(16) On the face of it, the above quoted observations do not give any indication of the material which was considered by respondent No. 3 for forming an opinion that the sale deeds had been under valued. The respondents have tried to supply this omission by making a statement in the counter affidavit that respondent No. 3 had made enquiries regarding the market value of the land in the area. If it could be proved that respondent No. 3 did make enquiries about the market value of the land in the area, we may have upheld the orders of reference notwithstanding the fact that mention of such enquiries has not been made therein. However, as the respondents have not produced any document to substantiate the assertion made in the written statements, we are inclined to agree with the learned counsel for the petitioners that the orders of reference were passed without application of mind and they are liable to be quashed being *ultra vires* to Section 47-A(1) of the 1899 Act (as applicable to the State of Haryana).

(17) For the reasons mentioned above, the writ petitions are allowed. Orders of reference passed by respondent No. 3 are declared illegal with the direction that within 2 months of the receipt of copy of this order, he shall pass fresh order after considering the material relevant for forming an opinion that the price mentioned in the sale deeds is less than the market value of such land. However, it is made clear that any observation made in this order shall not be construed as an impediment in the making of fresh order of reference. We further direct that the sale deeds shall not be released till the passing of fresh order by respondent No. 3 and if he decides to make reference under Section 47-A(1) of the 1899 Act, then the instruments shall not be released till the final determination is made by respondent No. 2.

R.N.R.

Before Jawahar Lal Gupta & K.S. Garewal, JJ.

VINOD TAYAL,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 5271 of 1999

15th September, 2000

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4, 6, and 9—State Government taking property of the petitioner on lease—Government not vacating the property even after

the expiry of the period of the renewed lease and another fresh lease—Government also stopping payment of rent—Petitioner forced to file number of eviction applications on account of non-payment of rent—Conduct of the Government not fair—Petitioner's land sought to be acquired—Notifications u/ss 4 and 6 issued in the newspapers prior to publication in the official Gazette—Action of the respondents does not conform to the requirements of law—Notifications u/ss 4 and 6 and also notice u/s 9 quashed—Writ allowed while awarding a sum of Rs. 1 lac as compensatory costs to the petitioner.

Held, that the notification u/s 4 was published in the newspapers on 16th November and 17th November, 1996. It was published in the Gazette on 19th November, 1996. Similarly the notification u/s 6 was published in the newspapers on 17th May, and 20th May, 1997. It was published in the official Gazette on 27th May, 1997. This was not in conformity with the provisions of the Act.

(Para 15)

Further held, that in our country, the Government considers matters on its files. Any decision taken by the Government gets sanctified only by its publication in the Official Gazette. Till then, it is only a proposal. A decision on the file if not formally published can be changed at any time. In cases relating to compulsory acquisition of public property, it is only on publication in the Official Gazette that the Government's decision becomes public. It is only thereafter that it becomes enforceable and confers rights or imposes duties. Till the Government publishes its decision in the Official Gazette, its intentions cannot be certain and the order cannot be enforced. No authority can enter upon the land. If a mere proposal on the file is published in the Press either because it has been discretely leaked out or even otherwise, it would not be of any consequence, for the citizen would have nothing to enforce or to follow. In a country where the Press is free, the Government cannot be held bound by something which merely appears on the pages of a newspaper. However, when the Government's decision is officially gazetted, it can be enforced. That is why the Act requires the publication of what has appeared in the Gazette. This is clearly inferable from the language of the statute.

(Para 17)

Further held, that the dates of publication in the Gazette and newspapers may be different on account of the manner in which the govermental officials function. Yet, it has to be remembered that the citizen has a very limited right. An opportunity to file objections. It is to effectuate the right that the Parliament has introduced the provision

for publication in the Press by an amendment of the existing provision. The legislative intent and the evil sought to be remedied have to be kept in view.

(Para 18)

Further held, that the impugned notifications have not been published in accordance with the provisions of Sections 4 and 6, and do not conform to the requirements of law. These are, consequently, vitiated. These are, thus, quashed. As a result, the further proceedings which were initiated by the issue of a notice u/s 9 cannot be sustained. These would also be quashed.

(Paras 21 and 22)

Further held, that a huge property worth a substantial amount had been taken on lease for a paltry sum. Even after the expiry of the period of the renewed lease, it was not vacated in the year 1955. In the year 1960, the proprietor was coerced to execute a lease deed for five years on the ground that the Deputy Commissioner's residence was to be constructed. After the construction had been completed, the Settlement Officer was made to occupy the premises. He had vacated within six months. Yet the Deputy Commissioner did not vacate the premises. Still further, the prevalent rate of rent viz. Rs. 86 per month was also not paid to the petitioner. In the year 1989, when he initiated proceedings, the authorities tendered rent for a period of three years only (out of about 20 years) on the ground of limitation. Thereafter the petitioner had to periodically approach the Court for payment of rent. It was not voluntarily paid to him. Clearly, the State has acted in a manner worse than that in which even an ordinary litigant behaves. We cannot compliment the State for its conduct. It was, at the lowest, unfair and arbitrary. It was misuse of authority. A public authority failed to act for public good. It is a fit case where compensatory costs should be awarded to the petitioner. We assess the costs at Rs. 1 lac. These shall be paid to the petitioner by the respondent State of Haryana.

(Paras 23 and 25)

C.B. Goel, Advocate, *for the petitioner.*

D.P. Singh, DAG, Haryana, *for the respondent.*

JUDGMENT

Jawahar Lal Gupta (O)

(1) The petitioner alleges that the notifications issued by the State Government under Sections 4 and 6 of the Land Acquisition Act, 1894

for acquisition of his land measuring 85 kanals 4 marlas are an abuse of the power under law. He prays that these notifications be quashed. A few facts as relevant for the decision of this case may be briefly noticed.

(2) The story begins with the year 1905. The land measuring 85 kanals 4 marlas alongwith a house thereon was taken by the Government on lease for a period of 30 years for the residence of the Deputy Commissioner, Hissar. At the expiry of the term, the lease was renewed for a further term of 20 years. It expired on 31st March, 1955. The petitioner's predecessor-in-interest requested the State Government to vacate the premises. It was not vacated. A fresh lease deed was executed with effect from April, 1960. It was to be for a period of five years or till such time as the new house proposed to be constructed for the Deputy Commissioner was actually built. A copy of this lease deed is at Annexure P.3 with the writ petition. The period of five years expired. The residence for the Deputy Commissioner was not completed. On 8th January, 1968, the Deputy Commissioner requested the petitioner's father to be "good enough to let the house remain on lease with Government on the same terms and conditions as of the previous lease deed".

(3) The Deputy Commissioner's residence was completed. Yet, the house was not vacated. *Vide* letter dated nil, a copy of which is at Annexure P. 6 with the writ petition, the Deputy Secretary (Revenue) communicated that "the newly constructed bungalow for Deputy Commissioner's residence has been earmarked for the residence of the Settlement Officer, Hissar. It will thus not be possible to vacate your Bungalow now being occupied by the Deputy Commissioner, Hissar till Settlement operations are over and he is in a position to move to the newly constructed house."

(4) The Settlement Officer vacated the house in or about the year 1968-69. However, the house was still not vacated. The Government set up the tourism complex in the premises. To add insult to the injury, the Government had also stopped paying the paltry sum of Rs. 86 per month which had been fixed as rent for the building and the huge piece of land. In August, 1989, the petitioner filed a petition claiming arrears from September, 1968. The State Government tendered rent for a period of three years. It was pleaded that the petitioner was not entitled to claim rent for a period beyond three years. The petitioner filed a petition for fixation of fair rent. The Rent Controller determined the amount at Rs. 184 per month,—*vide* his order dated 1st February, 1996.

(5) On 17th April, 1999, the petitioner was served with a notice under Section 9. He, thus, came to know that notifications under Sections 4 and 6 of the Land Acquisition Act had been issued on 12th November, 1996 and 30th April, 1997. Soon thereafter, he approached this Court through the present writ petition on 22nd April, 1999. The petitioner alleges that the notifications had been issued on account of extraneous considerations as his cousins had always opposed the then Chief Minister of the State. He further alleges that he had been agitating for the vacation of the premises since the year 1965. The land is not being acquired for any public purpose. The provisions of Sections 4 and 6 of the Act have not been complied with. Thus, the impugned notifications as also the notice under Section 9, copies of which are on record as Annexures P.7 to P.9 cannot be sustained. He prays that these be quashed.

(6) A written statement has been filed on behalf of the State Government and the other respondents by Mr. Apoorva Kumar Singh, Deputy Commissioner, Hissar. A preliminary objection has been raised that the writ petition is belated. However, it has not been pressed on behalf of the respondents at the stage of arguments. In fact, none of the preliminary objections have been pressed. On merits, it has been averred that "after the expiry of the lease deed, the respondent State of Haryana continued enjoying the status of tenant at will. The petitioner had also instituted application under Section 13 of the Act..... for the eviction of respondent State of Haryana.....". With regard to the payment of rent, it has been averred that "as per lease deed..... the rent was fixed for the property in question for a sum of Rs. 86 but in eviction petition (Annexure R/II/T) the petitioner had claimed rent for the premises in question @ Rs. 149 per month besides house tax. The respondent State of Haryana had tendered the entire due rent admissible as per law before Rent Controller. The petitioner had also instituted number of eviction applications against the respondent State of Haryana on the ground of non-payment of rent and the respondent State of Haryana has been tendering the due rent etc. admissible as per law in the Court of Rent Controller, Hissar." With regard to the petitioner's allegation of political bias, it has been averred that "para 14 of the petition is denied for want of knowledge that Shri Balwant Rai Tayal and Shri Baldev Tayal are relative/kith and kin of the petitioner. The rest of the para is denied for want of knowledge. The petitioner has not attached any affidavit of Shri Balwant Rai Tayal and Shri Baldev Tayal that they always opposed Ch. Bansi Lal, the then Chief Minister, Haryana or they were detained in MISA because of Ch. Bansi Lal. The petitioner has not joined Ch. Bansi Lal, the then C.M., Haryana as party to this petition

and as such these allegations may not be read in this petition." The petitioner's allegation that he came to know of the impugned notifications on 17th April, 1999 has also been controverted. It has been averred that he had come to know of the notifications on 4th September, 1997. The Land Acquisition Collector had given due publication of the notifications as required by law. The petitioner had appeared before the Land Acquisition Collector on 20th April, 1999 and requested for adjournment. On these premises, the respondents maintain that the writ petition should be dismissed.

(7) The petitioner has filed a replication to controvert the averments in the written statement.

(8) Counsel for the parties have been heard.

(9) It is the admitted position that the notification under Section 4 was published in the Government Gazette of 19th November, 1996. It was also published in a vernacular paper *viz.* 'Punjab Kesari' on 16th November, 1996. A day later, it was published in 'The Tribune of 17th November, 1996. The proclamation had been made in the locality vide report dated 29th January, 1997, a copy of which has been produced as Annexure R/3 with the written statement. Similarly, the notification under Section 6 was published in the Government Gazette of 27th May, 1997. About 10 days prior thereto, the notification had been published in a vernacular paper viz. 'Jan Satta' on 17th May, 1997. It had also been published in 'The Tribune' of 20th May, 1997. The proclamation was made in the locality on 26th June, 1997. Counsel for the parties have addressed arguments on these admitted facts.

(10) On behalf of the petitioner, it has been contened by Mr. C.B. Goel that there was no compliance with the provisions of Section 4 and 6. Learned counsel submits that the publication in the Press has to follow and not precede the publication in the Gazette. On the other hand, Mr. D.P. Singh, DAG, Haryana, appearing for the respondents has contended that the communications were sent simultaneously for publicaion in the Gazette as also in the Press. The notifications were published in the papers before they were published in the Gazette. There has been substantial compliance with the requirements of Sections 4 and 6. Thus, there is no legal infirmity so as to call for any interference.

(11) The short question that arises is—Have the provisions of Sections 4 and 6 been duly complied with in the present case ? In other words, does the action of the respondents in publishing the notifications in the Gazette after their publication in the Press conform to the requirement of law ?

(12) The provisions of Section 4(1) may be noticed. It provides as under :

> **"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 locality (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)."

(13) A perusal of the above provision shows that whenever the Government considers that land in any locality is needed for a public purpose, it has to publish "a notification to that effect.....in the Official Gazette". The purpose is obvious. Firstly, the Government has to be satisfied about the need for acquisition of land. Then it has to make its intention public by publication in the official gazette. Since the Gazette may not reach every house or individual, the law had initially provided that the substance of the notification shall also be published in the locality. Learning from experiene, the Parliament made an amendment in the provision in the year 1984. It was provided that the notification shall also be published "in two daily newspaper circulating in that locality of which atleast one shall be in the regional language....." In the very scheme of things, the publication in the Press is of the notification which has appeared in the Gazette.

(14) The provisions of Section 6 are also indicative of a similar intention. Section 6(1) postulates that when the Government is satisfied that "any particular land is needed for a public purpose....., a declaration shall be made to that effect....." In Clause (2), it has been provided that such a declaration "shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate....." The obvious intention is that the decision of the Government must appear in the Official Gazette and also in two daily newspapers. What is the position in the present case ?

(15) It is not disputed that the notification under Section 4 was published in the newspapers on 16th November and 17th November, 1996. It was published in the Gazette on 19th November, 1996. Similarly, the notification under Section 6 was published in the

newspapers on 17th May, and 20th May, 1997. It was published in the Official Gazette on 27th May, 1997. In our view, this was not in conformity with the provisions of the Act.

(16) Mr. D.P. Singh, learned counsel for the respondents contends that the purpose of publication is to inform the public. The sequence in which the publication is made is of no consequence. Thus, it does not matter whether the Government's intention is first made public in the papers and then in the Official Gazette. Is it so ?

(17) In our country, the Government considers matters on its files. Any decision taken by the Government gets sanctified only by its publication in the Official Gazette. Till then, it is only a proposal. A decision on the file if not formally published can be changed at any time. In cases relating to compulsory acquisition of public property, it is only on publication in the Official Gazette that the government's decision becomes public. It is only thereafter that it becomes enforceable and confers rights or imposes duties. Till the Government publishes its decision in the official Gazette, its intentions cannot be certain and the order cannot be enforced. No authority can enter upon the land. If a mere proposal on the file is published in the Press either because it has been discretely leaked out or even otherwise, it would not be of any consequence, for the citizen would have nothing to enforce or to follow. In a country where the Press is free, the Government cannot be held bound by something which merely appears on the pages of a newspaper. However, when the Government's decision is officially gazetted, it can be enforced. That is why the Act requires the publication of what has appeared in the Gazette. This is clearly inferable from the language of the statute.

(18) It is true that the dates of publication in the Gazette and newspapers may be different on account of the manner in which the governmental officials function. Yet, it has to be remembered that the citizen has a very limited right. An opportunity to file objections. It is to effectuate the right that the Parliament has introduced the provision for publication in the Press by an amendment of the existing provision. The legislative intent and the evil sought to be remedied have to be kept in view.

(19) Mr. C.B. Goel has placed reliance on the decision of this Court in *Kashmiri Lal and others* v. *The State of Punjab and another* (1) and *Rakha Singh and others* v. *State of Haryana through Secretary, Public Works Department (B&R) Civil Secretariat, Haryana, Chandigarh and*

(1) 1983 PLJ 549

others (2). Mr. D.P. Singh has attempted to distinguish these decisions. The ratio of the Full Bench judgment in the former case and the Single Bench in the latter clearly support the claim of the petitioner.

(20) In view of the above, we answer the question as posed above in favour of the petitioner. We hold that the impugned notifications have not been published in accordance with the provisions of Sections 4 and 6.

(21) Counsel for the parties have not pressed the other points.

(22) In view of our decision on the question as posed above, we find that the notifications at Annexures P.7 and P.8 do not conform to the requirement of law. These are, consequently, vitiated. These are, thus, quashed. As a result, the further proceedings which were initiated by the issue of a notice under Section 9 cannot be sustained. These would also be quashed. As further proceedings had been stayed by an interim order, there has been no award.

(23) Before we part with the case, we feel constrained to point out that the conduct of the State has not left us with a happy feeling. It is the admitted position that a huge property worth a substantial amount had been taken on lease for a paltry sum. Even after the expiry of the period of the renewed lease, it was not vacated in the year 1955. In the year 1960, the proprietor was coerced to execute a lease deed for five years on the ground that the Deputy Commissioner's residence was to be constructed. After the construction had been completed, the Settlement Officer was made to occupy the premises. He had vacated within six months. Yet the Deputy Commissioner did not vacate the premises. Still further, the prevalent rate of rent *viz.* Rs. 86 per month was also not paid to the petitioner. In the year 1989, when he initiated proceedings, the authorities tendered rent for a period of three years only (out of about 20 years) on the ground of limitation. Thereafter, the petitioner had to periodically approach the court for payment of rent. It was not voluntarily paid to him. As already noticed, in the written statement, the plea taken on behalf of the respondents is that "the petitioner had also instituted number of eviction application against the respondent State of Haryana on the ground of non-payment of rent and the respondent State Government has been tendering the due rent etc. admissible as per law in the court of Rent Controller, Hissar." Clearly, the State has acted in a manner worse than that in which even an ordinary litigant behaves. We cannot compliment the State for its conduct. It was, at the lowest, unfair and arbitrary. It was misuse of authority. A public authority failed to act for public good.

(2) 1988 (2) PLR 428

(24) Counsel for the petitioner states that nothing has been paid for the last many years. Not even at the rate determined by the Rent Controller.

(25) Taking the totality of circumstances into consideration, we are satisfied that it is a fit case where compensatory costs should be awarded to the petitioner. We assess the costs at Rs. 1 lac. These shall be paid to the petitioner by the Respondent State of Haryana. The writ petition is, accordingly allowed.

R.N.R.

Before Jawahar Lal Gupta & K.S. Garewal, JJ

VIJAY GOPAL DOGRA,—*Petitioner*

versus

PUNJAB & HARYANA HIGH COURT AND ANOTHER,—*Respondents*

C.W.P. No. 525 of 1999

25th September, 2000

Constitution of India, 1950—Art. 226—High Court of Punjab & Haryana Lawyers Chambers (Allotment and Occupancy) Rules, 1985 (amended as the High Court of Punjab & Haryana Lawyers Chambers (Allotment & Occupancy) Rules, 1988—Rls. 6, 9, 10, 11, 12, 14 and 17—Allotment of chambers constructed in the premises of the High Court—Petitioner as an associate member of a chamber allotted to original allottee—Whether an allottee can disassociate his colleagues from the use of the chamber—Held, yes—An original allottee can associate with him up to 7 members of his choice & can also disassociate any one with the previous approval of the Hon'ble Chief Justice—An associate member has no enforceable right to remain associated with the original allottee.

Held, that the allotment of chambers is within the sole discretion of the Chief Justice. The Advocate to whom a chamber has been allotted can associate with him up to seven members of his choice but only with the previous approval of the Chief Justice. This shows that the discretion of the Chief Justice is paramount in respect of allotment of the chambers and the association by the allottee of up to seven Advocates of his choice. The allottee cannot associate with him any Advocate unless he has the previous approval of the Chief Justice. From this it would follow that an allottee can also disassociate his colleagues from the use of Chamber. Just as the association of up to