

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No.5855 of 2001**

Judgment reserved on: December 16, 2009

% Judgment delivered on: January 11, 2010

Chander Bhan
S/o Shri Chhotey Lal
R/o Village Dhul Siras
New Delhi

...Petitioner

Through Mr. Anand Yadav, Advocate

Versus

1. Union of India
(through Secretary)
Ministry of Urban Development
Nirman Bhawan, New Delhi

2. Lt. Governor
NCT of Delhi
Raj Niwas, Delhi

3. Government of N.C.T. of Delhi
Through Secretary
Land & Building Department
Vikas Bhawan, New Delhi

4. Delhi Development Authority
Through Secretary
Vikas Sadan, INA Colony
New Delhi

5. Land Acquisition Collector
District South West
Kapashera, New Delhi

...Respondents

Through Mr. Sanjay Poddar, Advocate
for Respondent No.5

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The challenge in this writ petition is to notification No.F-10(30)/96/L&D/L.A/13417 dated 13th December, 2000 issued under Section 4 of the Land Acquisition Act, 1894 (for short the Act) in respect of the land owned by the Petitioner comprising of Khasra No.55/5 (4-11) situated in Village Dhul Siras, New Delhi.

2. In terms of Section 4 of the Act, the notification was published in the Official Gazette on 13th December, 2000 and in two newspapers circulated in the locality on 21st December, 2000. The Petitioner has annexed with the writ petition a photocopy of the Official Gazette and the publication made in the Hindustan Times of 21st December, 2000. A perusal of the Official Gazette shows that the notification was issued in respect of the land of the Petitioner, that is,

Khasra No. 55/5 (4-11). However, the newspaper publication shows that the notification was issued, *inter alia*, in respect of land bearing Khasra No.55/4 (4-11). In other words, according to the Petitioner, as per the newspaper publication, his land being Khasra No.55/5 (4-11) was not notified under Section 4 of the Act. The Petitioner seeks to take advantage of this discrepancy between the publication in the Official Gazette and the publication in the newspaper.

3. At this stage, it may be mentioned that both the Official Gazette and the newspaper publication state that a map showing the boundaries of the land covered by the notification is available for inspection in the office of the Land Acquisition Collector (South/West), Delhi. There is no averment made by the Petitioner that the map did not include his land, that is, Khasra No.55/5 (4-11).

4. Based on the discrepancy in the description of the notified land, it is submitted by learned counsel for the Petitioner (relying on the newspaper publication) that a valid notification, as required by Section 4 of the Act, was not issued in respect of his land bearing Khasra No.55/5 (4-11) thereby vitiating the acquisition proceedings. Section 4 of the

Act reads as follows:-

“4. Publication of preliminary notification and powers of officers thereupon.-

(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 or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification).

(2) xxx xxx xxx”

5. In support of his contention, learned counsel for the Petitioner relied upon a few judgments which we propose to deal with a little later.

6. On the other hand, learned counsel for the Respondents raised only one contention, namely, that no prejudice was caused to the Petitioner due to the typographical error in the publication in the Hindustan Times newspaper. It is submitted that the Petitioner filed objections under Section 5A of the Act against the proposed acquisition of his land. The Petitioner appeared and was heard at the time of

making the Award and so a mere typographical error in the description of the land did not prejudice him and was not good enough reason to vitiate the acquisition process.

7. Learned counsel for the Petitioner sought to establish two propositions: first, that the provisions of Section 4(1) of the Act were mandatory; second, if the mandatory provisions were not complied with, then the acquisition process was vitiated.

8. Learned counsel for the Petitioner drew our attention to *Rameshwar Saran & Ors. v. State of U.P. & Ors., 1988 All.L.J. 559*. In paragraph 10 and 20 of the Report, it was held by the Allahabad High Court that the requirement of Section 4(1) of the Act is mandatory and that there has to be strict compliance with the provisions thereof. Failure to comply with the mandatory requirements would vitiate the acquisition proceedings. Unless all the three modes of publication prescribed in Section 4(1) of the Act are resorted to, there could be no notification under Section 6 of the Act.

9. In *Prem Lata Devi v. State of Bihar, 1999 (1) LACC 335* the

Patna High Court held in paragraph 20 of the Report that the provisions of Section 4(1) of the Act are mandatory. Therefore, it was held that the failure of the authorities to publish the notification under Section 4(1) of the Act in two newspapers had rendered the acquisition proceedings invalid and liable to be quashed. The theory of “prejudice” was noticed in paragraph 18 of the Report but not considered.

10. Finally, reliance was placed on *Kunwar Pal Singh (dead) by LRs v. State of U.P. & Ors., 2007 (5) SCALE 122* which was a case dealing with publication of a declaration under Section 6 of the Act. The Supreme Court observed in paragraph 16 of the Report that there is no option with anyone to give up or waive any mode of publication and all prescribed modes have to be strictly resorted to. The Supreme Court held that the principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the statute.

11. Having considered the decisions cited by learned counsel for the Petitioner, we find that (i) there is no doubt that the provisions of

Section 4(1) of the Act relating to the publication of a notification are mandatory, and (ii) failure to comply with the mandate of Section 4(1) of the Act would vitiate the acquisition proceedings. The question before us is this: Is this an absolute position in law or can some exceptions be carved out?

12. It is important to note that none of the above cited decisions deal with the theory of prejudice relied upon by learned counsel for the Respondents.

13. There is no doubt that the Act is, in essence, an expropriatory legislation and, as held in *Devinder Singh and others v. State of Punjab and others*, AIR 2008 SC 261 (paragraph 41 of the Report) an expropriatory legislation must be strictly construed. Notwithstanding this, in *Union of India v. Pramod Gupta (dead) by LRs*, (2005) 12 SCC 1, the Supreme Court adverted to the “prejudice doctrine” in paragraph 119 of the Report but did not elaborate or elucidate the theory.

14. In *Pratibha Nema & Ors. v. State of Madhya Pradesh & Ors.*, (2003) 10 SCC 626, the Supreme Court dealt with the theory of

prejudice in paragraphs 37 and 38 of the Report in the context of alleged vagueness in the description of the public purpose in a notification issued under Section 4(1) of the Act. The Supreme Court observed that the appellants therein did not point out how the alleged ambiguity or vagueness in the notification had caused any prejudice or handicap in the sense that they could not file effective objections to the proposed acquisition. The Supreme Court noted that if there is no proof of prejudice or if no prejudice is demonstrated or could be reasonably inferred, it would be unjust and inappropriate to strike down a notification issued under Section 4(1) of the Act on the basis of a nebulous plea. The Supreme Court further observed that even assuming there is some ambiguity, Constitutional Courts should not deal a “lethal blow” to the entire acquisition proceedings based on a theoretical or hypothetical grievance of the landowner. However, when a real and substantial grievance is made out, the Court ought certainly to intervene if there is prejudice and injustice caused to the aggrieved party.

15. Earlier, in *State of Haryana & Anr. v. Raghubir Dayal*, (1995) 1 SCC 133, the Supreme Court held in paragraph 8 of the Report that since the owner of the acquired land or a person having interest in

the land is entitled to raise objections under Section 5A of the Act, unless there is “grave prejudice” caused in non-publication of the substance of a declaration under Section 6(1) of the Act, the omission to publish the substance of the declaration in the locality would not render that declaration invalid.

16. There is no doubt that the decisions of the Supreme Court referred to above have only limited situational application. However, the fact of the matter is that the “theory of prejudice” has been recognized and accepted by the Supreme Court in matters pertaining to acquisition of land. The question that arises is this: Can the theory of prejudice save the acquisition process in the present case and is there any other exception to the mandate of Section 4(1) of the Act?

17. In our opinion, even though the provisions of Section 4(1) of the Act with regard to publication of a notification are mandatory, two exceptions can certainly be carved out in extremely limited areas, such as in the case of a typographical error, which can be overlooked on the facts and circumstances of a given case and in the case of a limited, as distinguished from a general, waiver. In such a case, it may not be wise

to be too dogmatic or to stick to the precise letter of the law.

18. In *State of Karnataka v. All India Manufacturers Organisation*, (2006) 4 SCC 683 the Supreme Court dealt with vagueness in the purpose of the acquisition and observed that there was no prejudice caused to the respondents due to the wording of the notification. This is because they had (a) filed their objections to the proposed acquisition and (b) the appellants heard them on the objections filed.

19. Applying the theory propounded by the Supreme Court, it is easily discernible in the facts of this case that no prejudice, let alone any grave prejudice, was caused to the Petitioner due to the typographical error in the newspaper publication. We say this in view of the following facts:

(i) The Official Gazette correctly described the land proposed to be acquired and there is no dispute about this.

(ii) As between a newspaper publication and the Official Gazette, there can be no doubt that the contents of the Official Gazette are more authentic.

(iii) In the present case, since the Official Gazette correctly describes the land sought to be acquired, there can be no hesitation in accepting the fact that the Petitioner was put to adequate notice with regard to the proposed acquisition of his land.

(iv) There is nothing on record to suggest that the map showing the boundaries of the land covered by the notification (available for inspection in the office of the concerned Land Acquisition Collector) did not depict the correct state of affairs. If the Petitioner had any doubt about the proposed acquisition of his land due to the discrepancy between the Official Gazette (published on 13th December, 2000) and the newspaper (published later on 21st December, 2000) all that he was expected to do as a reasonable man was to confirm from the map available with the Land Acquisition Collector whether his land was sought to be acquired or not. Presumably, he did so and that is why he filed objections to the proposed acquisition.

20. In *Principles of Statutory Interpretation (10th edition, 2006)* waiver is accepted as an exception to the general rule of non-compliance of mandatory requirements resulting in nullification of the act. (Page 368 and 369). Reference is made to the maxim *quilibet potest*

renuniaré juri pro se introducto which means that every man is entitled to renounce a right introduced in his favour. In *Krishna Bahadur v. Purna Theatre, (2004) 8 SCC 229* waiver of a statutory right by conduct was accepted. Similarly, in *Commissioner of Customs Mumbai v. Virgo Steels Bombay, (2002) 4 SCC 316* it was held that a statutory right of notice could be waived. However, this is permissible only if no public interest is involved and the right waived is personal to that person.

21. So far as the present case is concerned, the right of the Petitioner was to receive a public notice of the proposed acquisition of his land. He could waive this right since it pertained to him only. He could not (nor could the general public) waive the general right to a public notice. This right, which is personal to the Petitioner (since the discrepancy was in the description of his land only) was clearly waived by him in view of the following:

(i) The Petitioner admittedly filed two sets of objections under Section 5A of the Act with regard to his land bearing Khasra No.55/5 (4-11). The first set of objections was filed on 12th January, 2001 and the second set on 30th January, 2001. In the first set of

objections, he does not even draw attention to the discrepancy. It is only in the second set that a “mention” is made of the erroneous description of the Petitioner’s land. However, no objection is raised in this regard. There was no occasion for the Petitioner to file these objections if his land was not covered by the notification issued under Section 4(1) of the Act. The Petitioner acted as if he knew his land was notified under Section 4(1) of the Act.

(ii) The Petitioner also participated in the hearing which led to the passing of an Award in respect of his land. If the Petitioner had any doubt about the proposed acquisition, he would not have participated in the hearing.

22. All these findings lead us to the inescapable conclusion that in so far as the present case is concerned, the Petitioner was fully conscious of the fact that a notification was issued under Section 4(1) of the Act in respect of his land bearing Khasra No.55/5 (4-11) and that the typographical error in the newspaper publication did not prejudice him in any manner whatsoever, and even if it did, he had waived his statutory right of notice.

23. We are also of the opinion that if we do not take a pragmatic and expedient view, we would eventually be dealing a “lethal blow” to the acquisition proceedings, or at least a part of the proposed acquisition. As noted above, the Supreme Court has cautioned against this particularly in a case of a nebulous, theoretical or hypothetical grievance. We, therefore, reject the first contention of learned counsel by invoking the theory of prejudice and waiver by conduct.

24. We have also taken note of the fact that the Petitioner has been unable to prove any prejudice caused to him or to demonstrate any prejudice caused to him or indeed persuade us to reasonably infer that any prejudice has been caused to him. On the contrary, the Petitioner participated in the acquisition proceedings without any substantive demurrer and approached this Court for relief only thereafter.

25. The second contention of learned counsel for the Petitioner is that similarly placed land belonging to some other persons was released by the Respondents although it was very much required for the same public purpose for which the land of the Petitioner was acquired. In this regard, learned counsel for the Petitioner placed reliance on *Sube Singh*

v. State of Haryana & Ors., (2001) 7 SCC 545. Reference was also made to *Hukam Chand v. Union of India, 1988 RLR (SC) 19.*

26. In *Sube Singh* the State Government had classified built-up properties into category A, B and C and taken a policy decision to exclude category A properties from acquisition. The Supreme Court came to the conclusion that there was no material placed before it to show the basis of classification. The classification appeared arbitrary and discriminatory, more so in view of the specific averments made by the writ petitioners that considering the nature of their construction, it could well be amalgamated with the planned acquisition. Even otherwise, the decision of the Supreme Court is confined to the facts of that case as mentioned in paragraph 11 of the Report wherein it was noted that on the facts of the case, the decision of the State Government was not based on a fair and reasonable consideration of the matter.

27. *Hukam Chand* pertained to allotment of land by the Gaon Sabha to members of the scheduled castes belonging to economically weaker sections of society. Instead of allotting the land to them, it was sought to be acquired by the State Government. Under these

circumstances, the acquisition was quashed. We are unable to see the relevance of this decision to the facts of the case before us.

28. On facts, even though no counter affidavit was filed by the Respondents, we were explained by learned counsel, on the basis of the maps of the area, that the only land released was that portion which fell for use as a *shamshan bhumi*. It is not the case of the Petitioner that his land falls for use as a *shamshan bhumi*. This being the position, we find no merit in the second contention urged.

29. Consequently, we find no merit in the writ petition and it is accordingly dismissed. No costs.

MADAN B. LOKUR, J

January 11, 2010
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MUKTA GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.