

PETITIONER:
FOMENTO RESORTS AND HOTELS LTD

Vs.

RESPONDENT:
GUSTAVO RANATO DA CRUZ PINTO & ORS.

DATE OF JUDGMENT 20/02/1985

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
REDDY, O. CHINNAPPA (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 736 1985 SCR (2) 937
1985 SCC (2) 152 1985 SCALE (1) 394

ACT:

Land Acquisition (Companies) Rules, 1963 Rule 4- Whether compliance of Rule 4 is mandatory before issuing the Notification under Section 4 of the Land Acquisition Act, 1894 in respect of acquisition of land for the propose of a company-Practice and Procedure-Where several contentions factual and legal are urged in a case and where there is a scope of an appeal From the decision of the Court, High Courts and Courts below should not merely rest its decision on one single point.

HEADNOTE:

The appellant made an application on the 15th November, 1978 under chapter VII of the Land Acquisition Act, 1894 for the acquisition of the lands earlier purchased by Respondent No. 1 herein. The Government issued on the 29th October, 1980 a notification for acquisition of the said land under section 4 of the Act which was published in the Government Gazette dated 30th October, 1980. Respondent No. 1 objected to the said notification. Subsequently the Government bled an enquiry under section 5A of the Act and, after submitting a report in March 1981, on or about 10th April 1981, the Deputy Collector issued notice to Respondent No. I that enquiry under rule 4 of the Land Acquisition (Companies) Rules 1963 would be held on the 15th April, 1981 to which the latter filed his objections on merit by his letter dated 4th May, 1981. On 26th October, 1983, agreement was executed between the government and the acquiring company. A notification under section 6 that the land in question was needed for the purpose of development of tourism, was published in the Government Gazette dated 27th October 1983.

Respondent No. 1, thereupon, filed a petition under Article 226 of the Constitution challenging the said notifications under sections 4 and 6 of the Land Acquisition Act. The High Court of Bombay (Goa Bench) quashed the said notifications on the first ground alone namely, the notifications were bad for prior non-compliance with Rule 4 of the Land Acquisition (Companies) Rules 1963, and noted that it was not necessary to deal with other grounds of challenge. Hence the appeal by special leave-

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Allowing the appeal and remitting the case back, the Court

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HELD: 1. ON a correct interpretation of the scheme of the Land Acquisition Act, it is not necessary that enquiry under rule 4 of the Land Acquisition (Companies) Rules, 1963 must in all cases precede issuance of the notification under section 4 of the Act. In an appropriate case if it is possible, enquiry under rule 4(1) may be held before the issuance of the notification under section 4. But it is not a mandatory requirement that it must precede the issuance of the notification under the Act. [949B-C]

RAJA Ram Jaiswal v. Collector, Allahabad & Another, (1980) 2 ILR Allahabad 269; conclusion approved.

Babu Barkya Thakur v. State of Bombay (now Maharashtra), AIR 1960 SC 1203 at 1206, followed.

Abdul Husein Tayabali & Ors. v. State of Gujrat 1 Ors., [1968] 1 SCR 597. explained and distinguished.

2.1. A conspectus of the provisions of the Land Acquisition Act as well as Land Acquisition (Companies) Rules 1963 indicate that there are two purposes of acquisition of land—one being for the public purpose and other for the purpose of a company. In case of acquisition for company, the appropriate Government has to satisfy itself that such acquisition is needed and would be useful also for public need. [943E-F]

2.2 Land Acquisition proceedings begin with the publication of the preliminary notification under section 4 of the Land Acquisition Act, 1894. When the acquisition is for a company the Purpose has to be investigated under section 5A (by hearing objections and disposing them) or under section 40 necessarily after the notification under section 4 of the Act. Under section 6 if the Government is satisfied after considering the report, if any, made under section 5A that any particular land was needed for public purposes or for a company a declaration shall be made to that effect subject to certain conditions stipulated therein. Sub-rule 4 of Rule 4 of the Land Acquisition (Companies) Rules 1963 provides that no declaration shall be made by the Appropriate Government under section 6 of the Act unless (i) the appropriate government had consulted the committee and had considered the report submitted under the said rule and the report if any, submitted under section 5A of the Act and (ii) further any agreement under section 41 of the Act executed by the Company.

To complete the acquisition proceedings notification under section 6 of the Act is required. Section 6 of the Act enjoins that the government has to be satisfied that the land is needed for public purpose or for a company and after declaration is made the acquisition is complete after the award is made and possession of the land is taken when the land vests under section 16 in the government free from encumbrances. Section 4

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does not require as such this satisfaction of the government. The government might initiate acquisition proceedings "if it appears" to the government that land is needed either for public purpose or for a company. That might appear to the government by enquiry aliunde or on a petition or application made by any company. Whether the need is proper or genuine that can be found by the government subsequently after notice under section 4 of the Act. An enquiry under rule 4 might be made before issuance of the notification under section 4 of the Act but it is not

a sine qua non for the issuance of the notification under section 4 to have an enquiry under rule 4 of the Rules. The scheme and the language of the Act and the Rules do not indicate that. Therefore, section 4 as such does not require government to be satisfied, it is sufficient if it appears to the government that land is needed either for public purpose or for a complain. It may so appear to the Government either by independent inquiry or from reports and information received by the government or even from an application by the company concerned. [943H; 944A-F]

2.3 It is undoubtedly true that a notification under section 4 can be issued after enquiry under rule 4. But under the scheme of the Act, the converse is not correct, i.e., the enquiry under rule 4 must always precede notification under section 4 of the Act, though enquiry under rule 4(1) must precede action under section 6 of the Act. Further certain matters which are required to be done under rule 4 cannot be done before because the officer or the person authorised by him would have no authority, unless notification under section 4 is issued. [945G-H; 946A]

Rule 4(4) does not prohibit or forbid issuance of notification under section 4 of the Act unless rule 4(1) has been complied with. If it is now insisted that there should be no issuance of notification under section 4 of the Act before enquiry under rule 4 then this sub-rule has to be re-written by stating that no notification under section 4 and no declaration under section 6 issued or made as the case may be unless the requirements mentioned in clauses (i) and (ii) of sub-rule (4) of rule 4 have been complied with. On the contrary, it will be contrary to the scheme and purpose of the acquisition proceedings because the compensation for the acquisition has to be fixed under section 23 of the Act keeping the market rate as on the date of the issuance of the notification under section 4 in view. If it be that the enquiry as contemplated by rule 4 should also precede issuance of notice under section 4 of the Act then that may upset the fixation of the market value and escalation of price with the passage of time between publication of the notification under sections 4 and 6 would make acquisition difficult. [945A.D]

3. In a matter of this nature where several Contentions factual and legal are urged and when there is scope of an appeal from the decisions of the Court, it is desirable as was observed by the Privy Council long time ago to avoid delay and protraction of litigation that the court should, when dealing with any matter dispose of all the points and not merely rest its decision on one single point. [950A-B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 504 of 1985

From the Judgment and Order of the High Court of Bombay, Panaji Bench (Goa) dated the 26th June, 1984, in writ Petition No. 8 of 1984.

B. Zaiwala, Anil B. Divan, Usgaonkar, Ravinder Narain, and Aditia Narayan, for the Appellant.

S.C. Desai, M.M Abdul Khader, Naunit Lal, Kailash Vasdev, Mrs. Vinod Arya, and Miss A Subhashini for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave granted. This

appeal filed by M/s Fomento Resorts and Hotels Limited raises the short question as to whether compliance with rule 4 of

the Land Acquisition (Companies) Rules, 1963 (hereinafter called the Rules) is necessary before issuing notifications under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

It appears that the land in question was purchased by Gustavo Ranato da Cruz Pinto hereinafter referred to as the land owner and the original respondent No. 1 on 10th of March, 1978. The original respondent No. 2 and the appellant herein on the 15th November, 1978 made an application under Chapter 7 of the Act for the acquisition of the said properties. The government issued on the 29th October, 1980 notification in respect of the land in question under section 4 of the Act which was published in the Government Gazette dated 30th October, 1980. The land owner being respondent No. 1 to this appeal objected to the said notification under section 4. Subsequently government held enquiry under section 5A of the Act and the Deputy Collector submitted the report to the Government in March, 1981. On or about 10th April, 1981 the Deputy Collector issued notice to respondent No. 1 that enquiry under rule 4 of the Rules would be held on 15th April, 1981. The respondent No. 1 filed his objections on merit by the letter dated 4th May, 1981. On 26th October, 1983, agreement was executed between the government and the acquiring company that the land in question was needed for the purpose of development of tourism. the government issued notification under section 6 of the Act which was published in the government Gazette dated 27th October, 1983.

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The petition under Article 226 out of which this appeal arises was filed in the Bombay High Court by respondent No. 1 challenging the said notifications under sections 4 and 6 of the Act. The High Court of Bombay (Goa Bench) quashed the said notification under sections 4 and 6 of the Act only on the ground that enquiry under rule 4 of the Rules was not held prior to the notification under section 4 of the Act. The propriety and validity of the said decision of the High Court are under challenge in this appeal. The High Court, however, noted that the impugned notification had been challenged on several other grounds but in the view it had taken on the first ground namely that the notifications under sections 4 and 6 of the Act being bad for prior non-compliance with rule 4 of the Rules, the High Court felt that it was not necessary to deal with other grounds. The petition succeeded before the High Court and the notifications under sections 4 and 6 of the Act were quashed. This appeal is filed against the judgment of the High Court.

Under the scheme of the Act, it is necessary for the purpose of acquisition of land first to issue a notification under section 4 of the Act, whenever it appears to the appropriate government that land in any locality is needed or likely to be needed for any public purpose.

The purpose and object of the notification under section 4 of the Act have been explained by this Court in the case of Babu Barkya Thakur vs. State of Bombay (now Maharashtra) and others thus:

"The purpose of the notification under section 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the

purpose for which it was sought to be acquired. It is only under S. 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under S. 4 becomes the subject matter of a definite proceedings for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under S. 4

(1) AIR 1960 S. C. 1203 at 1208.

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is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated under S. 5A or S. 40 necessarily after the notification under S.4 of the Act."

This Court emphasised that when the acquisition is for a Company the purpose has to be investigated under section . A or section 40 necessarily after the notification under section 4 of the Act. The land acquisition proceedings begin with the publication of the preliminary notification. Section 5A enjoins hearing of the objections and disposal of objections. Sections 6 of the Act provides that if the government is satisfied after considering the report, if any, made under section 5A, that any particular land was needed for public purpose, or for a Company, a declaration shall be made to that effect subject to certain conditions mentioned in the various sub-sections of section 6 of the Act. After declaration under section 6, section 7 enjoins the Collector to take order for acquisition of land. Various steps for the actual acquisition are enumerated in subsequent section of the Act which need not be set out in detail. Section 16 empowers taking of the possession after an award is made under section 11 and thereafter the land shall vest in the government free from all encumbrances.

It is important to note that section 23 of the Act deals with the matters to be considered in determining compensation for acquisition of land and it enjoins that the market value should be determined as on the date of the publication of the notification under section 4. In other words section 23 pegs the market value of the land as on the date of the notification under section 4 as one of the factors to be taken into consideration in determining the compensation to be paid. Part VII of the Act deals with acquisition of land for companies. Section 41 of the Act provides that if the appropriate government is satisfied after considering the report, if any, of the Collector under section 5A, or on the report of the officer making an enquiry under section 40 of certain matters, the details of which are not necessary for the purpose of appeal to be set out, it shall require the Company to enter into an agreement with the appropriate government providing for the satisfaction of the appropriate government for certain matters enumerated in different sub-sections of section 40. The said provisions need not be set out in detail. Essentially the satisfaction and agreement with the company are to ensure that the

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land in question will be put to such use which will be useful to the public.

Rule 3 of the Rules provides for the constitution of the Land Acquisition Committee. Rule 4 is headed "Appropriate Government to be satisfied with regard to certain matters before initiating proceedings" and sub-rule (1) of rule 4 lays down certain matters about which the

appropriate government has to be satisfied when the acquisition is for the Company. Sub-rule (4) of rule 4 of the Rules provides that no declaration shall be made by the appropriate government under section 6 of the Act unless (i) the appropriate government had consulted the committee and had considered the report submitted under the said rule and the report, if any, submitted under section 5A of the Act and (ii) further any agreement under section 41 of the Act executed by the Company. Rule 5 of Rules deals with the matters which are to be provided for in the agreement under section 41 of the Act. Rule 6 similarly deals with the additional matters which might be provided in the agreement under section 41 of the Act. Rule 7 provides for submission of periodical reports. Rule 8 of the Rules deals with the conditions under which sanction is to be given for transfer of land. Rule 9 deals with special provisions in relation to certain Companies. It is not necessary to discuss these rules in detail for the present purpose.

A conspectus of the provisions of the Act as well as the Rules indicate that there are two purposes of acquisition of land-one being for the public purpose and the other for the purpose of a Company. In case of acquisition for Company, the appropriate government has to satisfy itself that such acquisition is needed and would be useful also for public need. Rule 4 of the Rules provides for satisfaction of the appropriate government with regard to various matters before acquisition.

The learned judges of the Bombay High Court were of the view that the enquiry under rule 4 was necessary for the initiation of the acquisition proceedings to be satisfied that acquisition was necessary for the Company.

We are unable to accept this conclusion for the following reasons:

(i) To complete the acquisition proceedings, notification under section 6 of the Act is required. Section 6 of the Act

enjoins that the government has to be satisfied that the land is needed for public purpose or for a Company and after declaration is made the acquisition is complete after the award is made and possession of the land is taken the land vests under section 16 in the government free from encumbrances. Section 4 does not require as such this satisfaction of the government. The government might initiate acquisition proceedings "if it appears" to the government that land is needed either for public purpose or for a Company. That might appear to the government by enquiry aliunde or on a petition or application made by any Company. Whether the need is proper or genuine that can be found by the government subsequently after notice under section 4 of the Act. An enquiry under rule 4 might be made before issuance of the notification under section 4 of the Act but it is not a sine qua non for the issuance of the notification under section 4 to have an enquiry under rule 4 of the Rules. The scheme and the language of the Act and the Rules do not indicate that. As noted before, section 4 does not require government to be satisfied, it is sufficient if it appears to the government that land is needed either for public purpose or for a Company. It may so appear to the government either by independent enquiry or from reports and information received by the government or even from an application by the company concerned.

Section 6 undoubtedly requires satisfaction of the government and enquiry contemplated under rule 4 must precede publication of the notification under section 6 of

the Act. So also there must be before section 6 notification an enquiry under section 5A. The p significant pointer to the scheme is provided in sub-rule (4) 'of rule 4, the material portion of which reads as follows:-

"(4) No declaration shall be made by the appropriate Government under section 6 of the Act unless-

- (i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under section 5A of the Act; and
- (ii) the agreement under section 41 of the Act has been executed by the Company."

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The said sub-rule significantly does not prohibit or forbid A issuance of notification under section 4 of the Act unless rule 4 (1) has been complied with. If it is now insisted that there should be no issuance of notification under section 4 of the Act before enquiry under rule 4 then this sub-rule has to be re-written by stating that no notification under section 4 and no declaration under section 6 issued or made as the case may be unless the requirements mentioned in clauses (i) and (ii) of sub-rule (4) of lure 4 have been complied with. We find no warrant to do that. On the contrary, it will be contrary to the scheme and purpose of the acquisition proceedings because the compensation for the acquisition has to be fixed under section 23 of the Act keeping the market rate as on the date of the issuance of the notification under section 4 in view. If it be that the enquiry as contemplated by rule 4 should also precede issuance of notice under section 4 of the Act then that may upset the fixation of the market value and escalation of price with the passage of time between publication of the notifications under sections 4 and 6 would make acquisition difficult.

An argument was sought to be built on the basis of the heading of rule 4 which stipulates that "Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings". It is true that before the initiation of the acquisition proceedings, government had to be satisfied of certain matters mentioned in the various sub-rules of rule 4 as well as various provisions of the Act. Though preliminary steps for initiation of acquisition proceedings are necessary and those can only be taken by the authority of the notification under section 4 as mentioned in the decision of Babu Barkya Thakur v. State of Bombay (now Maharashtra) and Others, (supra) the initiation of the acquisition proceedings for all practical purposes begins after section 6 notification Satisfaction is necessary for proceeding for acquisition under section 6 of the Act but section 4 unlike section 6 does not require for the issuance of the notice to be satisfied but it might act only "when it appears" to it that the land is needed or is likely to be needed for any public purpose.

Reading the Act and the Rules and keeping in view the scheme of the Act, it is apparent, in our opinion, that before the issuance of section 4 notification, there is no requirement as such of compliance with the procedure contemplated by rule 4 of the Rules. We are therefore unable to subscribe to the view that

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enquiry by rule 4 must precede the issuance of notification under section 4 (1) of the Act. Furthermore as indicated before certain matters which are required to be done under

rule 4 can not be done because the officer or the person authorised by him would have no authority unless notification under section 4 is issued.

Reliance was placed before the Bombay High Court and before us in support of the judgment of the High Court on a decision of this Court in the case of Abdul Husein Tayabali and Ors. v. State of Gujarat and Ors. (1). There the contention before the Court was that Master was only a Special Land Acquisition Officer and not the Collector within the meaning of rule 4. Furthermore, it was urged, in any event, the notification in question did not 'specially' appoint him but was a general notification authorising all the Special Land Acquisition Officers in the State appointed not only before the date of section 4 notification but also those who would be appointed in future. It was further contended that notification did not "appoint" but simply authorised him to perform the functions of the Collector, the State Government had not given any directions to him to make a report as required by rule 4; therefore the enquiry held by him under that rule and the report made by him was invalid and consequently no notification either under section 4 or section 6 could be validly issued. It was urged, therefore, the section 6 notification was issued without complying with Part VII of the Act and without the valid consent of the State Government as required under section 39(iii), that the acquisition was made malafide and without application of mind to the relevant facts and the acquisition did not involve any public purpose and the State government was bound to give an opportunity of being heard to the appellants before taking a decision under section 5A particularly when the report made by Master was against the acquisition.

In this connection our attention was drawn to section 39 of the Act which provides that provisions of sections 6 to 37 (both inclusive) shall not be put into force in order to acquire land for any Company unless with the previous consent of the appropriate Government nor unless the Company shall have executed the agreement therein after mentioned. This section, in our opinion, has no relevance for determining whether to be a proper acquisition, enquiry contemplated-

(1) [1968] 1 SCR 597.

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ed under rule 4 must precede issuance of the notification under section 4 of the Act. In the decision of this Court referred to hereinbefore, this question did not really fall for consideration because there was compliance with rule 4 before issuance of the notification and the infirmities of the enquiry under rule 4 urged on behalf of the appellants were not established.

It was urged before this Court that the enquiry under rule 4 was a quasi-judicial enquiry and therefore it was incumbent on Master to give an opportunity to the appellants to be heard. This Court was of the view that the rule provide that an officer conducting the enquiry has to hear the Company before making his report. Whether he was also to hear the owners of the land or not did not fall for decision in those appeals as the officer had in fact given such an opportunity to the appellants by serving them with notices and recorded the statement of such of them who cared to appear before him. It was then contended that the enquiry under rule 4 had to be held after the notification under section 4 was issued and not before and therefore the enquiry held by Master was not valid. This Court observed at page 604 of the report "We do not find anything in rule or

in any other rule to warrant such a proposition. The enquiry, the report to be made consequent upon such enquiry, obtaining the opinion of the Land Acquisition Committee, all these intended to enable the Government to come to a tentative conclusion that the lands in question were or were likely to be needed for a public purpose and to issue thereafter section 4 notification. In our opinion no objection to the appointment of Master to perform the functions of the Collector under section 3(c) or to his competence to make the enquiry and the report under rule 4 or their legality can be validly made."

In our opinion when this Court observed that the report of the enquiry under rule 4 was a factor to be taken into consideration and "to issue thereafter section 4 notification" was by general observation. It is undoubtedly true that a notification under section 4 can be issued after enquiry under rule 4. But under the scheme of the Act, the converse is not correct i.e. the enquiry under rule 4 must always precede notification under section 4 of the Act. In that decision this Court analysed the importance of section 4 and it is after considering the report under rule 4 and report under section 4 that notification under section 4 will be issued. It is undoubtedly true that

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enquiry under rule 4(1) must precede action under section 4 but we do not find reading the said decision of this Court in the context of the facts and circumstances and the contentions urged in that case that this Court laid down any proposition that enquiry under rule 4(1) must precede issuance of notification under section 4. Indeed as we have mentioned before, notification under section 4 would facilitate the matters to be inquired under rule 4(1).

Reliance was also placed on certain observations in the case of General Govt. Servants Co-operative Housing Society Ltd" Agra v. Wahab Uddin & Ors. Etc. Etc. 1 There the scheme of the Act was analysed and what were matters to be required under rule 4 of the Rules were mentioned. This Court observed at pages 53-54 of the report as follows:

"No declaration shall be made by the appropriate Government under section 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector under section 4 of the Act. In addition, under clause (ii) of sub-rule (4) of rule 4, the Company has to execute an agreement under section 41 of the Act. The above consideration shows that rule 4 is mandatory; its compliance is no idle formality, unless the directions enjoined by rule 4 are complied with the notifications under section 6 will be invalid. A consideration of rule 4 also shows that its compliance precedes the notification under section 4 as well as compliance of section 6 of the Act."

It may be borne in mind in that decision the notification under section 6 was quashed but notification under Section 4 was not quashed though observations were made about the purpose and the role of compliance with rule 4. Reliance was placed on the following observations at page 54 of the report:

"A consideration of rule 4 also shows that its compliance precedes the notification under section 4 as well as compliance of section 6 of the Act."

It appears to us that the reference to rule 4 in the context in which it was made was inadvertent. What perhaps the Court want-

(1) [1981] 3 S.C.R. 46.

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ed to convey was the need of compliance of entering into agreement A under section 41 before the issuance of notification under section 6 of the Act. Otherwise it appears that there was no enquiry under rule 4 of the Rules before issuance of the notification under section 4 yet the notification under section 4 was not quashed. The observation then in any event is obiter.

On the scheme of the Act, we are of the opinion that on a correct interpretation, it is not necessary that enquiry under rule 4 must in all cases precede issuance of the notification under section 4 of the Act. In an appropriate case if it is possible, enquiry under rule 4(1) may be held before the issuance of the notification under section 4. But it is not a mandatory requirement that it must precede before the issuance of the notification under section 4.

Our attention was drawn to a Bench decision of the Allahabad High Court in the case of Raja Ram Jaiswal v. Collector, Allahabad & Another (1), where it was held that it would not be right to say that a case where a company makes an application for acquisition of land to the Collector it was obligatory that the provisions of rule 4(1) must be complied with before the Collector could issue a notification under section 4(1) of the Act. With this conclusion we are in agreement, though factually the case was slightly different in the sense that there the Collector was authorised to make a notification under section 4(1) of the Act and not the State Government as in this case. Therefore, though there may be in certain cases compliance with rule 4(1) of the Rules it was not mandatory that before issuance of notification under section 4(1) of the Act there should be an enquiry in compliance with rule 4(1).

In the premises in so far as the Bombay High Court held that non-compliance with rule 4 before the issuance of notification under section 4(1) of the Act is bad is set aside.

As mentioned hereinbefore, since the issuance of the notifications was challenged on several other grounds and the High Court had not decided those grounds, we remit the matter back to the High Court to decide those grounds- We request the High Court to dispose of those grounds as early as possible.

(1) [1980] 2 ILR Allahabad 269.

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In a matter of this nature there several contentions factual and legal are urged and when there is scope of an appeal from the decision of the Court, it is desirable as was observed by the Privy Council long time ago to avoid delay and protraction of litigation that the court should, when dealing with any matter dispose of all the points and not merely rest its decision on one single point.

In the facts and circumstances of the case, as the matter is being remitted back to the High Court, costs of this appeal will abide by the result of the High Court decision.

S.R.

Appeal allowed

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