

(1970) 05 DEL CK 0045

Delhi High Court

Case No: Company Writ Application No. 92 of 1969

Sardaur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 6, 1970

Citation: (1970) 6 DLT 414

Hon'ble Judges: M.R.A Ansari, J

Bench: Single Bench

Advocate: P.N. Nag and B. Sita Ram, for the Appellant;

Judgement

M.R.A. Ansari, J.

(1) In this petition filed under Articles 226 and 227 of the Constitution of India the petitioner seeks to challenge the validity of the land acquisition proceedings taken by the Lieutenant Governor, Himachal Pradesh, and the Land Acquisition Collector, Simla, in respect of certain lands which were required by the Government for the establishment of a National Himalayan Zoological Park. The Lieutenant Governor issued a notification dated 9-11-1967, u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act), to the effect that the lands specified in the notification were likely to be required by the Government for a public purpose, namely, the establishment of a National Himalayan Zoological Park under the Fourth Five Year Plan. This notification was published in the official gazette on 3-5-1969. The petitioner is a person interested in one of the lands so specified in the notification as he is in possession of 3 Bighas and 8 bids of land in Khasra Nos. 228, 230 and 231 which is included in the lands specified in the said notification and as he had also constructed a house on a portion of this land and had also grown a number of fruit plants and also trees fit for being used as timber. According to the petitioner he could not file objections u/s 5A of the Act against the proposed acquisition of the lands as on the same date i. e. on 3-5-1969, the Lieutenant Governor published a notification u/s 6 of the Act, although this notification was dated 11-6-1968. The petitioner was, Therefore, deprived of a valuable right u/s 5A of the Act by the

simultaneous publication of the notifications u/s 4 and 6 of the Act. Such simultaneous publication was illegal and violated the entire acquisition proceedings. Such proceedings are, therefore, liable to be quashed.

(2) The respondents in their written statement have stated that although the notification u/s 4 of the Act was published in the official gazette on 3-5-1969, the said notice was actually published in the village in the month of December, 1st 69, itself and that all the persons interested in the lands which were notified for acquisition had knowledge of the said notification and also filed objections u/s 5A of the Act which were duly considered by the Land Acquisition Collector. It is also stated that the petitioner also had filed a claim for compensation u/s 9 of The Act and that he was, therefore, estopped from objecting to the validity of the notification u/s 4. The respondents denied that there was any noncompliance with the provisions of Section 4 of the Act or that there was any illegality in the simultaneous publication in the official gazette of the notices under Sections 4 and 6 of the Act on the same date. In a supplementary written statement the respondents also alleged that the petitioners brother and cotenant had made a statement on 25-1-1968 before the Naib Tehsildar, Simla, on behalf of himself and the petitioner to the effect that in case their lands were to be acquired they should be either provided with alternative lands and house or that they should be paid adequate compensation.

(3) The petitioner filed a rejoinder to the written statement of the respondents in which he denied that there was any publication in the village of the notification u/s 4 as alleged by the respondents and also stated that the notification u/s 6 of the Act was not in conformity with the provisions of Section 6 of the Act inasmuch as in this notification only stated that it appeared to the Lieutenant Governor that the land was required by the Government for a public purpose and did not state that the Lieutenant Governor was satisfied that the land so required. The petitioner did not file any further rejoinder to the supplementary written statement filed by the respondents.

(4) The validity of the land acquisition proceedings have been challenged by the petitioner on various grounds and I shall first refer to those grounds which in my view are not tenable. It has been contended that a notice u/s 4 of the Act has to be served individually on the persons interested in the land and that as admittedly the petitioner was not separately served with the notice u/s 4 of the Act the land acquisition proceedings were illegal. This contention is not supported by the language of Section 4 and the learned counsel for the petitioner has not brought to my notice any decision in support of the said contention. The learned counsel relied upon the following observation of the Rajasthan High Court in *Gopal Singh and another v. State of Rajasthan*.

" NORMALLY, every person, who has interest in the land which is sought to be acquired, should have notice of the notification which is issued u/s (i) so that he may be able to file his objection, if there be any."

I do not understand this observation as requiring a individual notice lobe served on every person interested in the land apart from the genera] notification u/s 1) of the Act. Ail that this observation means is that the notice u/s 4 should be published in such a manners to bring it to the Knowledge of every person interested in the land so that he may file his objections, if any, u/s 5A. In fact this is what tie High Court has observed in para 14 of its judgment it has been observed thus:-

"THE language of Section 4(1) shows that it casts a duly on the Collector to cause public notice of the 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 5A"

The language of Section (1) is quite clear and it requires a notification to be published in the official gazette and also a public notice of the substance of such notification to be given at convenient places in the locality. Section 4 does not require a separate notice to be served upon every person interested in the land. Section 9 on the other hand, request that in addition to a public notice to be given at convenient places on or near the land, the Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein etc. Such an individual notice is, however, not required to be given u/s 4(5) of the Act.

It is next contended that the petitioner ought to have been given a notice individually u/s 5A of the Act and since such a notice was admittedly not given to him the proceedings were vitiated All that Section 5A requires is that every objection under sub-section (I) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by pleader, and the normal method of giving the objector an opportunity of being heard would be by issuing a notice to him But the issue of such a notice could be necessary to the objector only if there has been any objection by him. Since admittedly the petitioner did rot file any objections before the Collector it was rot necessary that a notice should be issued to him u/s 5A of the Act.

(6) The next contention urged on behalf of the petitioner is that the notification u/s 6 of the Act is not in accordance with the provisions of that section inasmuch as tie notification only states that it appeared to the Lieutenant Governor that the land was required for a public purpose and that the notification did not state that the Lieutenant Governor was satisfied that the land was so required. It is no doubt true that u/s 6 the appropriate Government should be satisfied after considering the report, if any, made u/s 5A, sub-section (J) that any particular land was needed for a public purpose; whereas u/s (5) in would be sufficient if it appeared to the appropriate Government that the land in any locality was needed or was likely to bs needed for any public purpose. The word "appeared" is certainly not synonymous

with the word "satisfied" and the authorities concerned would have been better advised if they had used the word satisfied "in the notice u/s 6. They appear to have over looked the amendment made to Section 6 of the Act by Section 4 of Act 38 of 1923 by which the words "when the local Government is satisfied" were substituted for the words "when it appears to the local Government." But the question is whether this defect in the language of the notification u/s 6 is fatal to the validity of the acquisition proceedings. This question has been answered in the negative by the Supreme Court in *Ganga Bishnu Swaka and another v. Calcutta Pinjrapole Society* in the following terms: -

"SUB-SECTION(1) provides that when the Government is satisfied that a particular land is needed for a public purpose or for a Company, a declaration shall be made "to that effect". Satisfaction of the Government after consideration of the report, if any, made u/s 5A is undoubtedly a condition precedent to a valid declaration for, there can be no valid acquisition under the Act unless the Government is satisfied that the land to be acquired is needed for public purpose or for a Company. But there is nothing in sub-section (1) which requires that such satisfaction need be stated in the declaration. The only declaration as required by sub-section (1) is that the land to be acquired is needed for &, public purpose or for a Company. Subsection (2) makes this clear, for it clearly provides that the declaration "shall state" where such land is situated. the purpose for which it is needed" its approximate area and the place where its plan, if made, can be inspected. It is such a declaration made under subsection (1) and published under sub-section (2) which becomes conclusive evidence that the particular land is needed for a public purpose or for a Company as the case may be. The contention Therefore that it is imperative that the satisfaction must be expressed in the declaration or that otherwise the notification would not be in accord with Section 6 is not correct. being thus no statutory forms and Section 6 not requiring the declaration to be made in any particular form, the mere fact that the notification does not expressly show the Government's satisfaction, assuming that the words "it appears" used in the notification do not mean satisfaction, would not render the notification invalid or not in conformity with Section 6."

(7) There is, however, one valid objection to the acquisition proceedings which has been raised on behalf of the petitioner, namely, that the simultaneous publication of the notices under Sections 4 and 6 of the Act on one and the same date i. e. on 3-5-1969 is illegal in cases like the present where the provisions of Section 17 of the Act were not invoked and where the provisions of Section 5A were not dispensed with. There is a direct authority of the Supreme Court on this point, namely, *Smt. Somananti and others v. The State of Punjab* The relevant rule has been laid down in paragraph 6C of the reported judgment in the following terms-

"IT is the last and final contention of the petitioner in these petitions that the notifications under Ss. 4 and 6 cannot be made simultaneously and that since both

the notification were published in the Gazette of the same date, that is, August 25, 1961 the provisions of law have not been complied with. The argument is that the Act takes away from a person his inherent right to hold and enjoy that property and, Therefore the exercise of the statutory power by the State to take away such property for a public purpose by paying compensation must be subject to the meticulous observance of every provision of law entitling it to make the acquisition. It is pointed out that under sub-section (1) of Section 4 the Government has first to notify that a particular land is likely to be needed for a public purpose."

Thereafter u/s 5A a person interested in the land has a right to object to the acquisition and the whole question has to be finally considered and decided by the Government after hearing such person. It is only thereafter that in a normal case the Government is entitled to make a notification under sub-section (1) of Section 6 declaring that it is satisfied "after considering the report, if any, made u/s 5A, Sub-section (2)" that the land is required for a Public purpose. This is the sequence in which the notifications have to be made. The reason why the sequence has to be followed is to make it clear that the Government has applied its mind to all the relevant facts and then come to a decision or arrived at its satisfaction even in a case where the provisions of Section 5A need not be complied with. Undoubtedly the law requires that notification under sub-section (1) of Section 6 must be made only after the Government is satisfied that particular land is required for a public purpose undoubtedly also where the Government has not directed under sub-section (4) of Section 17 that the provisions of Section 5A need not be complied with the two notifications, that is, under sub-section (1) of Section 4 and sub-section (1) of Section 6 cannot be made simultaneously

(8) It is contended for the respondents that although the notification u/s 4 was published in the official gazette along with the notification u/s 6 on 3-5-1969, the public notice of the notification under Section 4 had been given in the locality in December, 1967 itself and that the giving of such public notice was sufficient compliance of Section 4(1) of the Act. Although the petitioner does not specifically admit that a public notice was given in the locality as alleged by the respondents, there appears to be no doubt that such a public notice was in fact given in December, 1967. Apart from the fact that the giving of the public notice is supported by the affidavit of Shri S. S Guleri, 1. A. S., Joint Secretary Forests to the Government of Himachal Pradesh, Simla, the said public notice is also proved by the documents filed by the respondents along with the written statement including the copies of the proceedings of the Land Acquisition Collector Simla dated 20-4-1968, 17-5-1960 and 28-1-1968 which show that objections had been filed by several persons of the locality even prior to 20-4-1968 against the proposed acquisition. But the question is whether a mere giving of a public notice in the locality is sufficient compliance with the requirements of Section 4(1) of the Act, This section requires firstly, that the notification to the effect that any land was needed for any public purpose should be published in the official gazette and secondly that the Collector shall also cause

public notice of the substance of the said notification to be given at convenient place? in the said locality. It is not possible for me to accept the contention of the respondents that the giving of a public notice is the locality without the publication of the notification in the official gazette satisfies the requirements of Section 4(1) of the Act. If there had been no publication at all in the official gazette and there had been only a public notice given in the locality then there has been no publication as required u/s 4(1) of the Act.

(9) This case, of course, there was also a publication of the; notification u/s 4(1) in the official gazette at a much later date but such publication served no useful purpose as it was made simultaneously with the notification u/s 6 of the Act. The whole purpose of the publication of the notification in the official: gazette -is to acquaint the persons interested in the lands of the proposed acquisition and to give them an opportunity of objecting to the proposed acquisition. It is only after considering the objections of such persons that the government has to satisfy itself whether or not the land is required for a public purpose. After the Government is so satisfied it has to issue the notification u/s 6 of the Act. After the issue of the notification u/s 6 there is no further" question of hearing any objections to the proposed acquisition. By" publishing the notification u/s 6 of the Act on the same date on which the notification u/s 4 of the Act was published, the Government had effectively shut out an opportunity to the persons interested in the land to object to the acquisition. In cases where the provisions of section 17 are not Invoked and the provisions of Section 5A are not dispensed with, the publication of the notice u/s 6 of the Act. along with the notice u/s 4 of the Act will have the same effect as if there was no notification at all u/s 4(1) of the Act.

(10) The entire land acquisition proceedings are thus vitiated by reason of the simultaneous publication of the notifications u/s 4 and 6 of the Act These proceedings including the notifications under Sections 4 and 6 of the Act are, Therefore, quashed. It is open to the respondents to start fresh proceedings under the Land Acquisition Act in accordance with law. The petition is, Therefore, allowed but under the circumstances there shall be no order as to costs.