

J&K Housing Board & Anr vs Kanwar Sanjay Krishan Kaul & Ors on 4 November, 2011

Author: P. Sathasivam

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9353-9354 OF 2011

(Arising out of SLP (C) Nos. 24733-24734 of 2009)

J & K Housing Board & Anr.

.... Appellant (s)

Versus

Kunwar Sanjay Krishan Kaul & Ors.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) These appeals are directed against the judgment and

order dated 21.05.2009 passed by the High Court of Jammu and Kashmir at Jammu in LPAOW No. 60 of 2007 CMP No. 91 of 2007 whereby the High Court dismissed the said appeal filed by the J & K Housing Board - the appellants herein.

3) Brief facts:

(a) On 17.05.2003, the Collector, Land Acquisition (Land Management Estates Officer), Jammu and Kashmir Housing Board, Jammu (in short 'the Board') issued a Notification under Section 4 (1) of the Jammu & Kashmir Land Acquisition Act, 1990 (hereinafter referred to as 'the State Act') notifying the land measuring 181 kanals 19 marlas was needed for the public purpose by the Board, namely, for "development of Housing Colony" at Village Ferozpur, Tehsil Tangmarg, District Baramulla and calling for objections, if any, within 15 days from the date of publication of the said notification. The aforesaid notification was published in the Himalayan Mail newspaper on 21.05.2003 and in the Greater Kashmir newspaper on 22.05.2003 in the State of Jammu and Kashmir. Again, on 04.06.2003, the said notification was published in two daily newspapers. On the very same day, notice under Sections 5 and 5-A of the State Act was issued to all land owners for hearing of objections vide Office Order No. HB/LMEO/83-85 directing them to remain present at the spot on 16.06.2003 at 12.30 p.m. On 09.06.2003, the Collector issued an Addendum vide office order No. HB/LMEO/87-96 for acquiring additional land of 3 kanals 15 marlas. On 11.06.2003, a corrigendum was issued with regard to the said Addendum stating therein that the measurement of land sought to be acquired was not correctly calculated and it may be read as 185 kanals 05 marlas instead of 185 kanals 14 marlas and objections, if any, may be filed within 15 days of the issuance of the said corrigendum.

(b) On 16.06.2003, none of the owners was present on the spot except some paid labourers/Chowkidars who were looking after the said land. On 24.06.2003, the Collector, LMEO submitted a letter to the Deputy Commissioner (District Collector), Baramulla vide office letter No. HB/LMEO/120-22 for recommending the case to higher authorities for issuance of declaration under Sections 6, 7 and 17 of the State Act. On 03.07.2003, the Deputy Commissioner directed the Collector to take action in accordance with the Revenue Department Circular No. 13/8-REV/(LAK)99/2000 dated 23.05.2000. On 16.07.2003, the respondents sent a telegram to the Tehsildar, Tangmarg, who in turn, forwarded the same to the office of the Collector on 19.07.2003. In accordance with the directions of the Deputy Commissioner (District Collector), the Collector, vide letter No. HB/LEO/158-60 dated 22.07.2003, requested the Financial Commissioner (Revenue) J & K Government to recommend the case to higher authorities for issuance of declaration under Sections 6, 7 and 17 of the State Act.

(c) By Notification No. 199 RD/04 dated 15.01.2004, a declaration was made under Section 6 of the State Act to the effect that the land mentioned in the notification was needed for public purpose. Further, in pursuance of Section 17 of the State Act, the Collector was directed to take possession of the aforesaid land subject to completion of all formalities including those under Sections 9(2) and

17-A of the State Act and Rule 63 of the Land Acquisition Rules (in short 'the Rules') and to finalize the proceedings immediately. By letter dated 17.01.2004, all the land owners were again informed by the Collector about the acquisition of the land under Sections 9 and 9-A of the State Act and requesting them to remain present on the spot on 06.02.2004 at 11 a.m.

(d) On 30.01.2004, a letter was received from the land owners requesting the Collector for fixing a fresh date after due notice to them. A draft award dated 28.07.2004 was passed by the office of the Collector assessing the total value of the land structure and the fruit trees at Rs.2,77,31,901/-.

Notification No. HB/CLA/214-17 issued under Section 17-A of the Act was published in the Himalayan Mail Daily on 20.08.2004, in Greater Kashmir Daily on 23.08.2004 and in Greater 'Alsafa' Daily on 28.08.2004 mentioning the names of all the respondents.

(e) Challenging the notifications, on 30.08.2004, the respondents filed Original Writ Petition being OWP No. 941 of 2004 before the High Court of Jammu & Kashmir at Jammu.

Learned single Judge of the High Court, vide order dated 03.09.2007, allowed the petition of the respondents herein with liberty to file their objections afresh within 15 days of the receipt of the copy of the said order. Since the respondents-

land owners did not choose to receive the compensation and a reference under Sections 17-A and 32 of the State Act was filed on 03.09.2004 in the Court of District and Sessions Judge, Baramulla, a cheque bearing No. 0148568 dated 03.09.2004 amounting to Rs.2,34,71,151/- (80% of the total assessed compensation) was deposited with the District Judge, Baramulla with a request for disbursement of the said amount among the actual and real owners of the acquired land. On the very same day, i.e., on 03.09.2004, the possession of the land was taken over by the representatives of Deputy General Manager, Housing Unit-II, Srinagar.

(f) Challenging the said order of the learned single Judge, the appellants herein filed LPAOW No. 60 of 2007 before the Division Bench of the High Court. The Division Bench, by impugned judgment dated 21.05.2009, dismissed the said appeal.

(g) Aggrieved by the said judgment, the appellants have filed these appeals by way of special leave before this Court.

4) Heard Mr. Rajiv Dhawan, learned senior counsel for the Board-appellants herein and Mr. K.K. Venugopal, learned senior counsel for the contesting respondents herein.

5) Mr. Rajiv Dhawan, learned senior counsel appearing for the Board, after taking us through the entire acquisition proceedings and the relevant provisions of the State Act submitted that inasmuch as all the procedures had been meticulously followed by the Board and possession was also taken before filing of the writ petition, the order passed by the learned single Judge quashing the acquisition proceedings from the stage of proceedings under Sections 5 and 5-A of the State Act and also subsequent proceedings as confirmed by the Division Bench are not sustainable and prayed for

interference by this Court.

6) On the other hand, Mr. K.K. Venugopal, learned senior counsel appearing for the respondents/land owners, by drawing our attention to various mandatory provisions of the State Act and the J & K Housing Board Act, 1976, submitted that inasmuch as the appellants failed to follow the mandatory provisions of the State Act, the orders passed by the learned single Judge and the Division Bench are fully justified and no interference is called for by this Court.

7) We have carefully considered the rival contentions, orders of the High Court and perused the relevant provisions and also various notifications/orders etc.

8) Before considering the rival contentions, it is useful to refer the relevant provisions of the State Act which are applicable to the State of Jammu & Kashmir. Part II of the State Act deals with Acquisition. The relevant provisions are as under :

"4. Publication of preliminary notification and powers of officers thereupon - Whenever land in any locality is needed or is likely to be needed for any public pupose the collector shall notify it -

(a) through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and through the local Panchayats and Patwaries;

(b) in the Government Gazette; and

(c) in two daily newspapers having largest circulation

in the said locality of which at least one shall be in the regional language.

(2)"

"5. Payment for damage - The officers so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Provincial Revenue authority within thirty days of its being pronounced, whereupon, the decision of that officer shall be final."

"5-A. Hearing of objections. - Any person interested in any land which has been notified under section 4, sub- section (1), as being needed or likely to be needed for a public purpose may, within fifteen days after such land is notified in the manner prescribed in clause (a) of sub-section (1) of Section 4 as being needed or likely to be needed for a public purpose, subject to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the collector shall give the objector an opportunity of being heard either in

person or by pleader or by a person authorized by him and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

6. Declaration that land is required for public purpose - (1) When the Government is satisfied after considering the report, if any, made under section 5-A, sub-

section (2), that any particular land is needed for public purpose, a declaration shall be made to that effect under the signature of the Revenue Minister or of some officer duly authorized in this behalf:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of the public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate areas, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that land is needed for a public purpose, and after making such declaration the Government may acquire the land in manner hereinafter appearing."

"9. Notice to persons interested - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that the claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of notice, and to state the nature of their respective interests in the land and the amount and particular of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may, in any case, require such statements to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered in accordance with the Postal Rules in force for the time being in that behalf."

Section 11 speaks about enquiry into measurements, value, claims and award by the Collector. Section 12 makes it clear that the award passed by the Collector shall be final and conclusive evidence as between the Collector and the persons interested. Sub-section(2) of Section 12 mandates that the Collector shall give immediate notice of his award to such of the persons interested, as are not present personally or by their representatives when the award is made. Section 17 relates to special powers entrusted to the Collector in case of urgency. Section 18 speaks about the reference to Court to determine the objections as to the quantum of compensation or the measurement of land and procedure to be followed thereupon. In the last Part, i.e., Part VIII, which provides miscellaneous provisions, Section 43 speaks about the service of notice and makes it clear that how notice under this Act shall be made etc.

9) According to Mr. Rajiv Dhawan, learned senior counsel for the appellants, the requirement, particularly under Section 4, had duly been complied with and because of the fact that the respondents failed to submit their objections within the prescribed period under Section 5-A(1), the stand of the respondents/land owners has to be rejected. As per Section 4, whenever land in any locality is needed for any public purpose, the Collector has to notify it in the manner provided in sub-sections (a), (b) and (c) of the said Section. Public purpose has been defined in Section 3(g) of the State Act.

There is no dispute that the public purpose mentioned in the notification issued under Section 4(1) of the Act refers to "development of housing colony" by the Board at Village Ferozpur, Tehsil Tangmarg, District Baramulla. Undoubtedly, the said purpose is a public purpose in terms of Section 2(g) of the State Act. However, the main question before us is whether the Collector has fully complied with the mandates and procedures provided in sub-sections (a), (b) and (c) of Section 4. The opening part of Section 4 i.e. "whenever land in any locality is needed or is likely to be needed for any public purpose the Collector shall notify it" makes it clear that the procedure provided in sub-Sections (a), (b) and (c) are mandatory and the same has to be strictly complied with.

(Emphasis supplied).

10) As far as affixing of notice in the locality and information through beat of drum as well as through local Panchayats and Patwaries are concerned provided in sub-section (a), that have been complied with. The notification was duly published in the Government Gazette which satisfies sub-section (b) of Section 4. Sub-section(c) of that Section mandates that the Collector has to notify

his intention to acquire the land/lands needed for public purpose in two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language. (Emphasis supplied).

11) Before elaborating the compliance of sub-section (c) of Section 4 in terms of mandates provided therein, since Mr. Rajiv Dhawan, learned senior counsel has claimed that there is substantial compliance of provisions required above and no flaw is to be found in the acquisition proceedings, let us consider various decisions relied on by him.

12) In State of T.N. & Anr. vs. Mahalakshmi Ammal & Ors., (1996) 7 SCC 269, paragraph nos. 8 and 9 were pressed into service. On going through those paragraphs, we are able to see that the land owners filed their objections to the notice issued under Section 5-A and Rule 3 of the Rules framed by the State Government. Except the above factual information, nothing is available on record in support of the stand taken by the appellants.

13) The next decision relied on by Mr. Rajiv Dhawan is May George vs. Special Tahsildar & Ors., (2010) 13 SCC 98 wherein he very much pressed into service paragraph 25 of the said judgment which reads as under:

"25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."

In the above paragraph, one of us, Dr. B.S. Chauhan, J. has summarized the law as to declare a provision mandatory or not and the test to be applied whether non-compliance with the provision could render the entire proceedings invalid or not. Except the above proposition of law with which we are in entire agreement, the said decision is also not supporting the stand of the appellants.

14) The judgment in Talson Real Estate (P) Ltd. vs. State of Maharashtra & Ors., (2007) 13 SCC 186, relied on by Mr. Rajiv Dhawan, makes it clear that the provisions of Section 5- A of the Land Acquisition Act, 1894 (hereinafter referred to as "the Central Act") are attracted only when a person interested in any land which has been notified under Section 4(1) makes objection in writing to the Collector within 30 days from the date of the publication of the notification. It further makes it clear that the period of 30 days will have to be counted from the last day of the publication of the

notification under Section 4 of the Act after noting the date of publication in the Official Gazette and in two daily newspapers and notifying the substance of such notification on the site, this Court concluded that the appellants therein did not choose to file their objections within the time prescribed under Section 5-A of the Act.

15) In *Ajay Krishan Shinghal & Ors. vs. Union of India & Ors.*, (1996) 10 SCC 721, Mr. Rajiv Dhawan, pressed into service paragraph 8 which speaks about the compliance of mandatory requirements under Section 4(1). On going through the factual details available on the files produced before it, this Court concluded that the provisions of Section 4(1) of the Central Act have been fully complied with.

16) In *Sulochana Chandrakant Galande vs. Pune Municipal Transport & Ors.*, (2010) 8 SCC 467, which is a judgment rendered by us under the Urban Land (Ceiling and Regulation) Act, 1976, Mr. Rajiv Dhawan relied on paragraph

22. In that paragraph, this Court has held that once the land is acquired, it vests in the State free from all encumbrances.

It further shows that it is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. It was further held that the land owner becomes *persona non grata* once the land vests in the State and he has a right to get compensation only for the same. The said decision is not helpful to the issue raised in the case on hand.

17) The last decision relied on by Mr. Rajiv Dhawan is in *Banda Development Authority, Banda vs. Moti Lal Agarwal & Ors.*, (2011) 5 SCC 394. He relied on paragraph 37 which speaks about principles and how the possession has to be taken under the Central Act. The said decision is also not helpful to the case on hand.

18) On the other hand, Mr. K.K. Venugopal, learned senior counsel appearing for the respondents heavily relied on the principles laid down in the following decisions:

(i) *Khub Chand & Ors. vs. State of Rajasthan & Ors.*, AIR 1967 SC 1074 = (1967) 1 SCR 120.

(ii) *Syed Hasan Rasul Numa & Ors. vs. Union of India & Ors.*, (1991) 1 SCC 401 and

(iii) *Kunwar Pal Singh (dead) by L.Rs. vs. State of U.P. & Ors.*, (2007) 5 SCC 85.

19) In *Khub Chand (supra)*, Subba Rao, C.J. after considering similar rival contentions and quoting Sections 4, 5 and 5-A of the Central Act answered several aspects including the mandatory nature of publication provided under Section 4 of the Act. The following discussion and conclusion are relevant:

"6.The learned Advocate-General argued that a combined reading of Sections 4, 5 and 5-A indicates that the direction in the second part of Section 4 that the Collector shall cause public notice of the substance of the notification to be given at convenient places in the said locality was only directory. He pointed out that Section 4 contemplated only a notification in general terms and that under Section 5(2) after the Collector ascertained the necessary particulars, the Government had to issue a fresh notification giving sufficient description of the land intended to be acquired along with a plan, if one had been made, and also to cause a public notice to be given of the substance of the said notification at convenient places on or near the land to be acquired. As two notices were contemplated by the Act -- one in general terms and another with specifications -- and as both the notices should be published and their substance should be notified at convenient places, the argument proceeded, that the direction to cause a public notice of the substance of the notification to be given at convenient places in the said locality under Section 4 was only directory, for the party would get under the later notification better particulars and thus he would not in any case be prejudiced.

7. This argument was not accepted by the High Court, and in our view rightly. The provisions of a statute conferring power on the Government to compulsorily acquire lands shall be strictly construed. Section 4 in clear terms says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The provision is mandatory in terms. Doubtless, under certain circumstances, the expression "shall" is construed as "may". The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations. The object underlying the said direction in Section 4 is obvious. Under sub-section (2) of Section 4 of the Act, after such a notice was given, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry. The fact that the owner may have notice of the particulars of the intended acquisition under Section 5(2) does not serve the purpose of Section 4, for such a notice shall be given after the appropriate officer or officers enter the land and submit the particulars mentioned in Section 4. The objects of the two sections are different: the object of one section is to give intimation to the person whose land is sought to be acquired, of the intention of the officer to enter his land before he does so and that of the other is to enable him to know the particulars of the land which is sought to be acquired. In the Land Acquisition Act, 1894 (Central Act 1 of 1894) there is no section corresponding to Section 5(2) of the

Act. Indeed sub-section (2) of Section 5 of the Act was omitted by Act 15 of 1960 and Section 5-A was suitably amended to bring the said provision in conformity with those of Central Act 1 of 1894. Whatever may be said on the question of construction after the said amendment -- on which we do not express any opinion -- before the amendment, Sections 4 and 5(2) were intended to serve different purposes.

8. Indeed, the wording of Section 4(2) of the Act leads to the same conclusion. It says, "thereupon it shall be lawful for any officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality...." The expressions "thereupon" and "shall be lawful" indicate that unless such a public notice is given, the officer or his servants cannot enter the land. It is a necessary condition for the exercise of the power of entry.

The non-compliance with the said condition makes the entry of the officer or his servants unlawful. On the express terms of sub-section (2), the officer or his servants can enter the land to be acquired only if that condition is complied with. If it is not complied with, he or his servants cannot exercise the power of entry under Section 4(2), with the result that if the expression "shall" is construed as "may", the object of the sub-section itself will be defeated. The statutory intention is, therefore clear, namely, that the giving of public notice is mandatory. If so, the notification issued under Section 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void."

20) In Syed Hasan Rasul Numa (supra), this Court considered the dictum laid down by Subba Rao, C.J., in Khub Chand (supra). The following conclusion is relevant:

"13. There is a broad basis for the view that we have taken from the decisions of this Court although on the provisions of other enactment. Section 4(1) of the Land Acquisition Act, 1894 provides for publication of the notification in the official Gazette and in two daily newspapers circulating in that locality where the land is situated of which at least one shall be in the regional language. Section 4(1) further provides that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. In Khub Chand v. State of Rajasthan Subba Rao, C.J., while construing the object and scope of Section 4(1) expressed the view that provisions of the section requiring public notice are mandatory and the legislature thought that it was absolutely necessary that the owner of the land should have a clear notice of the proposed acquisition. It was said that the fact that the owner may have notice of the particulars of the intended acquisition by any other means does not serve the purpose of Section 4 and does not absolve the obligation to follow the method of publication of the notification. It was also observed that the notification issued under Section 4(1) without complying with the mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would also be void. This view has been reiterated in a number of subsequent decisions of this Court. In Collector (District Magistrate), Allahabad v. Raja Ram

Jaiswal most of the earlier decisions have been referred to and the view taken in Khub Chand case has been reiterated.

14. In the instant case, the notice has been published only in the local newspapers, namely, the Daily Pratap, the Hindustan Times, the Statesman, the Indian Express and the Navbharat Times. This is only one of the three means of publication provided under Section 44 and it apparently falls short of the mandatory requirements of the section. Since the provisions of the Section 44 have not been complied with, the notice in question has no validity and the action taken pursuant thereto has also no validity."

21) In Kunwar Pal Singh (supra), this Court while construing three modes of publication, namely, (i) publication in the Official Gazette, (ii) in two daily newspapers circulating in the locality and, (iii) causing public notice of the substance in the locality where the land situate, provided under the Central Act, held as under:-

"16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the Act".

22) Though all the above decisions arose under the Central Act, it is not in dispute that similar provisions have been incorporated in the State Act. We have already extracted Sections 4, 5, 5-A and 6 of the State Act which are similar to the provisions of the Central Act. From the materials placed before us, we are satisfied that the conditions prescribed in Section 4(1)(a) and (b) had been complied with except Section 4(1)(c) which have not been followed. In the light of the language used in Section 4(1), namely, "the Collector shall notify it", the procedures/directions provided in Section 4(1)(a)(b) and (c) ought to be strictly complied with. There is no option left with anyone to give up or waive any of the mode and all such modes have to be strictly resorted to. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the land owners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to. In the case on hand, admittedly, the notification was published in two daily newspapers i.e. in the Himalayan Mail and in the Greater Kashmir but one of them was not a newspaper published in regional language i.e. Kashmiri which is the requirement of Section 4(1)(c) of the Act. We have

already held that all the requirements provided in Section 4(1)(a)(b) and (c) are mandatory and have to be strictly adhered to. In addition to the same, though on 11.06.2003 a corrigendum was issued for enlarging the area of acquisition, admittedly, this corrigendum was not published in any newspaper.

23) As pointed out above, it is true that the prescribed period of 15 days as mentioned in Section 5-A(1) of the Act for filing objections starts running from the date of publication of the notification under Section 4(1) of the Act in the manner provided in Clause (a), however, at the same time, the conditions as prescribed under Section 4(1) have not been fully complied with. It cannot be claimed that compliance of provisions of sub-Sections (a) to (c) of Section 4(1) are only directory. On the other hand, it is not only mandatory but all the terms provided therein are to be complied with very strictly. This has been reiterated in Section 5-A of the Act also. By virtue of the provisions of the State Act, the valuable right/ownership of the land owners being taken away, hence, those provisions have to be strictly construed. The object of publication in terms of Section 4(1)(c) of the Act is to intimate the people who are likely to be affected by the notification. It is not in dispute that when the officers attempted to serve the notice by affixation or to persons in charge of the land, they were informed about the absence of the land owners due to disturbance in the area in question and it was also informed that they are residing in Delhi. In spite of such information, the authorities have not taken care of sending proper notice to the respondents or comply with the provisions, particularly, Section 4(1)(c) of the Act. In view of the above discussion, we agree with the reasoning and ultimate conclusion of the learned single Judge quashing the acquisition proceedings from the stage of Section 5A of the State Act and the decision of the Division Bench affirming the decision of the learned single Judge.

24) Apart from the above infirmities, Mr. Venugopal, learned senior counsel for the respondents after taking us through the provisions of the J&K Housing Board Act, 1976, particularly, framing of housing schemes and acquisition and disposal of land contended that in the absence of any approved Scheme by the Board, it is not permitted to proceed further. In respect of the above argument, he highlighted Sections 14, 15, 17, 19 and 26(1)(2) of the Housing Board Act, 1976. Inasmuch as we accept the reasonings and the conclusion of the learned single Judge quashing the acquisition proceedings from the stage of Section 5-A and further direction to file their objections afresh within 15 days of the receipt of copy of his order, we are not inclined to go into the said contention. However, the contesting respondents are free to raise the said objection and it is for the authority concerned/government to take a decision one way or other if the same is acceptable for which we are not expressing any opinion.

25) In the light of the above discussion, we are unable to accept the stand taken by the Board-appellants herein, on the other hand, we are in entire agreement with the decision of the learned single Judge as affirmed by the Division Bench.

Consequently, the appeals fail and the same are dismissed with no order as to costs. In view of the dismissal of the appeals of the Board and in the light of the various objections raised, the respondents/land owners are permitted to file their additional objections, if they so desire, within 15 days from the date of receipt of this judgment. On receipt of those fresh objections, the Collector of

the Board will consider both the original and additional objections and also afford personal hearing to them at the Housing Board Office situated at Green Belt Park, Gandhi Nagar, Jammu and proceed further in accordance with law.

.....J. (P. SATHASIVAM)J. (DR. B.S.
CHAUHAN) NEW DELHI;

NOVEMBER 4, 2011.