

C.K. Narayana Chary vs Pothepalli Ashanna & Ors on 30 September, 1985

Equivalent citations: 1986 AIR 317, 1985 SCR SUPL. (3) 161, AIR 1986 SUPREME COURT 317

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, R.S. Pathak, Amarendra Nath Sen

PETITIONER:

C.K. NARAYANA CHARY

Vs.

RESPONDENT:

POTHEPALLI ASHANNA & ORS.

DATE OF JUDGMENT 30/09/1985

BENCH:

BHAGWATI, P.N. (CJ)

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PATHAK, R.S.

SEN, AMARENDRA NATH (J)

CITATION:

1986 AIR 317	1985 SCR Supl. (3) 161
1986 SCC (1) 9	1985 SCALE (2) 783

ACT:

Land Acquisition Act 1894 sec. 4(1) & Land Acquisition (A.P. Amendment & validation) Act 1983 - Acquisition of Land Issuance of Notification - Public notice of substance of Notification - Giving of within 40 days of publication of Notification in Official Gazette - Necessity of.

HEADNOTE:

A Notification under sub-s.(1) of s. 4 of the Land Acquisition Act 1894 was issued on 18th October, 1979 and published in the Official Gazette on the same day. On 19th November 1979 the Revenue Divisional Officer directed notice of the substance of the Notification to be given in the locality. The compliance report was submitted by the Village Officer on 18th December, 1979.

The Land owners Respondent Nos . 1 and 2 challenged the Notification under Article 226 on the ground that public notice in the locality was not given of the substance of the Notification on the same day on which the Notification was published in the Official Gazette. The High Court allowed the petition and quashed the Notification on 28th June 1983.

However, before the delivery of the judgment, the Land Acquisition (Andhra Pradesh Amendment and Validation) Act 1983 had been enacted on 23rd June 1983, which escaped consideration by the High Court. The appellant filed a Review Petition and the same was dismissed on the ground that there was a time gap of more than forty days between the publication in the Official Gazette and the public notice of the substance of the Notification in the locality.

Dismissing the appeal of the appellant to this Court,

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HELD: In case of a Notification issued under sub-s.(1) of 8.4 on or after 12th Sept., 1975, if public notice of the substance of such notification is not given in the locality within forty days from the date of publication of such Notification in the official Gazette, such Notification would be invalid.

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Civil Appeal Nos. 5389-42 of 1983 dated 30.9.85 referred to.

In the instant case, the Notification under sub-s. (1) of 8.4 was published in the Official Gazette on 18th October, 1979 and if public notice of the substance of such Notification was given in the locality on 18th December 1979, there would be clearly a time gap of more than forty days between the publication of the Official Gazette and the giving of public notice of the substance of the Notification in the locality. The Notification would, therefore, be liable to be struck down as invalid.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2521 of 1984.

From the Judgment and Order dated 19.3.1984 of the Andhra Pradesh High Court in R.W.A.M.P. No. 134 of 1984.

Y. Prabhakara Rao for the Appellant.

G.S. Narayana for the Respondent.

The judgment of the Court was delivered by BHAGWATI, C.J. The Notification under sub-section (1) of section 4 of the Land Acquisition Act, 1894 was issued by the Government of Andhra Pradesh in the present case on 18th October, 1979 and it was published in the Government Gazette on the same

day. The Revenue Divisional Officer directed public notice of the substance of the Notification to be given in the locality and this direction was admittedly given on 19th November, 1979. The report of compliance with this direction was submitted by the Village Officer on 18th December, 1979. before any further proceedings could take place pursuant to the Notification, respondent nos. 1 and 2 who are owners of the land notified for acquisition under the Notification filed a writ petition in the High Court for quashing the Notification on the ground that public notice of the substance of the Notification in the locality was not given on the same day on which the Notification was published in the Official Gazette. The High Court allowed the writ petition and quashed the impugned Notification by a Judgment dated 28th June, 1983.

However, in the meantime, before the Judgment was delivered by the High Court, the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 had already been enacted on 23rd June, A 1985. But the attention of the High Court was not drawn to it and the judgment delivered by the High Court, therefore, did not take into account this amending legislation. The appellant, for whose benefit the acquisition was going to be made, thereupon filed a Review Petition in the High Court. The Review Petition too was dismissed by the High Court on the view that, though the impugned Notification was published in the Official Gazette on 18th October, 1979, public notice of its substance was given only on 18th December, 1979 and there was thus a time gap of more than forty days between the publication in the Official Gazette and the public notice of the substance of the Notification in the locality and there was accordingly violation of the mandate contained in sub-section (1) of section 4 as amended by the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 with retrospective effect from 12th September, 1975. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

We have already held in a Judgment delivered by us today in Civil Appeals Nos. 5839-42 of 1983 that, in case of a Notification issued under sub-section (1) of section 4 on or after 12th September, 1975, if public notice of the substance of such Notification is not given in the locality within forty days from the date of publication of such Notification in the Official Gazette such Notification would be invalid. Here the Notification under sub-section (1) of section 4 was published in the Official Gazette on 18th October, 1979 and if public notice of the substance of such Notifications was given in the locality on 18th December, 1979, there would clearly be a time gap of more than forty days between the publication of the Official Gazette and the giving of public notice of the substance of the Notification in the locality, and the Notification would be liable to be struck down as invalid. But the appellant contended that there was no material before the High Court to come to the conclusion that public notice of the substance of the Notification was given on 18th December, 1979. What, according to the appellant, happened on 18th December, 1979 was only this, namely, that the report of compliance with the direction given by the Revenue Divisional Officer for public notice being given in the locality was submitted by the Village Officer, but from that, contended the appellant, it did not follow that public notice of the substance of the Notification was given on that day. We do not think there is any substance in this contention urged on behalf of the appellant. The appellant in support of the Review Petition did not place any material before the High Court to show as to A when exactly and on what particular date, public notice of the substance of the impugned Notification was given in the locality. When there was no such material produced before it, the High Court was justified in reaching the conclusion that public notice of the substance of the impugned

Notification must have been given on 18th December, 1979 and the Village Officer must have immediately made a compliance report to the Revenue Divisional Officer. The High Court, in our opinion, could not be said to have erred in holding that public notice of the substance of the impugned Notification was given on 18th December, 1979.

We therefore dismiss the appeal but there will be no order as to costs throughout.

A.P.J.

Appeal dismissed.