

Narindrajit Singh And Ranjit Singh and Others

Vs

The State of U. P. and Others, Etc.

Civil Appeal Nos. 1192 and 1193 of 1967

(A. N. Grover, K. K. Mathew JJ)

24.10.1972

JUDGMENT

GROVER, J. -

1. These two appeals by certificate from a judgment of the Allahabad High Court must succeed on the short ground that the provisions of Section 4(1) of the Land Acquisition Act, 1894, were not complied with. In Civil Appeal 1192/67 a notification was issued under Section 4 of the Act on October 15, 1960, for acquisition of the land in dispute. Under Section 17(4) of the Act the provisions of Section 5-A were dispensed with. On October 28, 1960, the notification under Section 6 was issued. The appellant was directed to be present before the Collector in pursuance of a notice under Section 9 on December 4, 1960. On December 5, 1960, the appellant filed a petition under Article 226 of the Constitution challenging the acquisition proceedings. The petition was dismissed by a single judge of the High Court whose judgment was affirmed in Special Appeal by the Division Bench. Section 4(1) of the Act is in the following term :

"Whenever 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".

It is common ground that the Collector did not cause public notice of the substance of the notification to be given at convenient places in the locality where the land sought to be acquired was situated. In other words there was not compliance whatsoever with the second part of sub-section (1) of Section 4.

2. The law as settled by this court is that such notice under second part of Section 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated. We may refer in this connection to *Khub Chand and Others*. ((1967) 1 SCR 120 : AIR 1967 SC 1074) v. *The State of Rajasthan and Others*. In that case this court pointed out that the object is to give intimation to a person whose land is sought to be acquired of the intention of the officer to enter the land. Under Section 4(2) such a notice is a necessary condition for the exercise of the power of entry. Non-compliance with that condition makes the entry unlawful. In *State of Mysore v. Abdul Razak Sahib*, (C.A. 2361 of 1968, dated August 11, 1972 : (1973) 3 SCC 196) no notice as required by Section 4(1) of the Act were published in the locality till after the lapse of about 10 weeks. The question for consideration was whether the notification issued under Section 4 was a valid one. This court held that in the case of a notification

under Section 4 the law has prescribed that in addition to publication of a notice in the official gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied Section 4 of the Act cannot be said to have been complied with. The purpose behind such a notice was that interested persons should know that the land is being acquired so as to prefer any objections under Section 5-A which confers a valuable right.

3. Learned counsel for the State has, however, contended that according to these decisions it is only when the persons interested can file objection under Section 5-A that the public notice of the substance of the notification under Section 4(1) by the Collector would be necessary whereas in the present case the applicability of the provisions of Section 5-A have been dispensed with under Section 17(4) of the Act at the same time the notification under Section 4(1) was issued. It is wholly unnecessary that the interested parties should have the requisite information of the acquisition proceedings as they are not entitled to file objections under Section 5-A. We are unable to accept such a contention. In our judgment the provision 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 under Section 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 5-A. It lays down in unequivocal and clear terms that both things have to be simultaneously done under Section 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. The scheme of Section 4 is that after the steps contemplated under sub-section (1) have been taken the officer authorised by the Government can do the various acts set out in sub-section (2). It is not required under Section 17(4) of the principle Act that when a notification under Section 4(1) is issued the direction should be made simultaneously if the State Government so desires. Such an order or direction can be made even at a later stage. The effect of the direction made under Section 17(4) is that a declaration can be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4(1) and thereafter the Collector can take possession. But as mentioned before in a given case the appropriate Government may not consider it necessary to take action under Section 17(4) simultaneously with the notification under Section 4(1) and it may choose to invoke its provisions only at a later stage in view of any urgency that may crop up. Thus the construction of Section 4(1) cannot be made to depend upon any action or direction which the State Government may choose to make under Section 17(4) of the principle Act. In our opinion Section 4(1) has to be read as an integrated provision which contains two condition : the first is that the notification in the official Gazette must be published and the second is that the Collector has to cause public notice of the substance of such notification to be given. These two conditions must be satisfied for the purpose of compliance with the provisions of Section 4(1).

4. In the above view of the matter the appeals which involve the same point must succeed. They are consequently allowed and the acquisition proceedings in question in both the appeals shall stand quashed. The appellants will be entitled to costs in this court. One hearing fee.

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