Sikkim High Court Nar Bahadur Khatiwada vs State Of Sikkim And Ors. on 11 August, 2004 Equivalent citations: AIR 2004 Sik 41 Author: R Patra Bench: R Patra, N S Singh JUDGMENT R.K. Patra, C.J. 1. By this petition under Article 226 of the Constitution of India, the petitioner seeks quashing of Notification No. 13(789)/L.R.(S) dated 3-3-1987 of the State Government in the Land Revenue Department (published in the Gazette dated 5-3-1987) at Annexure A1 made under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) and the Notification No. 1(789)/L.R.(S) dated 25-8-1987 of the same department (published in the Gazette dated 27-8-1987) at Annexure A made under Section 6(1) of the Act. The petitioner also questions the validity of the Land Acquisition (Sikkim) Amendment Act, 1992. 2. The writ petition was originally filed by Kazi Lhendup Dorji Khangsharpa as petitioner No. 1 and Nar Bahadur Khatiwada as petitioner No. 2. In his application dated 17-11-1988 Kazi Lhendup Dorji Khangsharpa sought permission to withdraw the writ petition saying that he did not want to proceed with the matter. By order dated 6-9-1990 this Court allowed his prayer and the writ petition accordingly stood withdrawn so far as he was concerned leaving in the field Nar Bahadur Khatiwada who is an advocate of this Court as the lone petitioner to pursue the legal battle. 3. It is an admitted fact that both of them had filed Writ Petition No. 5 of 1987 in this Court challenging the very notification made under Section 4(1) of the Act at Annexure A1. While admitting the writ petition on 27-3-1987, this Court directed that other proceedings regarding the acquisition might continue but possession shall not be taken without the leave of the Court. This writ petition was dismissed as withdrawn on 30-11-1987. Before that i.e. on 28-11-1987 both of them filed another Writ Petition No. 48 of 1987 challenging the other notification made under Section 6(1) of the Act at Annexure A. On 30-11-1987 while admitting this Writ Petition No. 48 of 1987 this Court passed a similar interim order stating that other proceedings regarding the acquisition might continue but possession shall not be taken without leave of the Court. During the pendency of this second Writ Petition No. 48 of 1987, the present writ petition came to be filed by both of them on 16-8-1988. On 2-9-1988 this Court permitted the second Writ Petition No. 48 of 1987 to be withdrawn as the present writ petition is a consolidated one covering all the grounds. On the same day (2-9-1988) this Court admitted the writ petition and passed an order stating that the interim order passed in Writ Petition No. 48 of 1987 shall continue. 4. It is necessary to record the reasons as to why this writ petition remained pending in this Court for a pretty long time. Land admeasuring 0.35 acre appertaining to Plot No. 713 in the block of Gangtok was proposed to be acquired for construction of car park as per the impugned notification published under Section 4(1) of the Act (Annexure A1). The petitioner claims that the above land was gifted to him by its absolute owner i.e. the original writ petitioner No. 1-Kazi Lhendup Dorji Khangsharpa by gift deed dated 10-12-1986 (Annexure J). When the gift deed was presented for registration, the registering authority refused to register it on the grounds inter alia that such transfer is not permissible without express sanction of the Government under the relevant Revenue Order and the Government Proclamation. The decision

of the registering authority was upheld by the appellate authority in its order dated 15-3-1988. The petitioner as well as the donor challenged the appellate decision in this Court in Writ Petition No. 6 of 1988. By the judgment dated 24-5-1989 this Court set aside the appellate order and directed the concerned authority to register the gift deed. The State Government filed Special Leave to Appeal (Civil) No. 9706 of 1989 (later registered as Civil Appeal No. 6707 of 1995) before the Hon'ble Supreme Court challenging the correctness of the above judgment of this Court. The Hon'ble Supreme Court issued notice in the matter and directed stay of further proceedings relating to the registration of the gift deed. A Bench of this Court in its order dated 29-5-1991 adjourned the hearing of this writ petition sine die holding that its hearing "depends on the disposal of the appeal pending before the Hon'ble Supreme Court." We may mention that there is no stay order of the Hon'ble Supreme Court relating to the hearing of this writ petition. It appears from the records that in the year 1999 the writ petition suddenly surfaced for hearing but it suffered further adjournments from time to time on one ground or the other. By order dated 24-7-2000 the matter was again adjourned sine die on submission of both sides that locus standi of the petitioner cannot be decided "properly until the matter regarding the validity of the gift deed is finally decided" in Civil Appeal No. 6707 of 1995 by the Hon'ble Supreme Court. The petitioner filed CMA No. 19 of 2003 on 28-2-2003 in this Court for expeditious hearing of the writ petition by enclosing a copy of the order dated 13-2-2003 of the Hon'ble Supreme Court passed in Civil Appeal No. 6707 of 1995 wherein liberty was given to the parties to move this Court for expeditious disposal of the writ petition. The above CMA No. 19 of 2003 filed by the petitioner was disposed of by a Bench of this Court on 5-3-2003 with the direction to list the case on 26-3-2003 for hearing. Thereafter it appears applications were filed for amendment of the writ petition and for acceptance of certain documents which were allowed. The State Government had not filed its counter-affidavit presumably of the postponement of the hearing of the writ petition sine die. It however filed the counter on 17-4-2004. On the prayer of the counsel for the petitioner, 3 weeks' time was granted to file rejoinder but he has not chosen to do so. This is how after taking a slumberous course this petition has ultimately come up for hearing before us. 5. Shri Sarkar, learned counsel for the petitioner firstly contended that the impugned notification made under Section 4(1) of the Act (Annexure A1) is liable to be struck down because of non-compliance of the twin mandatory requirements viz. (i) publication of the impugned notification in 'two' daily newspapers circulating in the locality and (ii) giving public notice of the substance of the said notification by the Collector at convenient places in the concerned locality. Secondly, it was contended that the impugned notification was issued mala fide and in colourable exercise of power at the instance of the respondent No. 5 (Nar Bahadur Bhandari) who was the Chief Minister of the State at the material time. He is said to be the petitioners' "bitter political enemy and bears grudge against them." Thirdly, it was contended that the purpose for which the land was sought to be acquired i.e. for construction of car park no more exists since number of car parks have already come up in the area. Learned Advocate Gen-

eral appearing for the respondents 1 to 4 besides questioning the locus of the petitioner submitted that both the impugned notifications under Sections 4(1) and 6(1) were published in English and in the regional language of Nepali in the English and Nepali editions of the Sikkim Herald and there was thus substantial compliance of the requirements. He further contended that although Sections 4(1) and 6(2) of the principal Act require publication of the notifications in two 'daily' newspapers, the word 'daily' appearing in both the sections having stood deleted by the Land Acquisition (Sikkim) Amendment Act, 1992, lacuna if any in the publication of the impugned notifications stands rectified. Learned Advocate-General submitted that there was no mala fide in the matter. Had there been any such intention inquiry under Section 5-A would have been done away with by resorting to the special powers of urgency available under Section 17(4) of the Act. He also submitted that the original petitioner No. 1-Kazi Lhendup Dorji Khangsharpa as well as the present petitioner took part in the land acquisition proceedings before the Land Acquisition Collector and the compensation awarded by the Collector under Section 11 of the Act has already been received by the original petitioner No. 1. They have thus acquiesced to the proceedings and are estopped from challenging the impugned notifications. His further submission is that the need to construct the car park still continues and the writ Court cannot decide whether such need persists or not. 6. Locus standi : Let us first consider the locus of the petitioner. Learned Advocate-General strenuously contended that after the original petitioner No. 1-Kazi Lhendup Dorji Khangsharpa withdrew the petition and has taken the entire compensation, the present writ petitioner has no locus to challenge the acquisition of the disputed land. On careful and due consideration, we are not inclined to hold that the petitioner has no locus standi. He can be said to be "a person interested" in the acquired land. Admittedly the land holder i.e. the original writ petitioner No. 1 had gifted away the land in favour of the petitioner by executing a gift deed. A1- though it is not registered and later the donor revoked the gift deed, whatever might be consequences of non-registration or the revocation of the gift deed, the petitioner cannot be non-suited at the threshold. 7. Publication of the notifications : Notification under Section 4(1) is the foundation of a proceeding for acquisition of land. It requires the doing of triple things, viz. (i) publication of the notification in the Official Gazette that the land is needed for a public purpose, (ii) its publication in two daily newspapers circulating in the locality concerned of which at least one shall be in the regional language and (iii) giving of public notice of the substance of the notification by the Collector at convenient places in the concerned locality. In the instant case, the notification had been duly published in the Official Gazette. There is no dispute by the parties on this score. The notification was also published in English and regional language of Nepali in the Sikkim Herald. Relying on a statement of JAINCO – a local newspaper vendor –at annexure X, the learned counsel for the petitioner submitted that English dailies like the Times of India, the Hindustan Times, the Statesman etc. and Hindi dailies like the Nav Bharat, the Janasatta etc. and Nepali daily the Himalchuli have been very much in circulation but the State Government instead of publishing the

impugned notification in those newspapers got it notified in the Sikkim Herald which is not a newspaper but a Government mouthpiece which was also not 'daily' published. In the counter-affidavit, the stand of the respondents 1 to 4 is that the newspapers referred to by the petitioner being published outside the State of Sikkim were not regularly available at the material time due to vagaries of the communication system. They were also not widely circulated in the locality concerned and the only newspaper published in Sikkim being the Sikkim Herald, the impugned notification was published in its English and Nepali editions both in English and Nepali (regional language). 'News paper' has been defined in Sub-section (1) of Section 1 of the Press and Registration of Books Act, 1867 (hereinafter referred to as the Press Act) to mean "any printed periodical work containing public news or comments on public news". Under Section 19C of the Press Act, the Press Registrar issues a certificate of registration in espect of such newspaper to the concerned publisher. On 26-7-2004 we directed the State Government to file an affidavit if the Sikkim Herald has been issued with certificate of registration. On 30-7-2004 affidavit was filed sworn to by the Additional Secretary of the Land Revenue Department saying that the Sikkim Herald has not yet been registered under the Press Act although necessary application for registration has been submitted. What is the effect of non-registration of the Sikkim Herald under the Press Act? In the Land Acquisition Act, 1894 the word 'newspaper' has not been defined. In absence of any provision in the Act stating that the word 'newspaper' shall mean as it is defined in the Press Act, the meaning and definition of 'newspaper' provided in the Press Act cannot bodily be imported to understand the expression 'newspaper' occurring in Section 4(1) of the Act. It is a well-recognised rule of construction that it is not permissible in understanding the meaning of a word by applying definition of other Acts. The Privy Council in Laurence Arthur Adamson v. Melbourne and Metropolitan Board of Works, AIR 1929 PC 181 has held as follows :– "It is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act in the definition Clauses of another statute dealing with matter more or less cognate, even when enacted by the same legislature." In Webster's Dictionary the meaning of the word 'newspaper' is as follows :– "a publication regularly printed and distributed usually daily or weekly, containing news, opinion, advertisement, and other items of general interest." In any case the Sikkim Herald fulfils the meaning of 'newspaper' as it is a printed periodical work containing public news. In the circumstances, we have no hesitation to hold that in the publication of the impugned notification in the Sikkim Herald there has been substantial compliance of the requirement of Section 4(1) of the Act. It may be stated that the whole, pyrpose of publication of the notification in the newspapers is to acquaint "persons interested" with the fact that the land in question is likely to be acquired for public purpose and to give them opportunity to raise objections if any. The petitioner and the erstwhile petitioner No. 1 filed elaborate objections challenging the proposed acquisition of land (vide pages 219 to 226 of the brief). Thus neither of them was in any way prejudiced in the matter. As has been held by the Supreme Court in Narendra Bahadur Singh v. State of U. P. (1977) 1 SCC 216 : (AIR 1977 SC 660) that the

Courts should be averse to strike down a notification for acquisition of land on fanciful grounds based on hypertechnicality. What is needed is substantial compliance with law. As already noted, the word 'daily' appearing before the word 'newspapers' in Sub-section (1) of Section 4 and Sub-section (2) of Section 6 of the principal Act stand deleted by the Land Acquisition (Sikkim) Amendment Act, 1992. Learned counsel for the petitioner has rightly not contended that the State Legislature is not competent to enact the Land Acquisition (Sikkim) Amendment Act, 1992 as not being covered by any of the items in the legislative list. He however contended that the amendment was brought about mala fide with an ulterior motive to defeat the cause of the petitioner. This contention has to be stated to be rejected. It is now fairly settled that Legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Even assuming that the executive has an ulterior motive in making legislation, that motive cannot render the passing of the law mala fide (See K. Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 551, State of W.B. v. Terra Firma Investment and Trading Pvt. Ltd. (1995) 1 SCC 125 : (1995 AIR SCW 1694). His further submission is that the amended provision would not be applicable to the petitioner as the Amended Act does not declare that it shall apply to the pending proceedings. To consider this submission, Section 4 of the Amended Act has to be noticed which is hereunder quoted :– "Any notification published under Sub-section (1) of Section 4 and any declaration published under Sub-section (2) of Section 6 of the Principal Act before the commencement of this Act, shall be deemed to have been published in accordance with the provisions of this Act as if this Act was in force on the date of such publication." Although the Amended Act has come into force on 10-7-1992 reading of the aforesaid would show that amendment has retrospective effect to cover publication of all notifications issued under Sections 4(1) and 6 of the principal Act prior to coming into force f the Amended Act. In other words, all notifications made under Section 4(1) and 6(2) of the principal Act including the impugned ones stand validated even though they might have been published in a non-daily newspaper. 8. The petitioner has alleged that the third requirement i.e. giving of public notice of the substance of the notification by the Collector at convenient places in the locality was not complied with. In the counter-affidavit, the respondents 1 to 4 have denied the allegation (vide page 6) and asserted that the Collector duly published the substance of the notification at convenient places in the locality concerned.' From the records available to us by the learned Advocate-General, we have found that there is endorsement that "copy at the spot". This goes to corroborate the fact that the Collector was instructed to publish the substance of the notification in the locality. In absence of anything on record to the contrary, we would assume that the official act was duly performed. For all the reasons mentioned above, we do not find any valid ground to void the impugned notification and the consequential acquisition proceedings. 9. Re : Validity of declaration made under Section 6(2) of the Act. Learned Advocate-General relying on the decision of the Supreme Court in State of Haryana v. Raghubir Dayal (1995) 1 SCC 133 : (1995 AIR SCW 46) submitted that the provision of Section 6(2) of the Act is not mandatory. In that case question arose as to

whether provision of Section 6(2) is mandatory because the language of Section 6(2) is in pari materia with Section 4(1). On consideration of the matter the Supreme Court held as follows (para 8, at pp. 50 and 51 of AIR SCW) : "The purpose of publication of the declaration is to give effect to the conclusiveness of the extent of the land needed for the public purpose or for a company as made under Section 6(3) of the Act. Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the enquiry under Section 5-A, or otherwise in case of dispensing with enquiry under Section 5-A unless they show any grave prejudice caused to them in non-publication of the substance of the declaration under Section 6(1), the omission to publish the substance of the declaration under Section 6(1) in the locality would not render the declaration of Section 6 invalid. We are not intending to say that the officer should not comply with the requirement of law and it is their duty to do it. But their dereliction to do so per se does not render the declaration under Section 6 illegal or invalid. Therefore, the word 'shall' used in Sub-section (2) of Section 6 should be construed to be only directory but not mandatory." It may be stated that although the notification issued under Section 6(2) of the Act was published in the Sikkim Herald, for the foregoing reasons, we hold that there was substantial compliance of the requirement of the law. In view of what has been stated above, we unhesitantly reach the conclusion that the declaration made under Section 6(2) is legal and valid. 10. It was contended by Shri Sarkar that the notification was made mala fide and in colourable exercise of power at the instance of the respondent No. 5 who was the Chief Minister of the State at the relevant time. In this connection, he has referred and relied on the averments made in paragraphs 26 to 47 of the writ petition. The sum and substance of the averments contained therein is that the erstwhile petitioner No. 1 has been a political leader in Sikkim since 1945 and the petitioner has been his political worker and both of them championed the cause of democracy and in the year 1973 led the historic movement for establishment of Parliamentary democracy in the State and succeeded in overthrowing the hereditary monarchy which was later replaced by a democratically elected Government headed by the erstwhile petitioner No. 1 from 1974 to 1979. The respondent No. 5 under the patronage of the then feudal Chogyal tried to frustrate the democratic movement led by the petitioners. His party Sikkim Janta Parishad won the general elections in 1979 on the slogan of de-merger of Sikkim. He was later dismissed as the Chief Minister on charges of corruption and after breaking away from the Congress (I) party formed a regional party called Sikkim Sangram Parishad and won the general elections in 1983. After forming his Government and to wreak his private vengeance against his political adversary in colourable exercise of his power and being actuated with malice got the impugned notification issued. In the counter-affidavit of the respondents 1 to 4 the allegations of mala fide etc. contained in the above paragraphs of the writ petition have been denied. The allegations made by the erstwhile petitioner No. 1 in the above paragraphs have become futile because the writ petition so far as he was concerned, stands withdrawn. As regards the present petitioner, by referring to the entire background for acquisition of the

disputed land it has been stated in the counter that there could be no mala fide or colourable exercise of power inasmuch as the Cabinet took decision to construct the car park on 29-7-1981 whereas the gift deed in favour of the petitioner was executed on 12-12-1986. It appears from the counter-affidavit that the State Cabinet took a decision on 29-7-1981 to construct a car park at Gangtok and identified the location and directed the concerned department to take action. The proceeding of the Cabinet meeting held on 29-7-1981 (at Annexure R1) is extracted here-under :– "I- LOCAL SELF-GOVERNMENT DEPARTMENT (b) After a thorough consideration of the proposal submitted by the Secretary, LSG and Housing Department the Cabinet, in principle, approved as follows : (i) To utilise the land in front of West Point School below the National Highway for the construction of a multi-storey structure for car parking purpose. The department concerned will initiate for the preparation of plans and estimates and to engage the Modern Design Associates of Darjeeling for the purpose; (ii) To acquire the adjoining land of the area indicated under (i) above including the petrol pump. The Cabinet desired that the Land Revenue Department will initiate action for the acquisition of the land in question; and (iii) To remove the temporary garage and one Class II quarter standing in the land in question." The erstwhile local self-Government department in its letter dated 20-8-1981 (Annexure R2 colly) informed the Land Revenue Department to take appropriate action. The copy of the extract of the Cabinet proceeding and map showing the plot in which the car park was intended to be constructed was sent to the Land Revenue Department. The District Collector (East) was shown the area intended to be acquired and was asked to take step to estimate the cost of the land. The erstwhile local self-Government in its letter dated 24-11-1991 (Annexure R6) enquired from the Land Revenue Department as to what action had been taken in the matter. After some correspondence was made, the District Collector forwarded the draft notice under Section 4(1) and after obtaining the approval of the Government the impugned notification was issued. Thereafter proceeding under Section 5-A of the Act in respect of the land commenced. The original petitioner No. 1 and the petitioner filed separate objections. They were heard by the District Collector and after hearing them he held that the acquisition was unavoidable in the public interest. A copy of his report is at Annexure Rule 12. The Land Revenue Department after receipt of the report from the District Collector examined the matter and on being satisfied that the acquisition is in public interest notified the declaration under Section 6(1) of the Act. After issuing notice under Section 9, the Collector proceeded to make the award under Section 11 of the Act. By award dated 15-3-1988 the Collector granted compensation of Rs. 6,52,463/- in favour of the original petitioner No. 1. He received the same under Cheque No. H 191268 dated 17-11-1988. Later the original petitioner No. 1 revoked the gift deed in his petition dated 9-8-1994 addressed to the Registrar, District Collectorate. It has been held by the Supreme Court in E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555 that "the b(SIC) of establishing mala fides is very hea(SIC) on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of

credibility." In the present case, a declaration in respect of the disputed land was made under Section 6(1) of the Act (Annexure A). Sub-section (3) of Section 6 lays down that the said declaration shall be conclusive evidence that the land is needed for a public purpose. In Land Acquisition Collector, Burdwan v. Durga Pada Mukherjee, AIR 1980 SC 1678 the Supreme Court held as follows (para 5) :– "A declaration made under Section 6 of the Act and published in the Official Gazette shall be conclusive evidence that the land is needed for a public purpose and that to this rule there was only one exception, namely, that the declaration could be challenged on the ground of mala fide or colourable exercise of power. In the face of the conclusive presumption which the Court has to raise under Sub-section (3) of Section 6 of the Act about the nature of the purpose stated in the declaration being true, the onus on the landowners to displace the presumption was very heavy indeed and the same could not be said to have been discharged by a mere allegation in that behalf which has been denied by the State." It is relevant to note here that betwist 1987 till date, there have been different Governments led by different political parties and had there been any iota of mala fide in making the impugned notification, it would have been withdrawn. On careful consideration of the pleadings relating to the mala fide and colourable exercise of power, we are of the opinion that the petitioner has not been able to establish it. Besides this, the averments contained in paragraphs 26 to 47 of the writ petition are based on facts which have been refuted in the counter-affidavits. They are thus disputed questions of facts which require detailed examination of evidence which cannot be done by a writ Court. 11. It was also contended that in the meantime car parks have come up in the locality and, therefore, the purpose for which the land was sought to be acquired no more exists. It was submitted by Shri Sarkar that since the purpose no more exists the Government should de-notify the acquisition as was done in the case of M.T.W.T. Namgyal and Tempo Rapgey Kazi. The respondents 1 to 4 in their counter justify the acquisition of the land on the following grounds. They assert that the acquisition of disputed land is for a genuine public purpose. The land consisting of three plots of which one was the said land was found suitable for construction of a car park, which is big enough to accommodate a large number of vehicles. The proposed site is one of the few sites which is suitably located, of adequate size, flat and not requiring much development which in turn will save a huge expenditure from the public exchequer for such development. Flat lands of such size are very rare in Gangtok in view of the hilly terrain of the State. The public purpose continues to exist. The said land is found to be more suitable for the purpose of parking public vehicles because of it's proximity to many of the Government offices, main bazaar, food godown, vegetable market etc. All these places are public places frequented by the public for their personal work, purchase of essential commodities and other consumer items for their daily livelihood. The construction of a car stand in this area would relieve traffic congestion. The necessity of constructing a car park in and around Gangtok in public interest has been felt due to the number of vehicles being registered in Gangtok. The number of vehicles in Sikkim has increased from 1,316 registered as on 31-3-1975 to 17,953 as registered on 18-11 -2003 excluding Government

vehicles and two wheelers. Most of the vehicles that have been registered are mainly owned by public of Gangtok, and surrounding areas and as such, the Government has been hard pressed to ensure that there are adequate parking places for these vehicles. Moreover, the present car park just above the old West Point School is insufficient to cater to the growing need for parking space due to ever growing number of vehicles plying from other States daily specially during the peak tourist seasons. 12. The need shown for acquisition is construction of car park which is undoubtedly a public purpose because it is for the benefit of the general public. From the above facts, it is difficult to hold that the purpose for which the land was sought to be acquired no more exists. Moreover, a writ Court cannot substitute its opinion in place of the Government's opinion with regard to the need of construction of car park. 13. In the result, we do not find any merit in this writ petition which is accordingly dismissed. No costs. N. Surjamani Singh, J. 14. I agree.