, Sub-s. (3) of Section 52 provides that owner of the land or any other person interested therein may show cause and make objections, why the land should not be acquired, within the time specified in the notice. Thereafter the Officer on Special Duty to whom the objections are submitted is required to give an opportunity of being heard either in person or by the pleader of the objector. Thereafter the Officer on Special Duty is required to submit the case for the decision of the State Government together with the record of the proceedings held by him. The report which is to be submitted by the Officer on Special Duty is to contain recommendation on the objections. It is for the Officer on Special Duty to make enquiry, which he may deem necessary before submitting the case and report to the State Government which has to pass an order as it deems fit and the decision of the State Government in this regard has been made final. On a careful reading of both the parts of Section 52(2) of the Act, the following things become clear to us : --

(1) that in both the parts of Section 52(2) word "shall" has been used for service of the notice upon the owners and the persons interested and also for publication in the official gazette and pasting at a conspicuous place in the locality;

(2) that the issuance of show cause notice is a condition precedent before publishing the notice u/s 52(1) of the Act;

(3) that besides the service of individual notice upon the owners of the land and the persons interested, publication of the notice in the official gazette at least 30 days in advance and pasting of it at some conspicuous place of the locality are necessary.

11. Having analysed the provisions of Section 52(2), we consider it necessary to examine whether the word "shall" as used in second part of Section 52(2) is mandatory or peremptory or imperative or not.

12. We may mention that Mr. H. N. Calla. appearing for the appellants in both the appeals, did not dispute that the issuance of the show cause notice on the owner of the land and any other person, who in the opinion of the State Government is interested therein is mandatory. He also did not dispute that service of the notice upon the owner of the land and any other person, who in the opinion of the State Government may be interested therein, is also essential. He, however submitted that if there are more than one owner of the land then individual service upon all the owners of the land is not necessary. So also the publication of the notice in the official Gazette at least 30 days in advance and pasting of it at some conspicuous place in the locality where the land to be acquired is situate, are not at all necessary, as the word "shall" so used therein is only directory.

13. The use of the word "shall" ordinarily raises a presumption that the particular provision is imperative. But this prima facie inference may be rebutted by other considerations such as the object and scope of the enactment and the consequences flowing from such construction. There are numerous cases where

the word "shall" has been used as merely directory.

14. It was observed by Hidayatullah, J., as he then was, in *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, as under : --

"The word "shall" is ordinarily mandatory but it is sometimes not so interpreted if the context or the intention otherwise demands."

Subba Rao, J., as he then was, also expressed himself in the following words in *State of U. P. v. Baburam* AIR 1961 SC 761 :--

"When a statute uses the word "shall", prima facie it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute".

15. G. P. Singh, in his Book "Principles of Statutory Interpretation", 2nd Ed., in Chap. V relating to mandatory and directory provisions, under the head "Statutes Conferring Power", has stated as under : --

"In statutes conferring a power to be exercised on certain conditions, the conditions prescribed are normally held to be mandatory, and a power inconsistent with those conditions is impliedly negatived. So, if a corporation is authorised to do an act, e.g. to borrow at interest, subject to certain conditions, it must be deemed to have been prohibited to do the said act except in accordance with the provisions of the Act which confers the authority on it. Even an affirmative act prescribing the conditions for exercise of a power conferred by it is construed as mandatory. The rule stated in Bacon's Abr. is "If an affirmative statute which is introductive of a new law directs a thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way". The rule of implied prohibition is however, subservient to the basic principle that the court must, as far as possible, adopt a construction which effectuates the legislative intent and purpose."

16. The learned single Judge has referred to *Khub Chand and Others Vs. State of Rajasthan and Others*, , *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , *State of Mysore Vs. Abdul Razak Sahib*, , *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, , *Tharoo Mal Vs. Puran Chand Pandey and Others*, ; *Cen. Govt. Servants Co-op. Housing Socy. v. Wahab Uddin* AIR 1981 SC299 , *Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another*, , *Gowri Bheemappa Vs. The State of Andhra Pradesh and Others*, , *Haridwar Singh Vs. Bagun Sumbrui and Others*, , *Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others*, , and *Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others*, , which were cited by the learned counsel for the petitioners (respondents). He also examined *The Berar Swadeshi Vanaspathi and Others Vs. The Municipal Committee, Shegaon and Another*, , *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, and *K. Narasimhiah Vs. H.C. Singri Gowda*, . He amongst others noticed *Rajasthan Udyog Vs. State of Rajasthan and Others*, , in which it was

observed as under (at P. 37) :--

"The effect of amendment in Section 4 is that the provisions of Section 4(1) are directory and the provisions of Section 5(5) are mandatory."

We do not propose to examine all the authorities that were cited before the learned single Judge. We shall notice only some of them, which according to us have bearing on the question regarding interpretation of the word "shall".

17. In *Khub Chand and Others Vs. State of Rajasthan and Others*, , the provisions contained in Sections 4(1), 4(2), 5(2), 5A of the Rajasthan Land Acquisition Act (No. XXIV of 1953) (hereinafter referred to as "the Act of 1953"), came up for consideration. Subba Rao, C. J., speaking for the Court, laid down that the provision of a statute conferring power on Government to compulsorily acquire lands should be strictly construed. As to when the word "shall" may be construed as mandatory and when directory in comparison to the word "may", certain tests were laid down, which have been succinctly summed up in the book "Principles of Statutory Interpretation" by G. P. Singh at page 231. As stated above, while construing the word "shall" as used in the enactment, the provisions of the Act and the object for which they have been enacted have to be taken into consideration. Section 4(1) of the Act of 1953 was interpreted as it existed prior to its amendment by Act No. XV of 1966. It provided for publication of the notification in the Rajasthan Gazette and it further provided that public notice of the substance of such notification shall be given at a convenient place in the locality and upon such publication, it was provided in Sub-section (2) that it shall be lawful for any officer authorised by the Government in this behalf and for his servants and workmen to act in the manner provided therein. It was observed as follows (Paras 6 and 7) :--

"The provision is mandatory in terms. Doubtless, under certain circumstances, the expression "shall" is construed as "may". The term "shall" in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations. The object underlying the said direction in Section 4 is obvious. Under Sub-section (2) of Section 4 of the Act, after such a notice was given, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The Legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry."

While considering the words "may" and "shall", it was observed as follows : --

"It is a necessary condition for the exercise of the power of entry. The non-

compliance with the said condition makes the entry of the officer or his servants unlawful. On the express terms of Sub-section (2), the officer or his servants can enter the land to be acquired only if that condition is complied with. If it is not complied with, he or his servants cannot exercise the power of entry u/s 4(2) with the result that if the expression "shall" is construed as "may", the object of the sub-section itself will be defeated. The statutory intention is, therefore, clear, namely, that the giving of public notice is mandatory. If so, the notification issued u/s 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void."

18. In *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, it was held as under (Para 3) : --

" In our judgment the provisions of Section 4(1) cannot be held to be mandatory in one situation and directory in another. Section 4(1) does not contemplate any distinction between those proceedings in which in exercise of the power u/s 17(4) the appropriate Government directs that the provisions of Section 5-A shall not apply and where such a direction has not been made dispensing with the applicability of Section 5A. It lays down in unequivocal and clear terms that both things have to be simultaneously done u/s 4(1), i.e. a notification has to be published in the official gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated."

19. For determining whether the provisions of Section 52(2) of the Act are mandatory, it will be useful here to refer to *Haridwar Singh Vs. Bagun Sumbrui and Others*, . In para 13 of the report, it is observed as follows : --

"Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory (See *Earl T. Crawford. The Construction of Statutes*, Pp. 523-4)."

20. Following is stated in *Maxwell, Interpretation of Statutes*, 6th Ed. Pp. 649-650 :

"Where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority."

21. *Crawford on "Statutory Construction "*(Edn. 1940, Article 261, p. 516), has stated as follows : --

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phrasology of the provision, but also by considering its nature its design, and the consequences which would follow from construing it in the way or the other."

After noticing the above extract, while considering Section 6(1) of the Gujarat Agricultural Produce Markets Act (No. XX of 1964), the Supreme Court in *Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others*, observed as follows (Para 13) :-

"Thus, the governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and considerations. In other words, the use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature."

22. Section 3(2) of the Bihar Land Reforms Act before its amendment, came to be examined in *Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others*, .

23. Mr. H. N. Calla learned counsel for the appellants invited our attention to *Gopal Singh and Another Vs. State of Rajasthan and Another*, and *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, we consider it proper to examine these authorities at this stage.

24. Before a Division Bench in *Gopal Singh and Another Vs. State of Rajasthan and Another*, , Sections 4 and 5A of the Rajasthan Land Acquisition Act (No. XXIV of 1953) came up for consideration. A contention was raised in that case that issuance of public notice or substance of the Notification was not mandatory. While dealing with this contention, it was observed by the Division Bench as follows (Para 14) : --

"The language of Section 4(1) shows that it casts a duty on the Collector to cause public notice of substance of the Government notification to be given at convenient places in the locality where the land, which is sought to be acquired, is situated. Issue of the public notice is very necessary, so that those persons, who are interested in the land, which is sought to be acquired, may be able to file their objections u/s 3-A. It is also necessary to enable the employees of the Govt. to enter upon the land, make necessary survey and find out if it is suitable

for the purpose for which it is sought to be acquired. It is only after such a public notice is issued that it becomes lawful for the officers to proceed u/s 4(2). In the absence of such a notice, they are likely to find themselves in difficult situation if their entry on the land is resisted by persons who are owners or occupiers of the land. In a case where persons interested in the land come to know of the notification and they file their objections within time and the objections are decided by the Government u/s 5-A, absence of a public notice may not be considered a fatal defect for vitiating further proceedings, but the same view cannot be taken in a case where persons interested in the land are unable to file their objections u/s 5-A on account of the absence of a public notice. In the present case also, the absence of a public notice would not have assumed importance if the objections filed by the petitioners on 3rd November, 1960 u/s 5-A were forwarded by the Collector to the Government and decided by the Government according to law. Here we find that the Collector not only failed to comply with the provisions of Section 4(1), but he also did not care to comply with the provisions of Section 5 A."

25. The provisions contained in Section 131(3) of the U.P. Municipalities Act (No. II of 1960) were examined in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, . It will be useful here to excerpt the following provision.

"The Board shall, thereupon publish in the manner prescribed in Section 94 the proposals framed under Sub-section (1) and the draft rules framed under Sub-section (2) along with a notice in the form set forth in Schedule III."

As per majority, it was held that first part of Sub-section (3) of Section 131 dealing with the manner of publication was directory. We may state at once that the provisions of Section 131(3) of the aforesaid. Act are different from Section 52(2) of the Act with which we are concerned in these appeals.

26. The question of complying with the provisions of Section 4 of the Land Acquisition Act, 1894 in a case where enquiry u/s 5 A has been dispensed with, was considered in *Gowri Bheemappa Vs. The State of Andhra Pradesh and Others*, . After considering Supreme Court decisions, it was hold that dispensing with enquiry u/s 5A would not affect the requirements u/s 4(1) of the Land Acquisition Act, 1894.

27. *Khub Chand and Others Vs. State of Rajasthan and Others*, has been referred to therein. Section 4(1) of the Land Acquisition Act, 1894 was again considered in *State of Mysore Vs. Abdul Razak Sahib*, . In that case, notification under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894, was published in the Official Gazette, but notice of the substance of the notification was not given at convenient places in the concerned locality. The question arose whether the Notification was invalid. The Supreme Court expressed its agreement with *Gangadharaiah v. State of Mysore* (1961) 39 Mys LJ 883, wherein it was held that Section 4(1) requires that there should both be a notification in the Gazette as also a publication in the locality in which the property proposed to be acquired

is situate and that it is only when the notification is published in the official gazette and it is accompanied by or immediately followed by the public notice, that a person interested in the property proposed to be acquired can be regarded to have had notice of the proposed acquisition. The order of the High Court quashing the proceedings was upheld by the Supreme Court.

28. So far as General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, , is concerned, Section 4 of the Land Acquisition Act (No. I of 1884) came up for consideration before the Supreme Court. It was held that the section is mandatory; its compliance was no idle formality unless the directions enjoined by Section 4 are complied with, the notification u/s 6 will be invalid. It was observed as follows : --

".....a consideration of Rule 4 also shows. that its compliance precedes the notification u/s 4 as well as compliance of Section 6 of the Land Acquisition Act"

29. Before a learned single Judge of the Allahabad High Court in Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another, Sections 4(1) and 5A came up for examination. The question arose whether the publication of the substance of the notification after expiry of statutory period renders the Notification invalid and that if the objections are filed after that period and are entertained and considered on merits, will thus cure the deficiency in publication. The learned Judge after relying on Khub Chand and Others Vs. State of Rajasthan and Others, , Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, and State of Mysore Vs. Abdul Razak Sahib, opined that the two requirements laid down in Section 4(1), namely, publication in the gazette and publication of the substance of the notification in the locality, are mandatory.

30. The provisions of Section 4(5) of the Rajasthan Land Acquisition Act as amended by 41966 Act is analogous and *pari materia* to Section 52(2) of the Act. In Rajasthan Udyog Vs. State of Rajasthan and Others, it was observed that it was by notice u/s 4(5) an opportunity is afforded to the person interested to file objections so the provision of Section 4(5) was held mandatory.

31. It appears from the language employed in Section 52 that the legislature is not only concerned with service of notice on the owners and the persons interested, but appears to be equally very much concerned with publication of the notice in the Official Gazette and pasting of the same on some conspicuous place of the locality. It is why emphasis was placed by the legislature that notice shall also be published in the Official Gazette "at least" 30 days in advance and "shall" be pasted on some conspicuous place in the locality. It is well settled that when in the enactment, the words "also" and "at least" are used they signify peremptory legislative intent. The object of the provision is to give wider publicity of the intended acquisition, so that all persons having any interest whatsoever may come to know of the intended acquisition and may file objections under Sub-section (3). It should also be not lost sight of that after

compliance with second para of Sub-section (2) and publication of the notice, the land vests absolutely in the State Government free from all the encumbrances. It deserves to be considered that while determining the compensation for compulsory acquisition of the land u/s 53, Clause (b) Sub-section (6) thereof lays down that the value of the land shall be taken to be the market value of the land on the date on which the notice calling upon the owners to show cause as to why the land should not be acquired is issued under Sub-section (2) of Section 52 of the Act. Section 52 deals with compulsory acquisition of the land and its provisions have to be strictly complied with. The language of Section 52(2) of the Act is imperative with respect to (i) issuance of notice and service of notice on the owners of the land or on the persons interested; (ii) with regard to publication of notice in the official Gazette at least 30 days in advance and (iii) for pasting it at some conspicuous place of the locality. It has to be remembered that it is only after complying with the provisions of second para of Section 52(2) of the Act that notice under Sub-section (1) of Section 52 can be issued. In other words, compliance of second para of Section 52(2) is a condition precedent, a pre-requisite condition or a sine qua non for publishing a notice u/s 52(1). Considering the language used in Sub-section (2) of Section 52, and the object behind it, we hold that the provisions aimed in Section 52 in regard to the individual service of the notice on all the owners or persons interested and also with regard to publication and pasting of notice, are mandatory.

32. . Now let us advert to the facts bearing on the question of compliance with Section 52(2) of the Act.

33. In para 2 of the writ petition, it has been stated that the petitioners named in the writ petition purchased some land in the west of the road leading from Circuit House to Ratanada Crossing by a sale deed dt. Oct. 13, 1971 and registered on Oct. 16, 1971 from his Highness Shri Gaj Singhji of Jodhpur for constructing houses for their own residence. In reply to this para, it is stated that "para No. 2 of the writ petition is not denied when it says about purchase of land in question under a Sale Deed dt. Oct. 13, 1971 registered on Oct. 16, 1971 from the erstwhile Ruler of the then Jodhpur State. However, it is denied that the petitioners purchased this land in question for their own residence." Anx. 8 is a notice under Sub-section (2) of Section 52, of the Act to the persons interested in the land to be acquired under Chap. 11 of the U. I. T. Act. It is addressed to "Keshav Deo, Hari Ram, Balveer Singh, Baldeo Singh C/o Krishna Mandir, Ratanada, Jodhpur." It is not in dispute before us that Keshav Deo and Hari Ram are not the purchasers under the sale deed. Baldeo Singh and Balveersingh are the purchasers. A reply (Anx. 9) was sent by Balveersingh to the Secretary, U. I. T., Jodhpur asking for certain information in regard to the Notification. In that reply, it is clearly stated that he along with others are owners by virtue of the sale-deed dt. Oct. 13, 1971 registered on Oct. 16, 1971 of the plot of the land measuring 19263 sq. yards, as described in the sale deed and that a copy of the sale deed and the proposed sub-division have already been sent to the Secretary, U. I. T., Jodhpur along with letter dt. May 9, 1972. Then Anx. 10 is

the reply dt. Aug 3, 1973, which was sent by the counsel Shree Krishna Jindel, Advocate to the Sub-Divisional Officer and Special Officer, Jodhpur and in that the names of the owners of the land have been mentioned though the objections purport to be on their behalf. A perusal of Anx. 5 dt. Dec 14, 1972 shows that it was sent with reference to letter No. F. 2(3) Sub-Division/12683 dt. Nov. 22, 1972, to the Secretary, Urban Improvement Trust, Jodhpur, which was sent by the petitioner Balveer Singh. It was stated therein that an attested copy of sale deed dt. Oct. 13, 1971, registered on Oct. 16, 1971 was enclosed therewith. So far as individual service on all the owners, who are 12 in number is concerned, it has not been affected. Notice Anx. 8 was only served on the petitioner Balveer Singh. The case of the appellants, which was pressed for our consideration by their learned counsel was that all the purchasers of the land in question are co-owners and service of notice on one will be considered to be service of notice on all. Mr. H. N. Calla, learned Government Advocate drew our attention to Kanji Manji Vs. The Trustees of The Port of Bombay, , wherein while considering Section 108 and Section 11 of the Transfer of Property Act relating to joint tenancy it was held that once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient, and the suit for, the same reason was also good.

34. It was held by a learned single Judge in V. Konnappan v. Kunniyil Manikkan AIR 1968 Ker. 229, that in the case of tenants-in-common there is only unity of possession and not of title or interest and to determine such a tenancy, notice should be issued to all the tenants and there is no effective determination of the lease in the absense of notice to quit to any one of them and that a lease cannot be determined piece-meal. Reliance was placed in that case, amongst others, on Harihar Banerjee v. Ram Shashi Roy AIR 1918 P.C 1102. In "our considered opinion, these "authorities are beside the point. Twelve petitioners, who are respondents in both the appeals, have purchased the land by a registered sale deed. Second para of Section 52(2) of the Act provides that notice shall be individually served upon owners of the land as well as any other person, who, in the opinion of the State, may be interested therein. Learned counsel appearing for the appellants, as stated above, did not dispute before us that this para of Section 52(2) regarding service of notice is mandatory. Admittedly, notice Annex. 8 was addressed to four persons, out of whom two are strangers. Individual notices were not issued to each of the petitioners, whose lands were sought to be compulsorily acquired and therefore, there was non-compliance of the mandatory requirement of second para of Section 52(2) of the Act. Even if the contention raised by the learned counsel for the appellant is accepted for argument"s sake, the service of notice on one of the owners of the land will be considered to be service on all the purchasers of land under sale deed, still, if the condition of publication of notice in the official Gazette at least 30 days in advance and that it shall be pasted at some conspicuous place in the locality near where the land to be acquired is situate, if held to be mandatory, they were not complied with. The notice was not published in the official Gazette. We have

enumerated the reasons that there has been no compliance of pasting of the notice in the locality.

35. Here, we are required to consider the question with regard to the nature of the direction in Section 52(2) in the light of the provisions contained in Section 101(1)(d) and (e) of the Act.

Section 101(1)(d) and (e) reads as under :--

"101. Validation of acts and proceedings. --

(1) No act done or proceeding taken under this Act shall be questioned on the ground merely of :--

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(e) any omission, defect or irregularity not affecting the merits of the case."

According to Section 101(1), if any act has been done or proceeding has been taken under the Act, it cannot be questioned (i) if for failure to serve a notice on any person where it has not resulted in any substantial injustice and (ii) if there has been any omission, defect or irregularity not affecting the merits of the case, then it cannot be called in question. In this connection, the learned Judge has observed that the purport and object of Clause (d) and (e) appears to be different and these clauses may be pressed into service only in cases where no illegality is committed and the prejudice complained of is minor or there is negligible infraction of the provision, but on that account directions in the provisions of Sub-section (2) of Section 52 do not cease to be mandatory. Section 52(2) not only makes service of the notice essential on all the owners and persons interested, but a publication of notice in the official Gazette and pasting thereof in the locality are equally essential, and non-compliance of the provisions would amount to an illegality which will vitiate acquisition proceedings and the notice published u/s 52(1). In the case on hand notice was served on Balveer Singh alone and the rest of the 11 petitioners-respondents were not individually served with the notice. The question is whether the service of notice on one and failure to serve individual notices on other 11 petitioners has not caused any substantial injustice. Mr. H. N. Calla, learned Government Advocate submitted that after notice Anx. 8, objections were filed on behalf of all the non-petitioners through counsel and when the objections have been filed, the failure to serve notice cannot be said to have caused prejudice or any substantial injustice to them. In this connection, we would like to notice two decisions, of the Supreme Court.

36. In Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, , the question was with respect to non-compliance of Section 77(2) of the Co-operative Societies Act, which provided that no order prejudicial to any person shall be passed unless such person had been given an opportunity of

making his representation. It was contended, in that case that the appellant had of his own motion, made some representations in the matter and that the facts were clear so the non-compliance did not matter. This argument was repelled. Their Lordships observed (paras 21 and 22):

"This minimal requirement can on no account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for.

It is admitted that no notice whatever had been given by the Government to the appellant. There is, therefore, clear violation of Section 77(2) which is a mandatory provision. We do not agree with the High Court that this provision can be by-passed by resort to delving into correspondence between the appellant and the Government. Such non-compliance with a mandatory provision gives rise to unnecessary litigation which must be avoided at all costs."

This decision has been referred to in *S.L. Kapoor Vs. Jagmohan and Others*, . In *Tharoo Mal Vs. Puran Chand Pandey and Others*, right of representation was taken away, still it was held that that would not in any way affect" the observance or compliance of Sub-section (1) of Section 4. The same view was taken in *Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another*, . In that case, the question of validity of Notification issued u/s 4(1) arose for consideration. In that case, two Notifications u/s 4(1) of the Land Acquisition Act, were published in the U. P. Gazette dated August 4, 1973. The publication of the substance of the notification in the locality was made on Aug. 28, and 29, 1973 after expiry of 21 days from the date of publication of the Notification in the Gazette. The petitioners were also served with individual notices and all the petitioners had filed objections except Smt. Kamal Rani. The objections were considered on merits and were not rejected on the ground that they had been filed beyond the prescribed time. The question arose whether the publication of the substance of Notification in the locality and filing of the objections after the extended period of time would validate the Notification issued u/s 4(1). On those facts it was held that whenever right of property is involved, the law must be complied with strictly. The argument that no substantial injustice has resulted as they have filed the objection was repelled. Reliance was placed on *Tharoo Mal Vs. Puran Chand Pandey and Others*, . In view of the mandatory provisions of Section 52(2) and keeping in view of the legislative policy and the object behind it, the question of substantial injustice or prejudice in the circumstances of the case, has no relevance.

37. The words contained in Section 101(1)(e) are similar to the words used in Section 99 C. P. C. these words indicate that the errors etc. which affect the merits of the case or jurisdiction of the Court, are not curable. We have already held that compliance with Section 52(2) is a condition precedent for issuance of a notice under Sub-section (1) of Section 52 and when the compliance relates to the condition precedent Section 101(1)(e) cannot be invoked, for, its applicability cannot be extended to such cases.

38. Mr. H. N. Calla submitted that even if the provision is held to be mandatory, then, it has been substantially complied with, for, the reason that notice was served on one of the owners, and that all the petitioners-respondents have filed the objections to the acquisition and the affidavit of Shrinath shows that its copy was affixed on the notice board specially erected for the purpose. A perusal of that notice, which is said to have been pasted, shows that it was not a public notice. It is merely a copy, of the notice Anx. 8 in the name of four persons. That notice only calls upon the individuals to whom it is addressed to show cause within 30 days why the land should not be acquired and the notices were given to them as owners of the land. Thus, this notice does not satisfy the requirements of law. The notice, which has been placed on record marked Annex. 14, shows that it is only with respect to 19240 sq. yards of land and has no concern with the lands of the owners mentioned at serial Nos. 2, 3, 4, 5, 6, 7 and 8 measuring 57,660 sq.yds. in Anx. 18. The learned single Judge has taken note of the fact that in the order-sheet dt. Aug. 28, 1976 what is stated is that notice u/s 52(2) be issued to Keshav Deo, Hari Ram, Balveer Singh, Baldeo Singh etc. for information at the spot and to show cause within 30 days. No compliance was made of the order-sheet, as the notice has not been addressed to other individuals other than the four persons stated hereinabove. In the order-sheet the word "etc", is not there. It even does not speak of the general notice to be issued and pasted on some conspicuous place of the locality. Thus, there has not been compliance of pasting of the notice in the locality. It is also well settled that when the provisions of a particular statute are mandatory, they are to be complied with strictly. In this case, we have held that the provisions contained in Section 52(2) of the Act are mandatory and, therefore, the question of substantial compliance does not arise.

39. An argument was raised that in the facts and circumstances of the case, the learned single Judge ought not to have, interfered in the exercise of writ jurisdiction. Mr. H. N. Calla learned Government Advocate submitted that the notice was served on one "owner of the land, namely, Balveer Singh and after service of that notice, objections were filed on behalf of all the owners of the land. In this connection, reference was made to Iyyappan Mills Ltd. Vs. Iyyappan Mills Workers Union and Others, wherein it was held that the order directing payment of retrenchment compensation though in excess of jurisdiction of the Tribunal would not be interfered with in the exercise of discretionary powers under Article 226 when it has not resulted in substantial miscarriage of justice inasmuch as what the Tribunal has granted as retrenchment compensation is only the amount offered by the management in its notice at the time of closure. In our opinion, the argument is not tenable, for, the compliance of second para of Section 52(2) of the Act is a pre-requisite condition for the issuance of notice under Sub-section (1) of Section 52 of the Act and non-compliance thereof is an illegality. The provisions contained in second para of Section 52(2) have been completely disregarded and their breach is substantial. The authority under the Act could not proceed to take action under Sub-section (1) without complying

with the provisions of Section 52(2) of the Act. We have already held that it would be difficult to say that no substantial injustice has resulted from failure to comply with Sub-section (2) of Section 52 or that mistake or defect or irregularity has not affected the merits of the case. It is a case of illegality. Illegality does not embrace mistake, defect or error in the proceedings. In this case, non-observance of Section 52(2) has caused substantial failure of justice inasmuch as the petitioners-respondents would be deprived of the property on account of the disregard of the mandatory provisions and without authority or law. We do not mean to say that in all cases, when there is breach of mandatory provision, the Court should invoke its extraordinary jurisdiction. In appropriate cases, the Court may decline to give relief to the parties in exercise of the extraordinary jurisdiction. The learned single Judge was right in granting relief to the petitioners-respondents under Article 226 of the Constitution. The aforesaid contention also fails. , 40. Learned counsel for the appellants submitted that the learned single Judge went wrong in quashing the Notification Anx. 18 and declaring it as invalid and quashing the acquisition proceedings culminating in the Notification Anx. 18.

41. Anx. 18 contains eight items of the total land mentioned therein, out of which the petitioner's land is mentioned at item No. 1 in Anx. 18. It contains names of other persons whose lands were sought to be acquired. The petitioners are twelve in number. They have purchased the land measuring 19263 sq.yds. The notification can only be quashed with respect to the land covered by the sale deed measuring 19263 sq.yds. and not for entire land of all the persons whose lands were sought to be acquired but who did not challenge the Notification. The prayer according to Mr. H. N. Calla is misconceived.

42. The petitioners challenged the Notification. (Anx. 18) and prayed that this may be quashed. What the learned single Judge has decided on the petition filed by the petitioners is that the Notification u/s 52(1) is invalid on account of non-compliance of Section 52(2) of the Act and so, he allowed the writ petition of the petitioner-respondents and declared Anx. 18 invalid. As Anx. 18 was declared invalid, the acquisition proceedings culminating in the Notification were quashed. It was not necessary, as contended by the learned counsel for the appellants, that he should have quashed the Notification Anx. 18 qua the petitioners because it is only the petition of the petitioners under Article 226 of the Constitution, in which, inter alia, relief for quashing Anx. 18 has been sought. This disposes of the points raised by the learned counsel for the appellants.

43. Mr. Bhandari, learned counsel for the petitioners-respondents, pressed that the petitioners-respondents' land mentioned in the Notification has been dropped from the Scheme as the Scheme has not been found viable and, therefore, the very purpose for which the land has been acquired, has failed.

44. Before the learned single Judge as well as before us, Mr. Bhandari cited *Gela Ram v. District Board* AIR 1923 Lah 93 and *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, . The learned Judge rejected the contention by

observing that it does not merit acceptance. In view of the findings, which we have arrived at, it is not necessary for us to express any opinion on this point, which has been raised by Mr. Bhandari.

45. As regards the point whether the Art. 14 of the Constitution has been violated, the following facts are relevant. The Scheme was in respect of 91,739 sq. yds., out of which land measuring 18440 sq. yds. was left out from the notification Anx. 18 and only the remaining land has been acquired. The contention of Mr. Bhandari is that there was no justification for exclusion of land, marked as F, F-1, F-2, F-3 and F-4 and so there was discrimination. No explanation was shown as to why this land was excluded at the time of publication of notification (Anx. 18), dated June 3, 1974. The learned single Judge has observed as under : --

"It is really very strange that in respect of the land, which is the subject matter of Annexure 18, no notice u/s 52(2) has been published, whereas in respect of the land left out in Annexure 18, notice u/s 52(2) has been published, in the official Gazette. Of course this has no relevance on the point in question. Notice u/s 52(2) dates back to Dec. 17, 1973, much earlier to the notification Annexure 18. If the land, subject-matter of notice of December 17, 1973, was the part of the scheme, there was no justification for excluding that land in Annexure 18. Even no justification has been offered so that it can be said that in fact discrimination was not practised. Rather the land was excluded due to some reasons."

The learned single Judge took into consideration the explanation that the land has been surrendered. The State did not come forward with the plea that the land was surrendered prior to June 25, 1974. In this connection, affidavit of Shri Richhpalsingh the then Secretary U. I. T. Jodhpur was filed. That affidavit was not found to be correct because of the averments made in the application dated Jan. 13, 1978. Affidavit of Shri Anand Prakash Bhoot was also filed. In that affidavit, he has stated that the land is in their possession and that they have never surrendered the land in favour of the State. Taking into consideration the Explanation, affidavits of Shri Richhpalsingh, Shri Anand Prakash Bhoot and the application, the learned single Judge concluded that there has been no surrender of the land but still the land has not been acquired. He also held that no explanation has been offered as to why the land was excluded at the time of publication of the Notification Anx. 18.

46. In *Ram Pratap v. State of Rajasthan* 1979 R LW 426 land of one nursery was de-acquisitioned, whereas the land of other nursery was not de-acquisitioned and it was held that, it was a glaring case of discrimination. Attention of the learned single Judge was also invited to point (3) of Note 43 to Article 14 of the Constitution in AIR Manual, Fourth Edn. Vol. VII at p. 703. The learned single Judge has reproduced the aforesaid note.

47. In *Maganbhai Vanarshibhai Patel Vs. The State of Gujarat and Others*, , it

was observed as under (at pp. 88-89) --

"It is evident, therefore, that in this case the Government has followed the irrational method of pick and choose so far as the petitioner's land S. No. 540/2 is concerned and such an action of the Government is contrary to Article 14 of the Constitution.

.....

The action of the Government of acquisition of S. Nos. 540/1, 540/2 and 540/3 of the petitioner is thus contrary to its declared policy. The Government has obviously followed the method of selection or pick and choose in respect of the petitioner's lands, S. Nos. 540/1, 540/2, and 540/3 and has acted arbitrarily and also contrary to its declared policy. Hence the acquisition of S. Nos. 540/1, 540/2 and 540/3 is illegal and bad."

Learned council for the appellants placed reliance on *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, . in support of the contention that Anx. 18 is not violative of Article 14 of the Constitution. We may mention that both the decisions are distinguishable and are of no assistance to the appellants. So far as *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, is concerned, in that case an application u/s 56 of the Punjab Town improvement Act for exemption was rejected and while rejecting the application, it was observed as under (para 6) :--

"In any event if the appellants have failed to bring their case within Section 56 of the Act then merely because some other party has erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not clothe the present appellants with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case."

In *Pt. Lila Ram Vs. The Union of India and Others*, the facts are these : the lands which were earlier proposed to be acquired were subsequently ordered not to be acquired. This decision was reached after considering the objections u/s 5A. In those facts, it was held that the subsequent ordering of the land not to be acquired would not militate against validity of the acquisition of the land and it is for appropriate Government thereafter to take the decisions on the objections filed u/s 5A and that there is no inherent infirmity in the decision of the Government in accepting some of the objections and rejecting the others. As stated above, no justifying or good reasons have been put forward for excluding the tend marked F. and F.1 to F.4 from acquisition.

48. The position that therefore emerges is that the owners of the land similarly situated have been differently treated when Notification Anx. 18 dated June 3, 1974 was issued. We agree with the learned single Judge that by issuing Notification Anx. 18 dt. June 3, 1974, there has been breach of Article 14 of the Constitution, The learned single Judge was, therefore, right in holding that the

Notification Anx. 18 is violative of Article 14 of the Constitution and, therefore, liable to be struck down. The fifth contention thus, fails.

49. All the contentions raised by the learned counsel for the appellants are devoid of force.

50. The result is that both the appeals fail and they are hereby dismissed. In the circumstances of the case, we order that the parties shall bear their own costs.