A STATE OF HARYANA AND ANR.

v.

RAGHUBIR DAYAL

NOVEMBER 10, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Land Acquisition Act, 1894—Section 4 (1) —Word 'shall' used in Section 4 (1) —Mandatory—Publication of substance of notification of Section 4 (1) in the locality is mandatory—Time gap of more than six months between date of notification u/s 4 (1) in State Gazette and date of
C *publication of notification in the locality—Delay by itself will not render notification u/s 4 (1) invalid.*

Land Acquisition Act, 1894—Section 6—Non publication of substance of declaration u/s 6 (1) in locality—Whether renders declaration invalid—Held, No—Word 'shall' used in Sub-Section (2) of Section 6—Directory
D *and not mandatory.*

WORDS AND PHRASES—Word 'shall' Whether mandatory or directory.

Notification u/s 4 (1) of the Land Acquisition Act, 1894 was
E **published in the State Gazette on Oct., 25, 1988, in the local newspapers on November 16, 1988. The substance of that notification was got published in the locality on April 27, 1989. Similarly, declaration u/s 6 was published in the State Gazette on Aug., 1, 1989. No mention of the date of publication of the substance of Section 6 notification in the locality was made. Although notice was issued u/s 5-**
F **A, the respondent had not objected to the acquisition. Consequently, declaration came to be made. Pursuant to the notice served u/s 9 and 10, the respondents participated in the enquiry and the Award was made. The writ petition filed by the respondent was allowed by the High Court holding that publication of the substance of the notification u/s 4 (1) and 6 in the locality was mandatory and as they were not**
G **published in the locality, the acquisition was invalid for infraction of the mandatory provisions of Sections 4 (1) and 6 (2) of the Act. This appeal has been filed against the judgment of the High Court.**

The State has contended that the High Court was not right in holding that the substance of the notification u/s 4 (1) was not published
H **in the locality.**

It has been state that Munadi was made in the locality. It has been contended by the respondent that in view of the language with which Section 6 (2) was couched being in *pari materia* with the language of Section 4 (1), the publication of the substance of Section 6 declaration in the locality is also mandatory and non-compliance thereof renders the entire acquisition illegal. It is also contended that the publication of the substance of the notification in the locality was made after a lapse of six months of the publication of the notification in the State Gazette and that, therefore, notification u/s 4 (1) is also invalid. It is further submitted that the requirement of the publication in the locality of the notification u/s 4 (1) has since been held to be mandatory, the publication of the substance of the declaration u/s 6 in the locality is equally mandatory and non-compliance thereof renders it invalid. A B C

Allowing the appeal, this Court

HELD: 1.1. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima-facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the Legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word 'shall' as mandatory or as directory, accordingly. (452-B-C) D E

Raza Buland Sugar Co. Ltd. v. *Municipal Board,* AIR (1965) SC 895, relied on. F

1.2. The word 'shall' used in Section 4 (1) of the Land Acquisition Act, 1894 should be construed to be mandatory because the requirement of Section 4 (1) of the publication of the notification in the Gazette followed by their publication in the newspapers perhaps in some cases may not meet the needed purpose of the notice to the owner or person claiming interest in the land proposed to be *acquired.* Therefore, publication of the substance of the notification of Section 4 (1) in the locality is mandatory but it is not the requirement of the Law that it be done simultaneously, with the publication in the Gazette or G H

A **newspapers. Though, there is time gap of more than six months between the date of the notification u/s 4 (1) in the State Gazette and the date of the publication of the substance of the notification in the locality, the delay by itself does not render the notification u/s 4 (1) published in the State Gazette invalid. (453-D-E)**

B **1.3. The notification u/s 4 (1) should not be invalidated for non-compliance of the notification u/s 6. It is true that the language in Section 6 (2) is in *pari materia* with Section 4 (1). The purpose of publication of the declaration is to give effect of the conclusiveness of the extent of the land needed for the public purpose. Since, there is an opportunity already given to the owner of the land or persons having**
C **interest in the land to raise their objections during the enquiry u/s 5-A, unless they show any grave prejudice caused to them in non publication of the substance of the declaration u/s 6 (1), the omission to publish the substance of the declaration u/s 6 (1) in the locality would not render the declaration u/s 6 (1) invalid. Therefore, the word 'shall' used in**
D **sub-section (2) of Section 6 should be construed to be only directory but not mandatory. (453-H, 454-A-B)**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7664/94.

From the Judgment and Order dated 4.5.92 of the High Court of
E Punjab and Haryana at Chandigarh in C.W.P. No. 14413/91.

Mahinder Singh and Ms. Indu Malhotra for the Appellants.

Manoj Swarup for the Respondent.

The following Order of the Court was delivered:

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Leave granted.

Heard the learned counsel for the parties.

Notification under Section 4 (1) of the Land Acquisition Act 1 of 1894
G (for short 'the Act'), was published in the State Gazette on October 25, 1988, in the local newspapers Dainik Veer (Hindi) and in Indian Express on November 16, 1988. The substance of that notification was got published in the locality on April 27, 1989. Similarly, declaration under Section 6 was published in the State Gazette on August 1, 1989 in Veer Arjun (Hindi) on August 10, 1989 and in Patriot (English) on August 8, 1989. In the chart
H showing the dates of publication of notification found in the counter

affidavit, no mention of the date of publication of the substance of Section 6 notification in the locality is made. Although notice was issued under Section 5-A, the respondent had not, admittedly, objected to the acquisition. Consequently, declaration came to be made. Pursuant to the notice served under Sections 9 and 10 the respondents had participated in the enquiry held by the District Land Acquisition Officer-cum-Land Acquisition Collector, Gurgaon, and the Award was made on July 17, 1991. It is stated in the counter affidavit that since there was a dispute as to the apportionment of the compensation, a reference under Section 30 was made to the District Court, Gurgaon, and the compensation was deposited to its credit. The writ petition filed by the respondent was allowed on May 4, 1992 by the Punjab and Haryana High Court holding that publication of the substance of the notification under Sections 4 (1) and 6 in the locality was mandatory and as they were not published in the locality, the acquisition was invalid for infraction of the mandatory provisions of Sections 4 (1) and 6 (2) of the Act.

It is contended for the State that the High Court was not right in holding that the substance of the Notification under Section 4 (1) was not published in the locality. In paragraph 4 of the supplementary affidavit, sworn to by Mr. R.S. Malik, he has stated the details of the dates on which the respective publications came to be made. In Column 4 thereof, he has specifically stated that Munadi (publication by beating the drum) was made in the locality on April 27, 1989. But no statement as regards the publication of Munadi of Section 6 was made. It is contended by Mr. Manoj Swarup, learned counsel for the respondent, that in view of the language with which Section 6 (2) was couched being in *pari materia* with the language of Section 4 (1) was couched, the publication of the substance of Section 6 declaration in the locality is also mandatory and non-compliance thereof renders the entire acquisition illegal. It is also contended by him that though publication in the State Gazette under Section 4 (1) was made on October 25, 1988 and in the newspapers on November 16, 1988, the publication of the substance of the notification in the locality was made after a lapse of six months, i.e. on July 28, 1989 and that, therefore, notification under Section 4 (1) is also invalid. The contention is that the requirement of the publication in the locality of the notification under Section 4 (1) has since been held to be mandatory by a decision of this Court, the ratio of that decision would be applicable to the publication of the substance of the declaration under Section 6 in the locality which is equally mandatory and non-compliance thereof renders it invalid. We find no force in any of the contentions of the respondent. It is true that the publication of the substance of the notification under Section 4 (1) in the

A locality is mandatory. The object of publication of notification under s.4 (1) is that the owner of the land sought to be acquired has to exercise his valuable right to file his objections under s.5-A. The publication of the substance of such notification in the locality must, therefore, be mandatory.

The use of the word 'shall' is ordinarily mandatory but it is sometimes B not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed C thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word 'shall' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the D purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.

E In *Raza Buland Sugar Co. Ltd.* v. *The Municipal Board, Rampur*, AIR (1965) SC 895, a Constitution Bench of this Court had to consider the question whether Section 135 (3) read with s.94 (3) of the U.P. Municipalities Act was mandatory or directory. The facts were that Rampur Municipality, by a special resolution, proposed to levy property tax on F persons or a class of persons. Section 131 (3) required that the Board shall pass a resolution and have it published in the manner prescribed in s.94 of such proposed tax. Section 135 (3) declared that a notification of the imposition of the tax under sub-s.(2) thereof shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act. Under s.94 (3), every resolution passed by the Board shall be published in a G local Hindi Newspaper or in its absence by general or special order as may be directed by the State Government. The Municipality had contended that it had followed that procedure. The appellants contended that there was an infraction that behalf. While considering that question, per majority, it was held that "the question whether a particular provision of a statute was mandatory or directory cannot be resolved by laying down any general rule H and it should depend upon the facts of each case and for that purpose, the

object of the statute in working out the provision is a determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from the provisions or other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory." After exhaustive consideration of the subject, it was held that though there was a technical defect inasmuch as the local paper in which the publication had been made, was in Urdu and not in Hindi, there was a substantial compliance and it was held to be directory and the tax imposed was upheld.

Therefore, the word 'shall' used in s.4 (1) should be construed to be mandatory because the requirement of s.4 (1) of the publication of the notification in the Gazette followed by their publication in the newspapers perhaps in the some cases may not meet the needed purpose of notice to the owner or person claiming interest in the land proposed to be acquired. For instance, in rural areas most agriculturists may not read even the vernacular newspapers. Their fields are their world and work therein is their bread winner. They would come to know only if the substance of the notification is published (announced) in the village by beat of drum. Therefore, publication of the substance of the notification of s.4 (1) and in the locality is mandatory but it is not the requirement of the law that it be done simultaneously with the publication in the Gazette or newspapers. Though there is time gap of more than six months between the date of the notification under s.4 (1) in the State Gazette and the date of the publication of the substance of the notification in the locality, the delay by itself does not render the notification under s.4 (1) published in the State Gazette, invalid.

Though notice under s.5-A was issued to the respondent, he had not availed of the notice nor objection to the acquisition. The question emerges whether the non-publication of the substance of the declaration under s.6 (1) equally be mandatory and its omission renders the declaration invalid? The purpose of the declaration under s.6 is to render the land notified therein as that needed conclusively for public purpose. So we are of the opinion that the notification under s.4 (1) should not be invalidated for non-compliance of the notification under s.6. It is true that the language in s.6 (2) is in *pari materia* with s.4 (1). The purpose of publication of the declaration is to give effect of the conclusiveness of the extent of the land needed for the public purpose or for a company as made under s.6 (3) of the

A Act. Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the enquiry s.5-A, or otherwise in case of dispensing with enquiry under s.5-A unless they show any grave prejudice caused to them in non-publication of the substance of the declaration under s.6 (1), the omission to publish the substance of the declaration under s. 6 (1) in the locality would not render B the declaration of s.6 invalid. We are not intending to say that the officer should not comply with the requirement of law and it is their duty to do it. But their dereliction to do so *per se* does not render the declaration under s.6 illegal or invalid. Therefore, the word 'shall' used in sub-section (2) of s.6 should be construed to be only directory but not mandatory. Moreover, in this case, notice was issued to the respondent under ss.9 and 10 pursuant C to which they appeared before the L.A.O. and put forth their claim and the award has already been made. As stated earlier, since there is an *inter se* dispute as regards the apportionment, the Land Acquisition Officer had already made the reference under s.30 and deposited the compensation in the Court of District Judge along with the reference.

D Under these circumstances, the High Court was clearly in error in quashing the notification under s.4 (1) and s.6 declaration. The writ petition filed in the High Court is, therefore, dismissed. The appeal is, accordingly, allowed but in the circumstances without costs.

A.G. Appeal allowed.