

BOMBAY HIGH COURT

Ajitsingh

Vs.

State of Maharashtra

Special Civil Appln. No. 377 of 1969

(Mody and Khan, JJ.)

16.11.1970

JUDGMENT

Mody. J.

1. This is a petition praying for a writ under Article 226 of the Constitution of India quashing certain notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), The State of Maharashtra the Commissioner, Nagpur Division, the Collector. Chanda and the Special Land Acquisition Officer, Chanda are the respondents.

2. The petitioner by a purchase deed purchased a land khasra No.198/1 of Ballarpur, taluka and district Chanda admeasuring 2.45 acres from one Sadashiv Krishnaji Khanke. The deed is dated 29th January 1966 and it was registered on the same day. On the same day, the petitioner gave intimation of his purchase to the Patwari of Ballarpur to effect mutation entries. It is stated in the petition and not denied in the counter-affidavit that such a mutation entry was made towards the end of 1967, the exact date is not mentioned, but we are informed across the Bar was 16th November 1967.

3. A notification under Section 4 of the Act was published in the Maharashtra Government Gazette dated 1-2-1968 for acquisition for the public purposes mentioned in the notification. Amongst the lands sought to be acquired by the notification were 47.250 sq. ft. out of the petitioner's said land bearing khasra No.198/1. On 22nd August, 1968, a notification was published in the Maharashtra Government Gazette under Section 6 of the Act and amongst the lands acquired thereunder and the lands mentioned therein were 47.045 sq. ft. out of the petitioner's land bearing khasra No. 198/1. In the second week of November 1968, the petitioner received a notice from the Special Land Acquisition Officer, respondent No.4, which states that it is a notice under clause (8) of Section 9 of the Act. The notice bears no date. It gave notice to the petitioner to appear before the fourth respondent on 26th November 1968. It is the petitioner's

case that it was from this notice that the petitioner came to know for the first time about the said acquisition proceedings in respect of his said land. The petitioner appeared before the fourth respondent in pursuance of the said notice and raised various contentions. One of such contentions was that he had received no notice or an individual notice after the notification under Section 4 was issued and he had therefore been unable to raise objections as contemplated by Section 5-A of the Act and that the notification under Section 6 having been issued, in such circumstances was invalid.

4. The petitioner has raised several contentions in the petition in support of his case that the notifications under Sections 4 and 6 are invalid. At the hearing, the petitioner has, however, confined his case to one argument. That argument is that it is compulsory that an individual notice should have been served on the petitioner, that no such notice was served on him, that the petitioner, therefore, got no opportunity whatsoever to raise objections as contemplated by Section 5-A, that, therefore, the notification under Section 6-A has not been validly issued and lastly that not only the notification under Section 6 in so far as his land is concerned be set aside but that the notification under Section 4 also in so far as it affects his land should be quashed and set aside. In view of the fact that only this contention has been urged by the petitioner, it is unnecessary for us to refer, and we, therefore, do not refer, to the other facts and contentions contained in the petition and in the counter-affidavit filed on behalf of the respondents. It is stated in the counter-affidavit that the petitioner had urged all his contentions before the fourth respondent when he appeared in answer to the said notice under Section 9. It is, however, not disputed on behalf of the respondents that the objections which the petitioner can urge under Section 5-A could not in law have been urged at the stage when the petitioner appeared in answer to that notice under Section 9, that is, after the Section 6 notification was issued. It is, not disputed that an opportunity to urge objections under Section 5-A must precede the publication of a notification under Section 6 and that they cannot be urged after such a notification is issued. It is clear that the mere fact that the petitioner attempted to urge or in fact urged objections which could have been urged under Section 5-A at the later stage after the Section 6 notification was issued, cannot prejudice the petitioner's present contention about invalidity of the notification under Section 6 on the ground of want of individual notice before the notification under Section 6 was issued. But what has to be decided is whether it was obligatory to serve the individual notice on the petitioner as canvassed by the petitioner (1) before the notification under Section 6 was issued.

5. In paragraph 9 of the counter-affidavit, it has been stated:

"It is submitted that the record-of-right was not corrected till 28-8-1967, on which date, its copy was supplied by Patwari. Notice was then issued to the petitioner and his objections were duly considered by respondent No.4, as stated hereinbefore."

It may be noted that an extract from the relevant record-of-rights as annexed as annexure R-1 to the counter-affidavit shows the name of the petitioner's vendor Sadashiv Krishnaji and not that of

the petitioner against the land with which we are concerned in this petition. It should, however, be noted that under the signature of the Patwari "S.S. Dhakate" who certified the extract, there appears the date "28-8-1967", which is the date on which the Patwari issued the certified copy of the extract and it is this date which is referred to in paragraph 9 of the counter-affidavit. The words "notice was then issued to the petitioner" are capable of creating a little misunderstanding because of the use of word "then". The notice here referred to was not issued shortly after 28th August, 1967. Mr. Palshikar, the learned counsel for the respondents, stated that the reference to the notice here was to the said notice under Section 9, which was received by the petitioner in the second week of November 1968. The mutation entry was already made as stated earlier, towards the end of 1967.

6. The contentions urged on behalf of the petitioner divide themselves into three groups as under:

(i) to give an effective opportunity to the petitioner to be heard under Section 5-A of the Act. Service on the petitioner of an individual notice of the notification under Section 4 was mandatory but that in this case, although the said purchase-deed in favour of the petitioner was not only registered but the necessary mutation was effected in the record-of-rights long prior to the issue of the notification under Section 4, no such individual notice of the Notification under Section 4 was served on the petitioner.

(ii) service of such individual notice on the owner of the land sought to be acquired being a pre-requisite to the issue of a notification under Section 6, the result is that if such individual notice is not served, the notification under Section 6 is invalid.

(iii) if the notification under Section 6 is invalid, the efficacy of the notification under Section 4 on which the former is based gets exhausted, and no second or further notification under Section 6 can be issued on the basis of the same notification under Section 4. Sub-section (1) of Section 4 provides.

"Whenever it appears to the (appropriate Government) (or the Commissioner) 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 clear that what sub-section (1) of Section 4 requires is that the notification under the sub-section must, firstly be published in the Official Gazette and, secondly, the Collector must cause public notice of the substance of such notice to be given at convenient places in the locality in which the land intended to be acquired is situate. Sub-section (1) of Section 5-A provides:

"Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a 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 and in the locality, as the case may be."

Neither Section 4 nor Section 5-A contains any provision for the service of an individual notice on any person interested in the land sought to be acquired by a notification issued under Section 4. However, the relevant part of sub-section (1) of Section 55 of the Act provides:

"The (appropriate Government) shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement and may from time to time alter and add to the rules so made."

As appearing from the Manual of Land Acquisition for State of Bombay, written by F.G. Hartnell Anderson and published by the Government of Maharashtra in the edition of 1970, the State Government has framed certain Rules in respect of Section 5-A in exercise of the powers so conferred by Section 55. Rule No.1 of those Rules provides as under:

"Whenever any notification under Section 4 has been published but the provisions of Section 17 have not been applied; and the Collector has, under Section 4(1) issued notice to the parties interested; and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged under Section 5-A (2): Firstly, the Collector shall record the objection in his proceedings; secondly, the Collector shall consider whether the objection is admissible according to these rules."

7. This Rule 1 forms part of the statutory Rules made by the State Government in exercise of the statutory power delegated to it under Section 55(1). The Rules are framed for the guidance of the officers as stated in Section 55(1). The Rules, therefore, have the force of law. The provision in the said Rule 1 that "the Collector has under Section 4(1) issued notices to the parties interested" clearly indicates that for the purpose of giving an adequate opportunity to the owner of land in respect of which a notification under Section 4(1) has been issued notice must be given to him as a "party interested" in that land. In other words, this provision for giving an individual notice to the owner or other party interested in the land, contained in Rule 1 is by the Rule made an additional mode of publishing the notification under Section 4. It is in addition to the publication in the Official Gazette and the publication by the Collector as required under sub-section (1) of Section 4 and all these three kinds of publications stand on an equal footing. The additional provision of publication as required by Rule 1 is obviously required to be made for obvious reasons. Acquisition of land under the Act is for public good and in the public interest and the owner of land even if unwilling to part with it, is compelled by legislation to part with it. It is to provide him a fair opportunity to urge his objections under Section 5-A. Rule 1 provides that an individual notice must be given because a general public notice as provided under Section 4 (1), though it would amount to a constructive notice to the owner, was not thought to be enough or fair as it may not in fact come to the notice of the owner. Mr. Palshikar, the learned counsel for the respondents, did not dispute that this rule does require individual notices to be served on all persons interested in the land covered by the notification under Section 4 at the date of such

notification. He, however, contended that this provision is only directory and not mandatory with the result that even if a person interested in the land happens not to have been served with such an individual notice, it would not invalidate the notification under Section 6 issued thereafter. He did not dispute that the non-publication in the Official Gazette and by the Collector as required under sub-section (1) of Section 4 would render the notification under Section 6 invalid. In our view, because the effect of the publication of the notifications under Sections 4 and 6 would be to compulsorily deprive the owner of his land even against his will, the requirement of the Rule of service of individual notice contemplated by the said Rule 1 must stand on the same footing as the other two modes of publication mentioned in sub-sec. (1) of Section 4 and it is, therefore, mandatory and not merely directory. All the said three forms of publishing the notification under Section 4 are a pre-condition to the issue of a notification under Section 6. The non-service of an individual notice as contemplated by Rule 1 would render the notification issued under Section 6 invalid because it would not give proper opportunity to the person interested to urge his objections as contemplated by Section 5-A.

8. In the case before us, it is common around that no individual notice as contemplated by Rule 1 was served upon the petitioner before the notification under Section 6 was issued. Considerable time prior to the issue of the notification under Section 4 the purchase-deed in favor of the petitioner was not only registered but a mutation entry was made in the record-of-rights against the land with which we are concerned in this petition. What appears to have happened is that for a considerable time after the mutation entry was effected, it was not brought to the notice of the authority concerned and that for want of inquiry in that behalf the officer who issued the notification under Section 4 did not know that the petitioner had purchased the land. The result was that an individual notice was in fact served as required by Rule 1 but it was served on the vendor who was no longer interested in the land after he effected the sale-deed in favour of the petitioner. As a matter of fact at the date of such service the vendor himself was dead and the notice was accepted by the son of the vendor. But whatever be the reason why such an individual notice was not served on the petitioner, the fact remains that he was not served, Mr. Palshikar pointed out that as a matter of fact, after the notification under Section 6 was issued, the petitioner did come to know of the acquisition proceedings and did urge all his objections including those objections which he could have urged under Section 5-A and that he was heard. In our opinion, the correct stage at which, the objections under the provisions of Section 5-A are to be urged is before the notification under Section 6 is issued. The petitioner had no opportunity to do so for want of service of an individual notice upon him. The mere fact that the petitioner did urge those objections and was heard after the notification was issued under Section 6 would not prevent the notification under Section 6 being held invalid. We, therefore, hold that the impugned notification under Section 6 was invalid for want of individual notice contemplated by Rule 1 having been served upon the petitioner before such notification was issued.

9. The last contention of the petitioner is that if the notification under Section 6 is held to be invalid, it must be declared that the notification under Section 4 has exhausted itself and is not

available for the issue of any second or subsequent notification under Section 6 based upon the same notification under Section 4. In this connection, reliance has been placed by Mr. Madkholkar, the learned counsel for the petitioner, on the Judgment of the Supreme Court in the *State of Madhya Pradesh v. Vishnu Prasad Sharma*¹, In that case after a notification was issued under Section 4 of the Act, successive notifications were issued from time to time under Section 6 in respect of different pieces of lands covered by that notification under Section 4 and the validity of the notifications under Section 6 subsequent to the first notification under Section 6 was under challenge. The Supreme Court in its judgment considered various relevant provisions of the Act and a majority of the Court held that after the first notification was issued under Section 6, the efficiency of the notification under Section 4 was exhausted and no subsequent notification could be issued under Section 6 in respect of any land although it may fall under the notification issued under Section 4 and that such further and subsequent notifications were invalid. We reproduce below some material portions from that judgment of the majority of the Bench.

¹ AIR 1966 SC 1593

"It seems to us clear that once a declaration under Section 6 is made, the notification under Section 4(1) must be exhausted for it has served its purpose. There is nothing in Sections 4, 5-A and 6 to suggest that Section 4(1) is a kind of reservoir from which the Government may from time to time draw out land and make declaration with respect to it successively. If that was the intention behind Sections 4, 5-A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that Section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adopted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the Government what particular land out of that locality it needs. This is followed by a declaration under Section 6 specifying the particular land needed and that in our opinion completes the process and the notification under Section 4(1) cannot be further used thereafter. At the stage of Section 4 the land is not particularized but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularized and thereafter it seems to us that the notification under Section 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire [Section 4(1)] to the declaration under Section 6 unmistakably leads one to the reasonable conclusion that when once a declaration under Section 6 particularizing the area out of the area in the locality specified in the notification under Section 4(1) is issued, the remaining non-particularized area stands automatically released. In effect the scheme of these three sections is that there should be first a notification under Section 4(1) followed by one notification under Section 6 after the Government has made up its mind which land out of the locality it requires."

In that case it was contended that where the land is required for a small project and the area is not large, the Government may be able to make up its mind once for all what land it needs, but

whereas in that case the land was required for a large project requiring large area of land, the Government may not be able to make up its mind all at once and it should, therefore, be held that issuance of successive notification under Section 6 based on the same notification under Section 4 was not invalid. The Supreme Court, however, observed as under:

"It is urged however that where the land is required for a small project and the area is not large the Government may be able to make up its mind once for all what land it needs, but whereas in the present case land is required for a large project requiring a large area of land Government may not be able to make up its mind all at once. Even if it be so there is nothing to prevent the Government from issuing another notification under Section 4 followed by a notification under Section 6. As we have said before, the Government's power to acquire land in a particular locality is not exhausted by issuing one notification under Section 4(1) followed by a notification under Section 6. The interpretation which has commended itself to us therefore does not deprive the Government of the power to acquire more land from the same locality if later on it thinks that more land than what has been declared under Section 6 is needed. It can proceed to do so by a fresh declaration under Section 6. Such a procedure would in our opinion be fair to all concerned: it will be fair to Government where the prices have fallen and it will be fair to those whose land is being acquired where the prices have risen. Therefore as we read these three sections we are of opinion that they are integrally and intimately connected and the intention of the legislature was that one notification under Section 4(1) should be followed by survey under Section 4(2) and objections under Section 5-A and thereafter one declaration under Section 6. There is nothing in Sections 4, 5-A and 6 which supports the construction urged on behalf of the appellant and in any case it seems to us that the construction which commends itself to us and which has been accepted by the High Court is a fair construction keeping in view the background to which we have referred. Even if two constructions were possible, which we think is not so, we would be inclined to the construction which has commended itself to us because that construction does not restrict the power of the Government to acquire land at any time it deems fit to do and at the same time works fairly towards persons whose land is to be acquired compulsorily".

These observations have been made by the Supreme Court in a case which concerns issuance of successive notifications from time to time under Section 6 based upon the same notification under Section 4. The judgment is, therefore, of necessity concerning such a state of facts. In the case before us, only one notification under Section 6 was issued based upon the notification under Section 4. We have held the notification under Section 6 to be invalid but the above observations made by the Supreme Court in respect of successive notifications under Section 6 do, in our opinion, apply with equal force to the facts as existing in the case before us because the reasoning and the ratio appearing in this judgment of the Supreme Court can apply to the facts before us. Even an invalid notification under Section 6 would exhaust the efficacy of the notification under Section 4 on which it is based. We, therefore, uphold the petitioner's

contention and hold and declare that as the notification under Section 6 had in fact been issued, though it has been held by us to be invalid, the efficacy of the notification under Section 4 has been exhausted and no second or further notification can be issued on the basis of the said notification under Section 4. We, however, want to make one thing clear. The notification under Section 6 relates to lands other than the land of the petitioner with which this petition is concerned. Our judgment and declaration is confined only to the land of the petitioner and our judgment and declaration in no way relates to or concerns the other lands mentioned in the said notification under Section 4

10. We, therefore, declare the notification under Section 6 in so far as it relates to the petitioner's land khasra No.198/1 of Ballarpur to be illegal and set it aside to that extent. We further declare that the efficacy of the notification under Section 4 in so far as it relates to the petitioner's said land has been exhausted and no further or subsequent notification under Section 6 can be issued on the basis of the said notification under Section 4. As the costs must follow the event, we order the respondents to pay the petitioner's costs of this petition.

Petition allowed.