

Anil Kumar and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-06-1998

Reported in : AIR1998Raj202; 1998(1)WLN316

Judge : V.S. Kokje and; B.S. Chauhan, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 6; [Evidence Act, 1872](#) - Sections 115

Appeal No. : Civil Special Appeal No. 270 to 277 and 279 to 283 etc. etc. of 1997

Appellant : Anil Kumar and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : Lalit Kawadia, Adv.

Advocate for Pet/Ap. : Sarvashri Dinesh Maheshwari,; R.P. Dave and; J.R. Beniwa

Judgement :

B.S. Chauhan, J.

1. The present Special appeals have been filed under Section 18 of the Rajasthan High Court Ordinance, 1949 against the judgment and order dated 10-1-1997 passed in a bunch of forty-three S.B. Civil Writ Petitions treating S.B. Civil Writ Petition No. 469/1996 (Bheru Lal v. State of Rajasthan) as the main writ petition.

All the said writ petitions have been dismissed by the common judgment. Being aggrieved and dissatisfied, all the petitioners therein have preferred the special appeals and the same are heard together and disposed of by the common judgment.

2. The facts involved in these cases are not in dispute. The respondent-State sought for compulsory acquisition of about 4800 Bighas of land for the purpose of Plan Development, i.e., constructing residential houses in the revenue estate of village Bhuvana, tehsil Girwa, district Udaipur, under the provisions of the [Land Acquisition Act, 1894](#) (hereinafter called as 'the Act'). The subsequent developments have been as follows :-- 21-2-9030-3-901-4-90

The notifications under S. 4(1) of the Act were published in the local newspapers.

20-5-91

Gram Panchayat, Bhuvana filed Writ Petition No.2255/91 challenging the said notifications published in the local newspapers and this Court passed the following order:-

'Meanwhile status quo, as it exists today, with respect to the land in question will be maintained.'

4-6-92

Notification u/S. 4 of the Act was published in the Rajasthan Official Gazette.

13-11-92

Substance of said notification under S. 4 was affixed at the conspicuous places.

17-5-93 19-5-93 17-5-93 19-5-93

Substance of said notifications under S. 4 was published in the local newspapers.

24-5-94

Declaration under S. 6 of the Act was published in the Rajasthan Official Gazette.

19-10-9411-10-94

Declaration under S. 6 was published in the local newspapers.

28-10-94

Writ Petition No.2255/91 filed by Gram Panchayat was dismissed as withdrawn:

3. Persons interested preferred the writ petitions challenging the acquisition proceedings but no interim relief was granted to any of the petitioners therein. The main grounds of challenge in all the petitions had been as under :--

(a) the provisions of Section 4 of the Act were not complied with.

(b) declaration under Section 6 of the Act was made after the expiry of the period prescribed under the Act.

(c) the respondents gave discriminatory treatment as some land had been released by them on the applications of the land owners.

4. Respondents filed their reply raising the preliminary issues of delay and laches on the part of the appellant-petitioners and alleged that some of the writ petitioners had purchased the land subsequent to publication of Section 4(1) notification in the Gazette on 4-6-92 and the said writ petitions were not even maintainable. This Court, vide its impugned judgment and order dated 10-1-97 dismissed all the writ petitions solely on the ground that Section 6 declaration was not made after expiry of the limitation prescribed by the Act as it was saved by the interim order passed by this Court on 20-5-1991. Being aggrieved and dissatisfied, the present appeals have been filed.

5. Heard Mr. Dinesh Maheshwari, Mr. R.P. Dave and Mr. J.R. Beniwal, learned counsel for the appellants and Mr. Lalit Kawadia, learned counsel for the respondents and perused the record.

6. It is a settled proposition of law that notification under Section 4(1) of the Act is a condition precedent to the exercise of any further power under the Act. The process of acquisition starts with the notification under Section 4(1) of the act and,

thus, the notification under Section 4(1) is a sine qua non. Thus, where there is no notification under Section 4, the machinery provided by the Act for any further action obviously cannot proceed. (Vide Babu Barkya Thakur v. State of Bombay, AIR 1960 SC 1203; Narendrajeet Singh v. State of Uttar Pradesh, AIR 1971 SC 306 : (1970 All LJ 70); Aflatoon v. Lt. Governor, Delhi, AIR 1974 SC 2077; State of Bombay v. Chaturbhuj Nenshi, AIR 1966 Guj 185 and Smt. Angira Devi Gupta v. Land Acquisition Collector, AIR 1986 Del 40.

7. In Khoob Chand v. State of Rajasthan, AIR 1967 SC 1074, the Hon'ble Apex Court has held that as the Act provides for compulsory acquisition and deprive a person of his property, the provisions of the statute must be construed strictly.

Similarly, in Narendrajeet Singh (supra) the Hon'ble Apex Court observed as under :--

'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.' A Constitution Bench of the Hon'ble Supreme Court in Mahendra Lal Jaini v. State of Uttar Pradesh, AIR 1963 SC 1019, while examining the requirement of publication of notification in the Official Gazette under the provisions of the Indian Forests Act, 1927, has categorically held as under :--

'Now, a notification under Section 4 of the Act is required to be published in the Gazette and unless it is so published, it is of no effect.' 9. The judgment in Mahendra Lal Jaini (supra) was relied upon by the Hon'ble Apex Court in Collector (District Magistrate), Allahabad v. Raja Ram Jaiswal, AIR 1985 SC 1622 : 1985 All LJ 887) wherein the Court held as under (at page 1630 of AIR) :--

'Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid, has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows.' 10. Thus, it was categorically held in

Raja Ram Jaiswal that unless a notification under Section 4(1) of the Act is published in the Official Gazette, nothing further can be done. This view further stands fortified by the judgment of the Hon'ble Apex Court in Pankaj Jain Agencies v. Union of India, 1994 (5) SCC 198 : (1994 AIR SCW 4552) and I.T.C. Ltd. v. Collector of Central Excise, Bombay, 1996 (5) SCC 538.

11. The effect of a publication in the local newspapers of the substance of Section 4(1) notification prior to its publication in the Official Gazette came for consideration before the Hon'ble Supreme Court in Venkataswamappa v. Special Deputy Commissioner (Revenue), AIR 1997 SC 503 and the Court held that publication of the notification under Section 4(1) of the Act in the Official Gazette is the actual publication. However, if it has been published in the local newspapers prior to its publication in the Official Gazette, it would amount to an irregularity and would not vitiate the acquisition proceedings. The Court observed as under (at page 505) :--

'It is true that normally publication in the news-papers would be preceded by publication in the gazelle notification..... It would appear that before publication in the Gazette was made, it was published in one of the news papers. This is only an irregularity in the procedural steps required to be taken under the Act. It does not vitiate the validity of the notification published in the Gazette.....' 12. In the aforesaid judgment the acquisition had been upheld on the basis of the irregularities, however, it cannot be considered as a precedent for the reason that the Supreme Court referred to its earlier judgment in Raja Rain Jaiswal (supra) but did not consider the Constitution Bench judgment in Mahendra Lal Jaini (supra) (vide State of U.P. v. Ramchandra Trivedi, AIR 1976 SC 2547 : (1976 Lab IC 1647), Union of India v. Godfrey Philips India Ltd., 1985 (4) SCC 369 : (AIR 1986 SC 806) and General Manager, Telecom v. S. Srinivasan Rao. 1997 (9) JT (SC) 234.

13. In the impugned judgment and order, the learned single Judge reached the same conclusion and held that publications prior to 4-6-92 cannot be considered for any purpose whatsoever and for the purpose of determining the period of limitation for making declaration under Section 6, the last publication of the

substance of notification under Section 4(1) made on 19-5-1993 would be relevant.

14. Thus, it raises a further question that if 19-5-93 is the last date of publication of Section 4(1) notification, whether declaration under Section 6 of the Act made on 24-5-94 was within the period of one year, as prescribed by the Statute? Sri Kawadia has urged that the provisions of Section 6 provided to 'make' a declaration within one year and not to publish it and in the instant cases, the declaration had been made on 17-5-94 though published on 24-5-94. Thus, the declaration was made within the prescribed period of limitation. While deciding this issue, the learned single Judge has referred to the judgment of the Hon'ble Apex Court in *Krishi Utpadan Mandi Samili v. Makrand*, 1995 (2) SCC 497, wherein the Apex Court has categorically held that for the purpose of limitation prescribed under proviso to Section 6(1), the computation shall be from the last of the dates of publication of the notification under Section 4(1) to the date of publication of declaration under Section 6 in the Official Gazette and not in the newspapers.

15. In *Eugenia Misquitav. State of Goa*, 1997 (8) SCC 47 : (AIR 1997 SC 3939) the Court considered the same issue and observed that the word 'made' has been interpreted by judicial decisions by the Supreme Court, to mean 'published' for the reasons stated in those decisions and held that mere making of a declaration is not enough. The making of declaration under Section 6 is complete for the purpose of Clauses (1) and (2) of the first proviso to Section 6(1) when it is published in the Official Gazette. Same view has been taken in *Mohan Singh v. International Air-port Authority of India*, 1997 (7) SCC 132. Therefore, there is no force in the submissions made by Mr. Kawadia.

16. Once the learned single Judge has held that the actual notification under Section 4(1) of the Act had been issued on 4-6-92 when it was published in the Official Gazette, there was no occasion to consider the effect of the interim order passed by this Court in a case challenging the publications made on 21-2-90 and 31-3-90. It is an admitted fact that no interim order had been passed in the cases challenging acquisition proceedings which came into existence in pursuance of the gazette notification dated 4-6-92 and as per the law, referred to above, the

publications in the newspapers prior to publication in the Official Gazette, cannot be taken into consideration. Thus, there can be no effect of an interim order challenging the publications of Section 4 notification in the newspapers to its publication in the Official Gazette and if by ignoring the said interim order the period prescribed under the statute for making a declaration under Section 6 is computed, it was beyond one year and hence the declaration under Section 6 rendered to be void. Thus, as a consequence all subsequent proceedings, also, became void and these appeals/petitions should succeed only on this ground.

17. Even if it is assumed for the sake of argument that the interim order dated 20-5-91 restrained the respondents from proceeding further in view of the judgments of the Hon'ble Supreme Court in *Roshanara Begum v. Union of India*, 1986 (1) Apex Decision 6; *G. Narain Swamyreddy v. Government of Karnataka*, 1991 (3)JT(SC) 12 : (AIR 1991 SC 1726); *YusufBhai Noor Mohammed Nandoliya v. State of Gujarat*, 1991 (4) SCC 531 :(AIR 1991 SC 2153);*Gandhi Grah Nirman Sahkari Samiti v. State of Rajasthan*, 1993 (3) JT (SC) 194 : (AIR 1994 SC 2329); *Hansraj Jain v. State of Maharashtra*, 1993 (4) JT (SC) 360 : (1993 AIR SCW 2923); *Sangappa Gurulingappa Sajjal v. State of Karnataka*, 1994(4) SCC 145; *Abhey Ram v. Union of India*, 1997(5) JT (SC) 353 : (AIR 1997 SC 2564) and *Venkataswamappa* (supra) wherein it has been held that even if the stay order is granted in one case, it will be deemed to have been the stay in all the cases and even if only dispossession is stayed, it would extend to all further proceedings, the respondents were supposed to keep their hands off after the grant of the said interim order, but in the instant cases, the actual proceedings, i.e., publication of the notification under Section 4(1) of the Act in the Official Gazette and all other subsequent publications including declaration under Section 6 took place after the date of grant of interim order. Thus, the respondents cannot be permitted to plead that they could not complete the proceedings and make declaration under Section 6 within one year because of the interim stay. The respondents themselves have chosen to ignore the order passed by this Court. A Division Bench of this Court has considered this aspect in *National Insurance Company v. Kamal Prakash Rohila*, D.B. Civil Special Appeal No. 783/1995 decided on 5-12-97, wherein reliance was placed on various judgments of the Apex Court and held that a person cannot be permitted to derive any benefit taking contrary stand. In *R. N.*

Gusain v. Jaspal Dhir, AIR 1973 SC 352, the Hon'ble Apex Court has observed as under (at page 355) :--

'Law docs not permit, a person to both approbate and reprobate. This principle is based on the doctrine of law which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing other advantage.' 18. Thus, it is not permissible under the law that a person may blow hot and cold in the same breath. If the interim order was there and the respondents were aware of it, they were not supposed to proceed with acquisition proceedings at all and if by ignoring the same, respondents proceeded with acquisition they cannot be permitted to take any advantage of the said interim order. Therefore, contention raised by the respondents has no substance.

19. There is another aspect of the matter. In Mool Raj v. Murthy Raghunath Maharaj, AIR 1967 SC 1386, the Hon'ble Apex Court has held that any action taken by an authority/Court in contravention of the interim order passed by a Court of Law, is not only illegal but tantamounts to a nullity as the Apex Court has observed as under (at page 1388) :--

'But a mere order of stay of execution does not take away the jurisdiction of the Court. All that it does is to prohibit the Court from proceeding with the execution further..... As soon as the Courthas the knowledge of the order, it is bound to obey it and if it does not, it acts illegally and all proceedings taken after the knowledge of the order would be a nullity.' 20. The respondents have taken a specific plea to save the acquisition proceedings that they could not proceed further because of the interim order passed by this Court on 20-5-91. The said stay order was vacated on 28-10-94. They had chosen to ignore the stay order and proceed with the acquisition, thus, they cannot lake benefit of this plea and even otherwise if they had proceeded in spite of the stay order, the proceedings are rendered a nullity being in flagrant violation of the said interim order and in that even Section 6 declaration published on 24-5-94, also, was a nullity and as the respondents did not issue any other notification after the vacation of the said interim order dated

28-10-94, there was nothing, on the basis of which the respondents could have completed the acquisition proceedings. Submissions made by the respondents are preposterous.

21. It has been further contended by Mr. Kawadia, learned counsel for the respondents that a huge area of land was acquired, awards have been made and a very few people are before this Court and this Court should not entertain their pleas as it would render the whole acquisition proceedings invalid and it would cause great prejudice to the respondents, particularly in view of the fact that a huge amount has already been spent by them after taking possession of the land from almost all the persons and even from the present appellants after delivery of the judgment by the learned single Judge, Mr. Kawadia has, also, made some submissions on the ground of delay and laches.

22. Both these issues have been considered by a Division Bench of this Court in *Bhajan Ram Girdhari Lal & Sons v. State of Rajasthan*, D.B. Civil Special Appeal No. 1067/1997 decided on 10-11-97, and after placing reliance on various judgments of the Hon'ble Apex Court including *Hari Singh v. State of Uttar Pradesh*, AIR 1984 SC 1020; *Aflatoon (supra)*. *State of Mysore v. V. K. Karsan*, AIR 1975 SC 2190; and *Smt. Sudama Devi v. Commissioner*, 1983 (2) SCC 1 : (AIR 1983 SC 653), came to the conclusion that the proceedings cannot be challenged after an unreasonable delay as it is not permissible to remain sitting on the fence and permit the authorities to complete the acquisition proceedings and then approach the Court. In the instant cases the petitioners approached this Court whenever they were served with notices under Section 9 of the Act. Mr. Kawadia could not point out what action had been taken by the respondents, authority after publication of the declaration under Section 6 of the Act. Notices under Section 9(1) of the Act were issued by the Collector on 1-9-95 and 12-4-96 to the appellant-petitioners and they approached this Court immediately thereafter. Thus, in the facts and circumstances of the case, it cannot be held that the appellant-petitioners are guilty of delay and laches.

23. The issue of approaching the Court by a few persons, where a huge area of land is sought to be acquired, was also, considered in the said case and reliance

was placed on *Pista Devi v. State of Uttar Pradesh*, AIR 1986 SC 2025 and it was held that if there are some irregularities in the acquisition proceedings, the Court should not strike down the proceedings at the behest of a very few persons. The instant cases are of void proceedings and, thus, the case of *Pista Devi* is distinguishable.

24. However, there seems to be some substance in the averment made by Mr. Kawadia that some petitions were filed by the persons who had purchased the land after publication of Section 4 notification in the Official Gazette and their petitions/appeals are not maintainable. In *Pandit Leela Ram v. Union of India*, AIR 1975 SC 2112, the Apex Court has held that any one who deals with the land subsequent to Section 4 notification, would do so at his own peril. In *Sneh Prabha v. State of Uttar Pradesh*, AIR 1996 SC 540, the Apex Court held that Section 4 notification gives a notice to the public that the land is needed for public purpose and it further points out 'an impediment to any one to incumber the land acquired thereunder'.

25. Similarly, in *U.P. Jal Nigam v. Kalra Properties Pvt. Ltd.*, AIR 1996 SC 1170 : (1996 All LJ 523) the Hon'ble Supreme Court held that purchase after publication of Section 4 notification is void against the State and at the most the purchaser may be a 'person' interested in compensation since he steps into the shoes of the erstwhile owner and may merely claim compensation.

26. However, in subsequent judgment in *Jaipur Development Authority v. Mahaveer Housing Society, Jaipur*, 1996 (1) SCC 299, the Apex Court, though not decided the issue finally, expressed a doubt on the maintainability of reference under Section 18 by the subsequent purchaser.

27. In *Ajay Kishan Singhal v. Union of India*, AIR 1996 SC 2677 and *Galaxy Merchantile Ltd. v. State of Haryana*, 1997 (11) SC 427, the Hon'ble Apex Court has categorically held that a person who purchase the land after publication of Section 4 notification, is not entitled to challenge the proceedings.

28. Mr. Maheshwari has vehemently contended that their cases may be considered in view of the fact that the respondents had released the land of some

persons. Mr. Kawadia has pointed out that only that land has been released from acquisition where the constructed houses had already been in existence prior to the publication of the notification under Section 4 of the Act. In view of the law laid down by the Hon'ble Supreme Court in *Union of India v. Balram Singh*, 1992 Suppl (2) SCC 136; and *State of Tamil Nadu v. Mahalaxmi Animal*, 1996 (7) SCC 269 : (AIR 1996 SC 866), it is held that such exemption is permissible under the law and, thus, we cannot take any exception to such exemption made by the respondents.

29. Thus, in view of the above, D. B. Civil Special Appeal No. 271/1997 (*Kothari Buildmal v. State and Ors.* arising out of S.B. Civil Writ Petition No. 1126/1996); D. B. Civil Special Appeal No. 279/1997 (*Onkar and Ors. v. State of Rajasthan and Ors.* arising out of S. B. Civil Writ Petition No. 1131/1996); D. B. Civil Special Appeal No. 430/1997 (*Surendra Kumar and Ors. v. State of Rajasthan and Ors.*, arising out of S. B. Civil Writ Petition No. 1130/ 1996); and D. B. Civil Special Appeal No. 555/ 1997 (*Pradeep Gandhi and Ors. v. State of Rajasthan and Ors.*, arising out of S. B. Civil Writ Petition No. 1526/1997) cannot be entertained and the writ petitions filed by these appellant-petitioners stand dismissed as not being maintainable.

30. All other remaining appeals succeed and are allowed. The impugned judgment dated 10-1-1997 passed by the learned single Judge is set-aside and acquisition proceedings, including the Award etc. stand quashed qua the appellants in these appeals. It is further clarified that this judgment would not confer any benefit on any other person who had not been a party before this Court. In the facts and circumstances of the case, the parties shall bear their own costs.