

(2002) 07 MAD CK 0142

In the Madras High Court

Case No : Writ Petition No. 6186 of 1999 and W.M.P. No. 8925 of 1999

Angappa Asari

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 07 MAD CK 0142

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : V. Nicholas, for the Appellant; R. Thenmozhi Sivaperumal, G.A., for the Respondent

Judgement

V. Kanagaraj, J.—The above writ petition has been filed praying to issue a Writ of Certiorari calling for the records relating to the

Declaration u/s 6 of the Land Acquisition Act made in G.O.Ms. No. 29 Housing and Urban Development, dated 25.1.1999 and published in the

`Malai Murasu'', dated 29.1.1999 and quash the same.

2. The case of the petitioner is that he purchased an extent of 60 cents of land in S.F. No. 81 Ganapathy Village, Coimbatore under a registered

sale deed dated 11.6.1980 for the purpose of constructing a house therein; that the respondents issued a notification in G.O.Ms. No. 597 Housing

and Urban Development, dated 14.3.1983 u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the `Act'') to acquire the lands of the

petitioner along with other lands for the purpose of constructing houses under `Ganapathi Neighborhood Project''; that since the respondents have

issued the declaration u/s 6 of the Act in G.O.Ms. No. 387 Housing and Urban Development, dated 12.3.1986, without conducting any enquiry

as contemplated u/s 5A of the Act, the petitioner challenged the said Declaration before this Court by filing a writ petition in W.P. No. 12411 of

1986 and this Court, by order dated 11.9.1997 allowed the said writ petition thus quashing the declaration u/s 6 of the Act.

3. The further case of the petitioner is that thereupon the respondents issued a notice dated 3.8.1998 in Form-B u/s 5A of the Act requiring him to

place his objections within 15 days from the date of service of the said notice and also conducted the enquiry on 4.9.1998; that the respondents,

have made the declaration u/s 6 of the Act in G.O.Ms. No. 29 Housing and Urban Development, dated 25.1.1999 and hence the above Writ

Petition on ground that the substance of Section 4(1) Notification was not published in the locality; that the present declaration u/s 6 of the Act was

made beyond the period of three years, even after excluding the period during which the previous writ petition was pending i.e. from 18.11.1986

to 11.9.1997.

4. No counter has been filed on behalf of the respondents, but the learned Government Advocate would argue on instructions.

5. The main grievance of the petitioner is that Section 6 Declaration was not made within a period of three years even after excluding the period

during which the previous writ petition was pending and would file a calculation memo. thereby submitting that Section 4(1) Notification was

published on 14.3.1983 and it was published in the locality on 29.5.1983 and the present Declaration u/s 6 was made on 25.1.1999, thus the

period taken for issuance of Section 6 Declaration from the date of local publication of Section 4(1) Notification is 15 years 7 months 26 days and

the time taken for the disposal of the earlier writ petition is 10 years, 9 months and 23 days i.e. from 18.11.1986 to 11.9.1997; that even if the

period of stay in force i.e. a period of 10 years, 9 months and 23 days is excluded from the total time taken for publishing Section 6 Declaration,

the time taken for publication of Section 6 Declaration is 4 years, 10 months and 3 days and since it is beyond the period of three years and

contrary to the proviso to Section 6(1) of the Act., the Declaration u/s 6 is liable only to be quashed.

6. On the contrary, the learned Additional Government Pleader, producing the original records of the proceedings, would submit that the order of

the High Court in W.P. No. 12411 of 1986 was delivered on 11.9.1997 thereby quashing Section 6 Declaration issued earlier in G.O.Ms. No.

387, Housing and Urban Development dated 12.3.1986; that the said order copy was received by the respondents on 28.1.1998. At this

juncture, the learned Additional Government Pleader would further submit that the limitation provided u/s 6(1) of the Land Acquisition Act would

run from the date of receipt of the order of the High Court by the Land Acquisition Officer and would cite a judgment of the Apex Court in

N.NARASIMHAIAH AND OTHERS vs. STATE OF KARNATAKA AND OTHERS, UNION OF INDIA AND OTHERS reported in N.

Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, . It is a case wherein the exercise of the

power u/s 17(4) dispensing with enquiry u/s 5A is quashed by the Court and liberty is given to the State to proceed further in accordance with law,

i.e. to conduct an enquiry u/s 5A and even after conducting the enquiry as prescribed u/s 5A, the Government forms opinion that the land was

needed for public purpose and declaration was published. The Honourable Apex Court in that case has observed:

Running of the limitation should be counted from the date of the order of the court received by the Land Acquisition Officer and declaration is

published within one year from that date. It would be consistent with the scheme of the Act and it would subserve the public purpose. The

Government is bound under the order of the court to hold an enquiry u/s 5A. Thereafter, if the Government still opines that the land is needed for

public purpose, declaration u/s 6 should be published within one year. This interpretation would render judicial review efficacious and meaningful

and public purpose subserved and the aggrieved owner would get an opportunity to vindicate his grievance. Thus the limitation prescribed in clause

(ii) of the first proviso to sub-section (1) of Section 6 would apply to publication of declaration u/s 6(1) afresh. If it is published within one year

from the date of the receipt of the order of the court by Land Acquisition Officer, declaration published u/s 6(1) would be valid.

7. Citing the above judgment, the learned Additional Government Pleader would submit that the order of this Court dated 11.9.1997 was received

by the respondents on 28.1.1998 and notice u/s 5A was issued on 3.8.1998, which was served on the petitioner on 6.8.1998 and the petitioner

sent in his objections on 25.8.1998 and enquiry u/s 5A was conducted on 4.9.1998 and ultimately the declaration u/s 6 was issued in G.O.Ms.

No. 29, Housing and Urban Development Department, dated 25.1.1999 and it was published in "Dinakaran" on 27.1.1999 and "Malaimurasu" on

28.1.1999. The learned Additional Government Pleader would also submit that the locality publication was effected on 27.1.1999 and an award in

Award No. 1/2001 was passed on 25.1.2001, thus awarding a sum of Rs.25,984/- to the petitioner, but till date possession is not taken from the

petitioner. Submitting all the above details, the learned Additional Government Pleader would submit that the Declaration u/s 6 was passed well

within one year from the date of receipt of a copy of the order of this Court and would pray to dismiss the above writ petition with costs.

8. Since different views were expressed in several decisions rendered by Benches of three learned Judges and two learned Judges on the point

"whether after quashing of Notification u/s 6 of the Land Acquisition Act, 1894, fresh period of one year is available to the State Government to

issue another Notification u/s 6", the matter was referred to the Constitution Bench of the Honourable Supreme Court in PADMASUNDARA

RAO (DEAD) AND OTHERS vs. STATE OF TAMIL NADU AND OTHERS reported in AIR 2002 SCW 1156, wherein it has been held:

... a bare reading of Section 6 of the Act as amended by Act 68 of 1984, leaves no manner of doubt that the declaration under S.6 has to be

issued within the specified time and merely because the Court has quashed the concerned declaration an extended time period is not to be

provided. Explan.1 (appended to the section) specifically deals with exclusion of periods in certain specified cases. If it is held that limitation for 3

years for publication of declaration would start running from date of receipt of order of High Court it would mean reading something into the statute

which is not there, and in effect would mean legislation by the statute which is not there, and in effect would mean legislation by the Court whereas

it is within the absolute domain of the legislature. Such a view cannot be reconciled with the language of S.6(1). If the view is accepted it would

mean that a case can be covered by not only Clauses (i) and/or (ii) of the proviso to S.6(1), but also by a non-prescribed period. Same can never

be the legislative intent. It may be pointed out that the stipulation regarding the urgency in terms of S.5A of the Act has no role to play when the

period of limitation under S.6 is reckoned. The purpose for providing the period of limitation seems to be avoidance of inconvenience to a person

whose land is sought to be acquired. Compensation gets pegged from the date of Notification under S.4(1). Section 11 provides that the valuation

of the land has to be done on the date of publication of Notification u/s 4(1). S.23 deals with matters to be considered in determining the

compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the Notification under S.4(1)

of the Act. The prescription of time limit in that background is, therefore, peremptory in nature.

It is further held:

The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K.CHINNATHAMBI GOUNDER AIR

1980 Mad.251 was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of

life in those cases where the declaration under S.6 is quashed, there is no reason why it could not have done so by specifically providing for it. The

fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be

excluded and that there is no scope for providing any other period of limitation. The maxim `actus curia neminem gravabit' highlighted by the Full

Bench of the Madras High Court has no application to the fact situation of this case.

With such observations, the Constitution Bench of the Apex Court has held that the view expressed in N. Narasimhaiah and Others Vs. State of

Karnataka and Others and Union of India (UOI) and Others, , relied on by the learned Additional Government Pleader is not correct and

overruled the same. The Honourable Apex Court, however, made it clear that the above judgment shall operate prospectively to the extent that

cases where awards have been made and the compensations have been paid, shall not be reopened by applying the ratio of the present judgment.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the short

question that arises supreme for consideration and determination in the case in hand is the question of limitation and since the proposition earlier

held by the Apex Court in the case reported in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and

Others, had been later came to be overruled by the Constitutional Bench of the Hon"ble Apex Court in its judgment reported in AIR 2002 SCW

1156 (supra), this Court is of the view that the declaration u/s 6 of the Land Acquisition Act, within the meaning of the limitation prescribed u/s

6(1) proviso (ii), has not been done within time and hence the said declaration made u/s 6 of the Land Acquisition Act in G.O.Ms.29 Housing and

Urban Development, dated 25.1.1999, has to be quashed.

In result,

(i) the above writ petition succeeds and the same is allowed.

(ii) The declaration made u/s 6 of the Land Acquisition Act in G.O.Ms. No. 29 Housing and Urban Development, dated 25.1.1999 is quashed.

(iii) However, the respondents are at liberty to proceed afresh towards the acquisition of the subject matter in strict adherence of the law, and

procedures established by the Land Acquisition Act and Rules.

(iv) However, there shall be no order as to costs.

(v) Consequently, W.M.P. No. 8925 of 1999 is closed.