

Madhya Pradesh Housing Board Etc vs Mohd. Shafi And Ors. Etc on 13 February, 1992

Equivalent citations: 1992 SCR (1) 657, 1992 SCC (2) 168, AIRONLINE 1992 SC 285, AIRONLINE 1992 SC 42, 1992 AIR SCW 2988, (1992) 1 SCR 657 (SC), 1993 CHANDLR(CIV&CRI) 546, (1993) 1 MAD LW 40, (1992) 1 RRR 583, (1992) 2 SCJ 175, (1992) JAB LJ 331, 1992 UJ(SC) 2 73, (1992) 20 ALL LR 771, (1992) 1 APLJ 70, 1992 (2) SCC 168, (1992) 6 LACC 244, (1992) 1 CURCC 507, (1992) 2 CIVLJ 476, (1992) 3 JT 523 (SC), (1993) 112 CURTAXREP 241, (1993) 115 TAXATION 109, (1993) 200 ITR 594, (1993) 70 TAXMAN 67, 1994 SCC (SUPP) 2 114

Bench: M.H. Kania, T.K. Thommen

PETITIONER:

MADHYA PRADESH HOUSING BOARD ETC.

Vs.

RESPONDENT:

MOHD. SHAFI AND ORS. ETC.

DATE OF JUDGMENT 13/02/1992

BENCH:

ANAND, A.S. (J)

BENCH:

ANAND, A.S. (J)

KANIA, M.H. (CJ)

THOMMEN, T.K. (J)

CITATION:

1992 SCR (1) 657

1992 SCC (2) 168

JT 1992 (3) 523

1992 SCALE (1) 322

ACT:

Land Acquisition Act, 1894:

Sections 4(1), 6(1) and 17(1)-Acquisition of Land-Notification not disclosing with sufficient clarity details of land and public purpose for which land was sought to be acquired-Validity of.

HEADNOTE:

On a request from the Executive Engineer of the

petitioner Housing Board, the State Government issued a notification under Sections 4(1) and 17(1) of the Land Acquisition Act and a declaration under Section 6 of the Act for the acquisition of 2.298 hectares of land in the village mentioned in the Schedule to the Notification under Section 4(1), for the purpose of construction of buildings and shops under self financing scheme.

The respondent filed a Writ Petition before the High Court challenging the validity of the notification as also the declaration, on various grounds, including that the notification under Section 4(1) of the Act was vague and invalid for non-compliance with the mandatory requirements of the Act and that recourse to the urgency provisions under Section 17(1) of the Act could not be had since the land was not "waste or arable", which was sine qua non for exercising powers under Section 17(1) of the Act.

Allowing the Writ Petition, the High Court quashed the acquisition proceedings. Hence the appellant, the Madhya Pradesh Housing Board filed Special Leave Petition before this Court. On behalf of the appellant Board, it was contended that since the acquisition of land had been made at the request of the Housing Board of a large extent of land, absence of providing detailed particulars of the land or the locality where it was situate, could not vitiate the notification, more so, when sufficient particulars had been provided in the declaration issued under Section 6(1) of the Act wherein it had also been indicated that the site plan of the land was available in the office of the Collector; that the "public purpose"

658

mentioned in the schedule to the notification issued under Section 4(1) and 17(1) of the Act, as also in the notification issued under Section 6(1) of the Act, was sufficiently clear and the finding of the High Court that the notifications were vague on that account was incorrect and that absence of a finalised housing scheme could not vitiate the acquisition proceedings and that the High Court was in error in holding that recourse could not be had to the urgency provisions under Section 17 of the Act.

Dismissing the Special Leave Petitions, this Court

HELD : 1. The High Court was right in holding that the notification in question was vitiated on account of being vague and for non-compliance with the mandatory requirements of the Land Acquisition Act, 1894.

[667C]

2.1. The process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the

part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. [662H; 663A-B]

2.2. The object of issuing a notification under Section 4 of the Act is two-fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-

659

suitability of the land for the alleged "public purpose" also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition bad.

[663B-E]

Narendrajit Singh and Anr. v. State of U.P. & Anr., [1970] 3 SCR 278 and Munshi Singh & Others etc. etc. v. Union of India etc. etc., [1973] 1 SCR 973, referred to.

2.3. In the instant case, the description of the land in the notification issued under Section 4(1) and 17(1), is very cryptic. Not only no khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of the name of the village, which is spread over an area of 25 sq. kms. and is divided into various municipal wards, against the "locality" is wholly insufficient description and the respondent or anyone else could not have come to know from that description whether 2.298 hectares of land which was required for acquisition included the land belonging to him or not. The non-disclosure of the "locality" with precision, invalidates the notification and renders the publication of notice a meaningless formality. [664C-D]

2.4. Apart from this, even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as

invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. [665C-D]

2.5. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an identifiable section thereof. In the absence of the details about the alleged "public purpose" for which the land was sought to be acquired no one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter. [665D-E]

2.6. Besides, there is also non-application of mind by the authorities concerned and rather casual manner in dealing with the property of the citizen vitiating the acquisition proceedings. Whereas the letter of the

660

Executive Engineer of the Housing Board to the Collector had indicated that the Chairman of the Board had found the land suitable for "construction of buildings and shops under the self-financing scheme", the notification issued under Section 4(1) makes no mention thereof and instead declares the public purpose to be `residential. Again in the declaration under Section 6(1) "public purpose" has been stated to be "housing scheme of Housing Board" and not "construction of buildings and shops under the self financing scheme". Admittedly, apart from this letter there was no other material with the State Government and, therefore, it is not understandable on what material, did the State Government state the "public purpose" in different terms in the notifications issued under Sections 4 and 6(1). These factors go to expose non-application of mind by the authorities while issuing the notification in question and it appears that they were not even sure about the "public purpose" for which the land was sought to be acquired. [666F-H; 667A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 8788 of 1989.

From the Judgment and Order dated 11.3.1989 of Madhya Pradesh High Court in M.P. No. 514 of 1984.

WITH Special Leave Petition (C) No. 2724 of 1992. D.D. Thakur, S.K. Gambhir, V. Gambhir, Sakesh Kumar, Rajinder Singhvi and Satish K. Agnihotri for the Petitioners.

Shanti Bhushan, U.N. Bachawat, S. Atreya and Sushil Kumar Jain for the Respondents.

The Judgment of the Court was delivered by DR. A.S. ANAND, J. On 12th of April, 1984, the Collector Mandsaur, Madhya Pradesh, issued a Notification, purporting to be under Section 4(1) of the Land Acquisition Act, 1984 (hereinafter called the 'Act') to the effect that land detailed in the schedule attached thereto was required for a public purpose. The Notification further discloses that the State Government being of the opinion that the provisions of sub-section (1) of Section 17 of the Act were applicable in respect of the land required to be acquired, it dispensed with the enquiry under Section 5(A) of the Act.

The schedule to the notification provided as follows:

SCHEDULE Particulars of Land

Distt.	Tehsil	City/	Approximate area in Hectares	Authorised under Section 4(2)	Detail of purpose	Village	mate area	Officer under public
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(1)	(2)	(3)	(4)	(5)	(6)
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Mandsaur	Mandsaur	2.298	Executive	Residen-	Mandsaur
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			Engineer M.P.	tial
			Housing	
			Construction	
			Board, Ratlam	

The aforesaid notification was followed by a declaration under Section 6(1) of the Act, issued on April 16, 1984. In the schedule to that declaration, Khasra number of the proposed land with respective areas were provided and in column (2) requiring the mention of "public purpose" for which the land is required it was stated for "housing scheme of Housing Board". In column (3), it was stated that the plant of land may be inspected in the office of the Collector".

The respondent, herein, filed a writ-Petition in the High Court of Madhya Pradesh, challenging the validity of the notification issued under Sections 4(1) and 17(1) of the Act as also the declaration made under Section 6(1) of the Act on various grounds. The main thrust of the challenge was that the notification under Section 4(1) of the Act was vague and invalid for non-compliance with the mandatory requirements of the Act and that recourse to the urgency provisions under Section 17(1) of the Act could not be had since the land was not "waste or arable" which is the sine qua non for exercising powers under Section 17(1) of the Act. The challenge to the

notifications succeeded and the acquisition proceedings were quashed by the High Court by the judgment impugned before us by the Madhya Pradesh Housing Board through his Special Leave Petition.

Relevant facts necessary for the disposal of the special leave petition are as follows:

The executive engineer of the Madhya Pradesh Housing Construction Division on 3.9.1983 addressed a letter to the Land Acquisition Officer, Madhya Pradesh Housing Construction Board, Bhopal, stating therein that during the tour of the Chairman of the Board, he had found private land measuring 2.29 hectares situate near the bus stand in Mandsaur city, to be "absolutely suitable for the construction of buildings and shops under self financing scheme" and requested that the said land be acquired on priority basis. On receipt of this letter, the Land Acquisition Officer, addressed a communication, on 15.2.1984, to the Secretary, Government of Madhya Pradesh, Housing Department, with a request to forward the matter along with his recommendation to the Collector, Ratlam for favour of publication of a notification in the M.P. Gazette for the acquisition of the said land under Sections 4(1) and 17 of the Land Acquisition Act". On April 12, 1984, the Collector Mandsaur, M.P., issued the notification under Sections 4(1) and 17(1) of the Act and followed it by a declaration under Section 6 of the Act on April 16, 1984.

Mr. D.D. Thakur, learned Senior Advocate, appearing for the appellant assailed the findings of the High Court by characterising the same as based on "hypertechnicalities". Argued Mr. Thakur that since acquisition of land had been made at the request of the Housing Board of a large extent of land, the absence of providing detailed particulars of the land or the locality where it was situate, could not vitiate the notification, more so when sufficient particulars had been provided in the notification issued under section 6(1) of the Act wherein it had also been indicated that the site plan of the land was available in the office of the Collector.

It was also argued that the "public purpose" mentioned in the schedule to the notification issued under Sections 4(1) and 17(1) of the Act, as also in the notification issued under Section 6(1) of the Act, was sufficiently clear and the finding of the High Court that the notifications were vague on the account was incorrect. Mr. Thakur, further submitted that the absence of a finalised housing scheme could not vitiate the acquisition proceedings and that the High Court fell in error in holding that recourse could not be had to the urgency provisions under section 17 of the Act.

It is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. The object of issuing a notification under Section 4 of the Act is two- fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is

needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.

A reference to the Schedule appended to the Section 4(1) notification, in the instant case, shows that the only description given about the particulars of 2.298 hectares of the land proposed to be acquired is that the same is situate in District Mandsaur, Tehsil Mandsaur, Village Mandsaur. In column (6) the "public purpose" for which the land is required is stated to be "residential"

In the schedule to the notification issued under Section 6 of the Act, particulars of khasra number with the extent of land in each khasra number have been provided. The "public purpose" has been stated to be "for housing scheme of housing board" and it is also stated against column (3) that "the plan of the land may be inspected in the office of the Collector".

Why these particulars were not given in the Section 4 notification has not been explained.

The High Court found that Mandsaur is no more a small village but a big city, which is divided into 35 municipal wards having a population of more than 80,000 people and is spread over an area of 25 sq. kms. and the absence of the details of the land or the locality where the same is situate, vitiates the notification for non-compliance with the provisions of the Act.

The description of the land in the notification issued under Sections 4(1) and 17(1), in our opinion, is very cryptic. Not only no khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of Mandsaur, which is spread over an area of 25 sq. kms. and is divided into various municipal wards, against the "locality" is wholly insufficient description and the respondent or anyone else could not have come to know from that description whether 2.298 hectares of land which was required for acquisition included the land belonging to him or not. The non-disclosure of the "locality" with precision, invalidates the notification and renders the publication of notice a meaningless formality.

In *Narendrajit Singh and Anr. v. State of U.P. & Anr.*, [1970] 3 SCR 278, while dealing with the requirements of a valid notification under Section 4 of the Act, this Court observed that the defect of non-mention of the locality where the proposed land was situate in the notification was a very serious defect vitiating the notification. In that case, the schedule attached to the notification issued

under Section 4(1) and 17(1) of the Act read as follows:

"SCHEDULE

----- Distt. | Pargana |
Mauza | Approxi- | For what purpose | Remarks | | | mate area| required |

-----|-----|-----|-----|-----|-----|

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Rampur | Bilaspur| Gokal | 125 acres| For the rehabilitation of | | | Nagari| | East
Pakistan displaced | | | | families, under the | | | | Ministry of | | | |
Rehabilitation, | | | | Government of India." |

This Court opined that though Section 4(1) does not require the identity of the land which may ultimately be acquired to be specified with too many details but it undoubtedly casts upon the government a duty to "specify the locality in which the land is needed". In Narendrajit Singh's case (*supra*), this Court also repelled the argument identical to the one raised by Mr. Thakur that since detailed particulars of the land had been given in the notification issued under Section 6(1) of the Act, the absence of those particulars in Section 4(1) notification was of no consequence.

The Court said:

"In our view the defect in a notification under s.4(1) cannot be cured by giving full particulars in the notification under s.6(1)."

Apart from the defect in the impugned notification, as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an identifiable section thereof. In the absence of the details about the alleged "public purpose" for which the land was sought to be acquired, no-one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter.

In *Munshi Singh & Others etc. etc. v. Union of India etc. etc.*, [1973] 1 SCR 973 the notification issued under Section 4(1) of the Act had stated the purpose for acquisition as "for planned development of the area". A note was also appended in the notification on the effect that the "plan of the land may be inspected in the office of the Collector, Meerut". This Court, dealing with the

requirements of Section 4 in the context of the necessity to state with clarity the "public purpose" in the notification, observed:

"it is apparent from sub-s. (2) that the public purpose which has to be stated in sub-s. (1) of s.4 has to be particularised because unless that is done the various matters which are mentioned in sub-s. (2) cannot be carried out; for instance, the officer concerned or his servants and workmen cannot do any act necessary to ascertain whether it is suitable for the purpose for which it is being acquired. If the public purpose stated in s. 4(1) is planned development of the area without anything more it is extremely difficult to comprehend how all the matters set out in sub-s. (2) can be carried out by the officer specially authorised in this behalf and by his servants and workmen".

[p.981] The Court then went on to say:

"As already noticed in the notifications under s. 4 all that was stated was that the land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation i.e. whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way...

[p.981] This Court finally held that owing to the vagueness and indefiniteness of the "public purpose" stated in the notification under Section 4(1) of the Act, the acquisition proceedings were bad and the entire acquisition proceedings were quashed. Munshi Singh's case (supra) was at a much better footing than the instant case, where the only disclosure of the "public purpose" is stated to be "residential".

That apart, this case also discloses non-application of mind by the authorities concerned and rather casual manner in dealing with the property of the citizens vitiating the acquisition proceedings. Whereas the letter of the Executive Engineer of the Housing Board to the Collector had indicated that the Chairman of the Board had found the land suitable for "construction of buildings and shops under the self financing scheme", the notification issued under Section 4<1> makes no mention thereof instead declares the "Public purpose" to be "residential" . Again, in the declaration issued under Section 6(1) of the Act the "public purpose" has been stated to be "housing scheme of Housing Board" and not construction of buildings and shops under the self financing scheme" ! Admittedly, apart from the letter referred to above, there was no other material with the State Government and, therefore, it is not understandable on what material, did the State Government state the "public purpose" in different terms in the notifications issued under Sections 4 and 6(1). No explanation has been furnished by the learned counsel as to why different public purposes were mentioned in the letter of the Board and the two notifications issued under Section 4 and 6 of the Act. These factors go to expose non- application of mind by the authorities while issuing the impugned notification and

it appears that they were not even sure about the "public purpose" for which the land was sought to be acquired.

We have, in view of the above discussion, not been persuaded to take a view different than the one taken by the High Court and we agree with the High Court that the impugned notification is vitiated on account of being vague and for non-compliance with the mandatory requirements of the Act.

In the view that we have taken, it is not necessary for us to express any opinion on the question as to whether recourse could at all be had, in the instant case, to the urgency provisions or the effect of the absence of even a draft or contemplated scheme, let alone a finalised scheme prepared by the Housing Board, before the issuance of declaration under section 6 of the Act.

Special Leave Petitions (Civil) are, therefore, dismissed.

N.P.V.

Petitions dismissed.