Deepak Pahwa and Others

Vs

LT. Governor of Delhi and Others

Special Leave Petitions (Civil) Nos. 9013-9014 of 1984

(O. Chinnappa Reddy, A. P. Sen, E. S. Venkataramiah JJ)

22.08.1984

ORDER

O. CHINNAPPA REDDY, J. -

1. We are dismissing both the special leave petitions. But we propose to give our reasons for doing so, which we do not generally do, as our attention has been invited to some judgments of High Courts which we consider have been wrongly decided, proceeding as they do on a misunderstanding of some observations of this Court. A combined notification under Section 4 and 17 and a declaration under Section 6 of the Land Acquisition Act were published in the Delhi Extraordinary Gazette on June 18, 1984 in regard to the acquisition of certain lands in the Village Bijwasan for the purpose of construction of a 'New Transmitting Station for the Delhi Airport'. Public notice of the substance of the notification under Section 4 was alleged to have been given in the locality on July 17, 1984. It was also alleged that the matter was under correspondence between various departments of the Government, for nearly eight years before the notification and the declaration were published in the Gazette. A writ petition was filed in the Delhi High Court impugning the notification and the declaration on two grounds. The first was that the delay of 29 days in giving public notice of the substance of notification in the locality after the publication of the notification under Section 4 in the Gazette was fatal to the notification itself. The second was that the very circumstance that a period of eight years was spent in inter-departmental discussion showed that there was no urgency necessitating the invocation of Section 17(4) of the Land Acquisition Act to dispense with the enquiry under Section 5-A. The High Court dismissed the writ petition in limine and the present special leave petitions are directed against such dismissal. The very two questions which were raised before the High Court were again urged before us and reliance was placed by Dr. L. M. Singhvi, learned counsel for the petitioners, on Narinderjit Singh v. State of U.P. (AIR 1973 SC 552 : (1973) 1 SCC 157 : (1973) 2 SCR 698), Rattan Singh v. State of Punjab (AIR 1976 P&H 279 : ILR (1976) 2 Punj 550 : 78 Punj LR 545 (FB)), S. K. Gupta v. Union of India (AIR 1977 Del 209 : ILR (1977) 1 Del 659 : 1978 Rajdhani LR 1), Satish Kapur v. State of Haryana (AIR 1982 P&H 276 : 1982 Punj LJ 109 : 1982 Rev LR 231) and Chevuru Suryanarayana Reddy v. Government of Andhra Pradesh (AIR 1983 AP 17 : (1982) 2 APLJ (HC) 95 : (1982) 2 Andh LT 55 : (1982) 2 Andh WR 340). In addition, we have also perused Khub Chand v. State of Rajasthan (AIR 1967 SC 1074 : (1967) 1 SCR 120) State of Mysore v. Abdul Razak (AIR 1973 SC 2361 : (1973) 3 SCC 196 : (1973) 1 SCR 856), Mohd. Khaja v. Government of Andhra Pradesh (AIR 1982 NOC 270 : (1982) 2 Andh LT 188) and Sanjivaiah Nagar Depressed and Backward Classes Development Sangh v. District Collector, Hyderabad (AIR 1983 AP 142 : (1982) 2 Andh LT 223).

2. Section 4 of the Land Acquisition Act is as follows :

(1) 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.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen, -

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

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;

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 :

Provided that on persons shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

3. It may be noticed at once that Section 4(1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the Official Gazette or immediately thereafter. Publication in the Official Gazette an public notice in the locality are two vital steps required to be taken under Section 4(1) before proceeding to take the next step of entering upon the land under Section 4(2). The time factor is not a vital element of Section 4(1) and there is no warrant for reading the words 'simultaneously' or 'immediately thereafter' into Section 4(1). Publication in the Official Gazette and public notice in the locality are the essential elements of Section 4(1) and not the simultaneity or immediacy of the publication and the public notice. But since the steps contemplated by Section 4(2) cannot be undertaken unless publication is made and public notice given as contemplated by Section 4(1), it is implicit that the publication and the public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally contemporaneity may involve a gap of time and by the very nature of the things, the publication in the Official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by a long interval of time. What is necessary, is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time it may become necessary

to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to anyone.

4. We may consider here an argument which is usually advanced against any time gap between the publication in the Official Gazette and the public notice in the locality. Section 5-A provides that any person interested in any land which has been notified under Section 4(1) may object to the acquisition of the land or of any land in the locality within 30 days after the issue of the notification. It is, therefore, suggested that if the publication of the notification in the Gazette is not immediately followed by a public notice in the locality, it may lead to a denial to the person interested of an opportunity to object to the acquisition. We think, that this is too narrow an interpretation of Section 5-A. Notice to interested persons of a proposed acquisition of land is given by publicising a notification to the effect that land in any locality is needed or is likely to be needed for any public purpose in two ways - first, by causing publication of the substance of the notification to be given at convenient places in the locality. There is no reason to confine the period of 30 days prescribed by Section 5-A to one mode. The period of 30 days may be reckoned from either the date of publication in the Gazette or the date of public notice of the substance of the notification in the locality, whichever is later. In our view, that is the only reasonable and practical way of construing Section 5-A so as to advance the object of that provision, which is to provide a reasonable opportunity to interested persons to oppose the acquisition. We particularly notice that Section 5-A does not refer either to the date of publication in the Official Gazette or the date of public notice of the substance of the notification in the locality. It speaks of 'the issue of the notification'. This we consider is significant and, in the context, the words 'the issue of the notification' can only signify the completion of the prescribed process - rather, the twin process - of notifying the interested public of the proposed acquisition in the manner provided for by Section 4(1), that is by publication in the Official Gazette and giving public notice in the locality.

5. In Khub Chand v. State of Rajasthan (AIR 1967 SC 1074 : (1967) 1 SCR 120), this Court (Subba Rao, C.J. and Shelat, J.) ruled out the contention that public notice under Section 4(1) was not mandatory, and held that both publication in the Official Gazette and public notice in the locality were prerequisites to further action under Section 4(2) of the Land Acquisition Act. Non-compliance with either of the requisites would render the land acquisition proceedings void. In Narinderjit Singh v. State of Uttar Pradesh (AIR 1973 SC 552 : (1973) 1 SCC 157 : (1973) 2 SCR 698), the question was about the effect of the failure to cause public notice of the substance of the notification to be given at convenient places in the locality. The view taken in Khub Chand case (AIR 1967 SC 1074 : (1967) 1 SCR 120) was reaffirmed and it was further pointed out that the dispensing with of the enquiry contemplated by Section 5-A by the issuance of a notification under Section 17(4) would make no difference to the necessity for strict compliance with both the requisites of Section 4(1). It was said : (SCC p. 158, 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 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).

6. The observation that "both things have to be simultaneously done" has led some High Courts to conclude that simultaneity of publication in the Gazette and public notice in the locality is a mandatory condition of Section 4(1) and so to import an obsessive time factor. It is not so. What was apparently meant to be conveyed was that both things had to be done before the various acts set out in sub-section (2) could be undertaken. The question whether the publication in the Official Gazette and the public notice in the locality had to be simultaneous or whether there could be a gap of time was not an issue at all in that case. In State of Mysore v. Abdul Razak (AIR 1973 SC 2361 : (1973) 3 SCC 196 : (1973) 1 SCR 856), this Court referring to Section 4(1) held, "the section prescribed two requirements, namely, (1) a notification to be published in the Official Gazette, and (2) the Collector causing to given public notice of the substance of that notification at convenient places in the concerned locality", and, "unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied". The Court also added "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". This sentence along with the sentence "both things have to be simultaneously done under Section 4(1)" occurring in Narinderjit Singh case (AIR 1973 SC 552 : (1973) 1 SCC 157 : (1973) 2 SCR 698) have led to some confusion in some decisions of the High Courts. We have already explained the observation in Narinderjit Singh case (AIR 1973 SC 552 : (1973) 1 SCC 157 : (1973) 2 SCR 698). We are unable to read the observations in State of Mysore v. Abdul Razak (AIR 1973 SC 2361 : (1973) 3 SCC 196 : (1973) 1 SCR 856) as laying down any general principle that every time-gap between the publication in the Gazette and the public notice in the locality is fatal to the acquisition. Apart from the physical impossibility of synchronising the publication in the Gazette and the public notice in the locality, one can visualise a variety of circumstances which may bring about a time-gap between the two. There may be a breakdown of communications, there may be a strike or bandh as happened in one of the reported cases in Andhra Pradesh (Sadar Anjuman Ahmediyya, Muslim Mission v. State of A.P. (AIR 1980 AP 246 : (1980) 1 APLJ (HC) 400 : (1980) 2 Andh LT 32 : (1980) 2 Andh WR 109)) or there may be some other justifiable reason. This Court did not lay down any general principle that an acquisition would be regarded as void if the notification published in the Official Gazette was not accompanied or immediately followed by the public notice. What in fact appears to have been said was that a person interested in the property can be regarded to have had notice of the proposed acquisition if both the requirements of Section 4(1) are complied with whether simultaneously or one after the other. As we said no invariable rule was laid down that an acquisition would be regarded as void whenever there was a gap of time between the publication in the Gazette and the public notice in the locality.

7. We do not think that it is necessary to refer to the decisions of the High Courts in detail except to say that we consider Satish Kapur v. State of Haryana (AIR 1982 P&H 276 : 1982 Punj LJ 109 : 1982 Rev LR 231), Rattan Singh v. State of Punjab (AIR 1976 P&H 279, ILR (1976) 2 Punj 550 : 78 Punj LR 545 (FB)), Chevuru Suryanarayana Reddy v. Government of Andhra Pradesh (AIR 1983 AP 17 : (1982) 2 APLJ (HC) 95 : (1982) 2 Andh LT 55 : (1982) 2 Andh WR 340) and Mohd. Khaja v. Government of A.P. (AIR 1982 NOC 270 : (1982) 2 Andh LT 188) were wrongly decided and that Sanjivaiah Nagar Depressed and Backward Classes Development Sangh v. District Collector, Hyderabad (AIR 1983 AP 142 : (1982) 2 Andh LT 223) was rightly decided. In the last mentioned case there is a reference to several earlier Division Bench judgments and the judgment of the Full Bench which the learned Judges had followed. In particular, the learned Judges have referred to the following observations of a Full Bench of the Andhra Pradesh High Court in Shahnaz

Salima v. Government of A.P. (a decision which for some unknown reason has not been reported in any of the Law Reports) :

> There is no warrant for the contention that the publication in the Official Gazette and the publication of the substance of the notification at convenient places in the said locality should be simultaneous and be done precisely at the same time. If that were the intention of the Legislature, it could have said so. Something which is not in the section cannot be imported into it. The publication of the substance of Section 4(1) notification at convenient places in the locality is required out of anxiety of the Legislature to make it certain that it is brought to the notice of the affected persons. What all that is required is that before any thing is done as contemplated by sub-section (2), the substance of Section 4(1) notification must be published in the locality of the land. Several times it may prove to be a physical impossibility if simultaneous publication is insisted upon. It is not possible to think that the Legislature had provided for an impracticable and at the same time unnecessary task. What Section 4(1) requires is that Section 4(1) notification must be published in the Official Gazette and its substance at convenient places in the said locality.

We agree with these observations.

8. The other ground of attack is that if regard is had to the considerable length of time spent on inter-departmental discussion before the notification under Section 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the enquiry under Section 5-A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void. We however wish to say nothing about post-notification delay. In Jage Ram v. State of Haryana (AIR 1971 SC 1033 : (1971) 1 SCC 671), this Court pointed out the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. In Kasireddy Papaiah v. Government of Andhra Pradesh (AIR 1975 AP 269 : (1975) 1 APLJ 70), it was held, "..... delay on the part of tardy officials to take the further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency". In the result both the submissions of the learned counsel for the petitioners are rejected and the special leave petitions are dismissed.

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