

BEFORE

HON'BLE MR. JUSTICE I A ANSARI

HON'BLE DR. (MRS) JUSTICE INDIRA SHAH

JUDGMENT & ORDER
(ORAL)

(Ansari, J)

The subject-matter of dispute, in the present two writ petitions, made under Article 226 of the Constitution of India, is the process of acquisition of land by the State for the purpose of construction of Driving Training Institute and Research of the District Transport Office.

2. By this common judgement and order, we propose to dispose of both the writ petitions inasmuch as both these writ petitions involve the same process of acquisition, which form the subject-matter of challenge in these two writ petitions, and both these writ petitions have been heard, on the request made by the learned counsel for the parties concerned, together.

3. We have heard Mr. S. Bhattacharjee, learned counsel for the writ petitioner, and Mr. P. S. Deka, learned Additional Senior Government counsel, Assam. We have also heard Mr. D. Bora, learned Standing counsel, Department of Revenue, Government of Assam, and Mr. U. Rajbonghshi, learned Standing counsel, Transport Department.

4. In order to clearly appreciate the issues involved in the present set of writ petitions, it is imperative to look into the background of the presently impugned acquisition proceeding.

(i) LA Case No. 7/2005 was instituted by the respondents/authorities concerned on the basis of a notification, issued, in this regard, on 15.10.2005, and the said notification, which was a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), was published, on 28.11.2005, in the Assam Gazette. The said notification was also published, on 03.01.2006, in a daily newspaper called 'Agradoot'. The process of acquisition, which had been set into motion by the notifications aforementioned, lapsed due to the requisite amount of compensation having not been deposited with the District Collector by the concerned Department, namely, the Department of Transport, Government of Assam. It was thereafter that a notification, under Section 4, was published, on 29.06.2007, in the Assam Gazette, by the said Department seeking to occupy the land, which the petitioners have been, admittedly, in occupation and use of as Patta holders thereof. The later notification, dated 29.06.2007, aforementioned was followed by a declaration, made, on 26.02.2008, purported to be in exercise of the Government's power under Section 6 of the Act.

5. What is immensely important and extremely pertinent to note, now, is tha

t no notification, under Section 4 of the Act, was published in any newspaper nor was any notice, admittedly, given to the petitioners, though they are Patta holders, nor was there any publicity, with regard to the acquisition proceeding, as mandated by the scheme of the Act.

6. Considering the fact that the present acquisition proceeding suffers from non-publication of notice, in terms of the requirement of Section 4 of the Act, and that declaration has also not been published by the respondents/authorities concerned in the manner as envisaged by the Act, Mr. Bhattacharjee, learned counsel for the petitioners, has referred to the case of Mcleod Russel India Limited vs. State of Assam, decided on 05.03.2013, wherein this Court, while dealing with the scheme of Section 4 and Section 6 of the Act, observed and held as under:

14. While considering the present writ petition, it needs to be carefully noted that notwithstanding the fact that the right to property has ceased, under our Constitution, to be a 'fundamental right', Article 300A has been introduced into the Constitution by Constitution (44th Amendment) Act, 1978, as a 'right to property' and Article 300A states that no person shall be deprived of his property save by authority of law.

15. Since a person cannot, in the light of the constitutional provisions embodied in Article 300A, be deprived of his property except by authority of law, it would, extended logically, mean that if a person has to be deprived of his property, then, this deprivation has to be in accordance with the law and not contrary thereto. Because of the fact that the Constitution regards right to property as a Constitutional right, though not a fundamental right, it naturally follows that when a person is deprived of his right to hold on to his property, it is incumbent, on the State, to ensure that the procedure, prescribed by law, is meticulously and strictly adhered to or else, the right to property, as recognized by Article 300A, would become an empty formality and the real spirit, behind embodying the provisions of Article 300A, would wholly stand defeated.

16. In the backdrop of the Constitutional assurance to protect an individual's 'right to property' except as provided by law, let us consider and examine the provisions of the LA Act relating to the issues raised in the writ petition, the core issues being whether the procedure, which has been prescribed by Section 4 read with Section 6 of the LA Act, has or has not been followed in the manner in which it ought to have been followed and, if there has been non-compliance of the procedure prescribed by Section 4 and 6, whether such non-compliance would make the acquisition bad in law and liable to interference by Courts, more so, when the procedure, which Section 4 and Section 6 of the Land Acquisition Act prescribes, as regards acquisition of land, is a composite procedure and the procedure being mandatory in nature ?

17. Situated thus, when we consider Section 4, we notice that Section 4 reads as under:

4. Publication of preliminary notification and powers of officers thereupon
.- (1) Whenever it appears to the Collector of the District 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 the Collector shall cause public notice of the substance of such Notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by the Collector of the District in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;
to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and lines by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so

18. Close on the heels of Section 4, Section 6 reads :

6. Declaration that land is required for a public purpose.- (1) Subject, to the provisions of Part VII of this Act, when the Commissioner is satisfied, after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-Section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-Section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-Section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration 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 the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

19. A bare reading of Section 4, as a whole, shows that under Sub-Section (2) of Section 4, it becomes lawful for any officer to enter upon the land, sought to be acquisitioned, and do what is indicated by Sub-Section (1) of Section 4 provided that the procedure, prescribed for publication of the preliminary notification in respect of the land (which is sought to be acquired), has been scrupulously followed. Conversely speaking, if the procedure, as prescribed by Sub-Section (1) of Section 4, is not scrupulously adhered to, the legislation does not permit any further progress of the acquisition, which is commenced by publication of the preliminary notification in terms of Sub-Section (1) of Section 4.

20. Similarly, Sub-Section (2) of Section 6 lays down the procedure for declaration that the land is required for a public purpose and Sub-Section (3) makes it clear that if the declaration is made in accordance with law, such a declaration shall be conclusive evidence that the land is needed for public purpose and, on making of such declaration, the appropriate Government may acquire the land in a manner as has been prescribed in the succeeding provisions of the LA Act.

21. Here again, what becomes clear is that if the declaration, in respect of the land, is not made by scrupulously adhering to the provisions of Sub-Section (2) of Section 6, then, the declaration would not be clothed by the expression 'conclusive evidence that the land is needed for a public purpose'. Logically extended, this would mean that if the publication of the preliminary notification is not in accordance with law, the appropriate Government cannot acquire the land, more particularly, if the appropriate Government commits breach of the requirements of law as embodied in Section 6 of the Land Acquisition Act.

22. Bearing in mind what have been indicated above, when we revert to Section 4, we notice that Section 4 lays down that when it appears to the appropriate Government that a land 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 notification, so published in the official Gazette, shall be published in two daily newspapers, which have circulation in the locality, where the land is located, and out of these two newspapers, one newspaper shall, at least, be in the regional language. The provisions, so embodied in Sub-Section (1) of Section 4, show that once it appears to the appropriate Government that a land is needed or is likely to be needed for a public purpose or for a Company, the Government shall publish a notification, in this regard, in the official Gazette and the same notification has to be published in two daily newspapers, circulating in that locality, and one of these newspapers shall be in the regional language meaning thereby that the notification, which is published in the official Gazette, has also to be published in one of the daily newspapers in the regional language, i.e., the language used in the locality, where the land is situated. In short, the provisions, contained in Sub-Section (1) of Section 4, show that publication of the notification, in the official Gazette, commonly called 'preliminary notification', has to be followed by publication in the two daily newspapers.

23. What logically follows from the above discussion is that if the preliminary notification has not been published at all in a daily newspaper, circulating in the locality, in the regional language, then, the very purpose of publication of the preliminary notification would stand defeated.

24. Sub-Section (1) of Section 4 further shows that after the notification has been published in the official Gazette followed by publication of the notification in the newspapers as mentioned hereinbefore, the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

25. Thus, the public notice, which a Collector is required to cause to be given, containing substance of the notification, as indicated hereinbefore, has to succeed the publication of the notification in the two daily newspapers and not precede the publication of the notification in the daily newspapers. Speaking a little more explicitly, the Collector cannot cause public notice to be given unless a notification, same as the notification in the official Gazette, has already been published in the two daily newspapers circulating in the locality in the manner as has been pointed out hereinbefore.

26. In the present case, there is no dispute that the preliminary notification, required to be published under Section 4, was published in the official Gazette on 27-12-2010 and the publication of the preliminary notification, in the official Gazette, was not followed by publication of the preliminary notification in the newspapers; rather, a public notice, as the respondents contend, was given by the Collector, on 03-04-2010, and it was, then, that the preliminary notification, which was to be published in the two daily newspapers, came to be published, the publication of the notification being, on 08-05-2010, in 'Dainik Janasharan' and, on 09-05-2010, in 'The Sentinel'.

27. Thus, though publication of the preliminary notification in the newspapers ought to have preceded publication of the public notice by the Collector, the case at hand shows that the public notice is claimed to have been given by the Collector even before the notification, in tune with the preliminary notification, was published in the newspapers.

28. Thus, the manner in which the steps, for publication of the preliminary notification, ought to have been taken, have not been taken in the present case.

This apart, the preliminary notification, in both the newspapers, were contrary to the mandate of Section 4 inasmuch as the preliminary notifications were published in the two daily newspapers aforementioned in English language; whereas it is the admitted case of the parties concerned that the regional language of the locality concerned is Assamese and, thus, here again, there was a breach of the condition, which has been prescribed by Sub-Section (1) of Section 4 for validly acquiring land.

29. Moreover, there is, admittedly, no material on record to show that the public notice, containing the substance of the preliminary notification, which the Collector was required to give, was published in the locality at all inasmuch as the Collector made over the said notice to the local Gaonburah for publication. There is neither any report from the Gaonburah nor any affidavit by Gaonburah or any other person proving that the public notice was, in fact, published by the Gaonburah or anyone in the locality concerned.

30. Clearly, therefore, one shall have no hesitation, and we have no hesitation, in concluding that the procedure, prescribed by Sub-Section (1) of Section 4, with regard to the publication of the preliminary notification, has not been scrupulously followed. Far from this, the procedure stands breached and mutilated, while publishing the preliminary notification.

31. Coupled with the above, though Sub-Section (2) of Section 6 makes it clear that the declaration, which Section 6 contemplates, has to be published in the same order in which a preliminary notification, under Sub-Section (1) of Section 4, is required to be published in the sense that when the appropriate Government is satisfied that the land, in question, is needed for public purpose or for a Company, a declaration to that effect shall be made under the signature of the Secretary to such Government or of some officer duly authorised, in this behalf, and that this declaration has to be published in the official Gazette and, upon publication of the declaration in the official Gazette, the declaration/notification has to be published in two daily newspapers circulating in the locality in which the land is situated, and out of the two daily newspapers, one shall, at least, be in regional language and, then, only the Collector shall cause public notice to be given in the same manner as is required to be given under Sub-Section (1) of Section 4. It may be noted, in this regard, that the publication of declaration/notification in two daily newspapers need not necessarily be after publication of the declaration/notification in Official Gazette, it may be simultaneous publication also.⁷ In the case at hand, it has clearly surfaced that the notification, under Section 4 of the Act, was not published in any newspaper nor any notice has been given to the petitioners though they are Patta holders of the land, which is sought to be acquired by the respondents/authorities concerned.

8. In the light of the law laid down, in Mcleod Russel India Limited (supra), when we notice that no notification, under Section 4 of the Act, was, admittedly, published, in accordance with law, in the requisite number of newspapers and no publicity, as regards the acquisition proceeding, had been given in the locality concerned and when no notice had been given to the present petitioners, though they were, and are, Patta holders, the subsequent declaration, published on 26.02.2008, in the Assam Gazette, cannot be legally sustained. This apart, even the declaration, under Section 6 of the Act, has not been published in the manner as the declaration ought to have been published in the sense that the declaration, as mandated by Section 6 of the Act, has not been published in any newspaper.

9. At any rate, when the notification, under Section 4 of the Act, was not published in accordance with law, the subsequent declaration, made under Section 6 of the Act, cannot become legal or valid.

10. Because of the vital omissions, on the part of the respondents/authorities concerned, in issuing notifications in terms of the provisions of Section 4 and Section 6 of the Act, we are clearly of the view that the process of acquisition, which has been initiated by the notification, dated 29.06.2007, is bad in law and the same must, therefore, be interfered with. When the notification, da

ted 29.06.2007, cannot survive, the subsequent declaration, made on 26.02.2008, too, cannot stand and is required to be set aside.

11. In the result and for the foregoing reasons, both these writ petitions succeed. The notifications, dated 29.06.2007, and 26.02.2008, which gave rise to the impugned acquisition proceeding, are hereby set aside and quashed. The respondents are, however, left at liberty to resort to a fresh acquisition proceeding, in accordance with law, if so required, provided that the purpose for acquisition is a public purpose.

12. With the above observations and directions, both these writ petitions stand disposed of.

13. No order as to costs.