

(12) For the reasons recorded above, this petition fails and is dismissed with costs. However, the tenant-petitioner is allowed two months time to vacate the premises provided the arrears, if any, and the advance rent for two months is paid or deposited within a fortnight.

Sd./- J. V. Gupta, Judge.

28th February, 1980.

N. K. S.

Before S. S. Sandhawalia, C.J. and G. C. Mital, J.

BISHNA ALIAS BISHAN SINGH,—Appellant.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 6560 of 1975

February 29, 1950.

Land Acquisition Act (I of 1894)—Sections 4, 5-A and 6—Publication of the substance of notification under section 4 in the locality delayed—Objections by affected parties, however, filed within time and disposed of on merits—Validity of the notification—Whether could be challenged by such objection on the ground of delay in publication.

Held. that the purpose of the publication of the notification in the locality was to provide an opportunity to the land-owners to file objection under section 5-A of the Land Acquisition Act 1894. Therefore, it clearly goes to show that if in spite of delay a land-owner is able to file objections within the prescribed period of 30 days and those objections are heard on merits, the land-owner would not be entitled to challenge the notification under section 4 of the Act merely on the ground of delay and such a notification under section 4 would not be liable to be quashed. (Para 6).

Akhara Brahm Buta, Amritsar v. State of Punjab and others. 1978 P.L.R. 425 **OVERRULED.**

Appeal Under Section 10 of the Letters Patent against the judgment dated 30th January, 1976 passed by Hon'ble Mr. Justice A. S. Bains, in Civil Writ Petition No. 6560 of 1975 praying that the appeal be accepted and the judgment be set aside and also praying

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That the notification under Section 4 of the Land Acquisition Act and all other consequent proceedings taken there under for the acquisition of land be quashed.

G. S. Grewal, Advocate, for the Appellant.

N. S. Bhatia, A.A.G., Punjab, for the Respondents.

JUDGMENT

Gokal Chand Mital, J.

1. The State of Punjab issued notification, dated 11th of September, 1975, under section 4 of the Land Acquisition Act (hereinafter called the Act), which was published in the Official Gazette the same day, a copy of which is annexure P-2. The publication of the notification was made in the locality admittedly on 1st of October, 1975. Bishna, one of the landowners, filed objections on 10th of October, 1975, under section 5-A of the Act. Section 6 notification was published on 29th of October, 1975, a copy of which is annexure P-3. Thereafter, notice under section 9 of the Act was issued to him, a copy of which is annexure P-4.

2. On 6th of November, 1975, Bishna filed a writ petition under Article 226 of the Constitution of India, challenging notifications P-2 and P-3 and the notice P-4 on the ground that the publication of the notification under section 4 of the Act was not made in the locality simultaneously with the publication of the same in the Official Gazette and the publication made twenty days thereafter invalidated the notification, with the result that the notifications under sections 4 and 6 as also the notice under section 9 deserve to be quashed. In the written statement filed by the State, the facts stated in the writ petition were admitted and no explanation was offered for not publishing the notification in the locality soon after 11th of September, 1975. However, it was stated that since the petitioner filed objections under section 5-A of the Act on 10th of October, 1975, and the same having been duly considered, no writ petition was competent even if there was some defect in publication of the notification in the locality. A learned Single Judge of this Court dismissed the writ petition on 30th of January, 1976, being of the opinion that the publication was not belated as

the allegation made in the writ petition was denied by the State. The petitioner has come up in appeal under clause X of the Letters Patent.

3. Shri G. S. Grewal, the learned counsel for the appellant, has urged that the learned Single Judge was in error in holding that twenty days' unexplained delay in publication of the substance of the notification in the locality was not belated and the case was fully covered by the Full Bench decision of this Court in *Rattan Singh and another v. The State of Punjab and others* (1). On the basis of the Full Bench it was urged that the impugned notifications published under sections 4 and 6 of the Act deserve to be quashed.

4. On the other hand, Shri N. S. Bhatia, Assistant Advocate-General, Punjab, has urged that it is true that there is unexplained delay of twenty days in publication of the substance of the notification under section 4 of the Act in the locality but that delay has paled into insignificance as the landowner filed objections under section 5-A of the Act, within the period of limitation from the publication of the notification in the Official Gazette, which were duly considered on merits and were rejected. On the aforesaid basis, it is urged that the landowner was entitled to a notice of the issue of notification under section 4 for purposes of filing of objections under section 5-A of the Act and since he got the notice, although twenty days late, yet he availed of the time for filing objections within the period of limitation and having availed of the same, no writ petition would be competent to challenge the notification under section 4 merely on the ground of delayed publication in the locality. In support of his submission, reliance has been placed on a Single Bench judgment of K. S. Tiwana, J. in *Shmt. Bhagwati v. The State of Haryana and others*, (2), which was upheld in Letters Patent Appeal No. 44 of 1978, dismissed *in limine* on 6th of February, 1978.

5. The learned counsel for the appellant, while replying to the stand taken by the learned Assistant Advocate-General, urged that the provisions of section 4 are mandatory and once the unexplained delay in publication of the substance of the notification under section 4 in the locality is shown, the notification will have to be quashed in

(1) 1976 P.L.R. 545.

(2) C.W.P. 3326/76, decided on 22nd December, 1977.

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spite of the fact that the appellant filed objections within the period of limitation and in support of his argument, he has relied on a decision of M. R. Sharma, J., in *Akhara Brahm Buta, Amritsar v. State of Punjab and others* (3), as also a decision of the Supreme Court in *Narinderjit Singh v. The State of U.P. and others* (4).

6. The Full Bench of this Court in *Rattan Singh's case* (supra), noticed the Supreme Court decision in *Narinderjit Singh's case* (supra), and came to the following conclusion in para 15 of its judgment:—

“15. The object of giving publicity of the substance of the notification in the concerned locality is to make known to the affected persons the intention of the Government to acquire land so as to give opportunity to the landowners to file objections under section 5-A(1) of the Act against the proposed acquisition. In our country, illiterate people cannot be expected to have knowledge of the intended acquisition merely from the publication made in the official Gazette. The Legislature purposely made the provision of giving public notice of the substance of such notification at convenient places in the concerned locality with a view more or less to give direct information of the proposed acquisition, to the affected persons”.

The Full Bench also considered that if publication in the concerned locality is not made simultaneously or immediately and some time is taken in doing so, it would be for the State to show that whatever time was taken in publishing the substance of the notification in the concerned locality was the minimum time taken for this purpose. Therefore, the emphasis by the Full Bench was that the idea of publication in the locality was to provide an opportunity to the landowners to file objections under section 5-A of the Act and the delay if any can be explained by the State in a given case. Therefore, it clearly goes to show that if in spite of delay a landowner is able to file objections within the prescribed period of thirty days and those objections are heard on merits, he would not be entitled to challenge the notification merely on the ground of delay.

(3) 1978 P.L.R. 425.

(4) A.I.R. 1973 S.C. 552.

7. The point that if objections are filed within the period of limitation in a case when publication of the substance of the notification in the locality is admittedly delayed, did not come up directly before the Supreme Court, but it came up before two learned Single Judges of this Court who took different views. However, in *State of Mysore v. Abdul Razak Sahib*, (4), a somewhat similar point came up for consideration. In that case, the notification under section 4 was published in the Official Gazette on 17th of August, 1961, but was published in the locality on 1st and 9th November, 1961, and a landowner, who was respondent before the Supreme Court, filed objections under section 5-A on 4th of December, 1961. On behalf of the State an argument was raised before the Supreme Court that section 5-A empowers the interested persons to object to the acquisition of land but it was concluded that such objections could be filed within thirty days from the date of issue of the notification in the Official Gazette and any objections filed thereafter need not be considered as the same are filed after the time stipulated in section 5-A(1) of the Act. In this view of the matter, the objections which were admittedly filed beyond thirty days of the publication of the notification in the Official Gazette were considered to be time barred with the result that the right provided to the landowner to make representation by objection petition under section 5-A of the Act was taken away. The purpose of publication of the notification in the locality was held by the Supreme Court to provide an opportunity to the interested persons to file objections under section 5-A of the Act. It will be useful to quote the relevant passage from para 4 of the judgment:—

“The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under section 5-A, which is very valuable right”.

If their Lordships of the Supreme Court were of the view that the notification under section 4 would be bad in a case where publication of the notification in the locality was delayed but the objections under section 5-A were filed within thirty days of the

(4) A.I.R. 1973 S.C. 2361.

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publication of the notification in the Official Gazette, then the reasoning that the objections have to be filed within thirty days of the publication of the notification in the Official Gazette and not from thirty days from the publication in the locality was not necessary. Therefore, the Supreme Court was impliedly making a distinction between the filing of objections within thirty days of the publication of the notification in the Official Gazette and those filed beyond the period of limitation. In one case, where the objections are filed in case of delayed publication in the locality but within the specified period of thirty days, the reasoning to hold the notification valid would be that the objector has availed of the opportunity and the delayed publication has not caused any prejudice to him to question the notification under Article 226 of the Constitution. In the other case, where no objections are filed in a case of delayed publication in the locality, the landowner will be successful in impugning the acquisition, as he is deprived of the valuable right to file objections because of the illegal act of the State in late publishing the notification in the locality and under those circumstances this Court would quash the notification. To our mind, this seems to be a reasonable view to take in this case.

8. In *Narinderjit Singh's case* (supra), no such point arose for consideration as is before us although it was held that where emergency provisions are invoked taking away the right of filing objections under section 5-A of the Act, yet the State is duty bound to comply with the mandatory provision of section 4 of publishing the notification in the locality. The view which we are taking does not come in conflict with the aforesaid decision of the Supreme Court.

9. K. S. Tiwana, J., in *Shmt. Bhagwati's case* (supra), held as follows:—

“The delay is not of prime importance in every case. If the proclamation in the locality is not simultaneous to the publication of the notification or immediately thereafter and the persons interested in the land to be acquired are unable to file the objections within thirty days of the notification, because of their ignorance about the acquisition proceedings, then the delay becomes fatal because of the violation of the mandatory provisions of section 4 of the Act. But, this cannot be so held in every case of

delayed proclamation. The purpose behind such a notice, which is to be given through such a publication, is that the interested persons should know that the land is being acquired and they can prefer objections under section 5-A, if they so choose. It is an intimation to the interested persons of the intentions of the authorities to enter upon the land, so that they may utilise that information to exercise their valuable right under section 5-A of the Act for filing objections. In the absence of such a publication, the interested persons may not be able to file objections about the acquisition proceedings and they are deprived of the rights of representation against the acquisition provided under section 5-A of the Act. If in spite of delay the interested persons file objection within time, then they cannot possibly take any objection against such a delay. They lose every ground for criticism because they have exercised their rights and their representations are considered by the authority appointed under the Act. In the case in hand, the petitioner raised objections,—*vide* Exhibit P-2 within time, which, according to the return of the State, were considered by the appropriate authority. I do not agree with the learned counsel for the petitioner to quash the notifications on this ground, I draw support from *Mahal Singh and others v. The State of Punjab and others* (5), in which it was observed:

‘The appellants having in fact become aware of the notification within time and having admittedly filed objections under section 5-A of the Act, it is wholly immaterial whether some of them were or were not in the village at the time of the proclamation’.

“In that case, when the interested persons had filed objections, the notification was upheld as valid”.

We approve of the aforesaid observations.

10. Letters Patent Appeal No. 44 of 1976 was filed against the aforesaid decision of K. S. Tiwana, J., which was dismissed *in limine*

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on 6th of February, 1978, by S. S. Sandhawalia and P. C. Jain, C.J., and, therefore, that decision had the approval of the Letters Patent Bench also.

11. For the view of law we have taken above, the decision of the learned Single Judge *Akhara Brahm Buta, Amritsar v. State of Punjab and others* (supra), would not be laying down correct law and is hereby over-ruled.

12. For the reasons recorded above, since the appellant had filed objections within the period of thirty days from the date of publication of the notification in the Official Gazette, which were duly considered, we hold that he is not entitled to impugn the notification merely on the ground that the same was published in the locality after undue delay. The letters patent appeal is dismissed but without any order as to costs.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

Before Rajendra Nath Mittal, J.

BAL KISHAN and another,—*Petitioners*

versus

STATE TRANSPORT COMMISSIONER HARYANA and others,—
Respondents.

Civil Writ Petition No. 2065 of 1979.

February 29, 1980.

Motor Vehicles Act (IV of 1939)—Section 55—Large number of applicants for the grant of permits—Grant thereof by draw of lots—Such grant—Whether legal—Granting authority—Whether required to pass a speaking order.

Held, that section 55 of the Motor Vehicles Act, 1939 relates to the procedure for considering applications for public carrier's