

Supreme Court of India

Deepak Pahwa Etc vs Lt. Governor Of Delhi And Ors on 22 August, 1984

Equivalent citations: 1984 AIR 1721, 1985 SCR (1) 588

Author: O C Reddy

Bench: Reddy, O. Chinnappa (J)

PETITIONER:

DEEPAK PAHWA ETC.

Vs.

RESPONDENT:

LT. GOVERNOR OF DELHI AND ORS.

DATE OF JUDGMENT 22/08/1984

BENCH:

REDDY, O. CHINNAPPA (J)

BENCH:

REDDY, O. CHINNAPPA (J)

SEN, A.P. (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1984 AIR 1721 1985 SCR (1) 588

1984 SCC (4) 308 1984 SCALE (2) 239

CITATOR INFO :

RF 1986 SC2025 (6)

R 1988 SC1459 (16)

ACT:

Land Acquisition Act, 1894:

(i) Section 4(1) Requirements of-When satisfied-Whether contemplates giving public notice of substance of notification in the locality simultaneously with publication of notification in official Gazette-Whether delay in giving public notice makes notification invalid. Held-Public notice must be contemporaneous though not simultaneous-Contemporaneity involves gap of time But not long gap-In case of large gap further probe necessary.

(ii) Section 5-A-Interpretation of-Expression 'the issue of the notification' signifies completion of twin process of publication of notification and giving public notice the locality. The period of 30 days to be reckoned from date of publication of notification or date of giving public notice whichever is later.

(iii) Section 17(4)-Whether mere pre-notification delay renders invocation of urgency provisions of s. 17(4) void.

HEADNOTE:

A combined notification under ss.4 and 17 and a declaration under s. 6 of the Land Acquisition Act, 1894 which were published in the official Gazette in regard to the acquisition of certain lands were challenged in a writ petition before the High Court on two grounds: (1) that there was delay of 29 days in giving public notice of the substance of notification in the locality after the publication of the notification under s. 4 in the Gazette and that delay was fatal to the notification itself, and (2) that since the matter was under correspondence between various departments of the Government for nearly eight years before the notification and the declaration were published in the Gazette, that showed that there was no urgency necessitating invocation of s. 17(4) of the Act to dispense with the enquiry under s. 5-A. The High Court dismissed the writ petition in limine. The present special leave petitions were directed against dismissal of the writ petition.

Dismissing the special leave petitions,

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HELD: Section 4(1) of the Land Acquisition Act does not pres-
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cribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the official Gazette or immediately thereafter. Publication in the official Gazette and public notice in the locality are two vital steps required to be taken under s.4(1) before proceeding to take the next step of entering upon the land under s. 4(2). The time factor is not the vital element of s. 4(1) and there is no warrant for reading the words 'simultaneously' or 'immediately thereafter' into s. 4(1), But since the steps contemplated by s. 4(2) cannot be undertaken unless publication is made and public notice given as contemplated by s. 4(1), it is implicit that the publication and the public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally contemporaneity may involve a gap of time and by the very nature of the things, the publication in the official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by a long interval of time. What is necessary, is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of s. 4(1) 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 bona fides 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 that if the delay has

caused prejudice to any one. [592-H and 593 A.B]

The submission that if the publication of the notification in the Gazette is not immediately followed by public notice in the locality, it may lead to a denial to the person interested of an opportunity to object to the acquisition under s. 5-A, has no force. Section 5.A provides that any person interested in any land which has been notified under s. 4(1) may object to the acquisition of the land or of any land in the locality within 30 days after the issue of the notification. The section does not refer either to the date of publication in the official Gazette or the date of public notice of the substance of the notification in the locality. It speaks of 'the issue of the notification which, in the context, can only signify the completion of the prescribed process-rather the twin process-of notifying the interested public of the proposed acquisition in the manner provided for by s. 4(1), that is by publication in the official Gazette and giving public notice in the locality. Therefore, the period of 30 days may be reckoned from either the date of publication in the Gazette or the date of public notice of the substance of the notification in the locality, whichever is later. [593C.G]

Khub Chand v. State of Rajasthan, [1967] 1 S.C.R. 120, Narinderjit Singh v State of. Uttar Pradesh, AIR 1973 S.C. 552, State of Mysore v. Abdul Rajak, AIR 1973 S.C. 2361 and Anjuman Ahmediyya, Muslim Mission v. State AIR 1980 A.P. 246, referred to.

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Collector, Hyderabad, AIR 1983 A.P. 142 and Smt. Shahnaz Salima v. Govt. of A.P., W.P. No. 3353/76 decided by a Full Bench of Andhra Pradesh High Court on Sept. 26, 1978, approved.

Satish Kapur v. State of Haryana, AIR 1982 P. and H 276, Rattan Singh v State, AIR 1976 Pand H 279 (F.B.), C. Suryanarayana v. Govt. of Andhra Pradesh, AIR 1983 A P. 17 and Mohammad Khawaza v. Govt. of Andhra Pradesh, AIR 1982 N.O.C. 270 (A.P), overruled.

It is not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. [596H; 597A and 596G-H]

Jaga Ram v. State of Haryana, AIR 1971 S.C 1033 and Kashi Reddy Papaiah v. Govt of Andhra Pradesh. AIR 1975 A.P. 269, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 9013-9014 of 1984.

From the Judgment and order dated the 3rd August, 1984 of the Delhi High Court in C. W. No. 1890 and 1891 of 1984) Dr. L. M. Singhvi and Mrs. Bharati Anand for the Petitioners.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. We are dismissing both the Special Leave Petitions. But we propose to give our reasons for doing so, which we do not generally do, as our attention has been invited to some judgments of High Courts which we consider have been wrongly decided, proceeding as they do on a misunderstanding of some observations of this Court. A combined notification under ss. 4 and 17 and a declaration under s. 6 of the Land Acquisition Act were published in the Delhi Extraordinary Gazette on 18.6.1984 in regard to the acquisition of certain lands in the Village Bijwasan for the purpose of construction of a 'New Transmitting Station for the Delhi Airport'. Public Notice of the substance of the notification under s. 4 was alleged to have been given in the locality on 17.7. 1984. It was also alleged that the matter was under correspondence between various departments of the Government, for nearly eight years before the notification and the declaration were publi-

shed in the Gazette. A Writ Petition was filed in the Delhi High Court impugning the notification and the declaration on two grounds. The first was that the delay of 29 days in giving public notice of the substance of notification in the locality after the publication of the notification under s. 4 in the Gazette was fatal to the notification itself. The second was that the very circumstance that a period of eight years was spent in interdepartmental discussion showed that there was no urgency necessitating the invocation of s 17 (4) of the Land Acquisition Act to dispense with the enquiry under s. 5-A. The High Court dismissed the Writ Petition in limine and the present Special Leave Petitions are directed against such dismissal. The very two questions which were raised before the High Court were again urged before us and reliance was placed by Dr. L. M. Singhvi, learned counsel for the petitioners, on *Narinderjit Singh v. State of Uttar Pradesh*,⁽¹⁾ *Rattan Singh v. State*,⁽²⁾ *S. K Gupta v. Union of India*,⁽³⁾ *Satish Kapur v. State of Haryana*⁽⁴⁾ and *C. Suryanarayana v. Govt. of Andhra Pradesh*.⁽⁵⁾ In addition, we have also perused *Khub Chand v. State of Rajasthan*,⁽⁶⁾ *State of Mysore v. Abdul Rajak*,⁽⁷⁾ *Mohammad KHawaza v. Govt. of Andhra Pradesh*⁽⁵⁾ and *Sanjivaiah Nagar Depressed and Backward Classes Sangh v. District Collector, Hyderabad*.⁽⁹⁾ Section 4 of the Land Acquisition Act is as follows:-

(1) "Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the sub-stance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen:-

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work if any proposed to be made thereon;

to mark such levels, boundaries and line, by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house unless with the consent of the occupier thereof without previously giving such occupier at least seven days' notice in writing of his intention to do so."

It may be noticed at once that s. 4 (1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the official Gazette or immediately thereafter. Publication in the official Gazette and public notice in the locality are two vital steps required to be taken under s. 4 (1) before proceeding to take the next step of entering upon the land under s. 4 (2). The time factor is not a vital element of s. 4 (1) and there is no warrant for reading the words 'simultaneously' or 'immediately thereafter' into s. 4 (1). Publication in the official Gazette and public notice in the locality are the essential elements of s. 4 (1) and not the simultaneity or immediacy of the Publication and the Public Notice. But since the steps contemplated by s. 4 (2) cannot be undertaken unless publication is made and public notice given as contemplated by s 4 (1), it is implicit that the publication and the public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally contemporaneity may involve a gap of time and by the very nature of the things, the publication in the official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by along interval of time. What is necessary, is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gaz-

ette and if there is public notice in the locality, the requirements of s. 4 (1) 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 bona fides 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 anyone.

We may consider here an argument which is usually advanced against any time gap between the publication in the official Gazette and the public notice in the locality. Section 5-A provides that any person interested in any land which has been notified under s. 4 (1) may object to the acquisition of the land or of and in the locality within 30 days after the issue of the notification. It is, therefore,

suggested that if the publication of the notification in the Gazette is not immediately followed by a public notice in the locality, it may lead to a denial to the person interested of an opportunity to object to the acquisition. We think, that this is too narrow an interpretation of s. 5- A. Notice to interested persons of a proposed acquisition of land is given by publicising a notification to the effect that land in any locality is needed or is likely to be needed for any public purpose in two ways-first, by causing publication of the substance of the notification to be given at convenient places in the locality. There is no reason to confine the period of 30 days prescribed by s. 5-A to one mode. The period of 30 days may be reckoned from either the date of publication in the gazette or the date of public notice of the substance of the notification in the locality, whichever is later. In our view, that is the only reasonable and practical way of construing s. 5-A so as to advance the object of that provision, which is to provide a reasonable opportunity to interested persons to oppose the acquisition. We particularly notice that s. 5-A does not refer either to the date of publication in the official Gazette or the date of public notice of the substance of the notification in the locality. It speaks of 'the issue of the notification'. This we consider is significant and, in the context, the words 'the issue of the notification' can only signify the completion of the prescribed process-rather, the twin process-of notifying the interested public of the proposed acquisition in the manner provided for by s 4 (1), that is by publication in the official Gazette and giving public notice in the locality.

In *Khub Chand and Ors. v. State of Rajasthan and ors.* (supra), this Court (Subba Rao, C.J. and Shelat, J.) ruled out the contention that public notice under s. 4 (1) was not mandatory, and held that both publication in the official Gazette and public notice in the locality were pre-requisites to further action under s. 4 (2) of the Land Acquisition Act. Non-compliance with either of the requisites would render the land acquisition proceedings void. In *Narinderjit Singh v. State of Uttar Pradesh* (supra), the question was about the effect of the failure to cause public notice of the substance of the notification to be given at convenient places in the locality. The view taken in *Khub Chand's* case was reaffirmed and it was further pointed out that the dispensing with of the enquiry contemplated by s. 5-A by the issuance of a notification under s. 17 (4) would make no difference to the necessity for strict compliance with both the requisites of s. 4 (1). It was said:

"In our judgment the provisions of Section 4 (1) cannot be held to be mandatory in one situation and directory in another. Section 4 (1) does not contemplate any distinction between those proceedings in which in exercise of the power under Section 17 (4) the appropriate government directs that the provisions of Section 5-A shall not apply and where such a direction has not been made dispensing with the applicability of Sec. 5-A. It lays down in unequivocal and clear terms that both things have to be simultaneously done under Section 4 (1), i.e. a notification has to be published in the official gazette that the land is likely to be needed for any public purpose and the Collector has to cause notice to be given of the substance of such notification at convenient places in the locality in which the land is situated. The scheme of Section 4 is that after the steps contemplated under sub-section (1) have been taken the officer authorised by the Government can do the various acts set out in sub-section (2)."

The observation that "both things have to be simultaneously done" has led some High Courts to conclude that simultaneity of publication in the gazette and public notice in the locality is a mandatory condition of s. 4 (1) and so to import an obsessive time factor. It is not so. What was apparently meant to be conveyed was that both things had to be done before the various acts set out in sub-section (2) could be undertaken. The question whether the publication in the official Gazette and the public notice in the locality had to be simultaneous or whether there could be a gap of time was not an issue at all in that case. In *State of Mysore v. Abdul Rajak* (supra), this Court referring to s. 4 (1) held, "the section prescribes two requirements, namely, (1) a notification to be published in the official Gazette and (2) the Collector causing to give of the substance of such notification to be given at convenient places in the concerned locality", and, "unless both these conditions are satisfied, s. 4 of the Land Acquisition Act cannot be said to have been complied". The court also added "It is only when the notification is published in the (official Gazette and it is accompanied or immediately followed by the public notice, that a person interested in the property proposed to be acquired can be regarded to have notice of the proposed acquisition". This sentence alongwith the sentence "both things have to be simultaneously done under s. 4 (1)" occurring in *Narinderjit Singh's* case have led to some confusion in some decisions of the High Courts. We have already explained the observation in the *Narinderjit Singh's* case. We are unable to read the observations in *State of Mysore v. Abdul Rajak* as laying down any general principle that every time-gap between the publication in the Gazette and the public notice in the locality is fatal to the acquisition. Apart from the physical impossibility of synchronising the publication in the Gazette and the public notice in the locality, one can visualise a variety of circumstances which may bring about a time-gap between the two. There may be a break down of communications, there may be a strike or bandh as happened in one of the reported case in *Andhra Pradesh Anjuman Ahmediyya, Muslim Mission v. State*(1) or there may be some other justifiable reason. This court did not lay down any general principle that an acquisition would be regarded as void if the notification published in the official Gazette was not accompanied or immediately followed by the public notice. What in fact appears to have been said was that a person interested in the property can be regarded to have had notice of the proposed acquisition if both the requirements of s. 4 (1) are complied with whether simultaneously or one after the other. As we said no invariable rule was laid down that an acquisition would be regarded as void whenever there was a gap of time between the publication in the Gazette and the public notice in the locality.

We do not think that it is necessary to refer to the decisions of the High Courts in detail except to say that we consider *Satish Kapur v. State of Haryana*, *Rattan Singh v. State*, *Suryanarayana Reddy v. Andhra Pradesh* and *Mohd. Khawaza v. Govt. of A. P.* were wrongly decided and that *Sanjivaiah Nagar Depressed and Backward Classes Sangh v. District Collector, Hyderabad* was rightly decided.

In the last mentioned case, there is reference to several earlier Division Bench judgment and the judgment of the Full Bench which the learned judges had followed. In particular, the learned judges have referred to the following observations of a Full Bench of the Andhra Pradesh High Court in *Shahnaz Salima v. Govt. of A.P.* (a decision which for some unknown reason has not been reported in any of the Law Reports);

"There is no warrant for the contention that the publication in the official Gazette and the publication of the substance of the notification at convenient places in the said locality should be simultaneous and be done precisely at the same time. If that were the intention of the Legislature, it could have said so. Something which is not in the section cannot be imported into it. The publication of the substance of S. 4 (1) notification at convenient places in the locality is required out of anxiety of the Legislature to make it certain that it is brought to the notice of the affected persons. What all that is required is that before any thing is done as contemplated by sub-sec. (2), the substance of S. 4 (1) notification must be published in the locality of the land. Several times it may prove to be a physical impossibility if simultaneous publication is insisted upon. It is not possible to think that the Legislature has provided for an impracticable and at the same time unnecessary task. What S. 4 (1) requires is that S. 4 (1) notification must be published in the official Gazette and its substance at convenient places in the said locality." We agree with these observations.

The other ground of attack is that if regard is had to the considerable length of time spent on interdepartmental discussion before the notification under S. 4 (1) was published, it would be apparent that there was no justification for invoking the urgency clause under s. 17 (4) and dispensing with the enquiry under s. 5-A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that more pre-notification delay would render the invocation of the urgency provisions void. We however wish to say nothing about post-notification delay. In *Jaga Ram v. State of Haryana*, this court pointed out "the fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not." In *Kash Reddy Papiiah v Govt of Andhra Pradesh*, it was held, "Delay on the part of the tardy officials to take further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency." In the result both the submissions of the learned counsel for the petitioners are rejected and the special leave petitions are dismissed.

H.S.K. Petitions dismissed.