

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.6529-6530/1997

UNION OF INDIA

Appellant (s)

VERSUS

K.BALAJI JAYA RAMA RAO & ORS.

Respondent (s)

(with appln. for stay and office report)

Date : 18/11/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)

Mr.T.L.Viswanatha Iyer,Sr.Adv.,

Mr.T.A. Khan, Mr.S.N Terdol,Advs.

For Respondent (s)

Mr.G. Prabhakar,Adv.

Dr.Rajeev Dhawan,Sr.Adv.,

Mr.D.Ramakrishna Reddy,Adv.,

Mrs.D. Bharathi Reddy, Mr.B. Vikas,Advs.

UPON hearing counsel the Court made the following

O R D E R

The appeals are disposed of. There shall be no order as to costs.

(Vijay Kumar Sharma)(Jasbir Singh)

AR cum PS to Hon.Judge Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6529-6530/1997

UNION OF INDIA..Appellant

Versus

K. BALAJI JAYA RAMA RAO & ORS...Respondents

O R D E R

These appeals are against the Judgments of the High Court of Andhra Pradesh dated 5.7.1995 and 15.12.1995.

Briefly stated the facts are as follows:-

The 1st respondent herein purchased the concerned property from one Mr. Subbaiah on 2.4.1971.

The name of the 1st respondent was mutated in the Municipal records on 14.12.1971. On 28.5.1985, a notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued. The said notification was published in the gazette on 8.7.1985. Thereafter, it was published in two daily newspapers (one in Telugu and another in English) on 21.7.1985. It was also notified by beat of tomtom in the locality on 29.7.1985.

The 1st respondent filed objections under Section 5-A of the Act. Thereafter, a Section 6 notification was issued on 24.5.1986 and published in the gazette on 30.6.1986. The Section 6 notification was also published in two daily local newspapers on 6.7.1986. A declaration was made by beat of tomtom in the locality and affixing copy on 8.7.1986.

Thereafter, notices under Sections 9 (2) and 10 of the Act were issued to the 1st respondent. The award inquiry was fixed on 4.8.1986. The father of the 1st respondent appeared on 4.8.1986 along with a clerk of an advocate who filed his Vakalatnama. At their request the case was posted to 18.8.1986. On 18.8.1986 the father of 1st respondent sought further time.

At his request the case was adjourned to 29.9.1986. On 29.9.1986, 1st respondent and his father both appeared. They again sought time. At their request the matter was again adjourned to 20.10.1986 and then to 9.11.1986. At the request of the 1st respondent the matter was thereafter postponed on 17.11.1986, 12.1.1987, 19.1.1987 and 2.2.1987. On 2.2.1987, the 1st respondent and his advocate remained present. They adduced some evidence. They again remained present on 16.2.1987 and filed some further documents. The award inquiry was completed on 16.2.1987 and the award was passed on 28.6.1988.

The 1st respondent was then issued a notice to vacate. At this stage, the 1st respondent filed a writ petition in the Andhra Pradesh High Court challenging the acquisition proceedings. In the writ petition, the ground taken is that under the Section 4 notification the name of the owner and occupier was shown as K.B. Subbaiah even though the property had been mutated into his name. It was claimed that as his name had not been shown the notification was bad. The second ground was that there was no proper notice under Section 5-A of the Act. It was also averred that he had filed objections under Section 5-A, but that his objections had not been considered by the authorities. At this stage, to be noted that there is no claim or complaint that he has not been personally heard in the Section 5-A proceedings. The only ground is that his objections were not considered. The 3rd ground was that the post office for which acquisition was taking place was already located in a building which was more conducive and bigger than the building which was being acquired. It was also averred that he was only owning this residential building and the acquisition would make him shelterless. It is averred that no notification under Section 6 of the Act has been issued and that without issuing a Section 6 notification, notices under Sections 9 (3) and 10 were served on him. In the writ petition, it is not stated that he had participated in the award proceedings. Instead it is claimed that to his surprise and dismay a notice dated 28.6.1988 was issued to him calling upon him to hand over possession.

To this writ petition, counters were filed both by the State Government as well as the Union of India. It was pointed out that the property had been correctly described in the Section 4 notification. It was pointed out that 1st respondent had filed objections under Section 5-A. It was pointed out that Section 5-A inquiry lasted from 31.8.1985 to 23.12.1985 and that in view of the representation made by the 1st respondent notices had been issued to him incorporating his name. It was pointed out that pursuant to those notices, the 1st respondent only filed an objection petition. This showed that 1st respondent had chosen not to appear personally. It was also pointed out that the 1st respondent had thereafter participated in the award proceedings. No rejoinder was filed by the 1st respondent denying these averments in the counter. Thus, the 1st respondent was admitting these facts.

The learned single Judge by his Order dated 29.10.1993 allowed the writ petition. The reasoning of the learned Judge is as follows:-

"No doubt, section 4(1) of the Act may not cast an obligation on the part of the Land Acquisition Officer to incorporate the correct name of the owner and also the extent of land, but it cannot be a ground for justifying the action of the respondents. The Legislature never intended that the party whose land is acquired should be kept in dark without his name being figured either in section 4(1) notification or in section 5-A notice. Even if the petitioner files his objections and participated in the proceedings, in my view, the Land Acquisition Officer cannot excuse himself under the pretext that section 4(1) has not stipulated the contingency of incorporating the name of the owner. In a case where the appropriate authority intends to acquire a particular land or a building, it is the primary duty of such authority to make an enquiry as to the survey number, name of the owner, etc., of the property and until and unless proper steps are taken to ascertain the details of the property, the authority cannot proceed with acquisition proceedings. Admittedly, in the present case, petitioner purchased the house in 1971 from one K.B. Subbaiah. His name was mutated in municipal records in 1971 itself

lf, which is evident from the proceedings dated 14.12.1971 of the Corporation. Basing on some old record, which was available in their office, the respondents cannot say that the name of K.B. Subbaiah was found as the owner and, therefore, section 4(1) notification was issued. The reasoning given in the counter filed by respondents 1 to 3 goes to show that they have not taken care to see from the municipal records as to who is the person in whose name the building stands. Though acquisition proceedings were initiated in 1985, the 3rd respondent, basing on the 1966-67 records of the revenue authorities, issued section 4(1) notification, which action, in my view, looks to me that the authorities have not applied their mind and have not conducted themselves in a proper manner. While dealing with the rights of a citizen, callous attitude cannot be allowed, especially so when dealing with the property rights of a citizen.

In Hindustan Oil Mills' case (supra), the Supreme Court observed :-

"...Though it is true that the notification need not precisely define the nature of the land proposed to be acquired or the persons to whom it is considered to belong, there should be a clear indication in the notification of the land that is proposed to be acquired, from which the owners or occupiers of the land can get a fair idea as to the details of the acquisition and the impact on their rights. The failure to refer to the name Sampatlal as the owner is a vital defect in the notification."

Admittedly, in the case on hand, neither in section 4(1) notification nor in section 5-A notice, the owner's name i.e., the petitioner's name was found; therefore, section 4(1) notification and section 5-A notice become defective. Any further proceedings basing on such defective notification cannot survive and are liable to be set aside.

The reasoning given for acquisition by the 4th respondent at paragraph 2 of their counter reads:-

"The landlord of the present post office building is insisting on the vacation of the building and is not attending to periodical repairs, etc. The department is paying considerably a huge amount of Rs.3,000/- per month as rent, besides paying maintenance charges like electricity and water charges. The property sought for acquisition is located in an area which is easily accessible to all classes of public and will cater to the needs of the general public, as also to the patients and their attendants of Sarojini Devi Eye Hospital....."

The ground relied upon for the purpose of acquisition looks to be very bleak, as the present post office is also located in the same locality where the building of the petitioner is located. The reasoning given by the authorities that the owner of the present post office building is not attending to the repairs cannot be a justifying ground for the respondents to seek to acquire the property of the petitioner. Therefore, on this ground also, the acquisition proceedings are vitiated."

Thus, the 1st ground on which the writ petition has been allowed is that the Section 4 notification was defective inasmuch as it did not contain the name of the 1st respondent. This finding is given even though it is noticed that Section 4(1) of the Act cast no obligation to incorporate name of the owner. This finding is given in spite of the fact that High Court was made aware that the 1st respondent had filed his objections under Section 5-A and had thereafter participated in the award proceedings. The second ground on which the writ petition has been allowed is that there was no justifying ground to seek acquisition. As is being set out in greater detail hereinafter, neither of these reasons are sustainable. The appellants then filed an appeal which was dismissed in their absence on 5.7.1995. The Division Bench agreed with the reasoning of the learned single Judge. The appellant then applied for a review which has been disposed of by an Order dated 15.12.1995 wherein the Division Bench refused to interfere either with the order of the learned single Judge or its earlier order. At this stage, it must be mentioned that the authority of this Court in the case of State of Karnataka & Ors. Vs. Narasimhamurthy & Ors. {(1995) 5 SCC 524} was cited. The Division Bench erroneously held that this authority had no application. We have heard the parties at great length. 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 locali

ty 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 notification.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government 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 sub-soil;
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 line by placing marks and cutting trenches; and ,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line 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."

A plain reading of Section 4 shows that all that is required is that a notification has to be published in the Official Gazette, in two daily newspapers circulating in that locality of which one must be in the regional language and a public notice of the substance of such notification has to be given at a convenient place in the locality. Section 4 nowhere contemplates that the name of the owner must be mentioned in the notification. This becomes further clear if one reads Section 5-A of the Act. Section 5-A starts with the words "Any person interested in any land which has been notified under Section 4, sub-section (1)." Thus it also refers to a person interested in a land which has been notified. Section 5-A does not say that the person whose name appears in the notification. This also shows that there is no obligation under Section 4 to mention the name of any person. Of course, the object of Section 4 is two-fold. One is that there must be public announcement by the Government that the land, specified therein, is needed or likely to be needed for a public purpose. Secondly it authorises that the officers to do all such acts as are set out in Section 4 (2) of the Act. This has been so held in the case of M.P. Housing Board vs. Mohd. Shafi & Ors. {(1992) 2 SCC 168}. The announcement by the Government is in the manner as set out in Section 4 itself. As seen above all that Section 4 requires is that the notification be published in the Official Gazette and in two daily newspapers circulating in that locality one of which shall be in the regional language. The Collector has to give public notice of the substance of such notification at a convenient place in the locality. No other requirement is laid down in Section 4. In this case, as has been indicated hereinabove, the notification was published in the Official Gazette, it was published in the daily newspapers as required. Public notice of the substance of the notification was given at a convenient place in the locality and was also announced by beating of tom-toms in the locality. It could not be disputed that the Section 4 notification contained the correct description of the property. Thus the purpose of giving notice to the person, whose land was intended to be acquired, was fully served. The 1st respondent was aware of the notification. He was not in any doubt that it was his property which was intended to be acquired. He therefore appeared and filed his objections under Section 5-A.

It must be mentioned that on behalf of appellants a number of other authorities were cited.

In our view, it is not necessary to deal with each of those authorities, as the law on the subject is very clear. The authorities relied on are Babu Barkya Thakur Vs. State of Bombay, {AIR 1960 SC 1208}, State of Karnataka & Ors. Vs. Narasimhamurthy & Ors. {(1995) 5 SCC 524}, State of Gujarat Vs. Panch of Nani Hamam's Pole & Ors. {(1986) 1 SCC 566}, Bai Malimabu And Ors. vs. State of Gujarat & Ors. {(1978) 2 SCC 373 and Mahadeo Vs. Sub Divisional Officer & Ors. {(1997) 8 SCC 487}.

Even though we do not consider it necessary to deal with each of the above mentioned authority, we must state that in our view the case of State of Karnataka & Ors. vs. Narasimhamurthy is directly on point. We are unable to accept the reasoning of the Division Bench that that case had no application. Even though the acquisition in that case was under the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 the provisions of Section 3 (therein) are in pari materia to Section 4 of the Land Acquisition Act. This Court has as categorically held that in such a notification the name of the owner need not be mentioned.

On behalf of the 1st respondent reliance was placed upon the case of Hindustan Oil Mills Ltd. & Anr. vs. Spl. Deputy Collector (Land Acquisition) {(1990) 1 SCC 59}. In this case three

notifications under Section 4 had been issued on three different dates. The question before that Court as set out in paragraph 7 thereof as follows:-

"(1) The appellants have been awarded compensation on the basis of the market value of the lands as on May 11, 1961, the first of the notifications above referred to. The appellants contest the correctness of this and urge that the compensation payable should be determined on the basis of the notification published on February 28, 1963. This is the first contention.

(2) The High Court has finally determined the compensation, in respect of the lands belonging to the company, at Rs. 5 per sq. yard and in respect of the lands belonging to Sampatlal, at Rs.4 per sq. yard. The adequacy of the compensation thus awarded is the subject matter of the second contention urged before us.

(3) The third contention raised by the appellants turns on the following circumstances. In the land belonging to the company, there is a godown which had been leased out to the Government of India at a rent of Rs.1000 per month. It is common ground that the built-up area of the godown is about 2000 sq. yards. In calculating the compensation payable to the company the Land Acquisition Collector treated an area of 4 acres as the land occupied by the godown and appurtenant thereto. The compensation payable in respect thereof had been worked out as a multiple of the net annual rent derived by the company in respect of godown. When the matter came up to the District Judge, he treated 2 acres as the land appurtenant to the godown and gave compensation in respect of the balance of 8 acres at the rates already mentioned by us. Two objections are taken to this computation by the appellant. It is submitted that since the area occupied by the godown was only 2000 sq. yards, the total extent of land necessary for the use of the godown taken by the High Court at 2 acres is very excessive and that, even on the most generous estimate it could not be in excess of one acre. It is submitted that in respect of the balance of 9 acres, the company should be paid compensation at the rates which may be determined by us on the second contention referred to above. In respect of the godown it is submitted that since the rent was Rs.12,000/-, the market value of the godown and the rent pertinent thereto should have been worked out as a multiple of Rs.12,000/-, whereas it has been taken at 25 times a sum of Rs.10,000/-, treating that amount as the net annual rent. It is submitted that the deduction of Rs.2000/- from the annual rent in working out this compensation was not justified. These are the only three contentions which have been urged before us by Shri Sachhar on behalf of the appellants."

Thus, in this case the court was really dealing with the aspect of quantum of compensation and the date which should be taken into consideration for determining compensation. The Court was not at all concerned with the question whether a Section 4 notification must contain the name of the owner. It was held that the date of the the last notification under Section 4 was the relevant date. In coming to this conclusion it was inter alia observed as follows:-

".....Though it is true that the notification need not precisely define the nature of the land proposed to be acquired or the persons to whom it is considered to belong, there should be a clear indication in the notification of the land that is proposed to be acquired, from which the owners or occupiers of the land can get a fair idea as to the details of the acquisition and the impact on their rights. The failure to refer to the name of the company and the reference of Sampatlal as the owner of the entire 13-20-18 acres is a vital defect in the notification."

Strong reliance has been raised on the observations that failure to refer to the name of the company or the owner is a vital defect. In our view, these observations are mere obiter and not binding. There was no challenge to the acquisition proceedings. The question whether a Section 4 notification should contain the name of the owner was not before the Court. The Court was not considering the requirements of a notification under Section 4. Faced with this situation, it was submitted that the challenge to the Section 4 notification was in the context of 1st respondent's rights to have a personal hearing in proceedings under Section 5-A being adversely affected. It was submitted that the two provisions if read together indicate that the person interested, namely, the owner must have sufficient notice of the acquisition proceedings and must be given an opportunity of being heard in person or by any person authorised by him in that behalf in the Section 5-A proceedings. Reference was made by Dr. Rajeev Dhawan to the objections filed by the 1st respondent on 18.8.1985 under Section 5-A and the reminder sent on 9.12.1985. It was submitted that the 1st respondent was not given a personal hearing even though he had specifically asked for a personal hearing. It was submitted that this vital right, under Section 5-A had been denied because the Section 4 notification did not contain his name and the notice under Section 5-A was not issued to him or in his name. We see no substance in this submission. As has been set out hereinabove, it has been averred, in the counter, that the Section 5-A proceedings went from 31.8.1985 to 23.12.1985. It has also been averred, in the counter, that the 1st respondent was

as personally given a notice. It has been averred, in the counter, that the 1st respondent only filed his objections. This clearly meant that he had chosen not to personally appear. No rejoinder has been filed to deny these averments. Further, in the writ petition, as stated above, there is no ground that personal hearing had not been given under section 5-A. As stated above, the only stand taken was that the objections were not considered. It must also be noted that no such ground is taken even in the counter filed before this Court. No such ground having been taken in the writ petition, no rejoinder having been filed to the counter, no such contention having been taken in the affidavit filed in this Court, it is not open to 1st respondent to raise such a contention.

It must also be mentioned that the purpose of a Section 4 notification is merely to give notice, to the person interested, that his land is needed or is likely to be needed for a public purpose. The person interested who has notice by virtue of the fact that the land is correctly described in the notification and has participated in Section 5-A and the award proceedings, is then precluded from challenging the notification on the ground that the notification was defective. In this case, the notification under Section 4 correctly described the land sought to be acquired. It is an admitted position that the 1st respondent was aware of this notification. It is admitted that he filed his objections under section 5-A. It is now admitted that he thereafter participated in the award proceedings. We are at a loss to understand how the High Court could have concluded that such a participation did not preclude him from challenging the acquisition proceedings. The purpose of Section 4 notification, to give notice, was clearly fulfilled. The 1st respondent well knew that it was his property which was sought to be acquired. He was under no mistaken belief that some other property was sought to be acquired. Not only that, in the notification the name of his predecessor-in-title was given. He well knew that Mr. Subbaiah who was predecessor-in-title in respect of this property. As stated above the description of the property was correct. He had purchased the property from Mr. Subbaiah. One fails to understand on what basis it could even be argued that the notification was vague or defective.

The next ground which found favour with the High Court is: "the reasoning given by the authorities that the owner of the present office building is not attending to the repairs cannot be a justifying ground for the respondent to seek to acquire the property of the petitioner." The High Court has omitted to notice that in the counter, it has also been pointed out that the landlord of the other premises was asking for vacation of that building. If that landlord was asking for vacation of the building then it is clear that some other place was required for the purpose of the post office. There is no challenge to the fact that the acquisition is for a public purpose. Requirement for the purpose of post office would be public purpose. The High Court is not holding that the acquisition is not for a public purpose. It is for the government to decide whether this property is to be acquired or some other property is to be acquired. It is not open to an owner to say that some other property is more suitable. If that were to be permitted then every owner will say that some other property is better and that that property must be acquired instead of his own. So long as the property was required for a public purpose, the mere fact that some other property could have been acquired is not a ground on which the High Court can say that the reasoning for acquisition is not sufficient.

Dr. Rajeev Dhawan pointed out that, before the High Court a 3rd ground had also been taken. He submitted that the acquisition was for a post office. He submitted that under Section 3 (ee) of the Land Acquisition Act the appropriate authority would be the Central Government. He submitted, by reference to various portions of the counter affidavit filed in the High Court, that the acquisition proceedings had been initiated at the request of the postal department. He submitted that the request had been made to the Andhra Pradesh Government. He submitted that the notification was issued on behalf of the State Government. He submitted that for this reason the acquisition was bad. In support of this submission, reliance was placed on the case of Angrup Thakar & Ors. vs. State of Punjab & Anr., (AIR 1968 Delhi 97) and Balak And Ors. vs. State of U.P., (AIR 1962 Allahabad 208).

In our view, it is not open to the 1st respondent to raise any such contention. Admittedly, no such ground was taken in the writ petition. This is not a pure question of law. It is a mixed question of fact and law. If such a ground was taken in the writ petition, it may have been pointed out that the Central Government had authorised the State Government to undertake acquisition proceedings. No such ground having been taken in the writ petition or urged before the High Court, we do not allow such a contention to be raised before us. It must also be mentioned that the contention raised before the High Court to which a reference was made earlier is not what is now submitted. The contention made before the High Court was as follows:-

"The third ground urged is that the competent authority is the Central Government for acquiring the building for housing the post office and, therefore, the Land Acquisition Act is not applicable inasmuch as it is only the Requisitioning & Acquisition, Etc. Act, 1952, which is made applicable in this case and on that ground also the entire proceedings have to go."

Very fairly Dr. Rajeev Dhawan did not press this contention before us. It is clear that mere

ly because premises could have been required under the Requisition and Acquisition Act does not mean that the provisions of the Land Acquisition Act cannot be invoked.

In view of the above, we are unable to sustain the Judgments of the High Court. The Judgments of the learned single Judge as well as the impugned Judgment of the Division Bench are set aside. The writ petition filed by the 1st respondent stands dismissed.

The appellant will be at liberty to now take possession of the property from the 1st respondent.

It must be pointed out that the amount of compensation, as per the award, has already been deposited with the Special Deputy Collector (Land Acquisition). The 1st respondent will be at liberty to withdraw that amount.

The appeals stand disposed of accordingly. There shall be no order as to costs.

.....J

(S.N. Variava)

.....J

(H.K. Sema)

New Delhi,
November 18, 2003