the express condonation of delay has implicit in it the finding that earlier no application had been filed in time and the condoning of 7 years delay therefore, may well be a super-statutory direction. In practical terms, therefore, conferring on the petitioner a right to file a fresh application under Section 18 without a finding in his favour that any such application had been earlier filed at all is in a way abrogating the mandatory requirement of filing a written application and that too within the specific and prescribed period of time. To put it in other words, to claim the remedy under section 18 of the Act, the statutory procedural requirements have to to strictly fulfilled and in their absence no right can flow therefrom....."

In the present case, contrary to the aforesaid authoritative enunciation by the Full Bench, the learned Single Judge even whilst, finding that the respondent had in fact not filed any reference under Section 18 of the Act, has directed the condonation of the laches and irrespective of the existing period of delay or its justification, has further allowed respondent the period of three months for now filing an application afresh. This infracts the rule laid down by the Full Bench and overrides the statutory limitation under Section 18 of the Act and is unsustainable in law and, therefore, has to be set aside. The appeal is consequently allowed and the writ petition of the respondent is hereby dismissed. There will be no order as to costs.

S. C. Mital, J.—I agree.

D. S. Tewatia, J.—I agree.

S.C.K.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. P. Goyal and I. S. Tiwana, JJ.

KASHMIRI LAL AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 4472 *of* 1981

August 25, 1983

Land Acquisition Act (I of 1894)—Section 4—Land proposed to be acquired—Public notice of the proposed acquisition given in the

locality prior to the issuance of the notification under section 4—Such notice—Whether satisfies the requirements of section 4—'Notification'—Meaning of—How distinguishable from an 'order'—Word 'such' used in section 4(1)—Whether relates to the publication in the locality.

Held (per S. S. Sandhawalia, C.J. and I. S. Tiwana, J., S. P. Goyal, J. contra), that an element of formal declaration, proclamation or publication of an order either generally or in the manner prescribed is inherent in the concept of a notification. The very word 'notify' means to declare or to give notice and is to be contrasted with a mere intent or a cloistered order and thus means something which has been publicised to the citizenary at large. This seems to flow from its ordinary dictionary meaning as also from its use in common parlance. As a term of art also, the word 'notification' implies the widest publication to the people generally. Indeed, over the years, it has become a synonym with the same being published in the official gazette or authorised media or in any manner prescribed by the statute. The issuance of a notification is in the eye of law either notice or imputed knowledge of its contents to the citizens in general. This obviously cannot be so in the case of a mere order. The line which divides a mere order or decision of the Government or authority from formal notification is sharp and the dividing point thereof would be the publication or the formal declaration to the public or otherwise of the same. It is plain that an order derives its sanction or source when the authority vested with the lawful power to pass the same appends its signatures thereto. An order or a decision may reach completion from the moment of such a signature. However, it cannot be said that such an order or decision *ipso facto* becomes a notification even when it is disclosed to no person other than its author. It is only the factum of proclamation or publication in the gazette or other prescribed modes of publicity which alone would give such an order or decision, the indicia or the necessary stamping of a notification. Till then it would remain merely an order or decision and it may not travel beyond the knowledge of its author and might well remain completely cloistered. It would thus appear both on principle and on logic that the word 'notification' as employed in section 4 of the Land Acquisition Act, 1894 has been used in its pristine sense of being the formal declaration, proclamation and publication of an order in the manner prescribed.

(Paras 7, 8 & 9)

Held (per S. S. Sandhawalia, C.J. and I. S. Tiwana, J., S. P. Goyal, J. contra), that the word 'such' used in the later part of subsection (1) of section 4 of the Act is directly linked only to what is published in the gazette notification. It is true that the mere location of the word 'such' cannot be termed as conclusive. However, it is plain that this stands nearer in proximity to the words "a notification to that effect shall be published in the official gazette" and

otherwise seems to be appropriately related thereto alone. The word 'such' is connected primarily with the publication in the official gazette and not with the original decision of the Government with regard to the need for the acquisition of the land. An over-all reading of sub-section (1) of section 4 of the Act with a particular emphasis on its later part would show that the public notice in the locality has to be of the substance of the publication of notification in the official gazette. Therefore, the public notice at convenient places in the locality which is at variance with what has already been published in the gazette, would not be in compliance with the strict mandate of section 4(1) of the Act. Consequently, publication in the official gazette has necessarily to precede the public notice of the substance of such a notification later in the locality. The notification is, what has in terms been published in the official gazette and not what may have been either earlier inted-ed or even recorded in a draft notincation but not actually so published. The whole thrust of the law in section 4 (1) of the Act is to give the widest publicity and to plant with knowledge the citizens in general and all those persons in particular, who are interested in or affected by the acquisition. Consequently, it is the publication in the official gazette which is of a paramount nature and the word 'such' is more appropriately related thereto in the context of the publication in the locality. It is, therefore, held that publication in the official gazette is the *sine qua non* of the notification envisaged under section 4 of the Act. Once it is so held *a fortiori* the publication of the notification in the official gazette must necessarily precede the public notice of the substance thereof at convenient places in the locality. Therefore, a prior public notice in the locality cannot validly precede the publication of the notification in the official gazette and indeed is not so contemplated at all by section 4 of the Act.

(Paras 11, 12, 17 & 18)

Dhani Ram Dhiman *vs.* Land Acquisition Collector & Ors. 1981 P.L.J. 295.

Kishori Lal Batra *vs.* The Punjab State and another, A.I.R. 1958 Punjab 402.

OVERRULED.

Held (per S. P. Goyal, J. contra), that in the common parlance and according to the dictionary meaning, the notification is the act of notifying. So whatever is meant to be notified is a notification and it cannot be said by any stretch of reasoning that a notification remains only an order of the Government unless it is published in the official gazette. A notification is complete and effective when it is drawn and signed by the proper authority and its publication in the official gazette is just a mode of notifying it to the general public and to the person concerned. The provisions of section 4(1) of the Act are mandatory and without complying with its provisions as to the publication of the notification, the Collector cannot proceed to acquire

the land but any irregularity in the publication would not vitiate the acquisition proceedings or render the notification void. Where notice of the substance of the notification published in the official gazette is given at convenient places in the concerned locality, it cannot be said that the provisions of section 4(1) of the Act were not complied with simply because notice in the locality was given prior to the date when the notification was published in the official gazette. The validity of the notification cannot, therefore, be assailed.

(Paras 21 & 22).

(Case referred by a Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. P. Goyal to the Full Bench on 6th December, 1982 *for the decision of an important question of law involved in this case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice I. S. Tiwana finally decided the case on 25th August,* 1983).

Petition under Articles 226 *and* 227 *of the Constitution of India praying that this Hon'ble Court may be pleased to—*

(*i*) *call for the records and after the perusal of the same ;*

(*ii*) *issue a writ in the nature of* certiorari *quashing the Annexure* 'P. 2';

(*iii*) *issue any other writ order or direction as this Hon'ble Court may deem fit directing the respondents not to acquire the land of the petitioners* ;

(*iv*) *dispense with the requirement of filing of original/certified copies of the Annexures keeping in view the urgency of the matter and paucity of time* ;

(*v*) *waive off the requirement of serving of advance notice of motion on the respondents* ;

(*vi*) *stay the dispossession of the petitioners from the land under acquisition during the pendency of the writ petition ; and*

(*vii*) *award the costs of the petition to the petitioners.*

Sarwan Singh, Advocate, *for the Petitioner.*

Ashok Bhan, Sr. Advocate with A. K. Mittal, *for* Respondent No. 2.

G. S. Chawla, Advocate, *for the State.*

JUDGMENT

S. S. Sandhawalia, C.J.

Whether publication in the official gazette is the *sine qua non* of a notification envisaged under section 4 of the Land Acquisition Act, 1894 is the core question in this reference to the Full Bench.

2. The respondent State of Punjab framed a draft notification on February 28, 1980, for the purposes of the acquisition of land measuring 30 *kanals* 13 *marlas* for the public purpose of the construction of a 130 K.V. sub-station at Bhogpur. It would appear that before the said draft notification could be published in the gazette, an entry was recorded in the *roznamcha* on March 19, 1980 to the effect that publication by beat of drum had been done in the locality by the *chaukidar* that any owner having any objection with regard to the acquisition could file objections against the same within 30 days up to March 29, 1980. Later, on March 21, 1980, the notification was published in the official gazette wherein also it was directed that objections could be filed within 30 days of the publication of the said notification in writing before the Land Acquisition Collector of the State Electricity Board, Patiala.

3. The present writ petition was preferred to challenge the aforesaid acquisition primarily on the ground that there had been no public notice of the substance of the notification published in the gazette either simultaneously or thereafter, and indeed herein the admitted position being that the purported publication within the locality had been done two days prior to the date of the publication of the notification itself, namely, March 21, 1980. Since reliance on behalf of the petitioners was placed on an earlier judgment of this Court, the writ petition was admitted to hearing by the Division Bench.

4. When this writ petition came up for hearing before my learned brother S. P. Goyal, J. and myself, a frontal challenge to the correctness of the view in *Battan Singh* v. *State of Punjab* (1) was raised and in view of the significance of the question involved, the matter was referred for an authoritative decision by the Full Bench.

5. Inevitably, the language of section 4 of the Land Acquisition Act, 1894 (hereinafter called 'the Act') would provide the best clue

(1) 1981 P.L.J. 375.

for the answer to the questions arising herein and the relevant part thereof may hence be quoted for facility of reference:

> *"Publication of preliminary notification and powers of officers thereupon.*
>
> 4. (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 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 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 ;
>
> * * *
> * * *

Now what does the word 'notification' employed in sub-section (1) of section 4 of the Act precisely connotes ? Does it mean the mere decision or order of the appropriate government with regard to the need for the acquisition for a public purpose, or does it necessarily imply a formal declaration and publication thereof in the official gazette, as prescribed by Section 4 of the Act.

6. The word 'notification' has not been defined in section 3 of the Act nor does it find place in the Central General Clauses Act, 1898. One must consequently turn to the ordinary dictionary meaning of the words 'notify' and 'notification'. In Webster New International Dictionary, the word 'notify' means : To make known; to declare; to publish, and 'notification'; is the act of notifying a written or printed matter which gives notice. In Shorter Oxford English Dictionary, the word 'notify' means : To make known; publish, proclaim, to announce, e.g.; The King, therefore, notified to the country his intention of holding Parliament. 'Notification'—the action of notifying.....In Chamber's Twentieth Century Dictionary; viz.; to make known; to declare.

7. It seems to follow from the above that an element of formal declaration, proclamation or publication of an order either generally

or in the manner prescribed is inherent in the concept of a notification. The very word 'notify' means to declare or to give notice and is to be contrasted with a mere intent or a cloistered order and thus means something which has been publicised to the citizenary at large. This seems to flow from its ordinary dictionary meaning as also from its use in common parlance.

7-A. Again, as a term of art also, the word 'notification' implies the widest publication to the people generally. Indeed, over the years, it has become a synonym with the same being published in the official gazette or authorised media or in any manner prescribed by the statute. Reference in this connection may be made to the use of the word 'notification' in the Indian Evidence Act, 1872. By implication section 78 (1) thereof seems to draw a distinction betwixt an order and a notification of the Government, section 37, 81 and 114 (e) of the said Act are in a way also instructive in this context. It seems to follow that the issuance of a notification is in the eye of law either notice or imputed knowledge of its contents to the citizens in general. This obviously cannot be so in the case of a mere order. In the analogous provisions of section 2(36) of the Punjab General Clauses Act, 1898, the word 'notification' has, in terms been defined as under :—

> " 'notification' shall mean a notification published under proper authority in the Official Gazette."

It is true (as has already been noticed) that in strictness, the word 'notification' has not been so defined in the Central General Clauses Act, 1897. Be that as it may, it is well settled that a word and in particular a term of art would take its hue both from its context and its use in analogous provisions.

8. The line which divides a mere order or decision of the Government or authority from formal notification is sharp and the dividing point thereof would be the publication or the formal declaration to the public or otherwise of the same. It is plain that an order derives its sanction or source when the authority vested with the lawful power to pass the same appends its signature thereto. An order or a decision may reach completion from the moment of such a signature. However, can it be said that such an order or decision *ipso facto* becomes a notification even when it is disclosed to no person other than its author? In my view, this would not be so. It

is only the factum of proclamation or publication in the gazette or other prescribed modes of publicity which alone would give such an order or decision, the indicia or the necessary stamping of a notification. Till then it would remain merely an order or decision and as has been mentioned earlier, it may not travel beyond the knowledge of its author and might well remain completely cloistered.

9. It would thus appear both on principle and on logic that the word 'notification' as employed in section 4 of the Act has been used in its pristine sense of being the formal declaration, proclamation and publication of an order in the manner prescribed. Equally, precedent is not lacking for the proposition. In *Mahendra Lal Jaini* v. *State of Uttar Pradesh and Others,* (2), a government order which had not been published was sought to be equated with a notification under section 4 of the Forest Act. Repelling such a contention, their Lordships observed as under :—

> "That is, however, not a notification at all. It is a mere government order issued to all Conservators of Forests, Divisional Forest Officers and District Officers as well as the Secretary, Board of Revenue,....."
>
> * * *
> * * *
>
> "..... It may be mentioned that this government order was cancelled by a later government order dated July 7, 1958 which was also not published. Now a notification under section 4 of the Forest Act is required to be published in the Gazette and unless it is so published, it is of no effect. The notification of March 23, 1955 was published in the Gazette and was therefore a proper notification. It is also not disputed that in view of section 21 of the U.P. General Clauses Act (No. 1 of 1904), a notification issued under Section 4 could have been cancelled or modified but it could be done in the like manner and subject to the like sanction and conditions i.e. by notification in the gazette. The Government order of December, 1956 therefore cannot amount to excluding anything from the notification issued under Section 4, for it was never published, it was a mere

(2) AIR 1963 S.C. 1019.

> departmental instruction by Government to its Officers which was later withdrawn. The notification therefore stands as it was originally issued and the petitioner cannot claim any benefit of the government order of December, 1956, which was later cancelled....."

A similar result flows from the observations in *Emperor* v. *Fazal Rahman and others,* (3), wherein it was held, that a draft notification which had not been published in the local gazette in fact must be deemed as not to have been made at all and was not a notification, in the eye of law.

10. In fairness to Mr. Ashok Bhan, the learned counsel for the respondents, I must notice his stand that a notification is in essence the order or the decision of the appropriate government and the mere procedural mode of giving publicity thereto by either publication in the gazette or in the Press or by beat of drum etc. are ancillary matters of no legal consequence. For the reasons recorded earlier, I am unable to agree to this somewhat doctrinaire proposition. Learned counsel, however, was fair enough to concede that he could cite no authority whatsoever for his stand that an order devoid of all publicity or proclamation could nevertheless be styled as a notification.

11. Now once it is held that a notification is distinct and separate from the order or decision of the appropriate government, the writ petitioners are obviously on firm ground. However, the alternative argument raised on their behalf that the word 'such' used in the later part of sub-section (1) of section 4 of the Act is directly linked only to what is published in the gazette notification, also merits consideration and acceptance. It is true that the mere location of the word 'such' cannot be termed as conclusive. However, it is plain that this stands nearer in proximity to the word "a notification to that effect shall be published in the official gazette" and otherwise seems to be appropriately related thereto alone. I am inclined to read the word 'such' as connected primarily with the publication in the official gazette and not with the original decision of the government with regard to the need for the acquisition of the land. An over-all reading of sub-section (1) of section 4 of the Act with a particular emphasis on its later part would show that the

(3) AIR 1937 Peshawar 52.

public notice in the locality has to be of the substance of the publication of notification in the official gazette. Therefore, the public notice at convenient places in the locality which is at variance with what has been already published in the gazette, would not be in compliance with the strict mandate of Section 4(1) of the Act. Consequently, publication in the official gazette has necessarily to precede the public notice of the substance of such a notification later in the locality.

12. In support of the above view, it was plausibly argued on behalf of the writ petitioners that in case there is a variation or a discrepancy betwixt the original order for the draft notification and that what is actually published in the official gazette, it is the latter which should have primacy. This stance seems to be sound on principle. As held above, the notification is, what has in terms been published in the official gazette and not what may have been either earlier intended or even recorded in a draft notification but not actually so published. The whole thrust of the law in Section 4(1) of the Act is to give the widest publicity and to plant with knowledge the citizens in general and all those persons in particular, who are interested in or affected by the acquisition. Consequently, it is the publication in the official gazette which is of a paramount nature and the word 'such' is more appropriately related thereto in the context of the publication in the locality.

13. One must now turn to the precedent within this Court, which as already noticed had necessitated the reference to the larger Bench. *In Battan Singh's case* (supra), the position was identical and the public notice in the locality was given on May 19, 1980 long before the publication of the notification in the official gazette in June 6, 1980. The Division Bench held the infirmity to be incurable and quashed the acquisition proceedings. Though the matter was not very elaborately canvassed in the case aforesaid, the conclusion arrived at is sound and consistent with the line of reasoning in the earlier part of this judgment. The ratio therefore is consequently hereby affirmed. The only discordant note brought to our notice is the Single bench judgment in *Dhani Ram Dhiman* **v.** *Land Acquisition Collector and Ors,* (4). Therein also, the public notice in the locality was given prior to the publication of the notification in the official gazette. A close perusal of the judgment

(4) 1981 P.L.J. 295.

on this point would show that the conclusion turned wholly on the ground that no prejudice would arise to the persons affected by the acquisition because limitation for filing objections runs from the date of the publication in the gazette and not from the date of notice in the locality. With the greatest deference, it would appear to me that this line of reasoning is not tenable in view of the categoric observations in *Narinderjit Singh etc.* v. *The State of U.P. and others,* (5). Therein, it was held that the provisions of Section 4 of the Act were so mandatory in nature that the question of any prejudice being caused or otherwise was wholly extraneous. It was attempted to be argued before their Lordships of the Supreme Court in the said case that since in cases of urgency under Section 17 of the Act, no objections could be filed against the acquisition, consequently no prejudice would arise to the persons affected by the lack of any public notice in the locality. This contention was sternly rejected by holding that the provisions of Section 4(1) of the Act were mandatory in all situations irrespective of any prejudice to the parties and it was concluded as under :—

> "..... In our opinion Section 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. These two conditions must be satisfied for the purpose of compliance with the provisions of Section 4(1)."

The aforesaid observations would again indicate the sequence of the publication and the locality notice and it would appear that the notification in the official gazette must precede the public notice of the substance of such notification in the locality and not *vice versa.* The same result flows from the Full Bench decision of this Court in *Battan Singh* v. *State of Punjab,* (6), which inevitably had followed the final court.

14. Even as regards prejudice, it would appear that this also might well result in cases of considerable delay betwixt prior public notice given in the locality and subsequent publication in the Gazette. This matter was rightly though briefly adverted to in

(5) AIR 1973 S.C. 552.
(6) 1976 P.L.R. 545.

Battan Singh's case (supra) in the following terms.

> "..... It is, therefore, obvious that only the substance of the order passed by the State Government was published in the locality. Even if some of the citizens came to know on that date and their land was likely to be acquired, the maximum they could do was to make a search about that order in the Official Gazette, they could treat the *munadi* made by the Patwari as *non est.* ....."

In the situation visualised above, the interested persons on finding that there has been no publication in the official gazette, may well treat the public notice in the locality as *non est.* They, therefore, might well be lulled into the belief that the purported acquisition had been abandoned and consequently cease to be vigilant thereafter. A later publication in the gazette may, therefore, go unnoticed with the result that the interested persons may lose the right to file objections under Section 5-A of the Act within limitation which undoubtedly can be gravely prejudicial.

15. Apart from the above, it would appear that the matter was not adequately canvassed in *Dhani Ram Dhiman's case* (supra). The true meaning of the word 'notification both in its common parlance and as a term of art, was not even adverted to. Equally, the significance of the word 'such' in the later part of sub-section (1) of Section 4 of the Land Acquisition Act was not adequately highlighted. The observations of their Lordships in *Mahendra Lal Jaini's case* (supra) were also not brought to the notice of the Bench. For the detailed reasons given in the earlier part of the judgment, I would hold with the greatest deference and humility that *Dhani Ram Dhiman's case* (supra) is not correctly decided and is hereby overruled.

16. For the sake of clarity of precedent, reference must, however, be also made to *Kishori Lal Batra* v. *The Punjab State and another,* (7). Therein one of the challenges raised against the filling up of a vacant seat in a Municipal Committee (under the Punjab Municipalities Act, 1911) was on the ground of the notification of the vacated seats and the appointment thereto. A close analysis of the facts (para 5 of the report) would indicate that the order

(7) AIR 1958 Pb. 402.

vacating the seat was made on the 29th of May, 1948 and published in the official gazette on the 4th of June, 1948 whilst the order making the appointment to the said vacant seat was issued on the 3rd of June, 1948 and published on the 29th of June, 1948. It is thus manifest that the notification in the gazette with regard to the vacancy of the seat was made 25 days prior to the later notification in the gazette pertaining to the appointment to the said seat. There was thus plainly no infirmity on the said score. Learned counsel for the petitioner, however, whilst indulging in what appears to be legal casuistry pinned upon the date of the publication in the gazette in one case and the date of the order in the other to build a somewhat tenuous argument. However, in rightly rejecting the same the Bench proceeded to make certain wide-ranging observations and observed that according to the routine in Government offices, the notification takes effect from the date of issue which must usually take some time before it can be actually printed in the gazette. Obviously the mere practice or routine in Government offices (if any at all) cannot be conclusive in determining the law. It is otherwise plain that the matter was not adequately canvassed and neither principle nor precedent was cited in support of the observations made. It may be highlighted that herein we are specifically concerned with acts which the legislature enjoins to be effectuated by notification alone and not merely where a notification is resorted to as a convenient mode of giving publicity. With the greatest humility and deference, if the observations in para 5 of the report in *Kishori Lal's case* (supra) are to be construed as any warrant for the proposition that publication in the official gazette is not the *sine qua non* of a notification then for the reasons recorded earlier, it does not lay down the law correctly and has to be overruled.

17. To conclude, the answer to the question posed at the outset is rendered in the affirmative and it is held that publication in the official gazette is the *sine qua non* of the notification envisaged under Section 4 of the Land Acquisition Act, 1894.

18. Now once it is held as above a *fortiori* the publication of the notification in the official gazette must necessarily precede the public notice of the substance thereof at convenient places in the locality. Therefore, a prior public notice in the locality cannot validly precede the publication of the notification in the official gazette and indeed is not so contemplated at all by Section 4 of the Act.

19. In the present case, it is the admitted position of the respondents themselves that public notice in the locality was given on March 19, 1980 whilst publication in the gazette was two days later on March 21, 1980. The whole case of the respondents was sought to be rested on the ground that no prejudice had been caused to the petitioners. This stand has already been held to be untenable in this context by me. The writ petitioners are consequently entitled to succeed and the impugned notification, annexure P/2, is hereby quashed. This, however, would in no way preclude the respondents from issuing a fresh notification and proceed in accordance with law, if so advised. The writ petition is hereby allowed but the parties are left to bear their own costs.

S. P. Goyal, J.

20. This petition under Article 226 of the Constitution was referred to the Full Bench as the correctness of the decision in *Battan Singh* v. *State of Punjab and another*, (8) was challenged by the respondents. State of Punjab issued a notification under section 4 of the Land Acquisition Act (for short, called the Act) on February 28, 1980 which was published in the extra-ordinary gazette on March 21, 1980 notifying its intention to acquire land measuring 30 *Kanals*, 13 *marlas* for the construction of 130 K.V. sub-station at Bhogpur. The validity of the said notification has been challenged by the petitioners, owners of a part of the said land, on the ground that its substance was not published simultaneously and instead it was so done on March 19, 1980 two days prior to the date when it was published in the gazette. The contention of the learned counsel for the petitioners is fully supported by the decision in *Battan Singh's case* (supra) the ratio of which appears to be that unless the orders passed by the State Government is published in the official gazette it cannot be said to be a notification.

21. The answer to the question involved primarily depends on the interpretation of the word, "notification" in section 4(1) of the Act which reads as under:—

> "4(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, a notification to that

(8) 1981 P.L.J. 375.

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 the convenient places in the said locality."

In support of his contention, the learned counsel for the petitioners has put forth two-fold argument, namely, that the decision of the government does not acquire the character of the notification till it is published in the official gazette and that the words, "such notification" in section 4(1) refer to the notification as published in the official gazette and not to the one drawn by the government. Support for the first argument was sought from the definition of the word, "notification" as contained in section 2(36) of the Punjab General Clauses Act, 1898 and the decision of the Supreme Court in *Mahendra Lal Jaini* v. *State of Uttar Pradesh and others,* (9). Section 2(36) provides that "notification" shall mean a notification published under proper authority in the official gazette. According to this provision, the word "notification" wherever referred to in any Punjab Act shall mean only that notification which has been published under proper authority in the Punjab Gazette. There is no such restricted meaning given to the word, "notification" by the Central General Clauses Act. Resort, therefore, cannot be had to the definition of the "notification" in the Punjab General Clauses Act while interpreting the provisions of section 4 of the Act which is a Central Act. Otherwise also, the words of clause (36) read with the opening words of section 2 do not say that notification will become a notification only when it is published in the official gazette. All that it implies is that where the word, "notification" appears in any Act it would only mean such notification as published in the official gazette. In common parlance and according to the dictionary meaning, the notification is the act of notifying. So, whatever is meant to be notified is a notification and it cannot be said by any stretch of reasoning that a notification remains only an order of the government unless it is published in the official gazette. The effect of the provisions of clause (36) is only that a notification would not be effective and taken notice of unless it is notified in the official gazette. A similar question came directly for interpretation before a Division Bench of this Court in *Kishori Lal Batra* v. *The Punjab State and another,* (10), where a notification that a seat has fallen vacant in the Municipality was published in the

(9) AIR 1963 S.C. 1019.

(10) AIR 1958 Pb. 402.

gazette on June 4 and the notification filling the vacancy was dated June 3, 1948. The argument raised was that the notification of the vacancy having been published only on June 4, 1948, the notification filling the vacancy was obviously void. The contention was rejected with the following observations :

> "The appellant's learned counsel sought to make a distinction on the ground that while directing the vacation of seats under clause (e) of section 14, the Government had to act by notification and under clause (36) of section 2 of the Punjab General Clauses Act (Punjab Act No. 1 of 1898) 'notification' shall mean 'a notification published under proper authority in the Official Gazette' so that unless publication was made the notification could not be deemed to have taken effect. Clause (36) does not say that the notification shall have effect only from the date when it is published in the Official Gazette. All that it requires is such publication, and according to the routine in Government offices the notification takes effect from the date it is issued which must usually be some time before it can be actually printed in the Gazette."

From a bare reading of the above observation it is evident that the Bench was of the view that a notification is complete and effective when it is drawn and signed by the proper authority and its publication in the Official Gazette is just a mode of notifying it to the general public and the person concerned.

22. As regards the observations of the Supreme Court in *Mahendra Lal Jaini's case* (supra) it may be noticed that the same have to be understood in the context those were made. What happened there was that on March 23, 1955, the Government of Uttar Pradesh issued a notification under Section 4 of the Indian Forest Act which was duly published in the Official Gazette declaring that it was decided to constitute Asarori village including the land in dispute a reserved forest. Thereafter the Government issued an order to all Conservator of Forests, Divisional Forest Officers and District Forest Officers as well Secretary, Board of Revenue to the effect that a number of representations have been made to the Government by the claimants of the land situate in the erstwhile private forests that they are owners and the Governor on careful consideration had decided that all such lands in respect of which

valid legal reclamation leases were executed by the owners, should be released in favour of the lessees. Later on this order was cancelled by a latter order dated July 7, 1958 and both these orders were never published in the government gazette. These orders were stated to be not notifications by their Lordships of the Supreme Court and it was further observed that notification under section 4 of the Forest Act is required to be published in the gazette and unless it is so published it is of no effect. Obviously the orders issued by the Government were not in the nature of notification at all and were simply directions issued to the various Officers of the Forest Department. Further observation equally is of no help because all that the Supreme Court has said is that a notification under section 4 required to be published in the official gazette cannot be effective unless it is so published and it was never said that a notification would become only a notification when published in the official gazette.

The second limb of the argument that the words, "such notification" in section 4 refer to the notification published in the official gazette is equally untenable. The words, "such notificatoin" obviously refer to the word, "notification" used in the earlier part of the said section. The earlier words are whenever it appears to the appropriate Government that the land in any locality is likely to be needed for any public purpose, a notice to that effect shall be published in the official gazette. There is thus nothing in this section which would indicate that the publication of the substance of the notification in the locality can only be made after it is published in the official gazette. What that section requires is, notification is to be published in the official gazette and its substance notified in the locality where the land is situate. This shows that a notification is that which is issued by the Government and the latter provisions only prescribe two modes of its publication.

The matter can be looked at from another point of view also, namely that the publication of the substance of the notification in the locality before it is published in the official gazette, can under no circumstance be prejudicial to the landowners. The purpose of the publication of the substance of the notification in the locality is to notify to the landowners that the Government intends to acquire their land and if they so desire they may file their written objections, under section 5-A of the Act to the proposed acquisition. The limitation for filing of the

objections starts from the publication of the notification in the official gazette and not from its publication in the locality. The prior publication of the substance of the notification in the locality, therefore, under no circumstance can be prejudicial to the rights of the landowners in any manner whatsoever. The learned counsel for the petitioners, however, urged that the provisions of section 4(1) of the Act as held by the Supreme Court in *Narinderjit Singh* v. *The State of U.P. and others*, (11), being mandatory its violation cannot be overlooked on consideration of the absence of prejudice to the rights of the landowners. It cannot be disputed after the said decision of the Supreme Court that the provisions of section 4(1) are mandatory and without complying with its provisions as to the publication of the notification, the Collector cannot proceed to acquire the land. But the Supreme Court never held that any irregularity in the publication such as the one involved here would also vitiate acquisition proceedings or render the notification void. As notice of the substance of the notification published in the official gazette was given at convenient places in the said locality it cannot be said that the provisions of section 4(1) of the Act were not complied with simply because notice in the locality was given two days prior to the date when the notification was published in the official gazette. The validity of the impugned notification, therefor, cannot be assailed on either of the two contentions raised by the petitioners.

23. For the reasons recorded above, with utmost respect to the learned Chief Justice, I regret my inability to agree with the proposed order and in my view this petition is liable to be dismissed.

Order of the Court.

24. In consonance with the order of majority, the writ petition is allowed and the impugned notification, annexure P. 3, is hereby quashed. This, however, would in no way preclude the respondents from issuing a fresh notification and proceed in accordance with law, if so advised. The parties are left to bear their own costs.

S. S. Sandhawalia, C.J.
S. P. Goyal, J.
I. S. Tiwana, J.

N.K.S.

(11) AIR 1973 S.C. 552.

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