that the stay order of the petitioner had been accepted and not declined.

(10) The petitioner signed the register of the Haryana Legislative Assembly in pursuance of the stay order issued by the Supreme Court on May 4, 1973, with the result that his seat could not be declared vacant by the High Court under Article 190(4) of the Constitution. It is obvious that the evil consequences of Article 190(4) did not follow because the petitioner signed the register of the Assembly as a Member and not otherwise. To avoid evil consequences under Article 190(4) of the Constitution may be one of the objects for issuing the stay order by the Supreme Court on May 4, 1973, but the fact remains that his membership of the Assembly was revived to enable him to sign the register of the Assembly in that capacity.

(11) In view of discussion above, I hold that the stay order issued by the Supreme Court on May 4, 1973, in favour of the petitioner permitting him to sign the register of the Haryana Legislative Assembly as a Member thereof did amount to stay of the operation of the order of the High Court in terms of section 116-B of the Act. In this situation, the period of six years disqualification of the petitioner shall commence with effect from August 8, 1974, on which date the Supreme Court dismissed his appeal and not with effect from March 12, 1973, when his election was declared void by the High Court.

(12) In the result, the writ petition fails and is dismissed with no order as to costs.

S. C. K.

Before Harbans Lal, J.

GURCHARAN SINGH and others,—*Petitioners.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 529 *of* 1980.

May 30, 1980.

Land Acquisition Act (1 of 1894)—*Sections* 4, 5-*A*, 6 *and* 9—*Constitution of India* 1950—*Article* 226—*Delay in publication of the*

substance of the notification under section 4—Objections filed by one land owner but not by others though related to the former—Each landowner—Whether entitled to challenge the notification on the ground of delay in publication despite objections having been filed by one of them—Writ petition filed before the pronouncement of the award and issue of notice for taking of possession though much after the relevant notifications—Writ petition—Whether liable to be dismissed on the ground of laches.

Held, that the legal consequences flowing from the Act of one of the landowners in filing objections under section 5-A of the Land Acquisition Act, 1894 cannot prejudice the case of the other landowners. The mere fact that any other landowner was related to the person who filed objections is of no consequence. Each of the landowners has a right of his own and is entitled to challenge the legality of the notifications in his own right. (Para 8).

Held, that where inspite of the two notifications having been issued under sections 4 and 6 of the Act, the Collector had not pronounced the award at the time when the writ petition was filed nor was any notice under section 9 of the Act issued for the purpose of taking possession of the land under acquisition and the landowners continued to be in possession upto the time of the filing of the writ petition, it is neither reasonable nor in the interest of justice to dismiss the writ petition on the ground of delay and laches alone. (Para 16)

Petition under Articles 226/227 of the Constitution of India praying that :—

(i) *That this petition be admitted ;*

(ii) *That the respondents be summoned with all relevant records relating to the acquisition of the land in dispute ;*

(iii) *That after hearing the parties or their counsel, this Hon'ble Court be pleased to quash by a writ in the nature of certiorari or by any other appropriate writ, order or direction, the impugned notifications issued under sections 4 and 6, copies of which are appended as Annexure P-1 and P-2 respectively to the writ petition be quashed.*

(iv) *That in the alternative such relief may be granted to the petitioners by appropriate writ, direction or order to which they may be found entitled.*

(v) *That pending the disposal of the petition, the respondents be restrained from proceeding further with the acquisition proceedings and dispossessing the petitioners.*

(vi) That the petitioners be exempted from filing the original documents of which they have filed the copies.

(vii) That the costs of the petition be awarded to the petitioners against the respondents.

R. S. Bindra, Senior Advocate (Mrs. Kanwal Kochar, Advocate with him), *for the Petitioners.*

H. S. Mathewal, Advocate, for the State, *for the Respondents.*
G. S. Grewal & H. S. Nagra, Advocates, *for Respondent No.* 3.

JUDGMENT

Harbans Lal, J. .

(1) This judgment will dispose of C.W.P. Nos. 529, 560 and 792 of 1980 under Article 226 of the Constitution as the same notifications under sections 4 and 6 of the Land Acquisition Act (hereinafter to be called the Act) are sought to be quashed by issuance of writ of *certiorari.* For facility of reference, facts as adverted in C.W.P. No. 529 of 1980 may be briefly narrated.

(2) A notification under section 4 of the Act, dated 6th January, 1978 (P-1) was published in the Punjab Government Gazette on 20th January, 1978, by which land situated in villages Udhekaran, Chak Bir Sarkar and Muktsar were to be acquired for a public purpose namely for construction of the bye pass of Muktsar in Faridkot District According to the same, objections in writing could be filed by the interested persons within 30 days before the Land Acquisition Collector. This was followed by another notification under section 6 of the Act (P-2) which was published on 26th October, 1979. The legality of these two notifications has been challenged in this writ petition on behalf of six petitioners whose lands are also included therein.

(3) According to the averments in the petition and the contention of the learned counsel for the petitioners, substance of the notification under section 4 of the Act was not published in the locality concerned nor was the copy of the notification pasted anywhere as required under section 4 of the Act. The petitioners came to know from the patwari of Halqa Bhullar that a report about the proclamation relating to the notification had been recorded in his Roznamcha on February 2, 1978. The copy of the same in English translation is P-3 annexed with the petition. In the said report substance of the notification as alleged to be proclaimed is not disclosed. It is

the case of the petitioners that even according to the report in the Roznamcha (P-3) substance of the notification was published in the locality after 13 days and as such in view of a Full Bench decision of this Court in *Rattan Singh and another* vs. *The State of Punjab and anothers* (1), the impugned notification under section 4(P-1) is liable to be quashed as it was mandatory on the authorities concerned to publish the substance of the notification in the locality concerned simultaneously with the publication of the same in the gazette or atleast immediately thereafter and the delay in doing the needful was required to be explained satisfactorily. It was also urged by the learned counsel for the petitioners that in *Murari Lal Bhargava and others* vs. *The State of Haryana and others* (2), a Division Bench of this Court quashed a notification under section 4 of the Act even when there was a delay of only six days in the publication of its substance which had not been explained.

(4) According to the learned State counsel, this delay of 13 days in publication of the substance has been satisfactorily explained in the additional affidavit filed by the Executive Engineer on behalf of respondents Nos. 1 and 2. However the explanation given therein is to the effect that after publication of the notification in the Government Gazette on 20th January, 1978, the same was received in the office of the Land Acquisition Collector respondent No. 2 after four days, i.e., 24th January, 1978. Another three days were spent in preparing typed copies of the notification and a notice under section 5-A which were sent to the Naib Tehsildar Land Acquisition, Amritsar, on 27th January, 1978. Even thereafter, according to the report in the Roznamcha of the patwari, the proclamation was got done in the village by beat of drum through a Chowkidar on 2nd February, 1978. The report in the Roznamcha does not make mention of the details of land which had been acquired. The reference is only to the notification, dated 20th January, 1978. Nor does it disclose if the copy of the notfication or its substance had been pasted on any building in the locality concerned.

(5) In *Sat Dev and others* vs. *The State of Punjab and others*, (3) the report of the patwari, did not make it clear as to what had been proclaimed by the Chowkidar nor was it disclosed as to on which patwarkhana, the published notice

(1) 1976 P.L.J. 356.
(2) 1977 P.L.J. 398.
(3) 1975 Rev. L.R. 622.

had been pasted. The notification pertained to land in several villages, but it was not clear as to whether notices had been pasted in the patwarkhana of one village. In these circumstances it was held by R. N. Mittal J., that the substance of the notification had not been published in the locality concerned in accordance with the mandatory provisions of section 4 of the Act and the notification under section 4 was consequently quashed.

(6) In *Pritam Singh* vs. *The State of Punjab and another* (4), it was not clear from the report of the Patwari as to place or the area where the proclamation by beat of drum had been made. Consequently, the notifications under sections 4 and 6 of the Act were quashed by the Division Bench.

(7) In the present case it is evident from the impugned notification under section 4 (P-1) that the land had been acquired in three villages. However, the report Roznamcha (P-3) is absolutely silent about two out of the three villages and the area where the proclamation by beat of drum had been made. In the very nature of things, it cannot be expected that the proclamation will be made in all the three villages by the same Chowkidar. The report also does not make any mention of the time when the proclamation had been made. Details of the land are absolutely missing therein. It is also not disclosed if copy of the substance of the notification had been pasted in the patwarkhana of any of the villages concerned. Thus, this report is quite vague and it is not possible to come to the conclusion if any proclamation whatsoever was made. It has been held time and again that the publication of the substance of the notification in the locality concerned and also at other places is not a mere formality. Compliance of the same is mandatory as it is intended to give notice to the landowners to file objections against the proposed acquisition. Besides, it is also not possible to appreciate as to why it took four days to prepare the typed copies of the notifications and thereafter another three days had to be spent before the copies could reach the Naib Tehsildar Land Acquisition. Even thereafter, it appears the authorities did not take the matter seriously and proclamation, whatever its worth, was made only five days after that. This cannot be, in any circumstances, held to be a satisfactory explanation. In view of the same it must be held that the substance of the notification under section 4 of the Act was published after an

(4) 1976 P.L.J. 2.

unexplained delay of 13 days and besides the proclamation was also not made in a satisfactory and proper manner as was required.

(8) Faced with this situation, the learned State counsel has contended that Gurcharan Singh petitioner No. 1 had filed the written objections under section 5-A of the Act before the Collector. Petitioner No. 2 Smt. Baljit Kaur was his mother and Paramjit Singh petitioner No. 3 was his nephew. Consequently, these three petitioners cannot take advantage of any infirmity arising from the non-publication of the substance of the notification, according to the law laid down by the Full Bench of this Court in *Rattan Singh and another's case* (supra).. Reliance in support of this proposition was made on a decision of this Court in *Bishna alias Bishan Singh* vs. *The State of Punjab and another* (5). Undoubtedly, it has been held in this judgment that in case objections under section 5-A of the Act are filed by a landowner, it is not open to him to challenge the validity of the notification under section 4 on the ground of non-compliance of the provision relating to publication of substance of the notification simultaneously or immediately thereafter. According to the learned counsel for the petitioners this decision does not lay down correct law. Besides, it was also contended that this decision cannot operate against any of the petitioners other than Gurcharan Singh petitioner No. 1. It was emphasized that petitioner No. 2 Smt. Baljit Kaur was not his mother but was his brother's wife and the petitioner No. 3 was his nephew. If objections under section 5-A of the Act had been filed by Gurcharan Singh petitioner No. 1 alone, the same cannot be treated to be the objections by any other petitioner. As such, their cases cannot be prejudiced on that account alone. I do not agree that the said decision does not lay down corect law. Besides, I am bound by the same while sitting singly. However, the contention of the learned counsel for the petitioners is not without merit that the legal consequence flowing from the act of petitioner No. 1 in filing objections under section 5-A of the Act cannot prejudice the case of the other petitioners. The mere fact that any other petitioner was related to petitioner No. 1 is of no consequence. Each of the petitioners is a landowner in his or her own right and is entitled to challenge the legality of the impugned notification of his or her own.

(9) It was also urged by the learned counsel for the petitioners that so far as Gurcharan Singh petitioner No. 1 was concerned, his

(5) L.P.A. No. 73 of 1976, decided on 29th February, 1980.

case cannot be thrown out on the mere ground that he had filed objections under section 5-A of the Act. It was argued that under section 5-A, petitioner No. 1 was entitled to be provided a opportunity of hearing by the Collector before the latter could make his recommendation to the Government. In the absence of such an opportunity, the impugned notifications have to be quashed. In support of this proposition, reliance was placed on the Supreme Court decisions as reported in *Shri Mandir Sita Ramji* vs. *Lt. Governor of Delhi and others* (6) & *Shri Farid Ahmed Abdul Samad and another* vs. *The Municipal Corporation of the City of Ahmedabad and another* (7). A close perusal of these decisions leaves no manner of doubt that it is mandatory for the Collector to serve notice on the landowner who files written objections under section 5-A and to provide him opportunity of hearing and non-compliance with this essential requirement vitiates the subsequent proceedings. In the present case, the learned State Counsel was not able to show from the record if Gurcharan Singh petitioner No. 1, who had filed the objections was served with a notice under section 5-A of the Act or if any opportunity of hearing was provided to him.

(10) It was then urged by the learned State counsel that in the present case Land Acquisition Collector had announced the award and amount of compensation so determined was also received by the petitioners. Even proceedings were also initiated on behalf of the petitioners under section 18 of the Act for enhancement of the amount of compensation. In view of the same it was argued that the writ petition was not maintainable. It was admitted that the award was made by the Collector on 6th March, 1980, and reference under section 18 of the Act was filed by all the petitioners on 9th April, 1980, whereas the writ petition was filed on 18th February, 1980. Thus, it cannot be disputed that the writ petitions have been filed before the announcement of the award or the making of the reference under section 18 of the Act. It is also not denied that the land of the petitioners fell in two villages and possession of the land only in village Muktsar have been taken by the authorities on 13th March, 1980. Thus, even possession was taken from the petitioners partly after the filing of the petition In this view of the matter, reliance on decisions in which it was

(6) (1975) 4 S.C.C. 298.

(7) (1976) 3 S.C.C. 719.

held that the writ petition was not maintainable in case compensation had been received and reference made under section 18 of the Act is misconceived and it is not necessary to advert to them in any details.

(11) Lastly, it was emphasized by the learned State Counsel that the writ petition was not maintainable as the same was filed after long delay. It was pointed out that the notification under section 4 of the Act (P-1) was published on 20th January, 1978, whereas the writ petition was filed on 18th February, 1980. According to the State counsel, a delay for more than two years disentitled the petitioners from filing the petition. As against this, it was urged by learned counsel for the petitiners that though the first notification under section 4 of the Act was published on 20th January, 1978, but the Government did not think it fit to take further steps of publishing the notification under section 6 of the Act till 6th October, 1979. Even thereafter, no steps whatsoever were taken in pursuing the matter as award was pronounced as late as 6th March, 1980, and no proceedings were taken for taking possession before the 13th March, 1980. A number of decisions have been relied upon on both sides in support of their respective contentions which may be briefly considered.

(12) In *Union of India* vs. *Khas Karanpura College Co. Ltd.* (8), a notification under section 4 of Coal Bearing Areas (Acquisition and Development) Act, 1957, was challenged within six months of the notification. It was held that this delay was not sufficient to refuse a relief to the petitioners under Article 226 of the Constitution of India.

(13) In *Rajinder Parshad and another* vs. *The Punjab State and others* (9). Full Bench of this Court elaborately considered the question of delay, while considering a petition under Article 226 of the Constitution. It was held as under :—

> "No hard and fast rule can be laid down in this respect. So it would not be correct to say that merely looking at the question of some delay, the petition must be dismissed off-hand, nor would it be correct to say, as an abstract proposition, that, ignoring delay, the petitioner can insist upon the decision of the case on merits. Such inflexible

(8) A.I.R. 1969 S.C. 125.

(9) A.I.R. 1966 Pb. 185 (F:B:):

rule cannot be laid down and when, considering a petition under Article 226, what the Court does is that it takes into consideration the facts and circumstances of the case and delay is one of such circumstances in exercising its judicial discretion for ends of justice in the matter of decision of the petition. The supreme consideration for the exercise of the power and jurisdiction under Article 226 of the ends of justice, and that provides the approach to the exercise of judicial discretion in the matter, which embraces consideration of various aspects of the controversy and no limitations as rigid rules or propositions, such as referred to above, can be a fetter to that."

(14) In *Aflatoon* v. *Lt. Governor, Delhi* (10), notification under section 4 of the Act was issued in 1959 and that under section 6 in 1966. The writ petition was filed in 1970 in which the notification had been challenged on the ground that the particulars of public purpose had not been specified and that the Chief Commissioner was not competent to issue notification in view of section 15 of the Delhi Development Act. The writ petition was dismissed on the ground of delay. It was held by the Supreme Court that the writ petitioners were guilty of dilatory tactics as they sat on the fence and allowed the Government to complete acquisition proceedings on the basis that the notifications were void. In *I. G. N. Sahakari Samiti* v. *State of Rajasthan* (11), the writ petition had been filed after 9 years from the date of declaration under section 6 of the Land Acquisition Act. It was held that the length of delay in view of the nature of acts done during the interval on the basis of the notification was an important circumstances to be taken into consideration.

(15) In *Northern Carriers Pvt. Ltd.* vs. *The State of Punjab and others* (12), a notification under section 36 of the Punjab Town Improvement Act, 1922, which amounted to a notification under section 4 of the Land Acquisition Act was issued in 1966 and the writ petition was filed after the delay of 10 years in 1966. However, in spite of this apparent delay, this writ petition was not dismissed on the ground of laches as, the petitioner continued to be in possession of the property in dispute till the filing of the

(10) A.I.R. 1974 S.C. 2077.
(11) A.I.R. 1974 S.C. 2085.
(12) 1980 Rev. L.R. 140.

writ petition and it was held that the petitioner had a right to come to the Court to challenge a void notification when his right of possession is likely to be infringed.

(16) So far as the present petition is concerned, it is not disputed that in spite of the two notifications having been issued, the Collector had not announced the award at the time when the writ petition was filed nor any notice under section 9 of the Act was issued for the purpose of taking possession of the land under acsuisition. The petitioners continued to be in possession up to the time of the filing of the writ petition. In these circumstances it is not reasonable and in the interest of justice to throw the writ petition on the ground of delay and laches alone.

(17) It was also pointed out by the learned State counsel that the Government had incurred a huge expenditure amounting to Rs. 14 lacs in connection with the proceedings under the impugned notifications and that the Government will be put to a great loss if the same were quashed. This contention on deeper scrutiny has no merit. A close perusal of annexure R-1 disclosing the details of the expenditure purporting to have been incurred by the Government in connection with the bye pass for which the land has been acquired makes it evident that out of about Rs. 14 lacs alleged to have been incurred, an amount of Rs. 11 lacs pertains to the amount of compensation which has been paid to the landowners. This amount on the face of it cannot be held to be one which will go waste in case the notifications are quashed. The landowners will be liable to refund this amount and the Government will be legally entitled to recover the same. Up to the date of filing of the writ petition on 18th February, 1980, only an amount of Rs. 5,600 had been spent out of which an amount of about Rs. 5,000 pertains to the collection of bricks. From this no conclusion, as contended by the learned counsel undergone huge expenses. Though the notification under section 4 was published on 20th January, 1978, Government took about one year and nine months to make up its mind finally to make a declaration under section 6. Even thereafter no worthwhile steps were taken up to the date of the filing of the writ petition which could indicate that the Government was serious in pursuing the matter regarding the construction of bye pass for which the land was sought to be acquired. In view of all these circumstances, the writ petition cannot be thrown out on the ground of laches or delay or huge expenditure having been incurred by the Government.

(18) In Civil Writ No. 560 of 1980, the writ petition was filed on 20th February, whereas the reference under section 18 of the Act was made by the petitioner on 11th March, 1980, and possession of the land of the petitioners is said to have been taken on 13th March, 1980, i.e., subsequent to the filing of the petition. However, it is admitted by the learned counsel for the petitioners that out of the three petitioners, petitioner No. 1 Ajmer Singh and petitioner No. 2 Tegbir Singh did file objections under section 5-A of the Act. It is also clear from the record produced by the learned counsel for the State that both these petitioners had been served with notices under section 5-A to appear before the Collector in support of their objections. Out of them Ajmer Singh petitioner No. 1 had even put in appearance and even his statement had been recorded. In view of the decision of the L.P.A. Bench as referred to in the earlier part of this judgment, the writ petition of both these petitioners has to be dismissed, in spite of the infirmity in the publication of substance of the notification under secton 4 of the Act. However, the writ petition of petitioner No. 3 must succeed. According to the learned counsel for the petitioners, Khasra No. 2142 of Rectangle No. 309 of village Muktsar, is not covered by the alignment of byepass but the same has also been acquired under the impugned notification. According to the reply filed on behalf of the State, the land bearing this Khasra No. is not required for the purpose for which the impugned notifications were issued. It has even been disclosed that the Government has decided to issue the necessary notification denotifying the land comprised in this Khasra No. Consequently, it is also held that land bearing Khasra No. 2142 of Rectangle 309 of village Muktsar will not stand acquired by the impugned notifications.

(19) As regards C.W.P. No. 792 of 1980, the writ petition was filed on 12th March, 1980, whereas the possession of the land was taken by the State on 13th March, 1980, and the amount of the compensation awarded was also received by the petitioner on 21st March, 1980. Reference under section 18 of the Act was made by him on 9th May, 1980. It is not disputed that no objections under section 5-A of the Act had been filed by the petition. In view of these circumstances this petition also cannot be dismissed on the ground of laches.

(20) For the reasons mentioned above, writ petitions No. 529 of 1980 and 792 of 1980 are allowed and the impugned notifications

Annexures P-1 are quashed *qua* the petitioners in these writ petitions. C.W.P. No. 560 of 1980 is allowed only *qua* Rajbir Singh petition No. 3. The writ petition of the other two petitioners No. 1 and 2 are dismissed. In view of the peculiar circumstances of the case, there will be no order as to costs.

Before D. S. Tewatia and R. N. Mittal, JJ.

ATMA SINGH,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 1077 *of* 1976.

July 14, 1980.

Indian Penal Code (XLV of 1860)—Sections 320 and 326—Injury described as 'dangerous to life'—Whether synonymous with the injury which 'endangers life'—Former injury—Whether can be treated as 'grievous hurt'—Duty of Court to find the nature of the injury—Stated.

Held, that the doctors who conduct the medico legal examinations have been using the term 'dangerous to life' as synonymous with an injury which 'endangers life'. Even the court at times have considered an injury described as dangerous to life as an injury envisaged in clause Eighthly of section 320 of the Indian Penal Code 1860. The expression 'dangerous' is an adjective and the expression 'endanger' is a verb. An injury which can put life in immediate danger of death would be an injury which can be termed as 'dangerous to life' and, therefore, when a doctor describes an injury as 'dangerous to life', he means an injury which endangers life in terms of clause 8 of Section 320 of the Code, for, it describes the injury 'dangerous to life' only for the purpose of the said clause. He instead of using the expression that this was an injury which 'endangered life', described is that the injury was 'dangerous to life' meaning both the time the same thing. It cannot, therefore, be said that the expression 'dangerous to life' is somewhat milder and subdued as compared to the expression 'endangered life' used in clause Eighthly of section 320 of the Code. (Paras 8, 11 and 12).

Held, that the court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, expert's opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and