

Mohd. Ali and Others

Vs

State of U.P. and Others

Civil Appeals Nos. 2313-14 of 1977

(K. Ramaswamy, Faizanuddin JJ)

19.09.1996

ORDER

1. These appeals by special leave arise from the order of the Division Bench of the Allahabad High Court made on 20-5-1976 in WPs Nos. 792 and 5032 of 1975 and batch. The appellant challenged, along with yet other batch, the validity of the notification published under Section 4(1) on 12-10-1974 and declaration under Section 6 dated 28-9-1974 contending that the declaration under Section 6 could not be made until the notification under Section 4(1) was published in accordance with law. Therefore, the notification is bad in law. The High Court noted, as a fact, that the notification under Section 4(1) and the declaration under Section 6 were simultaneously published on 12-10-1974. There is no bar on the Government making the order that before publication of (sic notification under) Section 4(1) declaration under Section 6 should also be published. It is not in dispute that the State had in exercise of its power of eminent domain under Section 17(4) of the Act, dispensed with the enquiry under Section 5-A. It is settled law that simultaneous publication of the notification under Section 4(1) and the declaration under Section 6 was valid in law prior to the coming into force of the Amendment Act 68 of 1984. It is also seen that in relation to the State of Uttar Pradesh, the Land Acquisition (Amendment) Act 5 of 1991 has been brought into force w.e.f. 17-2-1991 and, therefore, in relation to the State of U.P. it is now settled law that when the State exercises the power of eminent domain and in exercise of the power under Section 17(4) dispensing with the enquiry under Section 5-A to acquire the land under Section 4(1) the State is entitled to have the notification under Section 4(1) and the declaration under Section 6 simultaneously published so as to take further steps as required under Section 9 of the Act, i.e., issuance of the notice and taking possession thereof under Section 17(2) of the Act. Thereafter, the land stands vested in the State free from all encumbrances. In view of the urgency, the Government exercised power of eminent domain and dispensed with the enquiry under Section 5-A; we do not find any illegality in the action taken by the respondents in having the notification under Section 4(1) and the declaration under Section 6 simultaneously published. It is then sought to be contended that the appellant has a small extent of the land and other lands have been excluded from acquisition and, therefore, it is arbitrary exercise of power. He also seeks to contend the procedural infirmities, but unfortunately none of the contentions have been pressed before the High Court, though they might have been raised in writ petition. Under those circumstances, we cannot permit the appellants to argue these points afresh which are purely questions of fact to be verified on the basis of the material as the State had no opportunity to deal with them.

2. The appeals are accordingly dismissed but, in the circumstances, without costs. The Land Acquisition Officer is directed to pass the awards within a period of six months from the date of the receipt of the order of this Court.

