

The Land Acquisition Officer, ... vs Mohd. Amri Khan & Ors. Etc. Etc on 30 September, 1985

Equivalent citations: 1985 SCR SUPL. (3) 152 1986 SCC (1), 3, (1985) 3 APLJ 21, AIRONLINE 1985 SC 5, 1986 ALL CJ 332, 1986 (1) SCC 3, (1986) 1 APLJ 14

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

PETITIONER:

THE LAND ACQUISITION OFFICER, HYDERABAD URBANDEVELOPMENT AUT

Vs.

RESPONDENT:

MOHD. AMRI KHAN & ORS. ETC. ETC.

DATE OF JUDGMENT30/09/1985

BENCH:

BHAGWATI, P.N. (CJ)

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BHAGWATI, P.N. (CJ)

PATHAK, R.S.

SEN, AMARENDRA NATH (J)

CITATION:

1985 SCR Supl. (3) 152 1986 SCC (1) 3

1985 SCALE (2)779

ACT:

Land Acquisition Act, 1894, Section 4(1) and Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983, Sections 3(1) and 2 - Acquisition of Land - Publication of Notification in Official Gazette and public notice in the locality - Whether both should be simultaneous or immediately after one another - Amended Section 4(1) laying down the limit of the time gap to 40 days with retrospective effect - Delay of over two months in the issue of public notice - Whether invalidates the Notification.

HEADNOTE:

The Government of Andhra Pradesh issued a Notification under Section 4 sub-sec. (1) of the Land Acquisition Act, 1894 for acquiring certain land for the purpose of the

Hyderabad Urban Development Authority (HUDA) and published it in the Andhra Pradesh Gazette on 4th August, 1977. Public notice of the substance of the Notification was given at convenient places in the locality, after a period of about 2 months, on 3rd Oct., 1977. On 10.1.1979, the State Government issued another Notification under Section 6 of the Act excluding some land and declaring that the remaining area of land was needed for the purpose of HUDA. The Land Acquisition Officer made an Award on 27th July 1981 and issued notices to the respondents to deliver possession of the land comprised in the area notified under Section 6 of the Act. The respondents challenged the validity of the aforesaid Notifications in a writ petition before the High Court. The High Court, following an earlier Full Bench decision dated 3rd December, 1982, allowed the writ petition on the ground that local publication of the substance of the Notification under sec. 4 sub-sec.(1) was not made on the same day on which the Notification was published in the Official Gazette and, therefore, the Notification under Section 4 sub-sec.(1) was invalid and the Notification under Section 4 sub-section (1) being the foundation of the jurisdiction to proceed further with the acquisition, the Notification under Section 6 must also fail.

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Subsequent to the delivery of the judgment by the High Court, the Supreme Court in *Deepak Pahwa v. Lt. Governor Delhi Ors.* [1984] 4 SCC 308 held that there is nothing in sub-sec. (1) of Section 4 which requires that the publication in the Official Gazette and public notice in the locality must be simultaneous or immediately after one another, but there should not be a large gap between publication in the Gazette and public notice in the locality as would be indicative of break in the continuity of action. However, before the decision in *Deepak Pahwa's* case, the Andhra Pradesh Legislature passed the Land Acquisition (Andhra Pradesh Amendment (Validation) Act 1983 (For short, the Amending Act) with retrospective effect from 12th Sept., 1975. Sub-section (1) of section 4 of the Act after the amendment provided that the collector shall, within forty days from the date of publication of such Notification, cause public notice of the substance of such Notification to be given at convenient places in the locality.

In appeals to the Supreme Court, the appellant argued (i) that the Legislature proceeded on the assumption that the Full Bench Judgment of the Andhra Pradesh High Court represented the correct law on the subject and it was on that assumption that the Amending Act was enacted by the Legislature. If, on the Full Bench Judgment of the Andhra Pradesh High Court being reversed by the Supreme Court in *Deepak pahwa's* case, the assumption made by the Legislature turned out to be incorrect and it was found that the Legislature proceeded on an erroneous view of the law in enacting the Amending Act, the Amending Act must be

considered superfluous and not the Amending Act, but the correct law as it prevailed prior to the Amending Act must be applied; and (ii) that the legislature enacted the Amending Act for the purpose of validating acquisitions made after 12th September, 1975 which were liable to be declared invalid on account of the Full Bench Judgment of the Andhra Pradesh High Court and it could never have been the intention of the Legislature to invalidate, acquisitions which were valid when made and therefore section 2 of the Amending Act which introduced the amendment in sub-s. (1) of sec. 4 should not be read as having retrospective effect, but should be construed as prospective in operation.

Dismissing the appeals,

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HELD: (i) The retrospective amendment made by the Amending Act in sec. 4 sub-sec. (1) of the Act completely invalidates the Notifications under sec. 4 sub-s. (1) and sec. 6 issued by the

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Andhra Pradesh Government and the Judgment of the High Court quashing these Notifications has therefore to be sustained though on a ground different from that which found favour with the High Court. Whatever be the reason for which the Legislature enacted the amending Act, the Amending Act is on the Statute book and is in force with effect from 12th Sept., 1975 and it must be given effect according to the plain natural meaning of its words. There can be no ground for denying to the amendment in sub-s. (1) of sec. 4 retrospective effect, which sub-s. (3) of sec. 1 of the Amending Act expressly directs that it shall have. In fact, there is no inconsistency between the mandate of sub-s. (1) of sec. 4 and the law as declared by Supreme Court in Deepak Pahwa's Case. What the amended sub-sec. (1) of sec. 4 does is to legislatively lay down the limit of the time gap beyond which it must be presumed that there is a break in the continuity of action. [155 B-C; 159 F-G; 160 C-D]

1. (ii) The requirement laid down in sub-s. (1) of sec. 4 as it stood from and after 12th Sept., 1975 would obviously apply to every Notification under sub-s. (1) of sec. 4 issued by the appropriate Government on or after 12th Sept., 1975. If in case a Notification issued under sec. 4 sub-sec. (1) on or after 12th Sept., 1975 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, it would introduce a fatal infirmity invalidating such notification. [158 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5839- 42 of 1983.

From the Judgment and Order dated 2.3.1983 of the Andhra Pradesh High Court in W.P. No. 5538,5563,5644 and 5722 of 1981.

P.P. Rao, T.V.S.N. Chari and Ms. V. Grover for the Appellant in C.A. No. 5839 of 1983.

T.V.S.N. Chari and Ms. V. Grover, for the Appellant in C.A. Nos. 5840-42 of 1983.

R.P. Bhatt, K. Rajendra Choudhary and K.S. Choudhury for the Respondent in C.A. No. 5839 of 1983.

K. Rajendra Choudhury and K.S. Choudhury for the Respondent in C.A. Nos. 5840-42 of 1983.

The Judgment of the Court was delivered by BHAGWATI, C.J. These appeals by special leave would have perhaps met with a different fate if the Land Acquisition Act, 1894 in its application in the State of Andhra Pradesh had not been amended by the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 (hereinafter referred to as the amending act) with retrospective effect from 12th September, 1975. The retrospective amendment made by the Amending Act in section 4 Sub-sec. (1) of the Act completely invalidates the Notifications under Sec. 4 Sub-sec.(1) and Sec. 6 issued by the Andhra Pradesh Govt. and the Judgment of the High Court quashing these Notifications has therefore to be sustained. The facts giving rise to these appeals are few and may be briefly stated as follows:

The Government of Andhra Pradesh issued a Notification under Sec. 4 Sub-sec.(1) stating that a total area of 35 acres and 35 gunthas was likely to be needed for the purpose of the Hyderabad Urban Development Authority (hereinafter referred to as (HUDA.) The Notification was published in the Andhra Pradesh Gazette on 4th August, 1977 and public notice of the substance of the Notification was given at convenient places in the locality, after a period of about 2 months, on 3rd Oct. 1977. Thereafter an inquiry under Sec. 5-A of the Act was held by the Special Land Acquisition Officer and as a result of the inquiry, the Andhra Pradesh Govt. decided to exclude an area of 6 acres 6 gunthas belonging to one Gaytri Devi Co-operative Housing Society and issued a Notification under Sec. 6 of the Act on 10th January, 1979 declaring that the remaining area of land admeasuring 29 acres 29 gunthas was needed for the purpose of (HUDA). Notices under Sec. 9 were then issued to the respondents in these appeals who are the owners of different parcels of land comprised in the area notified under Sec. 6 and after holding an inquiry, the Special Land Acquisition Officer made an Award on 27th July, 1981 and issued notices to the respondents calling upon them to deliver possession of the land acquired. The respondents thereupon filed writ petition in the High Court of Andhra Pradesh challenging the validity of the Notifications under Sec. 4 Sub-sec. (1) and Sec. 6 issued by the Andhra Pradesh Government.

There were several contentions raised on behalf of the respondents against the validity of the impugned Notifications but, barring one, all were rejected by the High

Court. The one contention which found favour with the High Court was that local publication of the substance of the Notification under Sec. 4 Sub-sec. (1) was not made on the same day on which the Notification was published in the Official Gazette, but it was made almost 2 months later and the Notification under Sec. 4 Sub-sec. (1) was therefore invalid and the Notification under sec. 4 Sub-sec.(1) being the foundation of the jurisdiction to proceed further with the acquisition, the Notification under Sec. 6 must also fail. The High Court, following an earlier Full Bench decision rendered by it on 3rd December, 1982 in Writ Petition No. 5722 of 1981 and other allied writ petitions accepted this contention and quashed the notifications under Sec. 4 Sub-Sec. (1) and Sec.

6. The Land Acquisition Officer representing the State thereupon preferred the present appeals with special leave obtained from this Court.

The principal question which would seem to arise in these appeals is as to whether the High Court was right in taking the view that on a true interpretation of Sec. 4 Sub- sec.(1) public notice of the substance of the Notification under that section must be given in the locality on the same day on which the Notification is published in the Official Gazette and if it is not whether that would have an invalidating consequence. There was no decision of the Supreme Court on this question at the time when the High Court gave its Judgment in the present case, but subsequent to the delivery of the Judgment by the High Court, this question came up for consideration before a Bench of this Court in special leave petitions directed against a Judgment of the Delhi High Court which had taken a view different from that taken in the present case by the Andhra Pradesh High Court. This Court held in a Judgment reported in *Deepak Pahwa v. Lt. Governor Delhi and Ors.* [1984] 4 SCC 308, that though publication in the Official Gazette and public notice in the locality are two vital steps required to be taken under sub-sec.(1) of sec. 4 without which the steps contemplated under Section 4 Sub-sec.(2) cannot be undertaken, there is nothing in sub-sec.(1) of sec. 4 which requires that the publication in the Official Gazette and public notice in the locality must be simultaneous or immediately after one another. This Court pointed out that what sub-sec.(1) of sec. 4 requires is that publication in the Official Gazette and public notice in the locality must be contemporaneous but contemporaneity does not involve simultaneity or immediacy. There is bound to be a gap of time between publication of the Official Gazette and public notice in the locality but what is necessary is that they should not be separated by such a long interval of time that the continuity of action may appear to be broken by a deep gap. If there is publication in the Gazette, observed this Court, and if there is public notice in the locality the requirements of sub-sec.(1) of sec.4 must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima-facie conclusion of lack of bonafides in the proceedings for acquisition. If the Notification and the public notice are separated by such a large gap of time, it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to any one. The Judgment impugned in the present appeals was clearly over-ruled by this decision in *Deepak Pahwa's* case (supra) and it was held that Notifications under sec.4 sub- sec.(1) and sec. 6 could not be struck down as invalid merely on the ground that public notice of the substance of the Notification under sec. 4 sub-sec.(1) was not given on the same day as the publication in the Official Gazette. We would have had to consider, in the light of the observations contained in the decision in *Deepak Pahwa's* case (supra)

as to whether there was such a large gap between the publication in the Official Gazette and the public notice in the locality that the continuity of action would appear to be broken and that would have necessitated examination of the question whether there was any justifiable cause for the delay and if the delay had caused prejudice to the respondents. But before the decision in Deepak Pahwa's case (supra) came to be given by this Court, the Andhra Pradesh Legislature enacted the Amending Act which came into force with effect from 23rd June, 1983 and it is this Amending Act which renders it unnecessary for us to consider whether on the application of the ratio of the decision in Deepak Pahwa's case (supra) the impugned Notification under sec. 4 sub-sec. (1) can be sustained or it is liable to be struck down as invalid.

We may now proceed to refer to the relevant provisions of the Amending Act. The Amending Act was passed by the Andhra Pradesh Legislature in order to counter-act the effect of the Full Bench decision of the Andhra Pradesh High Court in W.P. No. 5722 of 1981 and other allied writ petitions where inter alia it was held that publication in the Official Gazette and public notice in the locality must be on the same day or else the Notification under sec. 4 sub-sec.(1) would be invalid. The Amending Act was therefore given retrospective effect and sub-sec.(3) of sec. 1 expressly enacted that the Amending Act shall be deemed to have - come into force on 12th September, 1975. Every provision in the Amending Act must therefore a fortiori be deemed to have come into effect from the date namely 12th September, 1975. Section 2 of the Amending Act provided that in the Land Acquisition Act, 1984 in its application to the State of Andhra Pradesh for the words "the Collector shall cause", the words "the Collector shall, within forty days from the date of publication of such Notification, causes, shall be substituted. Sub-sec. (1) of sec. 4 in its application to the State of Andhra Pradesh therefore read as follows with effect from 12th September, 1975:

"Whenever it appears to an appropriate Govt. that the land in any locality is needed or is likely to be needed for public purpose, a Notification to that effect shall be published in the Official Gazette and the Collector shall, within forty days from the date of publication of such Notification, cause public notice of the substance of such Notification to be given at convenient places in the locality".

What therefore sub-sec. (1) of sec. 4 as it stood from and after 12th September, 1975 provided was that the Notification under that section shall be published in the Official Gazette and public notice of the substance of such Notification shall be given in the locality "within forty days from the date of publication of such Notification." This requirement would obviously apply to every Notification under sub-sec.(1) of sec. 4 issued by the appropriate Govt. On or after 12th Sept., 1975. If in case of a Notification issued under sec. 4 sub-sec.(1) on or after 12th September, 1975, 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, it would introduce a fatal infirmity invalidating such Notification. Here in the present case, the Notification under sec. 4 sub-sec. (1) was published in the Official Gazette on 4th August, 1977 but public notice of the substance of such Notification was given in the locality as late as 3rd October, 1977 i.e. more than forty days after the date of publication of such Notification in the Official Gazette. There was therefore clearly a violation of the mandate enacted in sub-sec.(1) of sec. 4 as it stood from and after 12th September, 1975 and the Notification under sec. 4 sub-sec.(1) was liable to be struck down as invalid, though on

a ground different from that which found favour with the High Court.

The learned counsel appearing on behalf of the appellant however made a valient but futile attempt to escape from the consequence of retrospective amendment of sub-sec. (1) of sec.4 by contending that sec. 2 of the Amending Act which introduced the amendment in sub-sec. (1) of sec. 4 should not be read as having retrospective effect, but should be construed as prospective in operation. The argument urged on behalf of the appellant was that the Legislature enacted the Amending Act for the purpose of validating acquisitions made after 12th September, 1975 which were liable to be declared invalid on account of the Full Bench Judgment of the Andhra Pradesh High Court in W.P. No. 5722 of 1981 and other allied writ petitions and it could never have been the intention of the Legislature to invalidate acquisitions which were valid when made. The Legislature, contended the learned counsel, proceeded on the assumption that the Full Bench Judgment of the Andhra Pradesh High Court represented the correct law on the subject and it was on that assumption that the Amending Act was enacted by the Legislature. If, on the Full Bench Judgment of the Andhra Pradesh High Court being reversed by this Court in Deepak Pahwa's case (supra) the assumption made by the Legislature turned out to be incorrect and it was found that the Legislature proceeded on an erroneous view of the law in enacting the Amending Act. The Amending Act, argued the learned counsel, must be considered superfluous and not the Amending Act, but the correct law as it prevailed prior to the Amending Act must be applied. This argument urged on behalf of the appellant is wholly specious and must be rejected. It is an argument of despair and it has only to be stated in order to be rejected. It is impossible to accept the proposition that because the Amending Act proceeded on an erroneous view of the law, it must be considered superfluous and must be deprived of all effect. Whatever be the reason for which the Legislature enacted the Amending Act and here the reason no doubt was to set at naught the effect of the Full Bench Judgment of the Andhra Pradesh High Court - the Amending Act is on the statute book and is in force with effect from 12th September, 1975 and it must be given effect according to the plain natural meaning of its words. Sub-sec. (3) of sec. 1 of the Amending Act provides in the clearest terms, not susceptible of any ambiguity or doubt that it shall be deemed to have come into force with effect from 12th September, 1975. It does not carve out any exception in relation to sec. 2 of the Amending Act and that section must also therefore, according to the clear and express mandate contained in sub-sec. (3) of sec. 1, be deemed to have come into effect on 12th September, 1975. It is true that if, in case of a Notification under sec. 4 sub-sec.(1) issued after 12th September, 1975, there is a gap of more than forty days between the date of its publication in the Official Gazette and the date.

When public notice of its substance was given in the locality, sub-sec. (1) of sec. 4 as amended with retrospective effect from 12th September, 1975 would render such Notification invalid. But that can be no ground for denying to the amendment in sub-sec.(1) of sec. 4 retrospective effect, which sub-sec.(3) of sec. 1 of the Amending Act expressly directs that it shall have- There is in fact to our mind no inconsistency between the mandate of sub-sec. (1) of sec. 4 and the law as declared by this Court in Deepak Pahwa's case (supra). This Court said in Deepak Pahwa's case that there should not be such a large gap between publication in the Gazette and public notice in the locality as would be indicative of break in the continuity of action. What the amended sub-sec. (1) of sec. 4 does is to legislatively lay down the limit of the time gap beyond which it must be presumed that there is a break in the continuity of action. We must therefore reject the argument of the learned counsel

appearing on behalf of the appellant that sub-sec. (3) of sec. 1 of the Amending Act must be read down so as to exclude from its operation Section 2 of that Act.

We accordingly dismiss the appeals though on a ground different from that which appealed to the High Court. Each party will bear and pay its own costs throughout.

M.L.A

Appeals dismissed.