

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8516 of 2014 (O&M)
Date of decision: December 19, 2015.

Raj Kumar and others

... **Petitioners**

v.

State of Punjab and others

... **Respondents**

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

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Shri Sanjeev Manrai, Sr. Advocate with
Shri Vikas Bishnoi, Advocate for the petitioner.

Shri Manoj Bajaj, Additional Advocate General, Punjab
for respondents No.1 & 2.

Shri Sanjiv Sharma, Advocate for respondent No.3.

Shri Naresh Kaushal, Advocate for respondent No.8.

Hemant Gupta, J. (oral)

Challenge in the present writ petition is to the notifications dated 28.10.2003 and 9.12.2011 under Sections 4 and 6 of the Land Acquisition Act, 1894 respectively (hereinafter mentioned as the Act).

The petitioners are owners of land in village Kurali, Tehsil Kharar, District Ropar. The State Government intended to acquire 24 acres, 4 kanal and 3 marlas of land in village Kurali and 6 acres, 2 kanal and 7 marlas in village Charheri for setting up of New Mandi Township. Initially notification under Section 4 of the Act was published on

28.10.2003 read with Section 17 of the Act, followed by the notification of the same date i.e. 28.10.2003 under Section 6 read with Section 17 of the Act. However in CWP No.17704 of 2003, (Gurcharan Singh v. State of Punjab), the notification under Section 6 of the Act was set aside. The State Government was given liberty to call for objections and proceed in accordance with law thereafter. Aggrieved, Special Leave Petitions were filed, both the land owners and by the State. The said SLPs were dismissed on 18.1.2011. It is thereafter the notification under Section 6 of the Act was made on 9.12.2011 which was published in Hindustan Times on 20.12.2011, in Punjabi Tribune on 22.12.2011 and in the Official Gazette on 2.3.2012.

It may be stated that earlier the petitioner challenged the same notifications vide CWP No.4963 of 2011 (Sham Singh and others v. State of Punjab and others) inter-alia on the ground that action of the State Government is discriminatory. The said writ petition was dismissed on 23.5.2013. It is thereafter the present writ petition was filed primarily on the ground that notification under Section 6 of the Act was published beyond the period of one year contemplated by the Act.

In an affidavit of Shri Daljit Singh, Collector, Land Acquisition, Colonization Department dated 22.10.2015, the office note of approving the declaration under Section 6 of the Act on 9.12.2011 has been produced on record as Annexure R1/1. The notification so approved is Annexure R1/2. Publication in the Hindustan Times (English) is Annexure R1/3 and that of Punjabi Tribune is Annexure R1/4. The substance of the notification was also published on 15.12.2011 in the *Roznamacha Wakaiti*.

Learned Counsel for the respondent-State refers to a Supreme Court order reported as State of Haryana and another v. Raghubir Dayal, (1995)1 SCC 133 to contend that provisions of Section 6(2) are directory in nature though the publication of the notification under Section 4 is mandatory. At this stage, certain provisions of the statute would be relevant:-

“6. Declaration that land is required for a public purpose.

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, 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 a 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 5A, sub-section (2)]:

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(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate 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 date of such publication and the giving of such public notice, being hereinafter referred to as the date of 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.”

Though the learned Counsel for the petitioners has referred to certain judgments but none of the judgments pertains to publication of a notification under Section 6 of the Act nor any of the judgments refers to or has taken contrary view than what has been held in Raghubir Dayal (supra).

The Court in Raghbir Dayal (supra) has said to the following effect:-

“8. Though notice under Section 5-A was issued to the respondent, he had not availed of the notice nor objected to the acquisition. The question emerges whether the non publication of the substance of the declaration under Section 6(1) equally be mandatory and its omission renders the declaration invalid? The purpose of the declaration under Section 6 is to render the land notified therein as that needed conclusively for public purpose. So we are of the opinion that the notification under Section 4(1) should not be invalidated for non-compliance of the notification under Section 6. It is true that the language in Section 6(2) is in pari materia with Section 4(1). The purpose of publication of the declaration is to give effect to the conclusiveness of the extent of the land needed for the public purpose or for a company as made under Section 6(3) of the Act. Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the enquiry under Section 5-A, or otherwise in case of dispensing with enquiry under Section 5-A unless they show any grave prejudice caused to them in non-publication of the substance of the declaration under Section 6(1), the omission to publish the substance of the declaration under Section 6(1) in the locality would not render the declaration of Section 6 invalid. We are not intending to say that the officer should not comply with the requirement of law and it is their duty to do it. But their dereliction to do so per se does not render the declaration under Section 6 illegal or invalid. Therefore, the word 'shall' used in sub-section (2) of Section 6 should be construed to be only directory but not mandatory. Moreover, in this case, notice was issued to the respondent under Sections 9 and 10 pursuant to which they appeared before the LAO and put forth their claim and the award has already been made. As stated earlier, since there is an inter se dispute as regards the apportionment, the Land Acquisition Officer had already made the reference under Section 30 and deposited the compensation in the Court of District Judge along with the reference.”

In view of the judgment in Raghbir Dayal (supra), we find that the declaration was made on 9.12.2011 i.e. within one year of the decision of the Supreme Court on 18th January, 2011 and thus, is within time prescribed by law. The notification was published in the newspaper

Hindustan Times (English) on 20.12.2011 and that of vernacular newspaper Punjabi Tribune on 22.12.2011. The substance of the notification was also published on 15.12.2011 in the *Roznamacha Wakaiti*. Therefore, mere fact that the Gazette Notification was published on 2nd march, 2012 is inconsequential as not only declaration was made within one year but was published in two newspapers and also in the locality within a period of one year.

In view thereof, we do not find any merit in the petition. The same is dismissed.

[Hemant Gupta]
Judge

[Raj Rahul Garg]
Judge

December 19, 2015.
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