GHAZIABAD DEVELOPMENT AUTHORITY

v.

JAN KALYAN SAMITI, SHEOPURI, GHAZIABAD AND ANR.

JANUARY 9, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Land Acquisition Act, 1894 :

Sections 4(1), 5-A, 6, 17(4)—Publication of notification in the locality—Dispensed with by amendment made by U.P. State—Hence notification under s.4(1) not vitiated for non-publication of the notification—Issue of notification under S.4(1) and declaration under S.6—Could be simultaneously published by operation of the proviso to S.17(4) as amended by the U.P. Amendment Act, 1990.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2099 of 1996.

From the Judgement and Order dated 3.11.89 of the Allahabad High Court in C.M.W.P. No. 7155 of 1986.

O.P. Rana, R.B. Misra and Raju Ramachandran for the Appellant.

The following Order of the Court was delivered :

Leave granted.

Though notice has been served on the contesting respondents, they have not appeared either in person or through counsel.

We have heard Shri O.P. Rana, learned senior counsel for the petitioner. The acquisition of the land by the Ghaziabad Development Authority was initiated by notification of February 25, 1986, under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the Act'); enquiry under Section 5A was dispensed with under Section 17(4) of the Act and the Declaration under Section 6 was made on February 26, 1986. Both the notifications and declaration were simultaneously published on April 10, 1986. The respondents 1 and 2 have filed writ petition No. 7155/86 in the High Court of Allahabad challenging the validity of the notification under Section 4(1) on the ground that local publication as required under Section 4(1) was not made. The exercise of the power under Section 17(4) was also wrongly invoked, as simultaneously notification under Section 4(1) and declaration under Section

6 could not be published. The High Court accepted the contentions and by impugned order dated November 3, 1987, allowed the writ petition and quashed the notification of Section 4(1) and the declaration under Section 6. Thus this appeal by special leave.

Section 4(1) of the Act envisages that 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. This was added by Amendment Act 68 of 1984. Earlier thereto under the local amendment of U.P., publication in one newspaper was sufficient. The Collector is required to cause public notice of the substance of such notification to be given at convenient places in the said locality. The State of UP made amendment to Section 4 by UP Land Acquisition VIII of 1974/ XXII of 1954, whereunder between the words "and" and the word "Collector" the following shall be inserted and be deemed always to have been inserted. The proviso thereto was added as under :

> "Except in the case of any land to which by virtue of a direction of the State Government under sub section 4 of Section 17 the provision of Section 5 A shall not apply".

In other words, the mandatory requirement of the publication of the notification in the locality was dispensed with in a case where the Government had opined that the land was urgently needed, under Section 17(4). When the authorities have dispensed with the enquiry under Section 5A, the requirement of local publication shall not apply. Consequently, the finding of the High Court in unsustainable. It is rather unfortunate that this amendment was not brought to the notice of the High Court when the writ petition was allowed. But operation of the statutory local amendment to the Act has dispensed with local publication in two newspapers. The notification under Section 4(1) is not vitiated for non-publication of the notification in the local newspapers.

The next question is whether Section 17(4) applies and the action taken was inconsistent with the provisions of the Act. It is seen that but for local amendment, on publication of the notification under Section 4(1) and exercising of the power under Section 17(4), the publication of the declaration under Section 6 is mandatory pre-condition for taking possession of the land. Even on publication of declaration under Section 6, notice under Section 9 is necessary to the owner or person interested in the land and on expiry of 15 days from the date of the notice under Section 9 the Government is entitled to take possession of the land. By operation of Sub-section (2) of Section 17

though award has not been made under Section 11 the land stands vested in the Government, free from all encumbrances. In the State of UP an amendment has been made by UP Amendment Act *repeal* 32 of 1990 and the Land Acquisition (Validation) Act 1991, (UP Act 5 of 1991), which had come into force w.e.f. September 24, 1984, envisaging insertion of a proviso to sub-section (4) of Section 17 which reads thus :

"In Section 17 of the Land Acquisition Act, 1894, as amended in its application to Uttar Pradesh, hereinafter referred to as the principal Act, in sub-section (4) the following proviso shall be inserted at the end and shall be deemed to have been inserted on September 24, 1984, namely, Provided that where in the case of any land, notification under Section 4 sub-section (1) has been published in the Official Gazette on or after September 24, 1984 but before January 11, 1989 and the appropriate Government has under this sub-section directed that the provisions of Section 5-A shall not apply, a declaration under Section 6 in respect of the land may be made either simultaneously with or at any time after the publication in the Official Gazette of the notification under Section 4, sub-section (1),"

In other words by operation of the proviso to Section 17(4) in relation to its application to the State of UP, Notification under Section 4(1) and the declaration under Section 6 would simultaneously be published. The appropriate Authority is empowered to issue notice under Section 9 and take possession on expiry of 15 days. The High Court, therefore, was not correct in its conclusion that the Government would not have published simultaneously the notification under Section 4(1) and the declaration under Section 6 and immediately taken possession of the land in question.

In that view of the matter, the decision of the High Court in the impugned judgment is clearly illegal. The appeal is accordingly allowed, but in the circumstances without costs.

Appeal allowed