

Muniveerappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Mar-07-1991

Reported in : 1991(2)KarLJ356

Judge : K.A. Swami and ;D.R. Vithal Rao, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227; Bangalore Development Authority Act, 1976 - Sections 17, 17(1), 17(2), 17(3), 17(5) and 17(6)

Appeal No. : W.P. No. 17707 of 1986

Appellant : Muniveerappa

Respondent : State of Karnataka

Advocate for Def. : R.S. Hegde, Adv. for Respondents 2 and 3

Advocate for Pet/Ap. : B. Veerabhadrappe, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.A. Swami, J.

1. In this Petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the Notification bearing No. A6HR.S.LAO.(S) 201/82-83 dated

15-7-1982 published in the Official Gazette of 26-8-1982 issued under Sub-sections (1) and (3) of Section 17 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as 'the Act') notifying that the lands stated in the schedule to the Notification are proposed for acquisition for the purpose of Nagarabhavi Layout. The petitioner has also sought for quashing the Notification bearing No. HUD 249 MNX 85 dated 16-8-1985 published in the Official Gazette of 7-11-1985 issued under Section 19(1) of the Act.

2. Under the aforesaid Notifications the lands in question bearing S.No. 103 measuring 4 acres 13 guntas of Nagarabhavi Village, Yeshwanthpur Hobli, Bangalore North Taluk, along with several other lands are acquired for the aforesaid purpose. The petitioner claims to be the owner of the land in question.

3. It is contended on behalf of the petitioner that the Notification Annexure-A was not published in three consecutive issues of the Official Gazette and was not affixed in some conspicuous places in the offices of the B.D.A., the Deputy Commissioner, the Corporation and in other places as considered necessary by the B.D.A; that the petitioner was not served with notice as required by Sub-sections (5) and (6) of Section 17 of the Act; that even if it is held that there was service of notice as required by Sub-section (5) of Section 17 of the Act, the said notice was not served within 30 days from the date of publication of the Notification produced as Annexure-A; that the alternative mode of service adopted by the Authority was not in accordance with Sub-section (6) of Section 17 of the Act. It is also contended that Sub-sections (3) and (5) of Section 17 of the Act are mandatory and non-compliance with them has vitiated the acquisition. Lastly, it is contended that Sub-section (5) of Section 17 of the Act which is in pari materia with Sub-section (3) of Section 15 of the Karnataka Improvement Boards Act, 1976 has been interpreted by this Court in W.P.No. 9277/1984, Halappa v. State of Karnataka DD 22-11-1990 as mandatory, therefore, non-compliance with Sub-section (5) of Section 17 of the Act must be held to have vitiated the acquisition.

4. On the contrary, it is contended on behalf of the respondents that this Court in VENKATARAMAIAH v. STATE OF KARNATAKA, ILR 1987 KAR 2995 has examined the records of the acquisition in question and has held that Sub-sections

(2) and (3) of Section 17 of the Act have been complied with; that the provisions of Sub-section (5) relating to service of notice within a period of 30 days are not mandatory and the same are directory; that as long as the notice is served upon the petitioner, it is sufficient. Hence, it is contended on behalf of the respondents that the acquisition is not vitiated in any manner.

5. In the light of the aforesaid contentions, the following points arise for consideration;

1. Whether the notification issued under Sub-section (1) of Section 17 of the Act was published in three consecutive issues of the Official Gazette as required by Sub-section (3) of Section 17 of the Act?

2. Whether the service of notice effected by leaving the notice on the land in question beyond the period of 30 days from the date of publication of the Notification under Section 17(3) of the Act was a valid service of notice?

6. Point No. 1:- In Venkataramaiah v. State of Karnataka the very same Notification in question acquiring the lands in question along with several other lands by the Bangalore Development Authority was challenged. Point No. 1 framed in that Decision was to this effect:

'whether the acquisition is liable to be set aside on the ground that there is non-compliance with Section 17 of the Act?'

This Court found that the requirement of Sub-sections (2) and (3) of Section 17 of the Act had been complied with. That finding is a finding of fact pertaining to the acquisition in question. Sub-section (2) of Section 17 states that a copy of the Notification contemplated under Sub-section (1) of Section 17 of the Act shall be sent to the Corporation which shall, within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government as provided in Section 17 of the Act and any representation which the Corporation may think fit to make with regard to the Scheme it can make. Sub-section (3) of Section 17 of the Act states that the authority shall also cause a copy of the said Notification to be published in three consecutive issues of the Official Gazette and affixed in some

conspicuous part of its own office, the Deputy Commissioner's Office, the Office of the Corporation and in such other places as the Authority may consider necessary.

7. The question for consideration is, when once this Court goes into this aspect of the matter at the instance of some of the persons interested in the lands proposed for acquisition and records a finding that Sub-sections (2) and (3) of Section 17 of the Act have been complied with, whether it would be necessary for this Court to go into that question again and again at the instance of the other persons whose lands also have been acquired under the aforesaid Notification. Of course, the principles of *res judicata* will not apply to the case because the petitioners are not the parties to the Decision nor they are claiming interest in the lands in question through the persons who were the petitioners in Venkataramaiah's case. But the interest of Justice and the very efficacy, value and strength of our Judicial System depends on the confidence of the public in the Judicial proceedings require that when once this Court examines the proceedings and records a finding regarding the regularity of the proceedings, unless review of that Decision is sought for, as it is always open to the persons affected by that Decision to seek review of that Decision or it is set aside by the Supreme Court, it would not be just and proper to go into that aspect of the matter once again. Of course if it is a question of law, it would stand completely on a different footing because on a question of law if one Bench takes a particular view and another Bench differs from that view, it is always open to the Bench which differs to over-rule the view of the smaller Bench if it is a larger Bench; if it is a Bench of co-ordinate jurisdiction to refer to a larger Bench. But the finding recorded on a question of fact cannot be gone into in a subsequent proceeding pertaining to the same matter even at the instance of a different party unless that party seeks review of that finding by way of another Writ Petition making the parties to the earlier Writ Petition in which such a finding is recorded, as parties to the subsequent Writ Petition. Otherwise such a course would lead to incongruous results. It will result in shaking the confidence of the public in the Judicial proceedings. If the petitioners are so much sure of the fact that requirements of Sub-sections (2) and (3) are not complied with, nothing prevented them to seek review of the Decision in Venkataramaiah's case in so far it affected them, as such a course was open to them to do so by way of an independent Writ Petition. (See: SHIVDEO SINGH AND ORS. v. STATE OF

PUNJAB AND ORS., AIR 1963 SC 1909). We may also point out that following the Decision in Venkataramaiah's case, a learned Single Judge of this Court in G. CHANNARAYAPPA v. STATE OF KARNATAKA AND ORS., W.P. No. 13042 of 1986 DD 23-11-1987 has held as follows:

'The petitioner claiming to be the owner of certain land situated at Nagarbhavi village Yeshwanthpur Hobli, Bangalore North Taluk, has sought for quashing the preliminary notification dated 15-7-1982 published in the Karnataka Gazette dated 26-8-1982 and the final notification published in the Karnataka Gazette dated 7-11-1985 issued by respondent-1 regarding acquisition of the said land.

2. In VENKATARAMAIAH v. STATE OF KARNATAKA (ILR 1987 Karnataka 2995), this Court has upheld the very same notifications by negating the very contentions raised in this petition. Following the said decision and for the very same reasons stated therein, this Writ Petition has to fail, and it is accordingly dismissed. No costs.'

Therefore, we do not consider it necessary to re-examine the contentions raised by the petitioner that the requirements of Sub-sections (2) and (3) of Section 17 of the Act have not been complied with, in the light of the Decision of this Court in Venkataramaiah's case even though that Decision is rendered by a learned Single Judge of this Court. Point No. 1 is answered accordingly.

8. Point No. 2:- Sub-sections (5) and (6) of Section 17 of the Act are as follows:-

'17(5). During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the focal authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

17(6). The notice shall be signed by or by the order of the Chairman, and shall be served.

(a) by personal delivery of, if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building; or

(b) by leaving the same at the usual or last known place of abode or business of such person; or

(c) by registered post addressed to the usual or last known place of abode or business of such person.'

It is contended by Sri Veerabhadrappe, learned Counsel for the petitioner that in the instant case even if the notice is taken to have been served upon the petitioner it is served beyond the period of 30 days from the date of publication of the Notification issued under Sub-section (1) of Section 17 of the Act in the Official Gazette, therefore the acquisition proceeding is vitiated because Sub-section (5) of Section 17 of the Act is mandatory. It is the contention of the learned Counsel that the Notification must be served within 30 days from the date of publication of the Notification in the Official Gazette. In the instant case, as contended by the petitioner the Notification issued under Sub-section (1) of Section 17 of the Act was published in the Official Gazette on 26-8-1982, therefore, on or before 27-9-1982, a notice ought to have been served upon the petitioner.

9. As per the records produced by the learned Counsel for the B.D.A. a notice dated 1-9-1982 was tried to be served on the petitioner on 29-10-1982. But, it was found that the petitioner was not residing in the village of Nagarabhavi and his present address was also not known therefore, service of the said notice was effected on the land. A copy of the notice contained in the records contains an endorsement to that effect and also bears signatures of witnesses for having effected the service of notice on the land on 29-10-1982. Thereafter, the Revenue Inspector who effected service of notice has submitted the same to the B.D.A. on 22-11-1982. Therefore, as per the records the service of notice was effected on the land on 29-10-1982. The contention of the petitioner that service of notice on

the land is not in accordance with the provisions of Sub-section (6) of Section 17 of the Act will be considered after we consider the contentions of the petitioner having a bearing on Sub-section (5) of Section 17 of the Act. The contention of the petitioner in relation to Sub-section (5) of Section 17 of the Act that the notice should be served within 30 days from the date of publication of the Notification in the Official Gazette issued under Sub-section (1) of Section 17 of the Act, in substance amounts to contending that the provisions of Sub-section (5) of Section 17 of the Act both in relation to service of notice and also the period within which such service of notice should take place are mandatory and non-compliance with the same vitiates the acquisition, The learned Counsel has placed reliance on the Decisions of the Supreme Court reported in LAND ACQUISITION OFFICER, HYDERABAD URBAN DEVELOPMENT AUTHORITY, HYDERABAD, A.P. v. MOHD. AMRI KHAN AND ORS., : (1986)1SCC3 and C.K. NARAYANA CHARY AND ORS. v. POTHEPALLI ASHANNA AND ORS., : AIR 1986 SC317 . The learned Counsel has also placed reliance on a Decision of a Single Judge of this Court in CHAYADEVI v. STATE OF KARNATAKA, : ILR 1988 KAR3125 . On the contrary, learned Counsel appearing for the B.D.A. has placed reliance on a Division Bench Decision of this Court in M.S. JAFFER SHERIFF v. CITY IMPROVEMENT TRUST BOARD, : ILR 1990 KAR3746 .

10. In Mohd. Amri Khan's case, the Supreme Court considered Sub-section (1) of Section 4 of the Land Acquisition Act as it was applicable to the State of Andhra Pradesh with effect from 12th September 1975. The provision as applicable to Andhra Pradesh contained in Sub-section (1) of Section 4 of the Land Acquisition Act considered by the Supreme Court was as follows:

'Whenever it appears to the appropriate Government 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, within forty days from the date of publication of such notification, cause public notice of the substance of such notification to be given at convenient places in the said locality.'

The Supreme Court has held as follows:

'6. The learned Counsel appearing on behalf of the appellant however made a valiant but futile attempt to escape from the consequence of retrospective amendment of Sub-section (1) of Section 4 by contending that Section 2 of the Amending Act which introduced the amendment in Sub-section (1) of Section 4 should not be read as having retrospective effect, but should be construed as prospective in operation. The argument urged on behalf of the appellant was that the Legislature enacted the Amending Act for the purpose of validating acquisitions made after September 12, 1975 which were liable to be declared invalid on account of the Full Bench Judgment of the Andhra Pradesh High Court in W.P.5722 of 1981 and other allied Writ Petitions and it could never have been the intention of the Legislature to invalidate acquisitions which were valid when made. The Legislature, contended the learned Counsel, proceeded on the assumption that the Full Bench Judgment of the Andhra Pradesh High Court represented the correct law on the subject and it was on that assumption that the Amending Act was enacted by the Legislature. If, on the Full Bench Judgment of the Andhra Pradesh High Court being reversed by this Court in Deepak Pahwa case [Deepak Pahwa v. Lt. Governor of Delhi, : [1985]1SCR588 , Reversed], the assumption made by the Legislature turned out to be incorrect it was found that the Legislature proceeded on an erroneous view of the law in enacting the Amending Act, the Amending Act, argued the learned Counsel, must be considered superfluous; and not the Amending Act, but the correct law as it prevailed prior to the Amending Act must be applied. This argument urged on behalf of the appellant is wholly specious and must be rejected. It is an argument of despair and it has only to be stated in order to be rejected. It is impossible to accept the proposition that because the Amending Act proceeded on an erroneous view of the law, it must be considered superfluous and must be deprived of all effect. Whatever be the reason for which the Legislature enacted the Amending Act and here the reason no doubt was to set at naught the effect of the Full Bench Judgment of the Andhra Pradesh High Court - the Amending Act is on the statute book and is in force with effect from September 12, 1975 and it must be given effect according to the plain natural meaning of its words. Sub-section (3) of Section 1 of the Amending Act provides in the clearest terms, not susceptible of any ambiguity or doubt that it shall be deemed to have come into force with effect

from September 12, 1975. It does not carve out any exception in relation to Section 2 of the Amending Act and that Section must also therefore, according to the clear and express mandate contained in Sub-section (3) of Section 1, be deemed to have come into effect on September 12, 1975. It is true that if, in case of a notification under Section 4 Sub-section (1) issued after September 12, 1975, there is a gap of more than forty days between the date of its publication in the Official Gazette and the date when public notice of its substance was given in the locality. Sub-section (1) of Section 4 as amended with retrospective effect from September 12, 1975 would render such notification invalid. But that can be no ground for denying to the amendment in Sub-section (1) of Section 4 retrospective effect, which Sub-section (3) of Section 1 of the Amending Act expressly directs that it shall have. There is in fact to our mind no inconsistency between the mandate of Sub-section (1) of Section 4 and the law as declared by this Court in Deepak Pahwa case. This Court said in Deepak Pahwa case that there should not be such a large gap between publication in the Gazette and public notice in the locality as would be indicative of break in the continuity of action. What the amended Sub-section (1) of Section 4 does is to legislatively lay down the limit of the time gap beyond which it must be presumed that there is a break in the continuity of action. We must therefore reject the argument of the learned Counsel appearing on behalf of the appellant that Sub-section (3) of Section 1 of the Amending Act must be read down so as to exclude from its operation Section 2 of the Act.'

Following this Decision C.K. Narayana Chary's case has been decided. Therefore, it is not necessary to make a special reference to C.K. Narayana Chary's case.

11. Now the question for consideration is whether the interpretation placed by the Supreme Court on Sub-section (1) of Section 4 of the Act as applicable to State of Andhra Pradesh with effect from 12th September, 1975, in Mohd. Amri Khan's case can be held to apply to the present case. Whether a particular provision is mandatory or directory depends not only upon the contents of that provision but also the object behind that provision. Therefore, we have to see the object, which the provisions contained in Sub-section (1) of Section 4 of the Land Acquisition Act as applicable to Andhra Pradesh with effect from 12th September 1975, are

intended to serve and the object which Sub-section (5) of Section 17 of the Act intends to serve. The provisions of Sub-section (1) of Section 4 of the Land Acquisition Act have also to be viewed in the background that no individual notice is necessary. Persons interested in the land are required to file their objections when once the Notification under Sub-section (1) of Section 4 of the Land Acquisition Act is published in the Gazette and the public notice of the substance of such Notification is given at convenient places in the locality. If the requirement of Sub-section (1) of Section 4 relating to publication of the Notification in the Official Gazette and causing public notice of the substance of such Notification at convenient places in the locality are not scrupulously observed there is possibility of the persons interested in the land not becoming aware of the acquisition. In that event they will be deprived of their right to object to the acquisition because personal service is not mandatory as held by the Supreme Court in KHADIM HUSSAIN v. STATE OF UP AND ORS., : [1976]3SCR1 . Therefore, the provisions must be held to be mandatory looked from this point of view. In addition to this, the words used are to the effect that the notification shall be published in the Official Gazette and shall cause public notice of the substance of the notification...'

12. The object of Sub-section (5) of Section 17 of the Act is to ensure that the persons falling in the category mentioned in Sub-section (5) of Section 17 of the Act are served with the notice. Therefore the said provision specifically states 'shall serve a notice on every person whose name appears...'. It does not state that it shall be served within 30 days next following the date on which the Notification is published. The sub-section opens with the words 'During the thirty days next following the day on which such Notification is published in the Official Gazette the Authority shall serve a notice on every person.' So the emphasis is on the service of notice and not on the period within which it should be served. The period is mentioned in Sub-section (5) because the Authority enjoined with the duty to serve the notice on the persons specified in Sub-section (5) of Section 17 of the Act should not take its own time. It should as far as possible serve it within 30 days. It is to enable the Land Acquisition Proceedings to be completed as early as possible. The said provision also further gives a right to a person to file his objections within 30 days from the date of service. Therefore, even if a person falling within the category of Sub-section (5) of Section 17 of the Act is served

beyond 30 days from the date of publication of the notification issued under Sub-section (1) and published under Sub-section (3) of Section 17 of the Act, he is not affected in any manner, No harm is caused to him. Because his right to file the objection is safeguarded as Sub-section (5) of Section 17 of the Act provides that such a person can file his objections within 30 days from the date of service of notice. Therefore, the object of Sub-section (5) of Section 17 of the Act is to ensure service of notice on the persons specified therein and that object is not defeated in any manner by service of notice beyond the period of 30 days; because the person concerned can file his objections within 30 days from the date of service of notice. When the object of the statute is not defeated by not serving the notice within 30 days as specified in the opening portion of Sub-section (5) of Section 17 of the Act, strict compliance with such a provision viz., serving notice within 30 days cannot be held to be mandatory; because it does not result in deprivation of any right of the person concerned nor it defeats the object of the statute if the notice is served beyond 30 days. Therefore, such a provision cannot be held to be mandatory. Hence it follows that though service of notice is mandatory but it is not mandatory to serve such notice within 30 days only. It can even be served beyond 30 days. Even then it does not vitiate the acquisition.

13. A Division Bench of this Court in *M.S. Jaffer Sheriff v. City Improvement Trust Board* has considered the question as to whether the provisions contained in Sub-section (2) of Section 16 of the City of Mysore Improvement Act, 1903 are mandatory or directory. Sub-section (2) of Section 16 of the City of Mysore Improvement Act, 1903 is in pari materia with Sub-section (5) of Section 17 of the Act with which we are concerned. Sub-section (2) of Section 16 of the City of Mysore Improvement Act, 1903 is as follows:

'2. During the thirty days next following the day on which such notification is published in the Mysore Gazette, the Board shall serve a notice on every person whose name appears in the assessment list of the Municipality or local body concerned or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which it is proposed to acquire in executing the scheme, or in regard to which the Board proposes to recover a betterment fee, stating that the Board proposes to acquire

such building or land or to recover such betterment fee for the purpose of carrying out an improvement scheme and requiring an answer within thirty days from the date of service of the notice, stating whether the person so served dissents or not, to such acquisition of the building or land or to the recovery of such betterment fee, and if the person dissents, the reasons for such dissent.'

In the aforesaid Jaffer Sheriff's case it is held as follows:

'11. Learned Counsel for the appellants submitted that the requirement of publication under Section 4(1) of the L.A. Act is equivalent to the publication required under Clause (b) of Section 16(1) of the Act and also the individual notice required to be given under Sub-section (2) of Section 16 of the Act, and if any one of them had not been complied with, the Preliminary Notification is liable to be set aside having regard to the principles laid down in the aforesaid decisions.

12. The argument, though attractive at first sight, on a careful scrutiny, is devoid of merit. The publication of the Preliminary Notification as required under Section 4(1) of the L.A. Act or as required under Clause (b) of Section 16(1) of the Act is mandatory. The publication of the Notification as provided therein gives the jurisdiction to the acquiring authorities to proceed further with the acquisition of the land. As pointed out by the Supreme Court in the case of Khoob Chand and other cases, if such a mandatory requirement is not complied with, the acquisition proceedings would be void ab initio. Therefore, no further steps could be taken pursuant to such Notification. A careful reading of the provisions of Section 16 of the Act would indicate that Clause (b) of Sub-section (1) of Section 16 of the Act prescribes the mandatory requirement of publishing the Preliminary Notification which corresponds to Sub-section (1) of Section 4 of the L.A. Act and what is provided in Sub-section (2) of Section 16 of the Act is a procedural requirement which requires the issue of notice to an individual within 30 days from the date of publication of the Notification under Section 16(1)(b). The said provision gives 30 days time to the concerned person to file his objection from the date on which the notice is served. If for any reason, in a given case, after the publication of Notifications in terms of Clause (b) of Sub-section (1) of Section 16 of the Act, on account of practical difficulties, like not being able to trace the owner, the notice is

not served on the individual within 30 days from the date of publication under Clause (b) of Sub-section (1) of Section 16 of the Act and the notice is served sometime after 30 days, then if the contention of the petitioners is correct the Preliminary Notification would have to be regarded as invalid. We do not think that that is the result which would be brought about by non-compliance with the provisions of Sub-section (2) of Section 16 of the Act. The object of individual notice required to be given under Section 16(2) is to give the party concerned 30 days time to file his objection. If the notice is served after thirty days from the date of publication of Preliminary Notification, still the party concerned would have 30 days time to file his objection. Therefore, while the service of notice is mandatory its service within 30 days cannot be regarded as mandatory. In this behalf the ratio of the Decision in REMINGTON RAND OF INDIA v. THEIR WORKMEN [1967(2) LLJ 866] in which the Supreme Court held that publication of an award within thirty days as provided in Section 17(1) of the Industrial Dispute Act is not mandatory and that an award published after thirty days is valid and enforceable after thirty days after its publication.

13. Later service of notice under Section 16(2) causes no injury to the party because he will be entitled to file his objections within 30 days from the date of receipt of notice by him. For these reasons, in our view Sub-section (2) of Section 16 of the Act is a matter of procedure and non-compliance with that provision only renders the further proceedings, invalid and would have no effect on the Notification which is validly issued and published under Section 16(1)(b) of the Act, after preparing a scheme in terms of Sections 14 and 15 of the Act. For these reasons we are unable to agree that the Preliminary Notification is also liable to be quashed.'

Thus, it has been held in M.S. Jaffer Sheriff's case that while the service of notice is mandatory but service of notice within 30 days cannot be regarded as mandatory. We are in full agreement with the view expressed in M.S. Jaffer Sheriff's case.

14. In Chayadevi's case, the learned Single Judge has not considered the question as to whether the provision relating to the service of notice within 30 days

as contained in Sub-section (5) of Section 17 of the Act is mandatory or not. The relevant portions of the Judgment as contained in paras 15 and 20 are as follows:

'There can be no doubt about the fact that the statute makes it imperative that a notice should be issued and served on the petitioners in accordance with Section 17(5) of the Act and the averment of the petitioners that no such notice was issued and served on the petitioners, has gone unrebutted on record, Specific allegations of fact have to be presumed to be true unless they are disputed by the party which chooses to contradict such allegations. In the instant case, as already mentioned, there is no denial of this allegation of fact. There is no material on record to hold that the statutory requirement was complied with. The mandate of the Legislature expressed in Section 17(5) of the Act does not make an exception to the B.D.A. in the facts and circumstances of this case. Therefore, I am inclined to hold that there is non-compliance with the mandatory requirements of Section 17(5) of the Act.'

'20. Merely because a number of houses have come up in the vast area of land acquired by the B.D.A. under the scheme, it cannot be said that the B.D.A. is absolved of the statutory obligation which is mandatory in nature of complying with the requirements of Section 17(5) of the Act.'

Thus, it is clear that the contention of the nature raised in the present case was not raised in that case. In that case it was contended that the service of notice was necessary. Therefore, the learned Single Judge held that the service of notice as contemplated under Sub-section (5) of Section 17 of the Act was necessary. Therefore, we are of the view that the decision in Chayadevi's case cannot be held to have a bearing on the contention raised in this petition. The said Decision is only to the effect that service of notice on the persons specified in Sub-section (5) of Section 17 of the Act is necessary and it is mandatory. That Decision does not deal with the question as to whether such service if effected beyond the period of 30 days, is valid or not. Therefore, the Decision in Chayadevi's case cannot be of any help to the petitioner. In the view we take it is not possible to apply the two Decisions of the Supreme Court in Mohd. Amri Khan's case and C.K. Narayana Chary's case to the point under consideration. Accordingly, we hold that the service of notice on the persons specified in Sub-section (5) of Section 17 of the

Act in any one of the modes specified in Sub-section (6) of Section 17 of the Act is mandatory. However, it is not mandatory that such service should be effected within 30 days from the date of publication of the Notification issued under Sub-section (1) of Section 17 of the Act in the Official Gazette.

15. The next question for consideration is as to whether the service of notice effected on the land in question can be considered to be valid service. Answer to this question depends upon the provisions contained in Sub-section (6) of Section 17 of the Act which is already reproduced earlier. Clause (a) of Sub-section (6) of Section 17 of the Act specifically states that the notice shall be served by personal delivery or, if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building. Clause (b) thereof provides that notice can be served by leaving the same at the usual or last known place of abode or business of such person. Clause (c) thereof further provides that notice can also be served by registered post addressed to the usual or last known place of abode or business of such person. The several modes of service specified in Clauses (b) and (c) are the alternative modes if it is not possible to serve notice on the person concerned as per Clause (a).

16. The contention of the learned Counsel for the petitioner is that if the present address of the person on whom the notice is required to be served as per Sub-section (5) of Section 17 of the Act is known it shall be served on him personally. However, if he is not found at the present address or the present address of the person concerned is not known then only the alternative modes provided under Clauses (b) and (c) can be followed.

17. In the instant case, the notice was tried to be served upon the petitioner at his present address as contained in the Revenue Records with reference to the land in question. He was not found in the village. Further where he resided apart from his village was also not known; who was his agent was also not known. Therefore, the service was effected on the land. The contention of the petitioner is that the endorsement on the notice shows that the present address was not known, therefore, the notice ought to have been sent to the last known place of abode or business of such person as provided under Clause (b) or should have been sent to

that address by registered post. It is not possible to accept the interpretation which the learned Counsel for the petitioner wants the Court to accept. A reading of Clause (a) makes it clear that at the first instance an attempt shall have to be made to serve the notice by personal delivery and if the person concerned is not available at the last known address, then it can be served on his agent, and if the agent of the person concerned is not known, it can be served by leaving the same on the land or the building as the case may be. This is what has been done in the present case. Any one of the alternative modes mentioned in Clauses (a), (b) and (c) can be followed when once the person concerned or his agent is absent or cannot be found at the address as mentioned in the revenue records. But it is not possible to hold that if the person concerned or his agent is not found at the present address, the other alternative modes of service mentioned in Clause (a) namely by leaving the notice on the land or building as the case be should not be followed and only the other alternative modes of service mentioned in Clauses (a) and (c) should be followed. As long as the service of notice by personal delivery on the person concerned or his agent is not possible because of non-availability of any one of them, any of the alternative modes of service as provided in Clauses (a), (b) or (c) can be adopted to effect service of notice and such service of notice is a proper service. No matter whether it is by leaving the notice on the land or by leaving the same at the usual or last place of abode or business of such person or by sending it by registered post to the usual or last known place of abode or business of such person. All these alternative modes of service are available when the person concerned or his agent is not present and his agent is not known. Therefore, we are of the view that notice served in the instant case by leaving it on the land as provided under Clause (a) of Sub-section (5) of Section 17 of the Act is a valid and proper service. Hence the contention is rejected.

18. For the reasons stated above, Point No. 2 is answered as follows;

The service of notice on the persons specified in Sub-section (5) of Section 17 of the Act is mandatory. Non-compliance with the same vitiates the subsequent stages of acquisition. The provision as to service of notice during 30 days next following the date of publication of the Notification in the official Gazette issued under Sub-sections (1) and published under Sub-section (3) of Section 17 of the

Act is not mandatory and it is directory. The service of notice can be effected either by personal delivery if the person concerned is present at the address available in the Revenue Records if the property proposed for acquisition is the land or in the Municipal records in case the property proposed for acquisition is a building. If the person concerned is not present at that address or cannot be found, the notice can be served on the agent of that person. If there is no agent of that person or the agent of that person is not known to the Authority, it can be served by adopting any one of the modes namely by leaving the same on the land or the building as the case may be, or by leaving the same at the usual or last known place of abode or business of such person or sending it by registered post to the usual or last known place of abode or business of such person.

19. Thus all the contentions raised by the petitioner fail.

20. For the reasons stated above, the petition fails and the same is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

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