A VENKATASWAMAPPA

*v.*

THE SPECIAL DEPUTY COMMISSIONER (REVENUE)

AUGUST 28, 1996

B [K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

*Land Acquisition Act, 1894 :*

*Sections 4(1), 5A, 6(1), 32(f)(vi)—Land acquired for allotment to*
C *House Building Co-operative Society—Notification published—Enquiry conducted—Appellant participated in the enquiry—Before declarations could be taken up, he filed Writ petition—Dismissed by Single Judge and Division Bench—On appeal held since lands of appellants were acquired for such or similar public purpose, present notification cannot be said to be mala fide—Notification sent for publication in the Gazette—Simultaneously direc-*
D *tions were given for publication in newspapers—In one of the newspapers publication was made prior to the publication in Gazette—It is only an irregularity in the procedural steps and does not vitiate the validity of the notification—The entire time taken from date of filing the writ petitions till date of receipt of order of Supreme Court stands excluded and the limitation*
E *of one year would start thereafter only—Hence notification under S. 4(1) has not lapsed—Govt. to consider the objections filed in the enquiry under S.5A and to have the declaration under S.6 published if it feels that public purpose still subsists.*

*The Collector (District Magistrate) Allahabad & Anr.* **v.** *Raja Ram*
F *Jaiswal Etc.,* **[1985] 3 SCR 995, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1006-25 of 1990.

From the Judgment and Order dated 17.7.89 of the Karnataka High
G Court in W.A. Nos. 877-90/89 in W.P. Nos. 5316-35 of 1989.

M.N. Shroff for the Appellant.

M. Veerappa for the Respondent.

H R.S. Hegde for K.R. Nagaraja for the Respondent No. 2.

The following Order of the Court was delivered : A

These appeals by special leave arise from the order of the Division Bench of the Karnataka High Court made on July 17, 1989 in Writ Appeals Nos. 877-896/89 dismissing the appeal *in limine* and confirming the judgment and order of the learned single judge dated March 30, 1989 made in Writ petition Nos. 5316-35/89. B

The appellants have challenged the validity of the notification published under Section 4(1) of the Land Acquisition Act 1 of 1894, (for short, the "Act") acquiring 80 acres of land in favour of the second respondent - N.T.I. House Building Cooperative Society. Notification under Section 4(1) C was published on February 23, 1989. Enquiry under Section 5-A was conducted. The appellant participated in the enquiry. Before the declaration could be taken up, the appellants filed the writ petition in March 1989 challenging the validity of the notification. Before the learned single Judge, the appellants had taken five grounds of objections as enumerated in para 2 of the judgment of the learned single Judge. He dealt with each of the D points separately and negatived the same. The Division Bench summarily dismissed the appeal. Thus, these appeal by special leave.

It is strenuously contended for the appellants that since some of the lands of the appellants were acquired, one on March 2, 1973 for defence E purposes and second on July 28, 1988 for the HMI House Building Cooperative Society, the acquisition of the lands under this notification is *mala fide* and, therefore, is not valid in law. We find no force in the contention. Providing house sites for construction of houses for the members of the second respondent, Co-operative Society registered under State Cooperative Societies' Act, is a public purpose is not in question and F cannot be questioned in view of the enlarged definition of 'public purpose' under Section 32(f)(vi) of the Act as amended by Act No. 68 of 1984. Therefore, so long as providing house sites to the members of the Cooperative Society is a 'public purpose', the contention that on earlier occasion also some of the lands belonging to the appellants were acquired for such G or some other public purpose, cannot be held to be *mala fide*.

It is next contended that alternative lands are available and the lands in question are not fit for construction. That question was gone into by the learned single Judge and was negatived. It is a question of fact in each case. The serious contention raised by the learned counsel for the appellants is H

A that while the notification under Section 4(1) of the Act was published on February 23, 1989 the newspaper publication thereof had come to be made prior thereto, i.e., on February 1, 1989 and, therefore, the mandatory requirement under sub-section (1) of Section 4 has not been complied with. It is further contended that the substance of the notification was not published in the locality. These two contentions were not raised before the B learned single Judge; even otherwise, we find that there is no force in these contentions. It is stated in the counter affidavit and also in the record of the Section 5-A enquiry produced by the appellant which would clearly indicate that after the notification was published, it was published in one of the newspapers on February 1, 1989 and substance thereof was publish- C ed in the locality on March 20, 1989. The second publication in the newspaper could not be made for the reason that it was already published prior to the publication of the notification in the Gazette. The question is: whether the procedure adopted in publishing the notification in the local newspaper before it was actually published in the Gazette is in violation of D the requirement under Section 4(1)?

It is true that normally publication in the newspapers would be preceded by a publication in the Gazette notification. It would appear that in this case while sending the notification, which was approved by the Government for publication in the Gazette, simultaneously direction was E issued to have it published in the Gazette. Therefore, it would appear that before publication in the Gazette was made, it was published in one of the news papers. This is only an irregularity in the procedural steps required to be taken under the Act. It does not vitiate the validity of the notification published in the Gazette on February 23, 1989.

F

In support of the contention that it is mandatory that the procedure prescribed under Section 4(1) should be strictly complied with, the learned counsel has placed strong reliance on the ratio of this Court in *The Collector (District Magistrate) Allahabad & Anr.* v. *Raja Ram Jaiswal Etc.*, G [1985] 3 SCR 995. There is no dispute on the proposition that publication of the notification under Section 4(1) in the Gazette is a mandatory requirement. In fact, in that case, that was not done. The contention raised in *Jaiswal's* case (supra) was that it is only an intention and not mandatory. This court has rightly rejected that contention. As noted earlier, since the H publication of the notification under Section 4(1) was made on February

23, 1989, the intention of the Government to acquire the land for public purpose had been set in motion and it was directed to take the procedural steps in that behalf as mandated under sub-section (1) of Section 4 of the Act. What transpires, therefore, is that the notification was made in one of the newspapers published earlier to the actual publication in the Gazette. As stated earlier, it was only an irregularity in the procedural steps to be taken under the Act. It is to be seen that the object of the publication of Section 4(1) is to put a notice to the owners that the land is purposed to be acquired for a public purpose and that they are prevented to deal with the lands in any manner detrimental to the public purpose. Obviously, therefore, the publication in the newspaper would put the owners on notice of the proposed acquisition even prior to the actual publication. Admittedly, in one of the newspapers notification was unauthorisedly published before the publication in the Gazette, namely, February 1, 1989. The substance was also published, as indicated in the proceeding of the Land Acquisition Officer conducted under Section 5-A, on March 20, 1989, the last of the dates was taken for the purpose of notification under Section 4(1). In that view we hold that there was no infraction of the compliance of the requirement under Section 4(1) of the Act.

It is then contended that since the limitation period of one year from the date of the publication under Section 4(1) had elapsed and the stay granted by the High Court or this Court was only of dispossession of the appellants from the lands, the notification under Section 4(1) now stands lapsed by Explanation 1 to proviso to Section 6(1). We find no force in the contention. It is seen that the writ petitions came to be filed in March 1989 in the same month in which the substance of the publication of the notification under Section 4(1) was made and the proceedings were pending before the learned single judge, the Division Bench and in this Court. Under these circumstances, the entire time taken from the date of the filing of the writ petitions till the date of the receipt of the order of this Court stands excluded and the limitation of one year would start thereafter only. Accordingly, we hold that the notification under Section 4(1) has not lapsed. It is now on record that the appellants have already filed their objections; enquiry under Section 5-A was conducted and report obviously must have been furnished to the Government for taking further steps in the matter. It would, therefore, be necessary for the Government to consider the objections and have the declaration under Section 6 published, if

A the Government is of the opinion that the public purpose still subsists.

The appeals are accordingly dismissed with the above observations. The State Government is directed to publish the declaration, if the objections are overruled, within four months from the date of the receipt of this order. No costs.

B

G.N. Appeals dismissed.