situation of the kind depicted. Keeping in view the overall circumstances of the case, the figure of Rs. 75 per mensem arrived at by the first matrimonial Court can safely be termed as reasonable and fair for the time being till altered for proper cause and in due course of time.

(8) As a sequel to the above, this appeal suceeds. The judgment and decree of the first matrimonial Court is modified and the claim of the wife-appellant for alimony is allowed to the extent of Rs. 75 per mensem. She would get it from 3rd November, 1978, the date of filing of the petition, with costs throughout.

S. C. K.

Before D. S. Tewatia and I. S. Tiwana, JJ.

MAN SINGH and others,—*Petitioners*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ No. 3766 *of* 1979.

February 25, 1980.

Land Acquisition Act (1 *of* 1894)—*Sections* 4, 5-*A and* 6—*Notification acquiring land for a specified public purpose issued—Notification under section* 6 *issued few days before the expiry of three years therefrom—No steps taken for a long time to complete the acquisition and pay compensation—Acquisition in such circumstances—Whether can be held to be* bona fide—*Substance of the notification under section* 4 *not published in the locality—Such non-publication—Whether renders the acquisition proceedings invalid.*

Held, that the unconscionable non-action of the Government for the last several years in not taking any step to complete acquisition and payment of compensation to the landowners is only indicative of the fact that the notifications issued under sections 4 and 6 of the Land Acquisition Act, 1894 were in all probability issued with the only object of pegging down the price of the land to be acquired in future to the date on which the notification under section 4 was published and that there was no possible need of the land to be acquired. In such circumstances the landowners are well justified

in assailing the acquisition proceedings on the ground that the notifications were issued not for the *bona fide* purpose of acquisition but for the collateral purpose, that is, to prevent them from claiming the benefit of rise in price of the land sought to be acquired. Thus, the action of the Government in issuing the two notifications was not at all *bona fide* and virtually amounted to abuse of power under the Act particularly when the notification under section 6 which had to be issued within three years of the publication of the earlier notification, was published only a day prior to the expiry of the said period of three years. It is obvious that the Government wanted to gain as much time as it possibly could do under the law. (Paras 6 and 9)

Held, that the publication of the substance of the notification under section 4 of the Act in the locality concerned has to be done without undue loss of time or virtually simultaneously with the publication of the notification and where it is not so done, the proceedings launched through the issuance of such a notification are rendered illegal. (Para 10).

Petition under Article 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—

(a) *issue a Writ of Certiorari or any other appropriate writ, order or direction quashing the Notification, dated 10th of December, 1973, Annexure P-1 and Notification, dated 9th of December, 1976, Annexure P-3* ;

(b) *grant any other appropriate relief to which the petitioners are entitled under the circumstances of the case* ;

(c) *to exempt the petitioners from filing the certified copies of Annexures P-1 to Annexure P-3* ;

(d) *dispense with the service of advance notice of motion on the respondents* ;

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

Roshan Lal Sharma, Advocate, *for the Petitioner.*

G. S. Grewal, Additional, Advocate-General, Punjab, *for Respondents.*

JUDGMENT

I. S. Tiwana, J.

(1) The facts which have led to the filing of this petition under Articles 226 and 227 of the Constitution of India, impugning the two notifications, dated December 10, 1973 and December 9, 1976, issued under sections 4 and 6 respectively of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), are as follows.

(2) The land of the petitioners sought to be acquired is located in village Sherpur Kalan, admittedly a suburb of Ludhiana Town. The State Government,—*vide* notification under section 4 of the Act, Annexure P. 1, expressed its intention to acquire 235.13 Acres of land at public expense for a public purpose, namely, for the setting up of a residential urban estate. Through another notification under section 6 of the Act, Annexure p. 3, the State Government made the requisite declaration that the land specified therein was required for the abovesaid public purpose, that is, the setting up of residential urban estate. It is the admitted position that though this notification under section 6 was issued a day earlier to the expiry of three years' period from the date of publication of the notification under section 4 of the Act, yet no other step whatsoever was taken by the authorities concerned for the completion of the acquisition proceedings under the Act so much so, not even a notice under section 9 of the Act inviting claims of the persons interested in the land to be acquired was issued nor any step worth the name towards the finalisation of the compensation to be awarded for the acquired land was taken. Undisputably the petitioners continue to be in possession of the area notified. The petitioners further allege that the substance of the notification under section 4 of the Act was never published at any place in the locality where the land to be acquired is situated and only a report, Annexure p. 2, containing the contents of the said notification was recorded by the Patwari of the village in his Raznamcha Waqiati on March 15, 1974. Even in this report no mention has been made as to whether the substance of the said notification has at all been published or proclaimed in the locality, what to talk of the mode and manner of the same. It is on these premises that the petitioners assail the above two notifications, Annexures p. 1 and p. 3 with the assertions that (i) the said two notifications were without jurisdiction because there was 'no possible need' of the land for the setting up of an urban estate and the proceedings were commenced not for the purpose for which they may under the law be commenced, but for a collateral purpose, viz., to acqure the land in future at the rates pegged down to the date on which the notification under section 4 was issued and thus the condition precedent to the exercise of the power to acquire the the lands under the Act being absent, all the proceedings including the notifications under sections 4 and 6 respectively, of the Act were invalid, and (ii) there being no compliance of section 4 of the Act, the whole action of the respondents has been rendered void.

(3) So far as the first challenge launched on behalf of the petitioners is concerned, the same is sought to be met in the form of a preliminary objection stated in the return filed on behalf of the respondents to the effect that the Court cannot go into the question as to whether the need or the public purpose specified in the declaration under section 6 of the Act (Annexure p. 3) is genuine or not and thus the *bona fides* of the Government's action cannot be gone into. So far as the second attack on behalf of the petitioners is concerned, it is stated that the substance of the notification under section 4 of the Act was published in the locality in accordance with the law. When was it done, however, is not disclosed. So far as the assertion of the petitioners with regard to the non-taking of any other step towards the completion or finalisation of the proceedings in the form of the assessment of the market price or the compensation of the land and their being still in possession of the land is concerned, it is stated in paragraph 14 of the return that the possession of the land will be taken after completing all the formalities. No mention has been made as to what steps have been taken by the respondents to complete the said formalities or the stage they have reached in the completion of those formalities.

(4) The fact that the above-noted first ground of attack is available to the petitioners in law, cannot be seriously disputed. Their Lordships of the Supreme Court in *Ambalal Purshottam etc.* v. *Ahmedabad Municipal Corporation of the City of Ahmedabad and others* (1), while examining an almost similar contention after holding that in the facts and circumstances of that case there were no good grounds to doubt the *bona fides* of the purpose of acquisition of the land, observed as follows:—

> "We are not hereby to be understood as suggesting that after issue of the notification under sections 4 and 6 the appropriate Government would be justified in allowing the matters to drift and to take in hand the proceedings for assessment of compensation whenever they think it proper to do. It is intended by the scheme of the Act that the notification under section 5 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any unreasonable delay."

(1) A.I.R. 1968 S.C. 1223.

(5) It is thus apparent from the above observation that in a given case the petitioner landowners would be well within their right to show that on the estalished facts of that case, the *bona fides* of the action and the declaration of the State Government as disclosed by the notifications under sections 4 and 6 of the Act, can be gone into. In fact in the above-noted case, it was after examining tne merits and the factual position that their Lordships observed that "we are unable to hold that there is any evidence that the Government of Bombay issued the notification under section 4 of the Land Acquisition Act, not for the *bona fide* purpose of acquisition, but with the object of pegging down prices so that the lands may when needed be obtained at those rates in future". Yet in another case, where this Court had quashed the acquisition proceedings on the grounds of *mala fides*, the Supreme Court, in *The State of Punjab and another* v. *Gurdial Singh and others* (2), while examining the issue as to what is *mala fides* in the province of exercise of power, observed as under:—

> "9. The question then, is what is *mala fides* in the jurisprudence of power ? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power—sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions—is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated, "I repeat...that all power is a trust—that we are accountable for its exercise—that, from the people, and for the people,

(2) A.II.R. 1980 S.C. 319.

all springs, and all must exist". Fraud on power voids the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action *mala fides* or fraud on power vitiates the acquisition or other official act."

(6) Here in this case we are quite convined that the action of the Government in issuing the above two notifications for the purpose disclosed, that is, for the setting up of the urban estate, was not at all *bona fide* and virtually amounted to abuse of power under the Act. As has been stated earlier, it is beyond dispute that no action whatsoever was taken under the Act except the issuance of the two abovesaid notifications Annexures P. 1 and P. 3. The subsequent notification Annexure P. 3 had to be issued within three years of the publication of the earlier notification, Annexure P. 1, in view of the proviso to section 6 of the Act. This was done only a day prior to the expiry of the said period of three years. Thus it is obvious that the Government wanted to gain as much time as it could possibly do under the law. However, subsequent to these notifications nothing whatsoever in the form of issuance of notice under section 9 of the Act or the completion of the assessment of compensation to be awarded or the taking up the possession of the acquired land has been done.

(7) The net result of the issuance of the notification under section 4 of the Act is that on the issue of the said notification, the land in the locality to which the notification applies is in a sense freezed. This freezing takes place in two ways. Firstly, the market value of land to be acquired has to be determined on the date of the notification under section 4(1) [*see* section 23(1) firstly]. Secondly, any outlay or improvements on or disposal of the land acquired commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under secion 4(1) cannot be taken into consideration at all in determining compensation (*see* section 24, seventhly). It was keeping in view this background that their Lordships of the Supreme Court in *The State of*

Madhya Pradesh and others v. *Vishnu Prasad Sharma and others,* (3), while examining the question as to whether only one notification under section 6 can be issued with respect to land comprised in the notification under section 4(1) and thereafter the notification under section 4(1) exhausts itself and cannot support any further notification under section 6 with respect to such land observed as follows:—

> "14. It is in this background that we have to consider the question raised before us. Two things are plain when we come to consider the construction of sections 4, 5A and 6. The first is that the Act provides for acquisition of land of persons without their consent, and though compensation is paid for such acquisition; the fact, however, remains that land is acquired without the consent of the owner thereof and that is a circumstance which must be borne in mind when we come to consider the question raised before us. In such a case the provisions of the statute must be strictly construed as it deprives a person of his land without his consent. Secondly, in interpreting these provisions the Court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is not in dispute that it is open to the appropriate government to issue as many notifications as it deems fit under section 4(1) even with respect to the same locality followed by a proper notification under section 6 so that the power of the appropriate government to acquire land in any locality is not exhausted by the issue of one notification under section 4(1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification under section 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification under section 4(1) and the notification under section 5 in case prices have risen in the meantime. This delay is likely to be greater if successive notifications under section 6 can be issued with respect to land comprised in the notification under section 4 with greater consequential loss to the person whose land is

(3) A.I.R. 1966 S.C. 1593.

being acquired if prices have risen in the meantime. It is, however, urged that prices may fall and in that case the person whose land is being acquired will stand to gain. But as it is open to the appropriate government to issue another notification under section 4 with respect to the same locality after one such notification is exhausted by the issue of a notification under section 6, it may proceed to do so where it feels that prices have fallen and more land in that locality is needed and thus take advantage of the fall in prices in the matter of acquisition. So it is clear that there is likely to be prejudice to the owner of the land if the interpretation urged on behalf of the appellant is accepted while there will be no prejudice to the government if it is rejected for it can always issue a fresh notification under section 4(1) after the previous one is exhausted in case prices have fallen. It is in this background that we have to consider the question raised before us."

Thus keeping in view the impact of the provisions of section 4, 5A and 6 of the Act which are undoubtedly integrally connected, it becomes manifest that the landowner whose land is sought to be acquired, is left with no choice in the matter except to claim compensation for the land of which he is being deprived of.

(8) The principle of awarding compensation is based on the right of the owner to be indemnified by the community for whose benefit he is being deprived of the property against his will. 'Compensation' would essentially mean a just equivalent of what the owner has been deprived of. In other words, the owner who is deprived of his property should be enabled by the compensation awarded to him, to place himself in substantially the same position in which he was before the acquisition. Now if that is the principle or concept of compensating such a landowner, then can it possibly be said in the present case that the landowner petitioners who would be paid the compensation or the market value of their acquired lands at the rate as it existed on December 10, 1973, that is, the date on which the notification under section 4 of the Act, Annexure p. 1, was published, would be placed in reasonably the same position in which they were before acquisition ? Can these petitioners now or in future, when the compensation is to be paid to them on the

basis of the prevalent market price about seven years earlier, purchase identical or similar land to the same extent with that compensation amount ? Keeping in view the present spiral in prices of land more particularly in the suburb of big towns like Ludhiana, this appears to be an impossible situation. It requires no great argument to say that the prices of land nearabout the cities have multiplied many times during the last seven or eight years.

(9) The unconscionable non-action of the respondent authorities for the last about seven years in not taking any step to complete the acquisition and payment of the compensation to the petitioners is only indicative of the fact that the impugned notifications, Annexure P. 1 and P. 3 were in all probability issued with the only object of pegging down the price of the land to be acquired in future to the date on which the notification Annexure P. 1 was published, that is, December 10, 1973 and that there was no possible need of the land to be acquired. We, therefore, find that the petitioners are well justified in assailing these acquisition proceedings on the ground that the abovesaid notifications were issued not for *bona fide* purpose of acquisition, but for the collateral purpose, that is, to prevent them from claiming the benefit of rise in prices of the land sought to be acquired. Hence these notifications. Annexures P. 1 and P. 3, deserve to be quashed for this reason alone.

(10) So far as the second ground of attack on behalf of the petitioners with regard to the non-publication of the substance of the notification under section 4 of the Act is concerned, we feel that they are still on a stronger footing. As has authoritatively been laid down by a Full Bench of this Court in *Rattan Singh and another* v. *The State of Punjab and others* (4), such a publication has to be done without undue loss of time or virtually simultaneously with the publication of the notification under section 4 of the Act. The respondents in the present case have chosen to disclose neither the date of the said publication nor the method and manner in which the same was carried out. This, to our mind, is fatal to the proceedings launched through the issuance of notification under section 4, Annexure P. 1.

(11) In view of the discussion above, we allow this petition and quash the two notifications, Annexures P. 1 and P. 3 issued under

(4) 1976 P.L.J. 356.

sections 4 and 6 of Act respectively. We, however, make no order as to costs.

D. S. Tewatia, J.—I agree.

S.C.K.

Before C. S. Tiwana, J.

MAHIPAL,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 720 of 1977.

February 26, 1980.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 12 and 16—Prevention of Food Adulteration Rules 1955—Rule 9(j)—Report of the public analyst not sent to the accused as required by rule 9(j)—Trial of the accused—Accused long after the conclusion of the prosecution evidence applying for examination of the sample kept by the public health authority—Sample found decomposed—Accused—Whether can take benefit of the non-receipt of the report in rule 9(j) and claim acquittal—Time limit laid down in rule 9(j)—Non-compliance therewith—Whether vitiates the trial.

Held, that it is difficult to hold that the time limit laid down in rule 9(j) of the Prevention of Food Adulteration Rules 1955 is so strict and rigid that non-compliance therewith necessarily vitiates all prosecutions. There are several rules relating to the taking keeping and sending of the samples obtained from different persons. The rules are so elaborate that the food inspectors are likely not to comply with one rule or the other which would lead to failure of justice in different cases if strict view of the rules were to be taken by the judicial Courts. Where the report of the public analyst is not sent to the accused under rule 9(j) but the whole evidence upon which the prosecution depended had been produced in court and the accused was not in any manner of doubt as to what was the case he was to meet and long thereafter he makes a prayer for sending of the sample kept with the local health authority for analysis and the same is found to have been decomposed by then, the accused cannot be allowed to take benefit of the delay for which he was responsible and he cannot claim acquittal on that ground. (Para 3).