

Urban Improvement Trust, Udaipur vs Bheru Lal & Ors on 20 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3309, AIR 2003 (NOC) 269 (AP), AIR 2003 (NOC) 239 (MAD), 2002 AIR SCW 3847, 2002 (2) UJ (SC) 1433, 2002 (5) SLT 374, 2002 (3) UPLBEC 2660, 2002 (9) SRJ 437, (2003) 1 ALLINDCAS 99 (SC), 2003 (1) ALLINDCAS 99, (2002) 7 JT 310 (SC), 2002 UJ(SC) 2 1433, 2002 (6) SCALE 558, 2002 (7) SCC 712, (2003) 3 INDLD 951, (2003) 2 CIVLJ 679, (2004) 1 HINDULR 647, (2002) 2 LACC 472, (2002) 3 UPLBEC 2660, (2003) 2 LANDLR 42, (2003) 1 MAD LJ 62, (2003) 1 RAJ LW 113, (2002) 4 SCJ 398, (2002) 6 ANDHLD 100, (2002) 6 SUPREME 478, (2002) 4 RECCIVR 213, (2002) 4 ICC 855, (2002) 6 SCALE 558, (2002) 6 ANDH LT 56, (2003) 1 ALL WC 73, (2002) 4 CURCC 54, (2003) 95 CUT LT 385, (2003) MATLR 314, (2004) 2 RECCIVR 337, (2003) 1 DMC 161, (2003) 3 KER LT 56, (2003) 3 ALLINDCAS 733 (MAD)

Bench: M. B. Shah, D. M. Dharmadhikari

CASE NO.:

Appeal (civil) 4065 of 1999

PETITIONER:

Urban Improvement Trust, Udaipur

RESPONDENT:

Bheru Lal & Ors.

DATE OF JUDGMENT: 20/09/2002

BENCH:

M. B. SHAH & D. M. DHARMADHIKARI.

JUDGMENT:

J U D G M E N T WITH CA Nos.4066-4104, 4106-4118 of 1999, CA Nos.858, 2603, 4344 of 2000, CA Nos. 2410, 5263 of 2001, CA Nos._6060,6055,6059,6057,6062,6056,6058,6061/2002 arising out of SLP Nos.12817, 12822, 13826, 14907, 14909-12 of 2000 AND CA No. 6054/2002 arising out of SLP No. 2436 OF 2002.

Shah, J.

Leave granted in the special leave petitions.

The notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was made by the State of Rajasthan on 21st February, 1990 for acquiring approximately 4800 bighas of land situated in Tehsil Girwa, district Udaipur as it was required by Urban Improvement Trust, Udaipur (hereinafter referred to as 'the Improvement Trust'), for the public purpose i.e. Udaipur Bhuwana Extension Scheme, Udaipur. Bhuwana Extension Scheme of the Improvement Trust is a residential scheme sub-serving the objective of the planned development and utilization of the notified land. The Improvement Trust, Udaipur was established under the provisions of the Rajasthan Urban Development Act, 1959 for the purpose of carrying out improvement and expansion etc. of urban area of the city Udaipur. It provides for the acquisition of any land or other property necessary for the execution of the Scheme.

Before the notification could be published in the official gazette, the Gram Panchayat Bhuwana filed Civil Writ Petition No.2255 of 1991 on 20.5.1991 challenging the notification dated 21st February, 1990. In the said matter, writ petitioner prayed for interim relief to the effect that the Improvement Trust should not make any allotment to any person out of the land of Khasra Nos.2661, 2691 and 2835 of village Bhuwana and the notification be quashed. The High Court passed the following interim order in the writ petition:

"Issue Notice.

Meanwhile the status quo as it exists today with respect to the land in question will be maintained."

That writ petition when came up for hearing on 28.10.1994, was not pressed and was dismissed as withdrawn.

In these matters, following are the relevant dates on which submissions are made:

Pending hearing of the aforesaid writ petition, notification which was prepared on 21st February, 1990 was published on 31st March, 1990 and 1st April, 1990 in the daily newspapers.

On 4.6.1992 notification under Section 4(1) dated 21.2.1990 was published in the official gazette.

On 13.11.1992, substance of the said notification under Section 4 of the Act was affixed at the conspicuous places.

On 17/19.5.1993, substance of the said notification was published in the local newspapers.

On 17.5.1994, the declaration under Section 6 (1) was made.

On 24.5.1994, the said declaration made under Section 6(1) was published in the official gazette.

On 9/10.10.1994, the declaration under Section 6 (1) was published in local newspapers.

Thereafter, in some of the matters, awards under Section 12 of the Act were made and in some of the cases proceedings for making awards were over but awards were not passed. In the meantime, in all 43 writ petitions were filed, out of which 11 were filed in the year 1995, 30 were filed in the year 1996 and 2 were filed in the year 1997 challenging the acquisition proceedings. Large number of other land owners have not challenged the land acquisition proceedings.

The learned Single Judge by his judgment and order dated 10.1.1997 in S.B. CWP No.469 of 1996 etc. dismissed all writ petitions. Against that judgment and order, Civil Special Appeal No.270 of 1997 etc. were preferred before the Division Bench of the High Court. The High Court by impugned judgment and order dated 6th March, 1998 allowed the appeals and quashed the acquisition proceedings including the awards etc. with a clarification that judgment would not confer any benefit on any other person who was not a party before the Court. The Court held that publication of notices in the newspapers prior to 4.6.1992, which is the date of publication of notification under Section 4(1) of the Act, cannot be considered for the purpose of determining the period of limitation for declaration made under Section 6(1). The last date of publication of the substance of notification under Section 4(1) was 19.5.1993 and as the notification under Section 6 was published in the official gazette on 24.5.1994, the same was beyond the period of one year and hence all subsequent proceedings were void.

The aforesaid finding cannot be sustained in view of Sections 4 and 6 of the Act as well as the decision rendered by this Court in S.H. Rangappa v. State of Karnataka and another [(2002) 1 SCC 538] and Khadim Hussain v. State of U.P. and others [(1976) 1 SCC 843].

We would first refer to relevant ingredients of Section 4(1) of the Act, which are as under:

Whenever it appears to appropriate Government that land in any locality is needed or likely to be needed for the public purpose or for a company (1) a notification to that effect shall be published in the Official Gazette; and (2) it is also required to be published in

(a) two daily newspapers circulating in that locality, and

(b) the Collector is required to cause public notice of the substance of such notification at convenient places in the locality;

(3) the last date of such publication and giving such public notice is considered as "the date of publication of the notification".

The publication of the notification made or prepared by the Government would be of no effect till it is published in the Official Gazette. That part of Section 4 is mandatory and is condition precedent for initiation of Land Acquisition proceedings.

As against this, Section 6 inter alia provides that when the appropriate Government is satisfied after considering the report, if any, made under Section 5A (2) that the land is needed for a public purpose or for a company (1) a declaration shall be made to that effect under the signatures of a Secretary to such Government or of some officer duly authorised to certify its order; and, (2) different declarations could be made from time to time in respect of different parcels of any land covered by the same notification under Section 4(1) of the Act.

(3) Further, under the 1st proviso to the said section, it is inter alia provided that no declaration in respect of a particular land covered by notification under Section 4(1) shall be made after the expiry of one year from "the date of publication of the notification".

Sub-section (2) of Section 6 thereafter provides that every such declaration is required to be published in the official gazette and in two daily newspapers circulated in the locality and also the Collector is required to cause public notice of the substance of such declaration at the convenient places in the said locality.

From the different phraseology used in Sections 4(1) and 6(1), it is apparent that under Section 4(1) publication in the official gazette is a condition precedent for acquiring the land.

As against this, Section 6(1) provides that if the appropriate Government is satisfied that any particular land is needed for a public purpose or for a company, a declaration is to be made to that effect under the signature of the Secretary of such Government or of some officer duly authorised to certify its order. Further, such declaration is to be made within a period of one year from the date of publication of the notification under Section 4(1) of the Act. Hence, Section 6(1) does not require that such declaration could not be published in the official gazette after expiry of one year from the date of publication of the notification under Section 4(1). Time limit of one year is prescribed to a declaration to be made that land is needed for a public purpose under the signature of a Secretary or authorised officer to such Government.

In this view of the matter, in the present case, the relevant dates for consideration would be 17/19.5.1993 when the substance of the notification under Section 4 was published in the local newspapers and 17.5.1994 which is the date on which declaration under Section 6 was made. The date 24.5.1994 when such declaration was published in the official gazette is not required to be considered. The notification under Section 6(1) is made within prescribed period. Hence, the impugned order passed by the High Court considering the relevant date as 24.5.1994 for setting at naught the land acquisition proceeding cannot be justified.

Further, the aforesaid question is concluded by three Judge Bench decision of this Court in S.H. Rangappa's case (supra), wherein it is held that Sub-section (2) of Section 6 does not prescribe any time limit within which the declaration made under Section 6(1) is to be published in official gazette. The time limit being within one year of the publication of Notification under Section 4 is only for the declaration which is required to be made under Section 6(1) of the Act. For this purpose, the Court referred to the earlier decision in Khadim Hussain's case (supra). The same view is taken in the case of Srinivas Ramnath Khatod v. State of Maharashtra and others [(2002) 1 SCC 689].

The learned senior counsel Mr. R.P. Bhatt appearing for the respondents submitted that the notices which were published in the daily newspapers on 31st March, 1990 and 1st April, 1990 are required to be taken into consideration for computing the period of limitation of one year for the purpose of making of declaration under Section 6(1). It is his contention that the notices were published in the daily newspapers in March/April 1990 and, therefore, there was no question of publishing the notices again in the newspapers on 17/19.5.1993. Hence, subsequent publication of notices is required to be ignored.

In our view, the aforesaid submission is rightly rejected by the High Court. It has to be stated that for the purpose of acquiring the lands, publication of the notification under Section 4(1) in the official gazette is mandatory. If the decision taken by the Government to acquire the land is not notified in the official gazette, the said decision will be of no effect. As stated above, Section 4 of the Act mandates that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the official gazette and acquisition process starts after publication of the notification in the official gazette under Section 4(1). [Re: Collector (District Magistrate), Allahabad and another v. Raja Ram Jaiswal [(1985) 3 SCC 1] and State of Haryana and another v. Raghubir Dayal [(1995) 1 SCC 133]. Therefore, publication of the Notification under Section 4(1) being a condition precedent for acquisition of land, said date is required to be taken into consideration for counting the period of limitation of one year and the previous publication of notices in the newspapers were rightly ignored by the High Court.

It is also contended by Mr. Bhatt, learned senior counsel that taking 17th or 19th May as the date of publication of substance of the Notification under Section 4 in the local newspapers, then there is delay in its publication. Therefore also, the land acquisition proceedings are required to be quashed.

It is apparent that the Notification under Section 4 was first published in the official gazette in June 1992. Thereafter substance was published in November 1992 at the conspicuous places and subsequently it was published in the local newspapers. Considering this sequence of publication, even if there is some delay, it would not mean that on this ground the land acquisition proceedings under Section 4 require to be set aside. Similar view is expressed by this Court in State of Haryana and another v. Raghubir Dayal and others [(1995) 1 SCC 133 para 7].

Further, learned counsel for the appellant rightly submitted that on the ground of delay and laches in filing the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the Notification under section 6 was published in the Official Gazette on 24.5.1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban Development Act and also in having planned development of the area. The law on this point is well settled. [Re. Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria and others [(1996) 4 SCC 579] and Hari Singh and others v. State of U.P. and others [(1984) 3 SCR 417].

In the result, the appeals filed by the Urban Improvement Trust are allowed. The impugned judgment and order passed by the High Court in D.B. Civil Special Appeal Nos.270-277/97 etc. allowing the appeals and quashing the land acquisition proceedings is set aside. The judgment and order passed by the learned Single Judge is restored.

Civil Appeal No.5263/2001 filed by J.K. Udaipur Udyog Ltd. is also dismissed.

There shall be no order as to costs.