

officers or the officials on such matters. In the present case the plaintiff wanted production of his representations made to the Chief Minister and the privilege is being claimed in respect of those representations on which some office notings or opinions were expressed by the Government servants. It has not been shown as to under what provision of the service rules or the statutes such representations were maintainable or that these representations could in any manner be called proceedings under the rules such as departmental proceedings. That being the position, the State could legitimately claim privilege with respect to office notings or opinions expressed on such representations. However, the evidence regarding the representations, their contents or the final order passed by the appropriate authority allowing or rejecting the same can well be brought on the record in evidence.

(8) With the above observations present revision petition is allowed. The order of the trial court summoning the documents asked for is modified to the extent that the officer bringing the same will not be called upon to give evidence with respect to office notings or opinions expressed on such representations made to the Chief Minister. However, he would be at liberty to give evidence regarding the representations as such and the final order passed thereon. Revision Petition disposed of as above. No order as to costs. The parties through their counsel are directed to appear in the trial court on August 6, 1990.

S.C.K.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

BHATINDA IMPROVEMENT TRUST, BHATINDA,—Appellant.

versus

BALWANT SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 127 of 1983.

5th September, 1990.

Punjab Town Improvement Act, 1922—Ss. 36 & 42—Issuance of three consecutive notifications for acquiring land—Objections invited within 30 days from first publication—Period of three years to be counted from the date of first publication—Delay in publication of notification under S. 42—Validity of such notification.

**Bhatinda Improvement Trust, Bhatinda v. Balwant Singh and others
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Held, that S. 36(2) (a) of the Act clearly stipulates that the notice of the publication of the scheme shall be published weekly for three consecutive weeks in the official Gazette as well as in newspaper or newspapers with a statement of the period within which objections will be received. This notice has been equated to a notification under Section 4 of the Land Acquisition Act,—*vide* para 2 of the Schedule to the Act. That being so, the notice which is issued in a newspaper is a good publication for the purpose of this Act, which publication is equivalent to a notification under section 4 of the Land Acquisition Act. It is this date i.e. the first date of the publication of the notification in the official Gazette, whichever is earlier, which would be the starting point for computing three years within which notification under section 42 of the Act has to be published.

(Para 6)

Held, once it is held that the notification under Section 42 has to be issued within three years from the first publication of the notice under section 36 of the Act, the notification under Section 42 would be void if it is issued after three years of the first publication.

(Para 11)

Letters Patent Appeal under clause X of the Letters Patent of the High Court against the judgment of Hon'ble Mr. Justice I. S. Tiwana, dated 3rd December, 1982, in Civil Writ Petition No. 2508 of 1982.

H. S. Mattewal, Sr. Advocate with S. P. Karwal, Advocate, for the Appellant.

H. S. Riar, Additional A.G. Punjab, Anand Swaroop, Sr. Advocate with Sunidh Kashyap, Advocate, J. R. Mittal, Sr. Advocate with Baldev Singh, Advocate, for the respondents.

JUDGMENT

R. S. Mongia, J.

(1) This judgment of ours will dispose of four Letters Patent Appeals, as common question of law and fact is involved.

(2) Letters Patent Appeals No. 127, 128 and 129 of 1983 have been filed by Bhatinda Improvement Trust, Bhatinda, against the judgment of learned Single Judge, dated 3rd December, 1982, by which three writ petition Nos. 2508 of 1982, 854 of 1982 and 2358 of 1980 were disposed of. L.P.A. No. 458 of 1984 has been filed by Batala Improvement Trust, against the judgment of another learned Single Judge in C.W.P. No. 396 of 1979, decided on 30th March, 1984, which is based on the judgment in the other three writ petitions, against which the aforesaid three Letters Patent Appeals have been filed.

(3) It would be relevant at this stage to state facts in the three Letters Patent Appeals filed by the Bhatinda Improvement Trust

(hereinafter called the Trust). In compliance with the provisions of Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter called the Act), three consecutive notifications were issued by the Trust in the Punjab Government Gazette on 17th June, 1977, 24th June, 1977 and 1st July, 1977. Earlier thereto in compliance with the provisions of Section 36 of the Act, three consecutive weekly publications were also made in the daily Tribune on 31st May, 1977, 7th June, 1977 and 14th June, 1977. These notifications were notices to the general public by the Trust that the Trust had framed a development Scheme for residential purposes for economically weaker sections under sections 24 and 25 read with section 28(2) of the Act, for an area measuring approximately 26.13 Acres within the municipal limits of Bhatinda. Objections were invited to the Scheme so as to reach the Chairman, Improvement Trust, within 30 days of the first publication of the notice. The notification under Section 42 was issued by the Trust on 30th June, 1980. It were these notifications under Section 36 and 42 of the Act which were challenged in the three writ petitions, against which the above said three Letters Patent Appeals have been filed.

(4) The learned Single Judge in the impugned judgment has observed that the necessary implication of proviso to Section 6 of the Land Acquisition Act, which makes it incumbent upon the acquiring authorities to issue notification under Section 6 of the Land Acquisition Act within three years of the issuance of the first notification under Section 4 of the Land Acquisition Act, was that the notification under Section 42 of the Act has to be issued within three years from the date of first publication under Section 36 of the Act. This principle has been well recognised and enunciated by a Full Bench of this Court in *Harbans Kaur and others v. Ludhiana Improvement Trust, Ludhiana and others* (1). The learned Single Judge held that the notification under Section 42 of the Act, which was published on 30th June, 1980, was beyond three years of the publication of the first notice in the Tribune on 31st May, 1977, and, therefore, being beyond the period of three years both notifications under Sections 36 and 42 were liable to be quashed. Dissatisfied with the judgment of the learned Single Judge, the Trust has come up in the present appeals.

(5) Before noticing the arguments of the learned counsel for the appellant-Trust, it will be advantageous to notice the provisions

(1) 1973 P.L.R. 511.

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of Section 36 and Section 42 as it stood prior to the addition of proviso by Punjab Act No. 13 of 1982 :—

“36. Preparation, publication and transmission of notice, as to improvement schemes, and supply of documents to applicants.—(1) When a scheme under this Act has been framed, the trust shall prepare a notice stating—

- (i) the fact that the scheme has been framed;
- (ii) the boundaries of the locality comprised in the scheme; and
- (iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) the trust shall —

- (a) notwithstanding anything contained in Section 78 cause the said notice to be published weekly for three consecutive weeks in the official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and
- (b) send a copy of the notice to the President of the municipal committee, and to the medical officer of health.

(3) The chairman shall cause copies of all documents referred to in clause (iii) of Sub Section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 74.

42. Notification of sanction of Scheme.—(1) The State Government shall notify the sanction of every scheme under this Act, and the trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of section 27 have been fulfilled.

(2) A notification under Sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.”

Para 2 of the Schedule to the Act, in turn, provides that the first publication of a notice of any improvement Scheme under Section 36 of the Act shall be substituted for and have the same effect as publication in the official Gazette and in the locality of a notification under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 and similarly the publication of notification under section 42 of the Act shall be considered declaration by the State Government under Section 6 of the Land Acquisition Act.

(6) The learned counsel for the Trust has reiterated the same submission which was made before the learned Single Judge to the effect that the starting point for limitation for computing three years for the publication of the notification under section 42 of the Act should be the last notification published in the official Gazette and not the first notice that is published in a newspaper. According to the learned counsel, the third notification which was published in the official Gazette was dated 1st July, 1977, and the notification under Section 42 of the Act having been issued on 30th June, 1980, was within three years, and, therefore, could not be quashed. According to the learned counsel, the issuance of notice in the newspaper consecutively for three weeks and publication of the same in the official Gazette is a continuing process and ends with the last publication of the notification in the official Gazette and it is that date which should be reckoned as the starting point for limitation for issuing notification under section 42 of the Act. We are afraid we cannot agree with the contention of the learned counsel for the appellant-Trust. Section 36(2) (a) of the Act clearly stipulates that the notice of the publication of the scheme shall be published weekly for three consecutive weeks in the official Gazette as well as in newspaper or newspapers with a statement of the period within which objections will be received. This notice has been equated to a notification under section 4 of the Land Acquisition Act,—*vide* para 2 of the Schedule to the Act. That being so, the notice which is issued in a newspaper is a good publication for the purpose of this Act, which publication is equivalent to a notification under section 4 of the Land Acquisition Act. It is this date i.e. the first date of the publication of the notice in a newspaper or publication of the notification in the official Gazette, whichever is earlier, which would be the starting point for computing three years within which notification under Section 42 of the Act has to be published. If the argument of the learned counsel

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for the Trust was to be accepted, then the publication of the notice in the newspaper which invites objections to the scheme from the general public will wholly become redundant.

(7) It will be relevant to mention here that in the present case the notice which was published in the daily Tribune of 31st May, 1977 mentions at the end that any person filing any objection to the scheme may forward the same in writing so as to reach the Chairman within 30 days of the first publication of this notice. If the notice in the newspaper is not a publication as envisaged by the Act and it is only the notification in the official Gazette which is to be treated as such then the requirement of the notice to be published in the newspaper(s) in three consecutive weeks becomes absolutely meaningless. The inviting of the objections through the notice in the newspaper dated 31st May, 1977 which said that the objections may be filed within 30 days of the first publication of *this* notice also becomes redundant if this notice in the newspaper is not to be taken into consideration at all. As noticed above, para 2 of the Schedule to the Act says that the first publication of notice would be considered equivalent to a declaration under Section 4 of the Land Acquisition Act. Therefore, it is the publication of the notice whether in the official Gazette or in the newspaper, whichever is earlier, which is to be treated equivalent to a notification under Section 4 of the Land Acquisition Act and the notification under Section 42 of the Act has to be within 3 years of such publication under Section 36 of the Act.

(8) Section 38 of the Act also makes it clear that during 30 days next following the first day on which the notice is published under Section 36 in respect of a scheme that the Trust shall serve a notice on every person whom the Trust has reason to believe after due enquiry to be the owner of any immovable property which is proposed to be acquired. So even a notice is envisaged within 30 days of the first publication of notice, which is the notice issued in the newspaper or in the official Gazette, whichever is earlier.

(9) The learned counsel for the appellant then submitted that section 2(10) of the Act defines notification to mean a notification published in the official Gazette, and, therefore, according to the learned counsel it is the notification which is issued in the official Gazette, under Section 36 of the Act which has to be the starting point and not the publication of the notice in a newspaper which

is to be treated as such for limitation for issuing notification under section 42 of the Act. Section 36(2)(a) itself provides that the publication of the notice has to be in the newspaper as well as in the official Gazette. So section 36 itself envisages two types of publication of the notice. One in the newspaper and the other in the Official Gazette. As has been observed above, the publication in the newspaper is not meaningless, and, therefore, the limitation under section 42 of the Act has to start from the first publication of the notice whether it is in the newspaper or in the official Gazette, but it would start from the earliest publication. Moreover, in the present case, even if the notification in the official Gazette is to be taken as the starting point, the first notification in the official Gazette was on 17th June, 1977 and even on that count the notification under section 42 was beyond a period of three years.

(10) At this stage another fact may also be noticed that by Punjab Act No. 13 of 1982, a proviso was added to Section 42(2) of the Act, which reads as under :—

“Provided that no notice in respect of sanction of a scheme shall be issued after the expiry of three years from the date of first publication of notice relating to that scheme under section 36.”

This proviso also shows the intention that the notification under Section 42 of the Act has to be issued within three years from the date of first publication of notice relating to the scheme under section 36 of the Act. The first notice can be in a newspaper or by publication in the official Gazette. That being the position in law, we find no error in the judgment of the learned Single Judge.

(11) The learned counsel for the appellants then submitted that even if there was delay in the publication of the notification under Section 42 of the Act, the same could not be quashed, inasmuch as there was no prejudice caused to the writ-petitioners and none had been shown. There is no merit in this submission. Once it is held that the notification under Section 42 has to be issued within three years from the first publication of the notice under section 36 of the Act, the notification under Section 42 would be void if it is issued after three years of the first publication. No question of prejudice under the circumstances would arise. Lastly, the learned counsel for the appellants submitted that if there was delay in filing the writ

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petitions, and the learned Single Judge should not have interfered in writ jurisdiction. No such point was urged before the learned Single Judge. The learned Single Judge having exercised his discretion under Article 226 of the Constitution of India, the learned counsel cannot be permitted to raise the point of delay in filing the writ petition at this stage.

(12) For the reasons recorded above, these Letters Patent Appeals fail and are dismissed with costs, which are quantified at Rs. 500 in each case.

(13) As far as L.P.A. No. 458 of 1984 is concerned, which has been filed by Batala Improvement Trust, the learned Single Judge had relied on the judgment of the Single Bench against which the above-mentioned Letters Patent Appeals have been dismissed. In this case, the publication of the first notice under Section 36 of the Act in the newspaper was on 31st October, 1975 and the first notification under Section 36 in the official Gazette was published on 21st November, 1975. The notification under Section 42 of the Act was on 20th/21st November, 1978. For the view we have taken in L.P.As Nos. 127, 128 and 129/1983 that the starting point for limitation of publication of a notification under Section 42 of the Act is the first notice published in the newspaper or the official Gazette, whichever is earlier, the notification under Section 42 of the Act in the present case having been issued after three years of 31st October, 1975, was rightly quashed by the learned Single Judge. We find no merit in the present Letters Patent Appeal and dismiss the same with costs, which are quantified at Rs. 500.

P.C.G.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

CHANDIGARH ADMINISTRATION AND ANOTHER,—Appellants.

versus

MRS. HARINDER PANNU,—Respondent.

Letters Patent Appeal No. 371 of 1989.

25th September, 1990

Capital of Punjab (Development and Regulation) Act, 1952—S. 15—Punjab Capital (Development and Regulation) Building Rules, 1952—Rl. 5—Construction in contravention of Rules—Notice of demolition served after six months of completion of illegal construction—Demolition illegal—Such construction—Whether stood compounded.