PETITIONER:
NARENDRA BAHADUR SINGH AND ANR.

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT26/11/1976

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
KRISHNAIYER, V.R.

CITATION:
1977 AIR 660 1977 SCR (2) 226
1977 SCC (1) 216
CITATOR INFO :
F 1985 SC1622 (13,15)

ACT:

U.P. Land Acquisition (Rehabilitation of Refugees) Act 1948 Sec. 2(7), 6, 7(1)--Notification for acquiring land for a society of refugees from Pakistan --Whether acquisition notification can be struck down on hypertechnical grounds or whether substantial compliance sufficient--In the absence of averments in a writ petition on a question of fact whether petitioner can be allowed to raise a ground based on assumption of such facts.

HEADNOTE:

U.P. Government issued a notification under Section 7(1) of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 for acquiring the land belonging to the appellant for the purpose of Sufferers Cooperative Housing Society. The Society entered into an agreement with the Government under section 6 of the Act. The Land Acquisition Officer determined the amount of compensation for the acquired land. The appellants challenged the validity of the said notification on the following grounds:

1. The notification did not properly specify the land sought to be acquired.
2. The notification was ultra vires the Act because it sought to acquire land for the rehabilitation of displaced persons and not for the rehabilitation of refugees.
3. The notification was not in accordance with the provisions of section 7(1) of the Act.

The single Judge of the High Court did not go into the first ground but accepted the second and third grounds and quashed the notification. He held that according to the definition of refugees in section 2(7) a refugee is a person who has migrated from Pakistan to any place in the U.P. and has been since then residing in U.P. and that there was nothing to show that the displaced persons who are the members of the Society had settled in U.P. While accepting the third ground the learned Judge held that section 7(1) requires to indicate in the notification that it had decided to acquire the land. However, the notification did not

mention the expression "decided".

On an appeal, the Division Bench disagreed with the conclusions of the Single Judge and allowed the appeal. The Division Bench held that the notification was substantially in accordance with the sect.ion 7(1) and that the members of the Society consisted of refugees. The Division Bench also held that the notification was not vague and it properly specified the land sought to be acquired.

In an appeal by Special Leave the appellants repeated the 3 grounds.

Dismissing the appeal

HELD: 1. The ground about the members of the Society not being refugees has not been taken in the Writ Petition at all. The question whether those members have settled in U.P. is essentially one of fact. In the absence of any averment in the writ petition the material facts having bearing on the point could not be brought on record. A party seeking to challenge the validity of a notification on a ground involving questions of fact should make necessary averments of fact before it can assail the notification on that ground. [229 F-H]

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2. The recital in the earlier part of the notification as well as the operative part of the notification that the land shall be deemed to have been acquired permanently and shall vest in the State Government lends clear support to the conclusion that the State Government decided to acquire the land and the order of acquisition was merely an implementation of that decision. The fact that the word decided has not been used in the notification would not prove fatal when the entire tenor of the notification reveals the decision of the State Govt. to acquire land. The court would not strike down a notification for acquisition on hypertechnicality; what is needed is substantial compliance with law and the impugned notification clearly satisfies that requirement. [230 D-F]

3. The contention that the notification in question is vague is not substantiated. The notification makes an express reference to the site plan. [230 G-231 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 297 of 1976.

Appeal by Special Leave from the Judgment and Order dated the 16-10-74 of the Allahabad High Court in Special Appeal No. 169/72.

S.T. Desai, M.K. Garg, K.B. Rohtagi, V.K. Jain and M.M. Kashyap, for the Appellant.

O.P. Rana for Respondents 1-4.

V.M. Tarkunde, Pramod Swarup and R.S. Verma for Respondent No. 5.

The Judgment of the Court was delivered by

KHANNA, J.-- This appeal by special leave is against the judgment of a Division Bench of the Allahabad High Court, reversing on appeal the decision of learned single Judge, whereby notification dated April 23, 1966 issued by the

State Government under section 7(1) of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 (hereinafter referred to as the Act) had been quashed. As a result of the decision of the Division Bench, the writ petition filed by the appellants to quash that notification stood dismissed.

The Sufferers' Co-operative Housing Society, Jaunpur, respondent, applied to the Uttar Pradesh Government in 1955 for acquiring four acres of land for the purpose of erecting houses, shops and workshops for the rehabilitation of the refugees-who were members of that society. At the instance of the State Government, the society deposited a sum of Rs.15,000 towards the cost of the land to be acquired. In 1964, the society entered into an agreement with the State Government under section 6 of the Act. The State Government thereafter published on April 23, 1966, the impugned notification and the same reads as under:

> "Under sub-section (1) of section 7 of the U.P. Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948, the Governor of Uttar Pradesh is pleased to declare that he is satisfied that the land mentioned in the Schedule is needed and is suitable for the erection of houses, shops and
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> workshops for the rehabilitation of displaced persons and/ or for the provision of amenities directly connected therewith.

All the persons interested in the land in question are, therefore, required to appear personally or by duly authorised agent before the Compensation Officer of the Distt. at Jaunpur on the twenty seventh day of April 1966, with necessary documentary or other evidence for the determination of the amount of compensation under section 11 of the Act.

The Collector of Jaunpur is directed to take possession of the aforesaid land fourteen days after the publication of this notice in the official gazette.

Upon the publication of this notice, the aforesaid land shall be deemed to have been acquired permanently and shall vest absolutely in the State Government free from all encumbrances from. the beginning of the day on which the notice is so published.

SCHEDULE

Distt.	Pargana	Mauza	Municipality Cantonment, Town area or Notified area	PlotNo.	Area
				154	
		Mohalla Diwan Shah Kabir alias Tartala		152/1	1,00
	Pargana Haveli, Tahsil			152/2	
Jaunpur	Municipal Area			149	
Jaunpur				153	
			2 shops No. 6 and 7		

For what purpose required: for the rehabilitation of displaced persons.

Note: A copy of the site plan may be inspected at the office of the Collector, Jaunpur."

Subsequent to that notification, the Land Acquisition Officer determined the amount of compensation for the land and shops to be acquired at a little over rupees forty one thousand. The balance of the amount to be paid as compensation was thereafter deposited by the society.

On April 10, 1970 the appellants, claiming to be the owners of a part of the land sought to be acquired, fried petition under article 226 of the Constitution of India in

the Allahabad High Court with a prayer for quashing the impugned notification. The notification was assailed on the following three grounds:

(1) The notification did not properly specify the lands sought to be acquired;

(2) The notification was ultra vires the Act inasmuch as it sought to acquire lands for the rehabilitation of the displaced persons and not for the rehabilitation of refugees; and

(3) The notification was not in accordance with the provisions of section 7(1) of the Act.

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The learned single Judge, while allowing the writ petition, did not go into the first ground. He, however, accepted the second and third grounds and in the result quashed the notification. On the second ground, the learned Judge referred to the definition in section 2(7) of the Act, according to which refugee means any person who was a resident in any place forming part of Pakistan and who, on account of partition of civil disturbances or the fear of such disturbance, has on or after the first day of March 1947 migrated to any place in the U.P. and has been since residing there. It was observed that there was nothing to show that the displaced persons for whose benefit the land in question was being acquired had settled in Uttar Pradesh. Regarding the third ground, the learned Judge expressed the view that the notification under section 7(1) of the Act required that the State Government should indicate in the notification that it had decided to acquire the land. As the word "decided" was not mentioned in the notification, the notification was held to be not in accordance with law. On appeal, the Division Bench of the High Court disagreed with the learned single Judge on both the grounds on which he had quashed the notification. It was held that the notification was substantially in accordance with section 7(1) of the Act. It was further observed that the society for whose benefit the land was being acquired consisted of refugees. Dealing with the first ground, namely, that the notification was vague as it did not properly specify the land sought to be acquired, the Division Bench held that all the necessary particulars in respect of the land sought to be acquired had been given. In the result, the appeal was allowed and the writ petition was dismissed.

In appeal before us, Mr. Desai has assailed the decision of the Division Bench on all the three grounds and has urged that the impugned notification is liable to be quashed on each of those grounds. We shall accordingly deal with those grounds.

So far as the ground is concerned that the persons for whose rehabilitation the land is sought to be acquired are not refugees, Mr. Desai could not in spite of our query refer us to any paragraph in the writ petition wherein the above ground had been taken. All the same, he submitted that as the question had been allowed to be agitated before the High Court, we should not debar the appellants from advancing arguments on that score. The submission made by the learned counsel in this behalf is that there is nothing to show that the persons for whose benefit the land is being acquired arc settled in Uttar Pradesh. In this respect we are of the view that the question as to whether those persons are settled in Uttar Pradesh or not is essentially one of fact. In the absence of any averment in the writ petition that the person concerned were not settled in Uttar

Pradesh, it is obvious that the material facts having bearing on this point could not be brought on record. A party seeking to challenge the validity of a notification on a ground involving questions of fact should make necessary averments of fact before it can assail the notification on that ground. As such we find it difficult to sustain the contention of Mr. Desai that the persons for whose benefit the land is being acquired were not settled in Uttar Pradesh. Apart from that, we find that
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ground No. 13 taken in the writ petition proceeds upon the assumption that the persons for whose benefit the land was being acquired were in fact refugees. It further appears from the judgment of the Division Bench that there was hardly any dispute before the Division Bench on the point that the respondent society, namely, Sufferers' Co-operative Housing Society, consists of refugees and has refugees as its members.

Coming to the second ground taken by the appellants that the notification was not in conformity with section 7(1) of the Act inasmuch. as it did not state that the State Government had decided to acquire the land in dispute, we are of the opinion that a reading of the notification which has been reproduced above leaves no manner of doubt that the State Government had decided to acquire the land. It is stated in the notification that the Governor of Uttar Pradesh is pleased to declare that he is satisfied that the land mentioned in the schedule is needed and is suitable for the erection of houses, shops and workshops for the rehabilitation of displaced persons and/or for the provision of amenities directly connected therewith. The notification further proceeds to state that the land in question shall be deemed to have been acquired permanently and shall vest absolutely in the State Government free from all encumbrances from the date of the notification. The recital in the earlier part of the notification as well as the operative part of the notification that the land shall be deemed to have been acquired permanently and shall vest in the State Government lend clear support for the conclusion that the State Government decided to acquire the land and the order of acquisition was merely an implementation of that decision. The fact that the word "decided" has not been used in the notification would not prove fatal when the entire tenor of the notification reveals the decision of the State Government to acquire the land and is consistent only with the hypothesis of such a decision having been arrived at. The courts should be averse to strike down a notification for acquisition of land on fanciful grounds based on hypertechnicality. What is needed is substantial compliance with law. The impugned notification, in our opinion, clearly satisfies that requirement.

Lastly, we may deal with the contention advanced on behalf of the appellants that the notification in question is vague. It is pointed out by Mr. Desai that the total area of the land comprised in field numbers mentioned in the notification is 1.26 acres, while the actual area which is sought to be acquired is one acre. The learned counsel accordingly urges that it is not possible to find out the particular portions of those fields which are sought to be acquired. As such, the notification is stated to be vague and thus not in conformity with law. Our attention has also been invited by Mr. Desaid to the report dated June 23, 1971 of the Tehsildar, who was deputed to deliver possession of the acquired land to the society. In the said report the Tehsildar stated that he found it difficult to find out as

to which part of the fields mentioned in the notification were acquired. In this respect we find that the report of the Tehsilder itself indicates that when he went to the spot to deliver possession of the acquired
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land, he did not take with, him the correct plan of the said land.The impugned notification makes an express reference to the site-plan. An affidavit has been filed on behalf of the society and that affidavit makes it plain that the area of the land which has been acquired comes to exactly one acre. There appears to be no cogent ground to interfere with the finding of the Division Bench of the High Court that the impugned notification has not been shown to be vague.

We, therefore, find no infirmity in the impugned notification. The appeal fails and is dismissed but in the circumstances with no order as to costs.

Before we conclude, we would like to observe that the case before us tells a sad tale of delays in a matter which on sheer humanitarian grounds needed to be attended to with expedition. The case, as would appear from the above, pertains to the acquisition of land with a view to rehabilitate refugees who were uprooted from their hearths and homes in areas now in Pakistan because of disturbances and fear of disturbances which marred the partition of the country. The refugees for this purpose formed a society, and applied to the administration in 1955 for acquisition of land so that they could erect shops and workshops on that land with a view to earn their livelihood. It took the administration 11 years thereafter to issue necessary notification for the acquisition of the land in dispute. Four years were thereafter spent because possession of the land could not be delivered. The only attempt made to deliver possession proved infructuous as the Tehsildar entrusted with this task took a wrong plan. From 1970 till today the delivery of possession remained stayed because of the writ proceedings initiated by the appellants. One can only hope that now that the final curtain has been dropped, the matter would be attended to with the necessary promptitude.

P.H.P. Appeal dismissed.
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