

Before M.M. Kumar & Ajay Tiwari, JJ.

KARAMJIT SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 17663 of 2009

3rd February, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4, 6 & 17—Land sought to be acquired—Whether notification u/s 4 read with S.17 and notification u/s 6 read with S.17 could be issued and published on same day—Held, no—Petition allowed, notifications u/ss 4&6 quashed while granting liberty to respondents to proceed in accordance with law for acquisition of land.

Held, that simultaneous notifications under Section 4 read with Section 17 and under Section 6 read with Section 17 of the Land Acquisition Act on the same day cannot be published and are thus, liable to be set aside.

(Para 9)

Arvind Thakur, Advocate, *for the petitioners*

Suvir Sehgal, Addl. AG Punjab, *for the respondents.*

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing of notifications, dated 10th June, 2009 (P.3 and P.4). It is pertinent to mention that notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 (for brevity 'the Act') was issued on 10th June, 2009 (P.3) and on the same day notification under Section 6 read with Section of the Act has also been issued (P.4).

(2) When the matter came up for motion hearing on 21st December, 2009, the parties were directed to maintain *status quo*.

(3) Mr. Arvind Thakur, learned counsel for the petitioner has raised only one substantive question of law, namely :

“Whether notification under section 4 of the Act read with Section 17 of the Act and notification under Section 6 read with Section 17 of the Act could be issued and published on the same day”?

(4) For the aforesaid proposition he has placed reliance on a judgement of Hon’ble the Supreme Court rendered in the case of **State of U.P. versus Radhey Shyam Nigam and others (1)**.

(5) In the written statement filed on behalf of respondent Nos. 1 to 3 the factum of issuance of notifications on the same day has been admitted as is evident from the reading of para 4 of the written statement.

(6) Mr. Suvir Sehgal, learned State Counsel has not disputed the factual position but has argued that if at all a notification suffers from any illegality then ordinarily declaration made under Section 6 of the Act may be quashed keeping the notification issued under Section 4 of the Act intact. In support of his submission, Mr. Sehgal has placed reliance on a judgement of the Hon’ble Supreme Court rendered in **Kanpur Development Authority versus Mahabir Sahkari Awas Samiti Ltd. and others (2)**

(7) Having heard the learned counsel for the parties, we are of the considered view that the submissions made by the learned counsel for the petitioner merits acceptance. It is well settled principle of law that there must be a gap of atleast a day between publication of notification under Section 4(1) and declaration under Section 6(1) of the Act. A similar issue arose before the Hon’ble Supreme Court in the case of **Mohan Singh versus International Airport Authority of India (3)**. The view of the Hon’ble Supreme Court is discernible from the reading of Para 13 of the judgement which is an under :

“13.....What is needed is that there should be a gap of time of at least a day between the publication of the notification under

(1) 1989 (2) R.C.R. 220

(2) (2005) 10 S.C.C. 320

(3) (1997) 9 S.C.C. 132

Section 4(1) and 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 the 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 required to be done by the Collector authorised by the Government under Section 7 and his subordinate staff. If dereliction of duty is given primacy, 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.”

(8) The aforesaid view has been followed by a Division Bench of this Court of which one of us (M.M. Kumar, J. is a member) in the case of **Punita Chaudhary and others versus State of Haryana and others (4)**. Similar view has been taken in the case of **Radhey Sham Nigam's case (supra)**. The aforesaid question has been clearly raised in para 5 and the same has been answered in para 14 of the judgement which reads thus:

“14. It is true that the expression “after the date of the publication of the notification” introduced in S. 4 can be explained away as making no change from the provisions of law by reading it along with the amendment made in Section 4 whereby in different situation in S. 4, the last date of publication of the notice has been determined as the date of the publication of the notification and similarly in S. 6 a date of the publication of the notice has been provided for. But the words “after the date of the publication of the notifications” in sub-sec. (4) of S. 17 read simplicitor clearly indicate that declaration under S. 6 had to be made after the publication of the notification meaning thereby subsequent to the date of the publication of the notification. It appears to us that there is nothing in the scheme of the Act which militates against such a construction. The fact that at times where emergency provisions are invoked emergent action may be taken but in such a situation in view of the state of law that was before it, the legislature has made a conscious change which cannot be explained away merely because this is as a consequence of the changes Ss. 4 and 6 of the Act, 690 (Sic 1894) ?” (emphasis added).

(9) In the face of the above enunciation of law by their Lordships of the Hon'ble Supreme Court it has to be concluded that simultaneous notifications under Section 4 read with Section 17 and under Section 6 read with Section 17 of the Act on the same day cannot be published and are thus liable to be set aside.

(10) The argument of the learned State counsel based on the Judgement of the **Kanpur Development Authority's case** (*supra*) does not require any detailed examination. In the present case the acquisition proceedings initiated on 10th June, 2009 by issuing simultaneous notification were challenged and on 21st December, 2009 the *status quo* regarding possession was ordered to be maintained. Thereafter the status quo order is continuing. On the basis of the judgement of Hon'ble the Supreme Court in the case of **Ashok Kumar versus State of Haryana (5)** for the purposes of period of one year it would not be deemed that the stay order was operative. Therefore, if the notification issued on 10th June, 2009 under Section 4 read with Section 17 of the Act is permitted to remain intact then it leads to precarious results. On the one hand the petitioners would not be able to claim the price of the land prevailing on the date of the notification under Section 4 of the Act which may be issued as a consequence of quashing the impugned notifications and their land price would be pegged down and they would get the price of their land as per the rate on 10th June, 2009. Moreover, in earlier cases it has been seen that the respondent-State has not been able to act efficiently so as to abide by the dead-line of one year. Therefore, we are not impressed with the submission made by the learned State Counsel.

(11) In view of the above, the petition succeeds. The impugned notification dated 10th June, 2009 issued under Section 4 read with Section 17 and under Section 6 read with Section 17 of the Act (P3 and P4) are hereby quashed. However, the respondents shall be at liberty to proceed in accordance with law for acquisition of the land.

R.N.R.