State Of Haryana vs Raghubir Dayal on 10 November, 1994

Equivalent citations: 1995 SCC (1) 133, 1994 SCALE (4)1084, 1995 AIR SCW 46, 1995 (1) SCC 133, (1999) 1 RAJ LW 27, (1998) 33 ALL LR 737, (1995) 1 SCJ 332, (1995) 1 CURLJ(CCR) 436, (1998) 4 JT 507 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, N Venkatachala

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
RAGHUBIR DAYAL

DATE OF JUDGMENT10/11/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC (1) 133 1994 SCALE (4)1084

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. Heard the learned counsel for the parties.

3. Notification under Section 4(1) of the Land Acquisition Act 1894 (1 of 1894) (for short 'the Act'), was published in the State Gazette on 25-10-1988, in the local newspapers Dainik Veer (Hindi) and

in Indian Express on 16-11-1988. The substance of that notification was got published in the locality on 27-4-1989. Similarly, declaration under Section 6 was published in the State Gazette on 1-8-1989, in Veer Arjun (Hindi) on 10-8-1989 and in Patriot (English) on 8-8- 1989. In the chart showing the dates of publication of notification found in the counter-affidavit, no mention of the date of publication of the substance of Section 6 notification in the locality is made. Although notice was issued under Section 5-A, the respondent had not, admittedly, objected to the acquisition. Consequently, declaration came to be made. Pursuant to the notice served under Sections 9 and 10 the respondents had participated in the enquiry held by the District Land Acquisition Officer-cum-Land Acquisition Collector, Gurgaon, and the Award was made on 17-7-1991. It is stated in the counter-affidavit that since there was a dispute as to the apportionment of compensation, a reference under Section 30 was made to the District Court, Gurgaon, and the compensation was deposited to its credit. The writ petition filed by the respondent was allowed on 4-5-1992 by the Punjab and Haryana High Court holding that publication of the substance of the notification under Sections 4(1) and 6 in the locality was mandatory and as they were not published in the locality, the acquisition was invalid for infraction of the mandatory provisions of Sections 4(1) and 6(2) of the Act.

4. It is contended for the State that the High Court was not right in holding that the substance of the notification under Section 4(1) was not published in the locality. In paragraph 4 of the supplementary affidavit, sworn to by Mr R.S. Malik, he has stated the details of the dates on which the respective publications came to be made. In Column 4 thereof, he has specifically stated that Munadi (publication by beating the drum) was made in the locality on 27-4-1989. But no statement as regards the publication of Munadi of Section 6 was made. It is contended by Mr Manoj Swarup, learned counsel for the respondent, that in view of the language in which Section 6(2) was couched being in pari materia with the language in which Section 4(1) was couched, the publication of the substance of Section 6 declaration in the locality is also mandatory and non-compliance thereof renders the entire acquisition illegal. It is also contended by him that though publication in the State Gazette under Section 4(1) was made on 25-10-1988 and in the newspapers on 16-11-1988, the publication of the substance of the notification in the locality was made after a lapse of six months, i.e., on 28-7-1989 and that, therefore, notification under Section 4(1) is also invalid. The contention is that the requirement of the publication in the locality of the notification under Section 4(1) has since been held to be mandatory by a decision of this Court, the ratio of that decision would be applicable to the publication of the substance of the declaration under Section 6 in the locality which is equally mandatory and non-compliance thereof renders it invalid. We find no force in any of the contentions of the respondent. It is true that the publication of the substance of the notification under Section 4(1) in the locality is mandatory. The object of publication of notification under Section 4(1) is that the owner of the land sought to be acquired has to exercise his valuable right to file his objections under Section 5-A. The publication of the substance of such notification in the locality must, therefore, be mandatory.

5. The use of the word 'shall 'is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of

the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word ,shall' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.

6. In Raza Buland Sugar Co. Ltd. v. Municipal Board1 a Constitution Bench of this Court had to consider the question whether Section 135(3) read with Section 94(3) of the U.P Municipalities Act was mandatory or directory. The facts were that Rampur Municipality, by a special resolution, proposed to levy property tax on persons or a class of persons. Section 131(3) required that the Board shall pass a resolution and have it published in the manner prescribed in Section 94 of such proposed tax. Section 135(3) declared that a notification of the imposition of the tax under sub-section (2) thereof shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act. Under Section 94(3), every resolution passed by the Board shall be published in a local Hindi newspaper or in its absence by general or special order as may be directed by the State Government. The Municipality had contended that it had followed that procedure. The appellants contended that there was an infraction in that behalf. While considering that question, per majority, it was held that:

> The question whether a particular provision of a statute was mandatory ... or directory cannot be resolved by laying down any general rule and it should depend upon the facts of each case and for that purpose the object of the statute in working out the provision is a determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from the provision ... or other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory. After exhaustive consideration of the subject, it was held that though there was a technical defect inasmuch as the local paper in which the publication had been made, was in Urdu and not in Hindi, there was a substantial compliance and it was held to be directory and the tax imposed was upheld.

7. Therefore, the word 'shall'used in Section 4(1) should be construed to be mandatory because the requirement of Section 4(1) of the publication of 1 AIR 1965 SC 895: (1965) 1 SCR 970 the notification in the Gazette followed by their publication in the newspapers perhaps in some cases may not meet the needed purpose of notice to the owner or person claiming interest in the land proposed to be acquired. For instance, in rural areas most agriculturists may not read even the

vernacular newspapers. Their fields are their world and work therein is their breadwinner. They would come to know only if the substance of the notification is published (announced) in the village by beat of drum. Therefore, publication of the substance of the notification of Section 4(1) and in the locality is mandatory but it is not the requirement of the law that it be done simultaneously with the publication in the Gazette or newspapers. Though there is a time gap of more than six months between the date of the notification under Section 4(1) in the State Gazette and the date of the publication of the substance of the notification in the locality, the delay by itself does not render the notification under Section 4(1) published in the State Gazette, invalid.

8. Though notice under Section 5-A was issued to the respondent, he had not availed of the notice nor objected to the acquisition. The question emerges whether the non- publication of the substance of the declaration under Section 6(1) equally be mandatory and its omission renders the declaration invalid? The purpose of the declaration under Section 6 is to render the land notified therein as that needed conclusively for public purpose. So we are of the opinion that the notification under Section 4(1) should not be invalidated for non-compliance of the notification under Section 6. It is true that the language in Section 6(2) is in pari materia with Section 4(1). 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. Moreover, in this case, notice was issued to the respondent under Sections 9 and 10 pursuant to which they appeared before the LAO and put forth their claim and the award has already been made. As stated earlier, since there is an inter se dispute as regards the apportionment, the Land Acquisition Officer had already made the reference under Section 30 and deposited the compensation in the Court of District Judge along with the reference.

9. Under these circumstances, the High Court was clearly in error in quashing the notification under Section 4(1) and Section 6 declaration. The writ petition filed in the High Court is, therefore, dismissed. The appeal is, accordingly, allowed but in the circumstances without costs.