

collateral matters. The writ petition is consequently dismissed leaving the petitioners to seek their ordinary remedies at law, and without any order as to costs.

April 15, 1976.

Prem Chand Jain, Judge—I agree.

Man Mohan Singh Gujral, Judge.—I agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

*Before Prem Chand Jain, Bhopinder Singh Dhillon and
A. S. Bains, JJ.*

RATTAN SINGH AND ANOTHER,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 6535 of 1975.

April 23, 1976.

Land Acquisition Act (I of 1894)—Section 4—Notification under—Publicity of the substance of such notification in the concerned locality—Whether to be simultaneous with or at least immediately after its publication in the official gazette.

Held, that the object of giving publicity of the substance of the notification in the concerned locality is to make known to the affected persons the intention of the Government to acquire land so as to give opportunity to the land owners to file objections under section 5A(1) of the Land Acquisition Act 1894 against the proposed acquisition. In our country the illiterate people cannot be expected to have the knowledge of the intended acquisition merely from the publication made in the official gazette. The Legislature purposely made the provision of giving public notice of the substance of such notification at convenient places in the concerned locality with a view to give direct information of the proposed acquisition to the affected persons. If the publication in the concerned locality is not

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made either simultaneously with or immediately after the publication in the official gazette, the reasonable period as provided under section 5A(1) of the Act for filing objections shall stand curtailed and this could never be the intention of the Legislature. The right of filing objections cannot be made illusory or nugatory by delaying the publication of the substance of the notification in the concerned locality. Thus publicity of the substance of a notification under section 4 of the Act in the concerned locality has to be given simultaneously or atleast immediately after its publication in the official gazetted.

Case referred by the Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Ajit Singh Bains, on 10th March, 1976, to a Full Bench for decision of an important question of Law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice Prem Chand Jain.. The Hon'ble Mr. Justice B. S. Dhillon and The Hon'ble Mr. Justice A. S. Bains, finally decided the case on 23rd April, 1976.

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

- (a) *that this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, direction or order, calling for the relevant records from the respondents and after persuing the same, this Hon'ble Court be pleased to quash the impugned Notification Annexures P. 1 and P. 2 and all subsequent acquisition proceedings including the award if any;*
- (b) *that this Hon'ble Court be pleased to issue an ad-interim writ, direction or order staying actual physical dispossession of the petitioner from the land in question on which his crops are standing;*
- (c) *that in view of the urgency of the matter necessitating prayer for ex-parte interim relief; issue and service of advance notice of motion of the petition on the respondents be dispensed with;*
- (d) *that the petitioners be exempted from filing certified copies of Annexures P. 1 and P. 2 as the same cannot be made readily available;*
- (e) *that such other interim/final relief be granted to the petitioners as it may appear to this Hon'ble Court to be just, fair and proper in the circumstances of the case; and*
- (f) *that the costs of the writ petition be awarded to the petitioners.*

M. L. Sarin, with M/s. Sarwan Kumar and V. Kataria, Advocates, for the Petitioners.

I. S. Tiwana, Deputy Advocate-General, Punjab, R. K. Chhokar, Advocate, with G. C. Garg, and D. V. Kansal, Advocates, as interveners, for the Respondents.

JUDGMENT

PREM CHAND JAIN, J.—(1) Rattan Singh and another have filed this petition under Articles 226/227 of the Constitution of India, for the issuance of a Writ in the nature of *Certiorari* for quashing the notifications issued under sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), copies Annexures “P-1” and “P-2”, respectively. The facts of the case may briefly be stated thus:—

(2) The petitioners are small landowners in village Nijjarpura, Tahsil and District Amritsar, and own about 51 Kanals each of agricultural land. It is stated in the petition that respondent No. 1 issued a notification under section 4 of the Act, to the effect that the land in the locality, specified in the notification was needed by the Government at public expense for a public purpose, namely, for allotment of house sites to the landless workers in the rural areas. Later on, the Collector, Amritsar, respondent No. 2, issued notification under sections 6 and 7 of the Act, which was published in the Punjab Government Gazette (Extraordinary), dated 26th June, 1975. In the said notification, it has been stated that the land specified in the said notification was needed by the Government at public expense for a public purpose, namely, for the allotment of house sites to the landless workers in the rural areas. As the two notifications also included the land belonging to the petitioners, the present petition has been filed challenging the legality of the said two notifications.

(3) This matter came up for hearing earlier before me and my learned brother Bains, J. Finding that the point involved in the petition was of importance, we decided to refer the matter to a larger Bench. That is how, we are seized of the matter.

The question that falls for determination may be stated thus:—

(4) To make section 4 notification valid, is it legally essential to give publicity of the substance of the notification in the concerned locality simultaneously with or immediately after publication of the notification in the official gazette?

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(5) The contention of Mr. M. L. Sarin, learned counsel for the petitioners was that after the publication of the notification in the official gazette, publicity of the substance of the notification in the concerned locality has to be given simultaneously or immediately, failing which the notification under section 4 as a whole, as well as the subsequent acquisition proceedings, are illegal. On the other hand, Shri I. S. Tiwana, learned Deputy Advocate-General questioned the correctness of the said contention and *inter alia* submitted that publication of the substance in the concerned locality could be done any time and that it would be from the date of the publication of the substance of the notification that a land-owner would get a period of 30 days for filing objections under section 5-A of the Act. According to the learned Deputy Advocate-General, the time for filing objections would not start from the date of the publication of the notification in the official gazette, but from the date when publication of the substance of the notification has been made in the concerned locality.

(6) To find out as to which contention has merit, the relevant provisions of the Act may be noticed:—

“4(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 substance of such notification to be given at convenient places in the said locality.

5A (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.”

(7) Under section 4(1), it is contemplated that besides publication of the notification in the Official Gazette, the Collector is required to give public notice of the substance of such notification at convenient places in the concerned locality. The question whether this requirement is directory or mandatory has been set at rest by the decision of their Lordships of the Supreme Court in *Khub Chand*

and others v. State of Rajasthan and others (1), wherein it has been observed thus:—

“The statutory intention is, therefore, clear, namely, that the giving of public notice is mandatory. If so, the notification issued under section 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void.”

(8) In view of the aforesaid observations it follows that the notification under section 4 shall be valid only when both the conditions mentioned in section 4(1) of the Act have been complied with.

(9) The next question that requires determination is the point of time when the public notice of the substance of the notification has to be given at convenient places in the concerned locality. Has it to be simultaneously with or immediately after the publication of the notification in the official Gazette or can it be done any time? The contention of Mr. Tiwana, based on the provisions of section 5A(1), that the time for filing objections would start when public notice of the substance has been given in the concerned locality, on the face of it, appears to be fallacious. The plain reading of section 5A(1) shows that the person interested gets 30 days for filing objections after the issue of notification in the Official Gazette. Mr. Tiwana tried to draw a distinction between the words “issue of notification” as used in section 5A(1) and the words “publication of notification” as used in section 4(1). This distinction, to my mind, is meaningless and of no consequence. The words “issue of notification” used in section 5A(1) connote the same meaning as the words “publication of notification” in the official Gazette as used in section 4(1). The Government issues notification by publishing it in the official Gazette and it can never be said that the notification would be deemed to have been issued only when its substance has been published in the concerned locality and, therefore, under section 5A(1) the time for filing objections starts from the date of the publication of the notification in the official Gazette. If the intention of the Legislature had been to allow time for filing objections from the date of publication of the substance in the locality, then it would have been so mentioned in the section.

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(10) Having found that the time for filing objections under section 5A(1) starts from the date of the publication of the notification in the official Gazette, the crucial point that now requires determination is whether public notice of the substance of such notification at convenient places in the concerned locality, has to be given simultaneously with or immediately after the publication of the notification in the official Gazette. For this proposition that publicity of the substance of the notification in the concerned locality has to be given simultaneously with or immediately, reliance was placed by the learned counsel on two decisions of their Lordships of the Supreme Court in *Narinderjit Singh v. State of U.P. and others*, (2) and *State of Mysore v. Abdul Razak Sahib* (3), and a Single Bench decision of this Court in *Sat Dev v. The State of Punjab and others*, (4). After giving my thoughtful consideration to the entire matter in the light of the observations made by their Lordships of the Supreme Court in the aforesaid two decisions, I find no escape from the conclusion that the publicity of the substance of the notification in the concerned locality has to be given simultaneously or at least immediately after the publication of the notification in the official Gazette.

(11) The object of giving publicity of the substance of the notification in the concerned locality is to make known to the affected persons the intention of the Government to acquire land so as to give opportunity to the landowners to file objections under section 5-A (1) of the Act against the proposed acquisition. In our country, illiterate people cannot be expected to have knowledge of the intended acquisition merely from the publication made in the official Gazette. The Legislature purposely made the provision of giving public notice of the substance of such notification at convenient places in the concerned locality with a view more or less to give direct information of the proposed acquisition, to the affected persons. If the publication in the concerned locality is not made either simultaneously with or immediately after the publication in the official Gazette, then the reasonable period as provided under section 5-A(1) of the Act for filing objections, shall stand curtailed. Such could never be the intention of the Legislature. The right of filing objections cannot be made illusory or nugatory by delaying the publication of the substance of the notification in the concerned

(2) A.I.R. 1973 S.C. 552.

(3) A.I.R. 1973 S.C. 2361.

(4) 1975 P.L.R. 747.

locality. It has been pointed out to us that in some cases the Collector may not find it possible to give notice of the substance in the concerned locality simultaneously with the publication of the notification in the official Gazette and required some time to complete this formality. Of course it is in consideration of this possible contingency that I am taking the view that the publication in the concerned locality if not made simultaneously, has to be made at least immediately after the publication of the notification in the official Gazette. But it would have to be borne in mind that in every case it would be for the State to show that whatever time was taken to publish the substance of the notification in the concerned locality was the minimum possible time taken for this purpose, failing which the notification issued under section 4 of the Act and any proceedings taken thereunder would be invalid and ineffective and liable to be struck down. The view I am taking finds full support from the observations of their Lordships of the Supreme Court in *Abdul Razak Sahib's case* (supra), wherein it has been observed thus:—

“With the above background we have to consider the scope of section 4(1). Under certain circumstances publications in the official Gazettes are presumed to be notice to all concerned. But in the case of a notification under section 4 of the Land Acquisition Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, section 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under section 5-A, which is very valuable right.”

(12) This very question came up for consideration before the High Court of Mysore in *Gangadharaiiah v. State of Mysore* (5), and the High Court ruled that section 4(1) requires that there should both be a notification in the gazette as also a public notice in the locality in which the property proposed to be acquired is situate. It

(5) (1961) 39 Mys L.J. 883.

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is only when the notification is published in the Official Gazette and it is accompanied by or immediately followed by the public notice, that a person interested in the property proposed to be acquired can be regarded to have had notice of the proposed acquisition. We are entirely in agreement with the rule laid down by that decision.

To the same effect are the observations in Narinderjit Singh's case (*supra*), which are reproduced below:—

“We are unable to accept such a contention. 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 section 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.”

(13) I do not agree with Mr. Tiwana that the aforesaid judgments are distinguishable as in these cases the publication of the substance of the notification had been made after the expiry of 30 days, and it was for that reason that the notification had to be quashed. As would be clear, their Lordships were considering the scope of section 4(1) and in doing so, the aforesaid observations were made, which leave no room for any doubt that the publication of the substance in the concerned locality has to be made simultaneously with or immediately after the publication of notification in the official Gazette. In view of the aforesaid discussion I hold that the substance of the notification has to be published in the concerned locality simultaneously and in case it is not possible to give notice of the substance in the concerned locality simultaneously, then at least it has to be done immediately after the publication of the notification in the official Gazette and it would be for the State to show that whatever time was taken to give notice of the substance in the concerned locality was the minimum possible time taken for this purpose.

(14) Adverting to the facts of this case, I find that publication of the substance in the concerned locality was made as late as on the 29th day after the publication in the official Gazette. That being so, the impugned notifications cannot legally be sustained. Accordingly, I allow this petition, quash the impugned notifications, Annexures P-1 and P-2, issued under sections 4 and 6 of the Act respectively.

(15) However, in the circumstances of the case, I make no order as to costs.

BHOPINDER SINGH DHILLON JUDGE.—I agree.

A. S. BAINS.—I also agree.

N. K. S.

APPELLATE CIVIL

FULL BENCH

Before S. S. Sandhawalia, Prem Chand Jain and M. S. Gujral, JJ.

CHANAN SINGH,—Plaintiff—Appellant.

versus

SHRIMATI MAJO AND ANOTHER,—Defendants—Respondents.

Civil Regular Second Appeal No. 146 of 1969.

April 27, 1976.

The Punjab Redemption of Mortgages Act (2 of 1913)—Sections 4, 5 to 11 and 12—Dismissal of an application for redemption of mortgage under sections 5 to 11—Whether extinguishes the right of redemption under the general law—Dismissal of such application as premature—Whether hit by section 12.

Held, that a reference to the various sections of the Punjab Redemption of Mortgages Act, 1913 makes it manifest that the statute is a special Act providing for a quick and efficacious procedure for the redemption of certain mortgages of land in Punjab. Within its limited field it is a miniature code in itself. The language of section 12 of the Act is clear and unequivocal and lays down in terms that unless a suit is brought to set aside an order of the Collector (passed under sections 5 to 12 of the Act), which may be to the detriment of either party, the said order would become conclusive. The intention of the Legislature is clear that when parties have resorted to the special jurisdiction of the Act and an order has been duly passed