Shri Mohan Singh & Ors Etc vs International Airport Authority ... on 7 November, 1996

Equivalent citations: AIRONLINE 1996 SC 472, 1997 (9) SCC 132, (1996) 4 SCJ 323, (1997) 3 CUR CC 94, (1997) 1 ICC 533, (1997) LACC 184, (1996) 10 JT 311, (1997) 6 SUPREME 169, (1996) 10 JT 311 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
SHRI MOHAN SINGH & ORS ETC.

Vs.

RESPONDENT:
INTERNATIONAL AIRPORT AUTHORITY OFINDIA & ORS.

DATE OF JUDGMENT: 07/11/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

Leave granted.

The International Airport Authority of India (for short, 'IAAI') had requisitioned the Lt. Governor, Delhi and the Government of India to acquire 713 bighas, 2 biswas of land for rehabilitation of 1,000 families displaced by acquisition of land for Indira Gandhi International Airport. The Lt. Governor, exercising the power under Section 17(1) dispensed with the enquiry under Section 5-A and directed under Section 17(4) to take over possession. The notification under Section 4(1) of the Land

Acquisition Act, 1894 (for short, the 'Act') was published in tow newspapers on January 3, 1987. The notice of substance of such notification was given at convenient places in the locality. The declaration under Section 6(1) was published on December 24, 1986 and notice of substance thereof was given in the locality thereafter. The possession of the land was taken over on January 29, 1987. The awards also were made by the Collector under Section 11 on December 23, 1987.

It would appear that, admittedly, a batch of writ petitions was filed in the High Court impugning the notification under Section 4(1) and the declaration under Section 6(1) and the exercise of the power under Section 17(4). The whole batch of cases was dismissed and became final. These two Civil Writ Petition Nos. 133 and 2440 of 1987 were segregated due to amendment of their pleading wherein the appellants had pleaded that the notification under Section 4(1) and the declaration under Section 6(1) were actually published on January 28, 1987 and January 29, 1987 respectively. Therefore, it was contended before the learned single Judge that in either event, notification under Section 4(1) was published in the newspapers on January 3,1987. While the Government exercised the power under Section 17(4) before publication of the notification under Section 4(1), as contemplated in the manner prescribed under Section 4(1), the learned single Judge accepted the contention and held that the exercise of the power by the Government dispensing with the enquiry under Section 5A and publication of the declaration under Section 6 was illegal. Accordingly, she quashed the declaration under Section 6 and gave liberty to the Lt. Governor to have the declaration published afresh in accordance with law. On appeal, the Division Bench, in the impugned judgment in LPA No. 53/94 and batch, dated February 28, 1996, reversed the judgment of the single Judge dated May 20, 1994. Thus, these appeals by special leave.

Shri Shanti Bhushan, learned senior counsel for the appellants, contended that the exercise of the power under Section 17(4) invoking urgency clause under Section 17(1) is conditioned upon the publication of the notification under Section 4(1). Thereafter, the Government has the power to invoke Section 17(4). Section 4(1) contemplate three mandatory conditions to be complied with, i.e. (1) publication of the notification under Section 4(1) in the official Gazette; (2) publication of the notification in two daily newspapers having circulation in that locality of which at least one shall be in the regional language; and (3) the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said notification to be given at convenient places in the said locality. The last of the dates of such publication and the giving of such public notice has reference to the date of the publication of the notification. Unless all the three steps are complied with and after compliance of last of it or any one of them which will be the last of it, the Act gives power to the appropriate Government to exercise the power under Section 17(1) and empowers thereafter to dispense with the enquiry under Section 5A and declaration under Section 6(1) may be made in respect of that land at any time "after the publication of the notification under Section 4(1)". In support thereof, he placed strong reliance on State of U.P. & Ors. vs. Radhey Shyam Nigam & Ors. etc. [(1989) 1 SCR 92]. He also contended that the publication of the three steps required to be taken under Section 4(1) is mandatory. There is a distinction between making a declaration and publication thereof in the newspapers and in the locality. Making the declaration is a condition precedent for exercise of the power under Section 17(4). The said making should be only after the publication of the notification under Section 4(1) as contemplated in sub- section (1) of Section 4. In support thereof, he relied upon the judgments in Khadim Hussain vs. State of U.P. & Ors. [(1976) 3

SCR 1] and Krishi Utpadan Samiti & Anr. vs. Makrand Singh & Ors. [(1995) 2 SCC 497].

Shri P.A. Chowdhary, learned senior counsel for the Union of India, has contended that in interpreting the provisions of Sections 4(1), 6 and 17, the purpose behind each of the three sections should be kept in view. Though the languages in Section 4(1) read with Section 17(4) is capable of more than one interpretation, as is sought to be pressed for acceptance by Shri Shanti Bhushan , the Court is required to consider what purpose each Section seeks to serve. The effect of interpretation on the public purpose and the resultant consequence are required to be kept in view in giving interpretation to the respective provisions. According to the learned counsel, the purpose of Section 4(1) is to intimate to the owner that (1) the land is needed or is likely to be needed for a public purpose; (2) it is a notice to the public that the land is encumbered for public purpose; and (3) the officers are authorised to enter upon the land to take measurements thereof etc. to find out whether it is suitable for public purpose. Therefore, the requirement of the publication of the notification in the Gazette, in the newspapers and giving of the notice of substance thereof at the convenient place in the locality is mandatory. The purpose of Section 6 is to give conclusiveness to the public purpose envisaged in Section 4(1). While the procedural steps of publication in the newspapers and notice of substance thereof in the locality under Section 6(2) are only ministerial acts, the last of which is intended as "hereinafter", namely, computation of limitation of two years to make the award thereafter under Section 11 and also computation of the limitation under Section 11A. The word "hereinafter" in Section 4(1) is also for the purpose of computation of the limitation of one year for publication of the declaration under Section 6(1). Section 17 gives power to the appropriate Government to dispense with the enquiry under Section 5-A which exercise depends upon the nature of the urgency. In cases of urgency, Section 17(4) gives power to the appropriate Government to dispense with enquiry under Section 5A, make and thereafter publish the declaration under Section 6(1) in the Gazette. The possession would be taken after the expiry of 15 days from the date on which notice under Section 9 was published. Sub-section (2) of Section 17 dispenses with the limitation on taking possession without awaiting the expiry of 15 days from the date of issue of Section 9(1) notice and immediately the appropriate Government may take possession of the land, when it is emergently needed. The scheme, thus, would indicate that interpretation of the provisions is required to be put up in such a way that each of the above objectives are achieved. In support thereof, he relies upon The State of U.P. & Ors. vs. Babu Ram Upadhya [(1961) 2 SCR 679].

Shri S.K. Sindu, learned senior counsel for IAAI, contended that preceding the Amendment Act 68 of 1984, the State had power to have the notification under Section 4(1) and the declaration under Section 6 simultaneously published in the Gazette to take possession, when enquiry under Section 5A was dispensed with. After the Amendment, the notification under Section 4(1) should be published in the Gazette and the declaration under Section 6(1) should be published thereafter within a gap of one day. Then, the exercise of the power under Section 17(1) or 2 becomes valid. In this case, the said procedure was adopted. Even if the notification, or date of the printing which is found different from the date of printing is taken into account, they were published on December 23 and December 24, 1986 respectively and again on January 28 and January 29, 1987 respectively. In either event, the declaration under Section 6(1) is valid in law. It is not necessary that the procedure of compliance of three conditions required under Section 4(1) should be completed before exercising the power under Section 17(4) read with Section 17(1); there is power to issue declaration under

Section 6(1). In support thereof, he relies upon Lt. Governor of Himachal Pradesh & Anr. vs. Sri Avinash Sharma [(1970) 2 SCR 149]. The Government having a already published the declaration under Section 6 and taken possession of the land on January 29, 1987, there was no necessity for the Government to make any further declaration under Section 6(1).

Mrs. Pinky Anand, learned counsel for the acquiring authority, contended that the purpose of Section 6 is different from the purpose of Section 4. Publication is required to be completed within one year from the date of the notification published under Section 4(1) and the compliance of the three steps, the last of which provides the limitation. This Court in State of Haryana & Anr. vs. Raghubir Dayal [(1995) 1 SCC 133] had held that the compliance of three steps required under Section 4(1) and of publication of the declaration in the Gazette is mandatory. This Court further held that the publication in the locality and newspapers was directory. Thus, this Court had, by interpretation, facilitated achievement of the objects of the Act. Similar interpretation also requires to be given to Section 17(4). What requires to be published is the notification under Section 4(1) in the Gazette. The later two steps required under Section 4(1) may be taken later, but to enable the appropriate Government, taking possession under Section 17(1) or 17(2) read with the Section 17(4) of the Act after publishing the declaration under Section 6(1), is necessary.

Shri Shanti Bhushan raised another contention that the Lt. Governor, after the judgment of the learned single Judge, superseded the declaration published on December 24, 1986, by causing publication of the declaration on May 19, 1995. Therefore, in the eye of law, there is no declaration published on December 24, 1986. The Division Bench, therefore, was not right to uphold such declaration which is or non est. The contention was refuted by the learned counsel for the respondents.

In view of the diverse contentions, the first question that arises for consideration is : what is the meaning of the phrase "a declaration may be made under Section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1)" used in Section 17 (4) of the Act and when is the power under Section 17(4) to be exercised ? It is seen and well settled legal position that the appropriate Government exercises its power of eminent domain to acquire the land in any locality when it is needed or is likely to be needed for any public purpose or for a company, in the later event in Chapter VII. The notification for the said purpose shall be published in the official Gazette. After the Amendment Act 68 of 1984, the same shall be published in two daily newspapers having circulation in that locality of which at least one shall be in the regional language. The Collector shall cause notice of the substance of such notification to be given at convenient places in the said locality, the last of the date of such publication "being hereinafter" referred to as the date of the publication of the notification. It would, thus, be seen that (1) the notification under Section 4(1) shall be published, in the official Gazette; (2) the same should be published also in two daily newspapers having circulation in that locality at least one of which would be in the regional language; and (3) the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. It is well settled legal position that the publication of the notification under Section 4(1) in the Gazette is mandatory. Similarly, preceding the Amendment Act 68 of 1984, publication of the substance of such notification in the convenient locality was also held mandatory. After the Amendment Act, in Raghubir Dayal's case

(supra), this Court had held that the requirement of compliance of three steps envisaged under Section 4(1) is mandatory. The expressions "hereinafter" and "last of the dates of the publication"

> shall be for the purpose of computation of limitation of one year under Section 6 and to determine compensation under Section 23(1).
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> As regards publication of the declaration under Section 6(2) and the meaning of the word "hereinafter", it is referred to for the purpose of computation of the limitation prescribed under Section 11-A of the Act. In Makrand Singh's case (supra), this Court had held that the purpose of the word "hereinafter" is to compute the limitation under Section 11-A. In Raghubir Dayal's case (supra), it was also held that the publication of the declaration in two newspapers and substance thereof at the convenient places in the locality is directory. The word "hereinafter" used in Section 4(1) is, therefore, also required to be understood in the same context. It seeks to prescribe limitation under Section 6 for publication of the declaration under Section 6(1) within one year from the date of the publication of the notification under Section 4(1). The last of the dates was intended only for the purpose of computation of limitation.
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> It is seen that Section 17 envisages two situations, viz, where the appropriate Government is of the opinion it is a case of urgency to take possession of the land for public purpose, the appropriate Government, even before making an award under Section 11, is empowered to direct the Collector to take possession of the land, after the expiry of 15 days from the publication of notice under Section 9(1). Such land shall, thereupon, vest absolutely in the Government free from all encumbrances. Further urgency has been emphasised in sub-section (2) of Section 17 and the embargo to await 15 days is also lifted in Section 17(2). Sub-sections (3), (3A) and (3B) are not relevant for the purpose of this case. Sub-section (2) further enlarges the power of the Government after invoking urgency clause and provides that if owing to any sudden change in the channel of any navigable river or other unforseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of the traffic or for the purpose of making thereon a river- side or ghat station, or of providing convenient connection with or access to any such station etc. the Collector, immediately after the publication of the notice under Section 9(1), without waiting the lapse of 15 days time, is empowered to enter upon and take possession of such land. Thereupon, such land shall vest absolutely in the Government free from all encumbrances. That would indicate the nature of the extreme urgency and they intend to avoid public inconvenience in the service of the notice to the owner under Section 9(1) of the Act and to wait for 15 days. Sub- section (4) follows the heels of publication in Gazette under Section 4(1), within a gap of one day, publication of declaration under Section 6 and tracks on Section 17(1) or 17(2). In the case of the exercise of the power under sub- section (1) or (2) the appropriate Government is empowered to direct that the provisions of Section 5A shall not apply and if it so directs "a declaration may be

made under Section 6 in respect of the land at any time after the date of publication of the notification under Section 4, sub- section (1)".

It is seen that Section 4(1) and Section 6(1) have expressly mentioned the phrase "hereinafter", while similar language does not find place in Section 17(4). Equally Section 17(4) does not mention the last of the dates of the publication, i.e., the three steps required under Section 4(1) or Section 6(2). In other words, the object of Section 17 appears to be that when the Government exercises the urgency power under Section 17(1) or emergency power under Section 17(2), they form the opinion that the land is needed for public purposes. If the possession of the land is needed urgently or immediately they are required to have the notification under Section 4(1) published in the official Gazette and within a gap of one day to make the declaration under Section 6 and have the same published under Section 6(1). Thus, what is mandatory is publication of the notification under Section 6(1) is mandatory. Thereby, the public purpose becomes conclusive, as envisaged under sub- section (3) of Section 6 and the Collector is empowered to take immediate possession of the land for the said public purpose.

The question is : whether it is mandatory in such a situation, i.e., after the publication of the notification in the Gazette publication in two local newspapers and giving of notice of the substance of the notification at convenient places in the locality, to await the exercise of power under Section 17(4) ? After giving due and deep consideration to the respective contentions raised by the learned counsel, we are of the considered view though the compliance of these three steps required under Section 4(1) is mandatory for the exercise of the power under Section 17(4), it is not necessary that all the three steps should be completed before making the declaration under Section 6(1) and have it published for directing the Collector to take possession under Section 17(1) or 17(2). What is needed is that there should be a gap of time of at least a day between the publication of the notification under Section 4(1) of the declaration under Section 6(1). Herein, we dispose of the controversy and agree with Shri Shanti Bhushan that the date of the notification and declaration published as mentioned in the Gazette is conclusive but not the actual date of printing of the Gazette. This interpretation of ours would serve the public purpose, namely, the official functions are duly discharged. When the land is urgently needed under Section 17(1), notice under Section 9(1) would be given to the owner steps would be taken to and resume its possession after the expiry of 15 days. If it is needed emergently under Section 17(2), even without waiting for 15 days on issue of notice under Section 9(1) to the owner, the appropriate Government would direct the Collector to take possession of the land immediately. If the publication in the newspapers and in the locality is also insisted upon as preliminary to the exercise of power under Section 17(4) which are mandatory requirements and until last of them occurs, the immediate or urgent necessity to take possession of the land under Section 17(1) or 17(2) before making the award would be easily defeated by dereliction of duty by the subordinate officers or by skillful manoeuvre. The appropriate Government is required to take the decision for acquisition of the land and to consider the urgency or emergency and to make the notification under Section 4(1) and declaration under Section 6 and have them published in the Gazette that the land acquired under Section 4(1) is needed for public purpose; they become conclusive under Section 6; and to give direction to the Collector to take its possession. The publication in the newspapers and giving of notice of the substance of the notification at the convenient places in the locality are required to be done by the Collector

authorised by the Government under Section 7 and his subordinate staff. If dereliction of duty is given primary, delay deflects public justice to meet urgent situation by the acts of subordinate officers for any reason whatsoever. Until that is done and the last of the dates occurs, Government would be unable to act swiftly for the public purpose to take immediate possession envisaged under sub- section (1) or (2) of Section 17 and they would be easily defeated or frustrated.

In Raghubir Dayal's case (supra) this Court in paragraph 7 had held thus :

> "Therefore, the word "shall" in Section 4(1) should be construed to be mandatory because the requirement of Section 4(1) of the publication of the notification in the Gazette followed by their publication 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, proposed to be acquired.
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> 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 Section 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.
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> In paragraph 8, it was held that the purpose of the declaration under Section 6 is to render the land notified therein as that is needed for giving conclusiveness to the public purpose. Though the language of Section 6(2) is pari materia with Section 4(1), since the two purposes are different, it was held that the publication of the declaration under Section 6 is mandatory; but publication of notification in the newspapers and of notice of substance thereof in the locality is held directory. The publication in the Gazette under Section 6(1) accords the conclusiveness to the need of the public purpose. Section 4(1) speaks of "needed or likely to be needed". The ministerial acts, thereafter, would not render such publication invalid. In Makrand Singh's case (supra) in paragraphs 4 and 5, the object of Sections 4(1), 6(1) and 6(2) is conjointly considered and it was held that the word "hereinafter" was intended for the purpose of computing the period of limitation provided in the proviso to sub-section (1) of Section 6. As held earlier, the word "hereinafter" in sub- section (1) of Section 4 is to compute the period of limitation under Section 6. Equally, the purpose of sub- section (2) of Section 6 is to compute the period of limitation provided in Section 11-A. It is true that in Radhay Shyam Nigam's case (supra), several notifications under Section 4(1) and declaration under Section 6 simultaneously published had come up for consideration before the Division Bench

of the Allahabad High Court and were upheld, but on appeal, this Court considered the effect of the simultaneous publication after the Amendment Act 68/84. In one of the cases, notification under Section 4(1) was of May 6, 1985 and declaration under Section 6 was published on May 22, 1985. Power under Section 17(1A) was exercised for taking possession immediately. The question arose : whether such publication of the declaration was valid in law ? This Court had held at page 106 that the words "after the publication of the notification" under sub- section (4) of Section 17 read simpliciter, clearly indicate that the declaration under Section 6 had to be made after the publication of the notification, meaning thereby subsequent to the date of the publication of the notification. The question at what gap of time declaration can be published, did not arise for consideration in that case. It is seem that in this case, the notification under Section 4(1) was published on December 23, 1986 and declaration under Section 6 was published on December 24, 1986, i.e., within gap of one day. Making of the declaration under Section 6 is not merely signing by the officials; the official is empowered to sign at any time before its actual publication. What is material is that the declaration under Section 6 should be published in the Gazette after the notification under Section 4(1) was published, i.e., after a gap of at least one day. Therefore, declaration is required to be published though signed earlier, after the publication of notification under Section 4(1) in the Gazette. Though it was contended by the learned counsel for the appellant in the High Court before the learned singly Judge and Shri Sidhu trod on the same path and brought on record that the actual Gazettes in respect of the notification under Section 4(1) and declaration under Section 6 were printed on January 28 and January 29, 1987 respectively, what is crucial is not the actual date of printing, but the date of the publication in the Gazette as appears from the Gazette. Shri Shanti Bhushan has fairly contended that such publication is a relevant one. We agree with Shri Shanti Bhushan in that behalf.

The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. In the present context, "may" does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In "Craies on Statute Law" (7th Edn.), it is stated that the Court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object

that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the language in which the intent is couched. The meaning and purpose the Act seeks to achieve. In "Suhtherland Statutory Construction" (3rd Edn.) Volume 1 at page 81 in paragraph 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In "Crawford on the Construction of Statutes" at page 516, it is stated that :

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other ...."

In "Maxwell on the interpretation of Statutes", 10th Edition, at page 381, it is stated thus :

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

The two quotations were approved by this Court in Babu Ram Upadaya's case and law was down thus :

"When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending t the whole scope

of the statute.

For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, contingency of the non-compliance with the provisions, the fact the non-

compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

In K. Narasimhiah v. H.C. Singri Gowda & Ors. [(1965) 3 SCR 618] giving of three days' notice to the councillor of a municipality in convening the no confidence Motion under Section 27 [3] of the Mysore Town Municipalities Act, 1951 was held to be directory as providing shorter period of such meeting was considered more important to make it convenient to the councillor to attend the meeting of Motion of No Confidence. It was held that the object of giving of notice was to make it possible for the councillors to so arrange their affairs in the other business as to be able to attend to the meeting.

In The Remington Rand of India Ltd. v. The Workmen [(1968) 1 SCR 154] the question was : whether publication of the award beyond fixed time was invalid ? Considering the provisions of Section 17(1) of the Industrial Disputes Act, 1947, this Court had held that it was only directory and not mandatory. Holding it to be directory would defeat the purpose of the Act.

In Hiralal Agrawal etc. v. Rampadarath Singh & Ors. [(1969) 1 SCR 328] the right of reconveyance under Section 16 of the Bihar Land Reforms Act, 1962 and giving of notice was held to be directory as it would effectuate obtaining reconveyance by the co-sharers under that Act.

In the Municipal Corporation of Greater Bombay v. The B.E.S.T. Workers' Union [(1973) 3 SCR 285] six months' time under Section 78 (1) of the Bombay Industrial Relations Act, 1946 for imposition of punishment was held to be directory.

In Raza Buland Sugar Co. Ltd. vs. Municipal Board, Rampur [(1965) 1 SCR 970] the question was whether the whole of Section 131(3) or the part of it requiring publication of the requisition in the manner laid down in Section 94(3) of the U.P. Municipalities Act, 1916, i.e., in the Hindu newspapers was merely directory. It was held that considering the object of the provisions for publication, i.e., to enable the public to be able to place the view point before the Board, publication is mandatory but the manner of publication was held to be directory. The same ratio would apply with equal force to the facts of this case.

The compliance of the requirements in the matter of filing nomination papers for election to the Legislative Assembly or election petitions has consistently been held to be mandatory. Since it is a right conferred under the statute, its strict compliance enables the respondent to raise the required objections. In regard to the nomination, strict compliance of the particulars in the nomination papers was held to be mandatory in Virji Ram Sutaria vs. Nathalal Premji Bhanvadia & Ors. [(1969) 2 SCR 627]; similarly, compliance of the requirement of furnishing particulars in the election petitions was held to be mandatory in Satya Narain vs. Dhuja Ram & Ors. [(1974) 3 SCR 20].

Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word "shall", though prima facie gives impression of being mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature ad design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the Court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provided for any contingency for non-compliance; if the word "shall" is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directly. If an object to the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice.

In the light of the above law, we have no hesitation to hold that though compliance of publication of the three steps required under Section 4(1) is mandatory while exercising the power of eminent domain under Section 4(1), when the appropriate Government exercises the power under sub-section(4) of Section 17 dispensing with the enquiry under Section 5-A and directing the Collector to take possession of the land before making the award when the lands are needed urgently either under sub-section (1) or (2) thereof, it is not mandatory to publish the notification under Section 4(1) in the newspapers and giving of notice of the substance thereof in the locality; the last of the dates of publication should not be the date for the purpose exercising the power under Section 17(4). This interpretation of ours would subserve the public purpose and suppresses mischief of non-compliance and seeks to elongate the public purpose, namely, taking immediate possession of the land needed for the public purpose, envisaged in the notification.

It is true that in Khadim Hussain's case, a Bench of four Judges of this Court had held that the declaration mentioned in Section 6(1) differs from the notification under Section 4(1) and requires to be signed by a Secretary or other officers duly authorised. The declaration is in the form of an order. The notification when published is proof of existence of public purpose. In that case, the question whether declaration under Section 6(1) requires to be published after making declaration, did not come up for consideration. As held by this Court in catena of decisions, publication of the declaration under Section 6(1) is mandatory to give conclusiveness to the public purpose envisaged in sub-section (3) of Section 6. The contention of Shri Sidhu Mrs. Pinky that there is no necessity for fresh publication of the declaration under Section 6, after possession was taken acceptance. The object of Section 4(1) is to enable the Government to have the land tested whether it is needed or likely is to be needed for a public purpose and is suitable; after its consideration by the appropriate Government that the land is needed or is likely to be needed for the public purpose, publication of declaration under Section 6(1) is mandatory to give its conclusiveness to the public purpose published under Section 4(1). Therefore, it is a mandatory requirement that the declaration under Section 6(1) should be published.

The question, therefore, is : whether after the publication of the declaration under Section 6 after it was quashed by the learned single Judge, there is any necessity for the Government to supersede the notification already published under Section 6? It would appear that there was obvious incongruity. It is indisputable that the learned single Judge had quashed Section 6 declaration published on December 24, 1986. Consequently, the question of supersession of the declaration already quashed of suppression of the declaration already quashed is superfluous. It is settled legal position that appeal is a continuation of the original proceedings. Though the learned single Judge quashed Section 6 declaration, on the finding by the Division Bench that the view taken by the learned single Judge is not correct in law, the consequence would be that the act of the learned single Judge quashing the declaration under Section 6 is vitiated by law. As a result, by operation of the decision of the Division Bench, the declaration quashed by the learned single Judge dated December 24, 1986 stood restored. As a result, the declaration under Section 6(1) published on May 19, 1995 is only superfluous and of no consequence.

It is true that after the possession of the land is taken either under Section 17(1), 17(2) or 16, the land stands vested in the State absolutely free from all encumbrances. Subsequently, the power of withdrawal under Section 48(1) would no more be available. The ratio in Avinash Sharma's case (supra), relied on by Shri Sidhu has no application to the facts of this case. Therein, the facts were that after the possession was taken under Section 17(1) and vested in the State, exercising the power under Section 17(1) and vested in the State, exercising the power under Section 21 of the General Clause Act, the declaration under Section 6(1) was withdrawn by the Government had that power ? In that context, this Court had held that after the land vested in the State free from all encumbrances under Section 17(1), the power of issuing of a notification and the power to withdraw such notification envisaged under Section 21 of the General Clause Act was not applicable since the land already stood vested and the Government was denuded of its power under the Act.

It would, therefore, be seen that the declaration under Section 6 published on May 19, 1995 does not have any effect on the declaration published under Section 6(1) on December 24, 1986 which has the

legal effect of getting restored. The Division Bench of the High Court, therefore, was right in setting aside the judgment of the learned single Judge and dismissing the writ petition. It is already seen that the lands stood vested in the State on January 29, 1987 and after the lands including the land belonging to the appellants in an extent of 81.9 bighas out of total extent of 713.2 bighas, were taken possession, they stood vested in the State free from all encumbrances. The award also became final. Under these circumstances, the learned single Judge was wholly wrong in the judgment under appeal before the Division Bench; the reasoning given and consequences reached by the Division Bench are entirely correct in law warranting no interference.

The appeals are accordingly dismissed, but, in the circumstances, without costs.