Khub Chand and Ors.

Vs

State of Rajasthan & Ors.

Civil Appeal No. 85 of 1964

(CJI K. Subha Rao, J. M. Shelat JJ)

22.08.1966

JUDGMENT

SUBBA RAO, C.J.

This appeal by certificate is directed against the judgment of the High Court of Rajasthan at Jodhpur, dismissing the petition filed by the appellants under Art. 226 of the Constitution.

The relevant facts may be briefly stated. By a registered sale deed dated December 10, 1958, the appellants purchased the land comprised in Khasra Nos. 158 and 182/2 situated in village Sangaria in Tehsil Hanumangarh in the State of Rajasthan. On February 14, 1957, the Government of Rajasthan published a notification No. 7 (104) Rev/(A) dated October 19, 1956, under s. 4 of the Rajasthan Land Acquisition Act, 1953, hereinafter called the Act, to the effect that the said land, along with others, was needed or likely to be needed for the public purpose of laying township and orchards. On January 9, 1958, another notification was published in the Rajasthan Gazette under s. 5(2) of the Act. On February 3, 1959, a further notification under s. 6 of the Act was published in the Rajasthan Gazette in respect of the said land. The Government of Rajasthan in exercise of the powers under s. 3(c) of the Act, issued a notification dated September 10, 1955, appointing the Deputy Director of Colonisation, Suratgarh Division with headquarters at Hanumangarh, to perform the functions of a Collector under the Act within the local limits of his jurisdiction. On July 30, 1959, the said Government published a notification dated June 4, 1959, in modification of the previous notification, appointing the Deputy Director of Colonisation, Rajasthan Canal Project, then having headquarters at Bikaner, to perform the said functions within the districts of Ganganagar, Bikaner and Jaisalmer. Notwithstanding the said notification, the Deputy Director of Colonisation, Suratgarh, exercising the functions under the Act, continued the acquisition proceedings. The appellants filed objections questioning the jurisdiction of the said Deputy Director to proceed with the enquiry and thereafter they did not take part in the proceedings. On December 11, 1959, after making ex parte enquiries, the said Deputy Director made an award which for convenience of reference may be referred to as Award No. 1. In the said award, the appellant's land was valued at Rs. 614 per bigha. But, on June 27, 1960 the said Deputy Collector made another award, hereinafter referred to as Award No. 2, setting aside Award No. 1 and giving compensation to the appellants land at the rate of Rs. 442 instead of at Rs. 614 per bigha. The appellants filed the writ petition in the High Court of Rajasthan challenging the validity of the said proceedings.

The contentions raised by the parties before the High Court need not be particularised as they are apparent from the following findings giving by it : (1) The provision of s. 4 in the Act, namely, that a public notice of the substance of the notification should be given at convenient places in the locality of the land in dispute, is mandatory and Land Acquisition Officer did not comply with the

same; but as the objection raised by the appellants in that regard was belated it could not be allowed to be taken at that stage. (2) The direction given by the Rajasthan Government to the Deputy Director of Colonisation, Suratgarh Division, to exercise the powers of the Land Acquisition Officer under the Act was not withdrawn, either expressly or by necessary implication, by the notification dated June 4, 1959, by which the Deputy Director of Colonisation, Rajasthan Canal Project, was authorised to perform the functions of Collector within the three districts mentioned therein. (3) Award No. 1 dated December 11, 1959, which related to Khasra No. 158 had become final and it could not be altered by Award No. 2 in regard to the said Khasra number. In effect and substance, the High Court held that both the awards were valid but Award No. 2 should be confined only to Khasra No. 182/2. In the result, the petition was dismissed. Hence the appeal.

The learned counsel for the appellants raised before us the following three points : (1) The entire acquisition proceedings were void inasmuch as the mandatory provision of s. 4 of the Act was not complied with. (2) After the Deputy Director of Colonisation, Rajasthan Canal Project, had been authorised to perform the functions of a Collector in the districts of Ganganagar, Bikaner and Jaisalmer, the Deputy Director of Colonisation, Suratgarh Division with headquarters at Hanumangarh, who was appointed earlier to perform the functions of a Collector under the Act within the local limits of the said jurisdiction, had become functus officio in regard to the instant acquisition and therefore, the proceedings conducted by him thereafter were null and void. (3) Under the Land Acquisition Act, the Collector thereunder could make only one award in respect of a notification and, therefore, when he made the first award in respect of the notification he became functus officio and therefore the second award made by him in respect of the same notification was void.

The learned Advocate-General of Rajasthan questioned the correctness of every one of the said contentions. We shall advert to his contentions in the relevant contexts.

Sections 4, 5, and 5A of the Act read :

> "Section 4. Publication of preliminary notification and powers of officers thereupon. -
>
> (1) Whenever it appears to the 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 Rajasthan Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.
>
> (2) Thereupon it shall be lawful for any officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen, -
>
> (a) to enter upon and survey and take levels of any land in such locality;
>
> (b) to dig or bore into the sub-soil;
>
> (c) to do all other acts necessary to ascertain whether the land is adopted for such purpose;
>
> (d) to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

(e) to mark such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Section 5. Report by Collector. - (1) The Collector or a Revenue Officer specially empowered by the Government in this behalf shall forward to the Government with his remarks a report on the result of the survey, if any, and other operations described in and taken under sub-section (2) of section 4.

(2) After considering the report, if any, submitted under sub-section (1) or, if no such report has been received, at any time after the issue of the notification under sub-section (1) of section 4, the Government shall publish a further notification in the Rajasthan Gazette, giving sufficient description of the land already notified under the said sub-section (1) of section 4 to enable it to be identified and stating the purpose for which it is or is likely to be needed, its approximate area and situation and, where a plan has been made of the land, the place where such plan may be inspected, and the Collector shall cause public notice to be given of the substance of the said further notification at convenient places on or near the land to be acquired.

Section 5A. Hearing of objections. - (1) Any person interested in any land which has been notified under section 5 as being needed or likely to be needed for public purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be."

The learned Advocate-General argued that a combined reading of ss. 4, 5 and 5A indicates that the direction in the second part of s. 4 that the Collector shall cause public notice of the substance of the notification to be given at convenient places in the said locality was only directory. He pointed out that s. 4 contemplated only a notification in general terms and that under s. 5(2), after the Collector ascertained the necessary particulars, the Government had to issue a fresh notification giving sufficient description of the land intended to be acquired along with a plan, if one had been made, and also to cause a public notice to be given of the substance of the said notification at convenient places on or near the land to be acquired. As two notices were contemplated by the Act - one in general terms and another with specifications - and as both the notices should be published and their substance should be notified at convenient places, the argument proceeded, that the direction to cause a public notice of the substance of the notification to be given at convenient places in the said locality under s. 4 was only directory, for the party would get under the later notification better particulars and thus he would not in any way be prejudiced.

This argument was not accepted by the High Court, and, in our view, rightly. The provisions of a statute conferring power on the Government to compulsorily acquire lands shall be strictly construed. Section 4 in clear terms says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. 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 s. 4 is obvious. Under sub-s (2) of s. 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. The fact that the owner may have notice of the particulars of the intended acquisition under s. 5(2) does not serve the purpose of s. 4, for such a notice shall be given after the appropriate officer or officers enter the land and submit the particulars mentioned in s. 4. The objects of the two sections are different : the object of one section is to give intimation to the person whose land is sought to be acquired, of the intention of the officer to enter his land before he does so and that of the other is to enable him to know the particulars of the land which is sought to be acquired. In the Land Acquisition Act, 1894 (Central Act 1 of 1894) there is no section corresponding to s. 5(2) of the Act. Indeed sub-s (2) of s. 5 of the Act was omitted by Act 15 of 1960 and s. 5A was suitably amended to bring the said provision in conformity with those of Central Act 1 of 1894. Whatever may be said on the question of construction after the said amendment - on which we do not express any opinion - before the amendment, ss. 4 and 5(2) were intended to serve different purposes.

Indeed, the wording of s. 4(2) of the Act leads to the same conclusion. It says, "thereupon it shall be lawful for any officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality.....". The expressions "thereupon" and "shall be lawful" indicate that unless such a public notice is given, the officer or his servants cannot enter the land. 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-s. (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 under 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 under s. 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void.

Reliance is placed by the learned Advocate-General on the decision of this Court in Babu Barkya Thakur v. The State of Bombay ([1961] 1 S.C.R. 128, 140.). There, the notification under s. 4 did not say specifically that the land sought to be acquired was needed for a public purpose, but it gave the necessary details in regard to the purpose for which the land was sought to be acquired. It was argued that the non-mention of the expression "public purpose" invalidated the notification. Dealing with the argument, this Court observed :

> "What was a mere proposal under s. 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under s. 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated under s. 5A or s. 40 necessarily after the notification under s. 4 of the Act."

In that case a formal defect was sought to be relied upon to invalidate the notice and this Court did not accept the contention. But it cannot be an authority for the position that, if a public notice of the notification was not given as prescribed by s. 4, it can be ignored. That would be re-writing the

section.

The decision of this Court in Smt. Somavanti v. The State of Punjab ([1963] 2 S.C.R. 774, 823, 822.) is also beside the point. The argument advanced therein was that the notification under s. 6 should succeed the notification under s. 4 and that it could not be legally published in the same issue of the Gazette. Dealing with that argument, this Court observed :

> "In the case before us the preliminary declaration under s. 4(1) was made on August 18, 1961, and a declaration as to the satisfaction of the Government on August 19, 1961, though both of them were published in the Gazette of August 25, 1961. The preliminary declaration as well as the subsequent declaration are both required by law to be published in the official gazette. But the law does not make the prior publication of notification under sub-s. (1) of s. 4 a condition precedent to the publication of a notification under sub-s. (1) of s. 6."

On the said ground the contention was rejected. This decision also has no bearing on the point raised before us. Indeed, the following observation made by this Court in the course of the judgment, to some extent, goes against the contention of the respondent :

> "A notification under sub-s. (1) of s. 4 is a condition precedent to the making of notification under sub-s. (1) of s. 6."

In the present case, the High Court, as we have expressed earlier rightly held that the provision for public notice was mandatory but disallowed the objection on the ground that it was rather belated. We find it difficult to appreciate the said reasoning. This is not a case where a party, who submitted himself to the jurisdiction of a tribunal, raised the plea of want of jurisdiction when the decision went against him; but this is a case where the appellants questioned the jurisdiction of the tribunal from the outset and refused to take part in the proceedings. Though the notification under s. 4 was published in the Rajasthan Gazette on February 14, 1957, Award No. 1 was made on December 11, 1959 and Award No. 2, on June 27, 1960. The appellants say that they came to know that the awards were made only on September 15, 1960, and they filed the petition on October 26, 1960. It cannot, therefore, be said that there was such an inordinate delay as to preclude the appellants from invoking the jurisdiction of the High Court under Art. 226 of the Constitution.

In this view, it is not necessary to express our opinion on the other two questions raised by the learned counsel for the appellants.

In the result, the appellants will be entitled to a writ of prohibition restraining the respondents from giving effect to the said two awards. The order of the High Court is set aside and the writ petition filed by the appellant is allowed with costs here and in the court below.

V.P.S.

Appeal allowed.

</html