

Suraj Bhan and anr. Vs. Executive Engineer and anr.

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SooperKanoon Citation : sooperkanoon.com/456869

Court : Allahabad

Decided On : Sep-27-1972

Reported in : AIR1973All269

Judge : T.S. Misra, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1) and 6(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 80

Appeal No. : Second Appeal No. 1997 of 1965

Appellant : Suraj Bhan and anr.

Respondent : Executive Engineer and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : A. Banerjee, Adv.

Disposition : Appeal allowed

Judgement :

T.S. Misra, J.

1. This is a plaintiffs appeal arising out of a suit for permanent injunction to restrain the Executive Engineer, Tube Well Division, Bulandshahr and the Special Land Acquisition Officer. Meerut from interfering with their possession and use of the

plots of land in suit and from taking possession of the same. The plaintiffs alleged that they were the Bhumidhars of the plots in suit. The defendants were, however representing that they had acquired the said land for the purposes of State Tube Well No. 114 Hapur Group Service Road. The plaintiffs contended that no valid acquisition proceedings had been taken in respect of the said land. No notifications under Sections 4 and 6 of the Land Acquisition Act had been published nor any notice for acquisition had been served on them. As the defendants were threatening to interfere with the plaintiff's possession the suit for the aforesaid reliefs was filed. The defendants contested the suit contending that the Khasra Nos. 970. 850 and 849 had been acquired for the public purpose of State Tube Well No. 114. Hapur Group Service Road. The said acquisition had been made in accordance with law and the notifications under Sections 4 and 6 of the Land Acquisition Act had been duly published. It was also contended that the plaintiffs had no cause of action for the suit.

2. The trial court found that the acquisition proceedings were not in accordance with the law and were ultra vires. It also held that the plaintiffs had the cause of action to file the suit. The trial court accordingly decreed the suit. Against the said decision the defendants filed an appeal. The appellate court below found that the land was legally acquired for public purpose. It also, held that the suit was not bad for want of notice under Section 80. Civil Procedure Code. It accordingly allowed the appeal and dismissed the suit. Aggrieved, the plaintiffs have come to this Court in second appeal,

3. The appellants have impugn-ed the decree of dismissal of the suit on the ground that no proper and valid notifications under Sections 4 and 6 of the Land Acquisition Act had been issued in the instant case and as such the alleged acquisition proceedings were illegal and invalid. They urged that the notification No. 64 (G)--ILA/Meerut dated 3rd April. 1963, under Section 4 of the Land Acquisition Act published in the U. P. Gazette dated 13th April, 1963, did not contain sufficient particulars regarding the land to be acquired. Similarly the notification No. 64 (H) (iii) ILA/Meerut dated 1st May. 1963 issued under Section 6 of the Land Acquisition Act and published in the U. P. Gazette dated 11th May. 1963, also did not contain correct particulars of the land under acquisition. It was

pointed out that in both the aforesaid notifications the land was mentioned as being situate in mauza Kilohra and Nahli pargana Dasna whereas the said villages were in pargana Jalalabad. Thus the correct name of the pargana was not mentioned in both the said notices. Similarly the number of the plots sought to be acquired were also not mentioned in those notices. The learned counsel for the defendants respondents brought to my notice a notification No 3780--ILA--Meerut 939-TW published in the U. P. Gazette of 13th July. 1963, whereby it was notified that in both the aforesaid notifications of 3rd April. 1963, and 1st May. 1963, for the word 'Dasna' the word 'Jalalabad' under the heading pargana be read. On the basis of this notification it was urged on behalf of the respondents that the name of the pargana was duly corrected and the defect was removed. The said notifications were therefore, valid and the acquisition proceedings were in accordance with law.

4. Admittedly in the notification issued under Sub-clause (1) of Section 4 of the Land Acquisition Act dated 3rd April, 1963, the name of the pargana was not correctly mentioned. The numbers of the plots to be acquired were also not mentioned therein. A note was, however, appended below the said notification that the plan of the land might be inspected in the office of the Collector. Meerut. It is by now a settled law that a notification issued under Section 4(1) of the Land Acquisition Act. which does not comply with the essential requirements of that provision of law, must be held to be bad. In the case of Bahori Lal v. L. A. Officer. 1969 All LJ 813 = (AIR 1970 All 414) a Full Bench of this Court held that:--

'A note to the effect that the site plan of the land can be inspected, in a notification under Section 4(1) of the Act, cannot be held to be of any consequence and cannot be accepted as valid substitute for sufficient description of the land and that locality required to be given under Section 4(1) of the Act. If independently of such a note, the description of the land and the locality in which the land is situate can be held to be sufficient in a particular case, the notification will be valid. If, however, independently of such note, the description of the land and the locality is too vague or indefinite, the notification cannot be held to be valid. Mention of plot numbers may not be indispensably necessary in a notification under Section 4 of the Act, but the notification itself must contain particulars adequately revealing the locality

and the land proposed to be acquired therein. Ordinarily this can be done effectively by a proper description of the locality and the mention of the plot numbers or such other material data as may be sufficiently indicative of the land and its location. If this has been done in a given case, the requirements of Section 4(1) of the Act have been fulfilled.'

5. The requirements of Section 4(1) of the said Act came up for consideration before the Supreme Court in the case of *Narendrajit Singh v. State of U. P.* 1970 All LJ 70 = (AIR 1971 SC 360). It was laid down that Section 4(1) of the Land Acquisition Act does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the land is needed and that any notification which is the first step towards depriving a man of his property must be strictly construed and courts ought not to tolerate any lapse on the part of the acquiring authority in the issue of such notification if it be of a serious nature. It was observed that a person interested in the land which is affected by any notification under Section 4(1) of the Act may immediately object to it in Court. Notification under Sub-section (1) of Section 4 is a condition precedent to the making of notification under Sub-section (1) of Section 6. It was therefore, held that the defect in a notification under Section 4(1) cannot be cured by giving full particulars in the notification under Section 6(1). In the present case the locality in which the land in question is situate was not correctly specified. The land admittedly is situated in pargana Jalalabad whereas in the notification issued under Sub-section (1) of Section 4 the name of the pargana was mentioned as Dasna. This notification, therefore, suffered from ,a serious defect and was therefore, bad in law. This defect is also to be found in the notification issued thereafter under Section 6(1) of the said Act. In that notification also the name of pargana was mentioned as Dasna. That notification was also, therefore, bad in law. The notification No. 3780--ILA/Meerut--939--TW dated 13th July, 1963, published In the U. P.Gazette of 13th July. 1963 cannot, in my view, cure the defect in the aforesaid two notifications issued under Sections 4 and 6 of the Act. The defect in the notification issued under Section 4(1) of the Act could not be cured by giving full particulars in the notification under Section 6 or by any other notice by way of corrigendum after issuing the notification under Section 6(1). The; appellate court below, therefore, was not correct in holding that the land

was legally acquired.

6. The learned counsel for the State, however raised an objection to the maintainability of the suit for want of a notice under Section 80, Civil Procedure Code. It was urged that as no notice was served by the plaintiffs on the defendants, who are the public officers, the suit was not maintainable and was liable to be dismissed on this ground alone. This argument is, however, not sustainable. The scope and object of Section 80 of the Code of Civil Procedure are by now well settled. The provisions of that section are explicit and mandatory, and they admit of no implications and exceptions. They apply to all sort of suits including suits for injunction and non-compliance thereof would entail dismissal of the suit. When a plea relating to bar of Section 80 of the Code is raised in a suit the Court must consider whether the name, description and residence of the plaintiff are given in the notice in order to enable the authorities to identify the person serving the notice; whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity, whether a notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section, whether the suit is instituted after the expiration of the requisite period of two months and whether the plaint contains a statement that such a notice has been so delivered to or left at the office of the proper authority. No doubt a notice under Section 80 of the Code is not a pleading and need not therefore be a copy of the plaint, still the notice must set out the facts constituting the cause of action and the relief which the plaintiff claims. The notice should, however, not be interpreted pedantically. A little common-sense should be imported and a reasonable reading of the notice should be given without making undue assumptions. The object of giving such a notice to the Government or public officer is to enable him to reconsider its or his legal position and if so advised to settle the claim out of court and avert the suit. Hence there should not be variance between the claim made in the notice and the claim in the plaint nor should there be difference in the identity of the person giving the notice and person filing the suit. The notice itself is, however, not a cause of action for the suit. The cause of action for the reliefs claimed in the notice precedes the notice.

7. Section 80 of the Code is obviously enacted for the benefit of the Government and the public officers. It is, therefore, open to them to forgo the benefit and not raise an objection to the maintainability of the suit on the ground that no notice was served prior to the institution of the suit or the notice served by the plaintiff was bad. If no plea in regard to the non-maintainability of the suit for want of a notice under Section 80. Civil Procedure Code or on the ground of illegality of the notice is raised in the written statement of the Government or the public officer as the case may be end no issue is framed in that respect, it may be inferred that the objection has been waived. However, if due to inadvertence, accidental slip or any other cause of like nature the objection under Section 80. Civil Procedure Code was omitted from being taken in the written statement and the Government or the public officer, as the case may be seeks to raise the objection and incorporate the plea by amendment of the written statement, the court may in the particular circumstances of the case and on being satisfied that no prejudice would be caused to the plaintiff by the lateness of the stage at which the objection was raised, permit the objection to be raised and frame an issue in regard to the same.

8. I shall now examine the position in the case at hand in the light of the principles adverted to above. There is no averment in the written statement of the defendants that the suit was not maintainable on the ground that no notice under Section 80. Civil Procedure Code had been served on them prior to the institution of the suit. No issue was, therefore, framed by the trial court in that behalf. No application for amendment of the written statement was made for incorporating the plea at any stage of the suit. In the peculiar circumstances it must, therefore, be held that the defendants had waived the objection with regard to the maintainability of the suit for want of notice. It is not now open to the respondents to raise this plea at this stage.

9. In the result the appeal is allowed with costs throughout. The decree passed by the appellate court below is set aside. The suit of the plaintiff is decreed and the defendants are restrained from interfering with the possession of the plaintiffs over the plots in suit in pursuance -of the notifications dated 3rd April, 1963 and 1st May, 1963, issued under Sections 4 and 6 of the Land Acquisition Act respectively.

