

## NARINDRAJIT SINGH &amp; ANR.

v.

STATE OF U.P. &amp; ORS.

October 24, 1972

[A. N. GROVER AND K. K. MATHEW, JJ.]

*Land Acquisition Act, 1894, sections 4(1) and (2), 5-A, 17(4)—Collector not causing public notice of substance of notification to be given in locality—Non-compliance with section 4(1)—Section 4(1) held mandatory and to be read as integrated provision containing two conditions—Not controlled by Section 17(4).*

A notification was issued under section 4 of the Land Acquisition Act on October 15, 1960 for acquisition of the land in dispute. The Collector did not cause public notice of the substance of the notification to be announced at convenient places in the locality where the land sought to be acquired was situate, as required by the second part of section 4(1). Under section 17(4) of the Act the provisions of section 5A were dispensed with. On October 28, 1960 the notification under section 6 was issued. The appellant was directed to be present before the Collector in pursuance of a notice under Sec. 9 on December 4, 1960. On December 5, 1960 the appellant filed a petition under Art. 226 of the Constitution challenging the acquisition proceedings. The petition was dismissed by a single Judge of the High Court whose judgment was affirmed in Special Appeal by the Division Bench.

Allowing the appeals,

**HELD :** (i) The law as settled by this Court is that such a notice under second part of section 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated. Under section 4(2) such a notice is necessary condition for the exercise of the power of entry. Non-compliance with that condition makes the entry unlawful. The purpose behind such a notice is that interested persons should know that the land is being acquired so as to prefer any objections under s. 5-A which confers a valuable right. [699G]

*Khub Chand and Others v. The State of Rajasthan and Ors.* [1967] 1 S.C.R. 120 and *State of Mysore v. Abdul Razak Sahib*, C.A. 2361 of 1968 dt. August 11, 1972 referred to.

(ii) The construction of S.4(1) cannot be made to depend upon any action or direction which the State Govt. may choose to make under S. 17(4) of the principal Act. S. 4(1) has to be read as an integrated provision which contains two conditions both being mandatory. Requirement of public notice in the locality cannot be rendered directly by a notification under S. 17(4) dispensing with hearing under Sec. 5A. [700H]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 1192 and 1193 of 1967.

Appeal by special leave from the order dated January 13, 1969 of the Punjab and Haryana High Court, at Chandigarh, in L.P.A. No. 6 of 1969.

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*B. Sen* and *G. D. Gupta*, for the appellant.

*V. C. Mahtajan* and *R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

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GROVER, J. These two appeals by certificate from a judgment of the Allahabad High Court must succeed on the short ground that the provisions of s. 4(1) of the Land Acquisition Act, 1894, were not complied with. In C.A. 1192/67 a notification was issued under s. 4 of the Act on October 15, 1960 for acquisition of the land in dispute. Under s. 17(4) of the Act the provisions of s. 5A were dispensed with. On October 28, 1960 the notification under s. 6 was issued. The appellant was directed to be present before the Collector in pursuance of a notice under s. 9 on December 4, 1960. On December 5, 1960 the appellant filed a petition under Art. 226 of the Constitution challenging the acquisition proceedings. The petition was dismissed by a single judge of the High Court whose judgment was affirmed in Special Appeal by the Division Bench. Section 4(1) of the Act is in the following terms :—

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“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”;

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It is common ground that the Collector did not cause public notice of the substance of the notification to be given at convenient places in the locality where the land sought to be acquired was situated. In other words there was no compliance whatsoever with the second part of sub-s. (1) of s. 4.

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The law as settled by this Court is that such a notice under second part of s. 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated. We may refer in this connection to *Khub Chand & Others v. The State of Rajasthan & Ors.*<sup>(1)</sup>. In that case this Court pointed out that the object is to give intimation to a person whose land is sought to be acquired of the intention of the officer to enter the land. Under s. 4(2) such a notice is a necessary condition for the exercise of the power of entry non-compliance with that condition makes the entry unlawful. In *State of Mysore v. Abdul Razak Sahib*<sup>(2)</sup> no notices as required by s. 4(1) of the Act were published in the locality till after the lapse of about 10 weeks. The question for consideration

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(1) [1967] 1 S. C. R. 120.

(2) C. A. 2361 of 1968 dt. August 11, 1972.

was whether the notification issued under s. 4 was a valid one. This Court held that in the case of a notification under s. 4 the law has prescribed that in addition to publication of a notice 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 s. 4 of the Act cannot be said to have been complied with. The purpose behind such a notice was that interested persons should know that the land is being acquired so as to prefer any objections under s. 5-A which confers a valuable right.

Learned counsel for the State has, however, contended that according to these decisions it is only when the persons interested can file objections under s. 5-A that the public notice of the substance of the notification under s. 4(1) by the Collector would be necessary whereas in the present case the applicability of the provisions of s. 5-A have been dispensed with under s. 17(4) of the Act at the same time the notification under s. 4(1) was issued. It is wholly unnecessary that the interested parties should have the requisite information of the acquisition proceedings as they are not entitled to file objections under s. 5A. We are unable to accept such a contention. In our judgment the provisions of s. 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 s. 17(4) the appropriate government directs that the provisions of s. 5-A shall not apply and where such a direction has not been made dispensing with the applicability of s. 5A. It lays down in unequivocal and clear terms that both things have to be simultaneously done under s. 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. The scheme of s. 4 is that after the steps contemplated under sub-s. (1) have been taken the officer authorised by the Government can do the various acts set out in sub-s. (2). It is not required under s. 17(4) of the principal Act that when a notification under s. 4(1) is issued the direction should be made simultaneously if the State Government so desires. Such an order or direction can be made even at a later stage. The effect of the direction made under s. 17(4) is that a declaration can be made under s. 6 in respect of the land at any time after the publication of the notification under s. 4(1) and thereafter the Collector can take possession. But as mentioned before in a given case the appropriate government may not consider it necessary to take action under s. 17(4) simultaneously with the notification under s. 4(1) and it may choose to invoke its provisions only at a later stage in view of any urgency that may crop

- A up. Thus the construction of s. 4(1) cannot be made to depend upon any action or direction which the State Government may choose to make under s. 17(4) of the principal Act. In our opinion s. 4(1) has to be read as an integrated provision which contains two conditions; the first is that the notification in the official gazette must be published and the second is that the Collector has to cause public notice of the substance of such notification to be given.
- B These two conditions must be satisfied for the purpose of compliance with the provisions of s. 4(1).

- C In the above view of the matter the appeals which involve the same point must succeed. They are consequently allowed and the acquisition proceedings in question in both the appeals shall stand quashed. The appellants will be entitled to costs in this Court One hearing fee.

S.B.W.

*Appeals allowed.*