

(1993) 03 P&H CK 0021

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 438 of 1983

Subhan Khan

APPELLANT

Vs

The State of Haryana and
Another

RESPONDENT

Date of Decision: March 23, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Land Acquisition Act, 1894 - Section 4(1)

Citation: (1993) 104 PLR 236

Hon'ble Judges: Harmohinder Kaur Sandhu, J

Bench: Single Bench

Advocate: None, for the Appellant; S.S. Gill, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

Harmohinder Kaur Sandhu, J.

Subhash Khan has filed this petition under Articles 226 and 227 of the Constitution of India for issuance of an appropriate Writ for quashing the Notification u/s 4 and Notification u/s 6 contained in Annexures P-1 and P-3 and further proceedings u/s 9 of the Land Acquisition Act (for short the Act).

2. The petitioner is proprietor of land measuring 3 Kanals 10 Marias mentioned in para 2 of the petition situated in the revenue estate of village Shikrawa, Tehsil Ferozepur Jhirka, District Gurgaon Respondent No. 1 issued a Notification u/s 4 of the Act which was published in the Haryana Government Gazette dated 25-9-1981. No proclamation was made in the locality of the village or on the spot regarding this Notification, though it was learnt that a fictitious report was entered in the Roznamcha of the patwari dated 30-10-1981. The petitioner was unaware of the issuance of Notifications and could not file objections u/s 5 of the Land Acquisition Act. A Notification u/s 6 of the Act was published in the Gazette of 3-9-1982 and

although no proclamation was made regarding this Notification a report was made in the Roznamcha of the petitioner which was dated 19-10-1982. The petitioner came to know about issuance of some notice from the office of the Sub-Divisional Officer (Civil) in the second week of November, 1982 and on enquiry found that some proceedings had been taken for acquisition of his land. The petitioner alleged that so far no award had been made nor possession of the Land had been taken. The issuance of Notification u/s 4 of the Act was illegal unconstitutional and arbitrary. Notification was published in the Gazette on 25 9 1981 and proclamation was made in the locality on 30-10-1981. Due to non publication of Notification in the locality by way of "Munadi" he was denied an appropriate opportunity of making objections u/s 5A of the Act and whole proceedings regarding acquisition deserved to be quashed on this ground.

3. No return was filed by the respondent though opportunities were granted for submitting the same.

4. The main contention of the petitioner is that the impugned Notification issued u/s 4 of the Act is liable to be quashed as mandatory provisions of Section (1) have not been complied with. After publication of the Notification in the official gazette publicity of the substance of the Notification in the concerned locality had to be given simultaneously or immediately thereafter failing which the Notification u/s 4 as well as subsequent acquisition proceedings became illegal. Section 4(1) of the Act reads as under :-

"Where ever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

A bare reading of this Section shows that when a Notification is to be published in the official Gazette that certain land is needed for public purpose the Collector is required to give a public notice of the substance of such notification at convenient places in the said locality. u/s 5A(2) of the Act any person interested in the land notified u/s 4 Sub-Section (1) can object to the acquisition of the land within 30 days after the issue of the notification. In the instant case notification Annexure P-1 was published in the Haryana Government Gazette of 25-9-1981. The petitioner contended that no public notice of this Notification was given in the locality by beat of drum or otherwise and simply report was made in the roznamcha of the patwari and that too shows that notice if any was given to the public on 30-10-1981 i.e. after 35 days of the publication of the notification. The petitioner could file objections within 30 days of the issue of the notifications. In the case of Rattan Singh and Anr. v. The State of Punjab (1976) 78 P. L. R. 545, the question that fell for determination was whether it was legally essential to give publicity of the substance of the Notification u/s 4 in the concerned locality simultaneously with or immediately after

publication of the notification in the official gazette to make the notifications valid and it was held : -

"The substance of the Notification issued u/s 4(1) of the Land Acquisition Act, 1894, has to be published in the concerned, locality simultaneously and in case it is not possible to give notice of the substance in the concerned locality simultaneously, then at least it has to be done immediately after the publication of the notification in the Official Gazette and it would be for the State to show that whatever time was taken to give notice of the substance in the concerned locality was the minimum possible time taken for this purpose."

It was further observed in this authority that the Notification issued u/s 4 of the Act shall be valid only when both the conditions mentioned in Section 4(1) of the Act have been complied with. Discussing the object of giving publicity of the substance of the Notification it was observed that the substance is to be notified in the locality to make known to the affected persons the intention of the Government to acquire land so as to give opportunity to the landowners to file objections u/s 5A(1) of the Act against the proposed acquisition.

5. In the instant case notification u/s 4(1) of the Act was published in Government Gazette on 25-9-1981 while publicity of the substance of notification was given in the locality after the expiry of one month of the issue of notification. No return was filed explaining as to why this delay occurred. In the absence of any explanation the proceedings arising from the impugned notification are obviously rendered invalid. The impugned notification therefore, cannot be legally sustained.

6. As a result I allow this petition and quash the impugned notifications Annexure P-1 and P-3 under Sections 4 and 6 of the Act respectively. No order as to costs.