
(1996) 08 SC CK 0170

In the Supreme Court Of India

Case No : Civil Appeal No. 3961 of 1988

Aircraft Employee's Housing Co-operative Society Ltd.

APPELLANT

Vs

Secretary, Rural Development and Panchayat Raj, Govt. of
Karnataka, Bangalore, and others

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 16, 17(4), 4

Citation : AIR 1996 SC 3501 : (1996) 6 SCALE 217 : (1996) 11 SCC 475 :
(1996) 4 SCR 424 Supp

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : K.R. Nagaraja, for the Appellant; Prem Prasad Juneja and M.
Veerappa, for the Respondent

Final Decision : Allowed

Judgement

1. An interesting question of law has been raised in this case. Notification u/s 4(1) of the Land Acquisition, 1894 (1 of 1894) (for short, the 'Act') was published in the State Gazette on September 24, 1981 acquiring an extent of 137 acres of land for housing scheme of the appellant. We are concerned with 2 acres 28 gunthas of land belonging to the respondent Nos. 3 to 7 in this appeal. The objections u/s 5-A of the Act were filed by the respondents on November 12, 1981. He appeared through counsel on November 21, 1981 and sought further time to file further objections. The matter was posted for November 25, 1981. He filed a memo stating that the additional objections already filed on November 12, 1981 would be treated as on record and sought time for hearing and accordingly the matter was posted for November 30, 1981 on which date the respondent appeared neither in person nor through counsel. The Land Acquisition Officer, therefore, considered the objections and submitted his report to the Government for consideration by his proceedings dated January 12, 1982. The Government after considering the objections and the report and on rejection thereof published the declaration u/s 6(1) in the Gazette on October 28, 1982. Thereafter, the

respondent filed Writ Petition No. 43227/82 sometime in October 1982. The High Court directed stay of further proceedings. The High Court in the impugned judgment dated May 27, 1987 held that the enquiry u/s 5-A was vitiated on account of failure to give opportunity of hearing to the respondents on the objections. Since the writ petition came to be filed after the declaration u/s 6 was published, Explanation 1 to 6 is not attracted; the Explanation postulates exclusion of the time taken in pursuance of the notification u/s 4(1). Since stay of further proceedings of the declaration u/s 6 was granted, the Explanation 1 to 6 is inapplicable. Therefore, the time taken during the pendency of the proceedings cannot be excluded in computing the period of three years as envisaged in the first proviso to Sub-section (1) of Section 6, Therefore, the declaration u/s 6 and the notification u/s 4 have elapsed. Thus, this appeal by special leave. Though the respondents have been served, none is appearing either in person or through counsel. We requested Sri , who is well experienced in this branch of law, to assist as amicus.

2. Shri Nagaraja, learned Counsel for the appellant, contended that the view taken by the High Court is not valid in law. The language of the Explanation that period during which any action or proceedings taken in pursuance of the notification u/s 4(1) is stayed by an order of the Court requires to be construed to mean that all steps taken from the stage of issuance of the notification u/s 4(1) should be understood meaningfully. If the Explanation would be construed strictly to mean that after the notification was published but before the declaration u/s 6 was published, the steps taken in pursuance of Sub-section (1) of Section 6 only were stayed and were to be excluded, the operational efficiency would be in jeopardy. The stay of the further proceedings, therefore, should include all steps to be taken after the notification u/s 4(1) is published including the declaration u/s 6 which are necessarily to be excluded. Otherwise, an interested person would wait for publication of declaration u/s 6 and then only would impugn the validity of declaration without challenging Section 4(1) and get further proceedings stayed and on expiry of three years even if the writ petition is dismissed or withdrawn, no further steps could be taken since three years from that date stood expired and resultantly notification u/s 4 and declaration u/s 6(1) would stand lapsed. Such an interpretation would not be in the public interest to sustain the acquisition by the Government for public purpose. Shri Juneja, the learned Counsel contended that Section 7 of the Act provides clue to the interpretation. Section 7 envisages that whenever any land has been declared u/s 6, as needed for a public purpose, the appropriate Government may authorise some officer on its behalf to take order for the acquisition of the land which show that the steps are required for issuance of the notice u/s 9 read with Section 10; award enquiry u/s 11 to pass an award there under and to take possession of the land u/s 16 only would be stayed. Therefore, the interpretation of Explanation 1 should be understood to mean that during the period of stay taking further steps pursuant to Sub-section (1) of Section 6 alone be excluded. If so excluded, only the declaration could be made within three years after the compliance of the

mandatory requirement of Section 5-A in this case. Since three years have already elapsed on 24th September, 1994 the notification u/s 4(1) shall stand elapsed by operation of the first proviso to Section 6(1), Even otherwise, he contends that the declaration u/s 6 was to be published within three years. The notification u/s 4(1) was admittedly published on September 24, 1981. On September 23, 1984, three years' period had expired. Therefore, the notification u/s 4(1) and declaration u/s 6 shall automatically stand elapsed.

3. Therefore, two questions that arise in this case for decision are : (1) whether the interpretation given to the Explanation 1 to Section 6(1) by the High Court correct in law; and (2) whether the failure to give opportunity of hearing to the counsel for the respondent triggers off Section 5-A enquiry? With a view to appreciate the contention it is necessary to look into the relevant provisions. Section 4(1) envisages the publication of the notification in the Gazette and also in the locality etc., as required there under. An enquiry u/s 5-A shall be conducted unless the power u/s 17(1) is exercised dispensing with the same and possession u/s 17(4) is taken by the Government. In this case, these steps were not taken. Necessarily, therefore, enquiry u/s 5-A had to be conducted. In fact, the notice was served on the owners/interested persons including the father of the respondents who had filed the objections and the case was adjourned on four occasions. On the last occasion, it was adjourned to November 30, 1981 on which date neither respondent nor the counsel was present. Consequently, the enquiry was closed, objections were considered and recommendations were made to the Government to take appropriate action. The declaration u/s 6 came to be published on October 6, 1982 after overruling the objections. Thereafter, the writ petition was filed and stay of further proceedings was obtained. Explanation 1 to Section 6 reads as under :

In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded.

4. If it is read in isolation, as was done by the High Court, it would be obvious that the period during which action or proceedings to be taken in pursuance of the notification issued u/s 4 Sub-section (1) is stayed by an order of the Court, alone is required to be excluded. Since that stage had passed by at the time of publication of declaration u/s 6(1), the question arises : as to what is the meaning of the words 'in pursuance of u/s 4(1) of the notification? 'In pursuance of would mean under the authority of or by virtue of or in the course of carrying out in accordance with the scheme or plan or direction or order or anything in consequence or conformable to or according to; act of pursuing, carrying out and performance, prosecution; the scheme of the Act envisages that after the notification u/s 4(1) was published, the owner/interested person is entitled to a notice, after compliance of the requirements under Sub-section (1) of Section 4. Thereafter owner/person interested is entitled to file his objections. In this case, admittedly, objections were filed on November 30, 1981 when neither the

counsel nor the respondent was present at the time of hearing. After the objections were considered and obviously rejected, declaration u/s 6(1) came to be made and published. The writ petition was filed and further steps were stayed. Consequently, the notice u/s 9 and 10 and award and further steps were stayed. The question is : what is the meaning to be given to the words 'in pursuance of'? In our considered view, these words would be read widely to give effect to the steps to be taken including the enquiry u/s 5-A and declaration u/s 6 and further action thereafter. Otherwise, when a person challenges the notification u/s 4(1) but pending challenge if the proceedings are stayed, that period alone shall be excluded by operation of Explanation 1 to Section 6. If a person challenges the declaration, he may file objections to the publication of the declaration in the Gazette u/s 6 and then challenge the declaration for the non-compliance of the requirement u/s 5-A without going into the validity; he could contend that three years from the date of the publication of the notification u/s 4(1) had elapsed and Explanation 1 is not attracted; it would be unnecessary to go into the question and the writ petition may be got dismissed as his object gets achieved. If the High Court disposes of the matter within two years from the date of publication of the notification u/s 4(1) before the expiry of three years' period, certainly the Government could reconsider the objections filed u/s 5-A and declaration u/s 6 could be published. But when there is a stay of the further proceedings, then necessarily the Government cannot make the declaration. In this case, three years' period was to expire on September 23, 1984 by which date the High Court had already stayed further proceedings and writ came to be disposed of in 1987 by which date three year's period already stood expired. If the period of stay was not to be excluded, the Government has no power even to hear the objections and if the objections are untenable and overruled and public purpose was found to be subsisting, the Government could get the declaration u/s 6(1) published. Considered from this perspective, we are of the view that the words 'in pursuance of' would be widely understood and all steps required as to be taken including the declaration u/s 6 are to be considered as part of the scheme. Accordingly, we hold that there is no impediment in such an interpretation and the restricted interpretation given by the High Court is clearly illegal.

5. The next question is : whether the view taken by the High Court that the enquiry u/s 5-A is vitiated in law, is correct? In our view, the High Court has not correctly interpreted the legal position. It is seen that respondent was given opportunity thrice to file his objections. At his instance the case was posted for hearing on November 30, 1981 on which date neither the respondent nor his counsel was present. Under these circumstances, the respondent having failed to present himself either in person or through counsel on November 30, 1981, the omission to give a right of hearing to him does not vitiate enquiry u/s 5-A. On the other hand, the respondent denied himself of the opportunity of being heard. Therefore, enquiry u/s 5-A is not vitiated by the error of law. Consequently, the declaration u/s 6 is not vitiated by any error of law. Shri Juneja equally is not

correct in contending that even under the unamended Act by operation of the first proviso to Section 6(1), the three years' period had expired by November 19, 1994 and therefore, the notification u/s 4(1) stood elapsed. Admittedly, the notification u/s 4(1) was published on November 24, 1981. The writ petition was filed in 1982 sometime after October, 1982. Therefore, the stay was granted. In the interregnum, the Government disabled to take further steps and, therefore, it cannot be said that though the stay was granted the notification u/s 4(1) stood elapsed for non-publication of the declaration u/s 6 within three years upto September 23, 1994. We place on record our deep appreciation for the valuable assistance rendered by Shri Juneja.

6. The appeal is accordingly allowed, but, in the circumstances without costs.