
(2014) 07 MAD CK 0173

In the Madras High Court

Case No : Writ Appeal Nos. 31 to 33 of 2011, etc.

C. Samraj

APPELLANT

Vs

The Government of Pondicherry

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5(A), 5A, 6

Citation : (2014) 4 LW 52

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

K. Ravichandrababu , J.—The above writ appeals are filed against the common order made in W.P. Nos. 6951, 6953 and 6554 of 1996 dated 04.08.2009. The appellants are the writ petitioners. They have challenged the acquisition proceedings initiated under the Land Acquisition Act, 1894. The notification issued under section 4(1) of the said Act and published in the Government Gazette dated 11.04.1995 and the declaration made under section 6 of the said Act in G.O.Ms. No. 41 dated 12.04.1996 and published in the Gazette on 23.04.1996 were challenged by the writ petitioners by raising very many grounds out of which, the main ground urged was that the said 4(1) notification was issued against two dead persons. The learned Single Judge after considering the rival submissions and finding that the patta stood in the name of those two dead persons Mrs. Rajeswari Ammal and Thangavelu, allowed the writ petitions however, by quashing the declaration made under section 6 alone. Consequently, the learned Single Judge remitted the matter back to the second respondent for holding a fresh enquiry under section 5(A) of the said Act, after issuing notice to the writ petitioners and also to the legal heirs of the said dead persons and then to issue appropriate declaration under section 6 of the said Act. Thus, the learned Judge directed the Authorities to complete the above exercise within a period of six months.

2. Challenging the said common order made in the above writ petitions dated

04.08.2009, the appellants filed the above appeals on 24.09.2009 and the appeals were latter admitted on 03.08.2011.

3. During the pendency of the above writ appeals, M.P. Nos. 1 to 1 of 2014 are filed in all the three writ appeals seeking permission of this Court to raise additional grounds which are as follows:

"a) That the order of the learned Judge in quashing Section 6 declaration and in directing the conduct of Section 5A enquiry is against the judgment of the Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

b) That the learned Judge should have seen that the quashed Section 6 declaration was published after a period of 1 year though passed prior to the expiry of limitation under section 6 proviso (ii). No purpose will be served in remitting the matter since the limitation prescribed under statute bars the publication of any declaration."

4. In the meantime, pursuant to the order made by the learned Single Judge in the above writ petitions, the second respondent issued enquiry notice under section 5(A) of the said Act and the appellants also made their objections on 01.02.2010 and 15.02.2010. However by rejecting their objections, fresh declaration under section 6 of the said Act was passed in G.O.MS. No. 7 dated 21.04.2010 and published in the Government Gazette on 11.05.2010. The Section 6 declaration was also published by public affixture on 09.10.2010. Thereafter, an award enquiry notice also came to be issued on 05.06.2012. The petitioners filed the present writ petitions in W.P. Nos. 21508 of 2012, 21509 of 2012 and 21510 of 2012 and challenged the declaration made under section 6 in G.O.Ms. No. 7 dated 11.05.2010. They also filed other three writ petitions in W.P. Nos. 21511 to 21513 of 2012 against the award proceedings. All these six writ petitions are posted along with the above three writ appeals and all the matters are heard together.

5. Following are the short facts that arise for consideration in these appeals and writ petitions:

The appellants are the owners of the land which are subject matter in these proceedings. A Notification under section 4(1) came to be issued on 11.04.1995 under the Land Acquisition Act, proposing to acquire the petitioners' land for providing house sites to the landless labourers. Out of the lands covered under the said 4(1) notification, Survey Nos. 63/2, 64/2, 65/1 stood in the name of one Rajeswari Ammal and Survey No. 65/3 stood in the name of one Thangavelu. The said Thangavelu died on 13.07.1979 and the said Rajeswari Ammal died on 05.03.1988. However, while issuing 4(1) notification on 11.04.1995, those two dead persons were also shown as the land owners in the said notification. Subsequently section 6 declaration was made in G.O.Ms. No. 41 dated 12.04.1996. The appellants filed W.P. Nos. 6951 of 1996, 6953 of 1996 and 6554 of 1996 before this Court challenging the above notification under section 4(1)

and declaration under section 6 of the said Act. The writ petitions were allowed on 04.08.2009, only by setting aside the declaration under section 6 and remitting the matter back to the second respondent for conducting a fresh enquiry and for passing fresh declaration thereafter. The learned Single Judge also granted 6 months time for doing such exercise.

Challenging the said common order, the present writ appeals are filed.

6. Subsequent to the order passed by the learned Single Judge, Section 5(A) enquiry was conducted and the appellants have objected to the acquisition proceedings. Thereafter, fresh declaration under section 6 came to be passed on 21.04.2010 in G.O.Ms. No. 7. The same was published in the Government Gazette on 11.05.2010. Consequently, award proceedings were also issued and all these proceedings are challenged in the W.P. Nos. 21508 to 21513 of 2012.

7. Mr. V. Raghavachari, learned counsel appearing for the appellants and writ petitioners mainly contended that apart from the fact that Section 4(1) notification issued on two dead persons is not valid and that the writ petitions were liable to be allowed in toto by quashing the 4(1) notification as well, the fresh declaration passed on 21.04.2010 is hopelessly barred by limitation in view of Section 6(1)(ii) of the said Act, which contemplates that such declaration has to be made within one year from the date of publication of the notice under section 4(1). The learned counsel thus contended that the learned Single Judge was not right in extending the period of limitation by granting six months time, since it goes against the statute. In support of such submission, the learned counsel relied on the Constitution Bench decision of the Hon''ble Supreme Court reported in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , Padma Sundara Rao v. State of Tamil Nadu as well as the later decision of the Hon''ble Supreme Court reported in Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others, , Vijay Narayan Thate v. State of Maharashtra. Therefore, the learned counsel submitted that the entire acquisition proceedings are liable to be set aside as the same are in violation of the mandatory statutory requirements as well as the law laid down by the Hon''ble Supreme Court.

8. Per contra, Mrs. N. Mala, learned Additional Government Pleader, Pondicherry, supported the order of the learned Single Judge and contended that this Court, having quashed Section 6 declaration and granted liberty to the respondents to proceed further from the stage 5A enquiry, is right in granting six months time to complete the further acquisition proceedings and therefore, there is no illegality in the declaration made in pursuant to the said order passed by the learned Single Judge. In support of her submission, she relied on the decision of the Hon''ble Supreme Court reported in 2013(11) SCC 578, State of Rajasthan and Others Vs. D.R. Laxmi and Others, , State of Rajasthan v. D.R. Laxmi.

9. We have considered the submissions of the learned counsels on either side and perused the materials placed before this Court.

10. From the above stated facts and circumstances and the submissions made by

the learned counsels appearing on either side, following are the issues that arise for consideration in this matter:

- 1) Whether the notification issued under section 4(1) of the Act can be sustained, if the same was issued also against two dead persons.
- 2) Whether the Court after quashing section 6 declaration, can extend the period of limitation as contemplated under section 6(1)(ii) of the Land Acquisition Act, for passing a fresh declaration.
- 3) Whether the period of limitation for issuing fresh declaration commences from the date of the publication of the 4(1) notification or from the date of the order passed by the Court while quashing the earlier 6 declaration?

11. Before answering the first issue, let us first consider the issue Nos. 2 and 3 as follows:

In this case, the 4(1) notification was issued in G.O.M.S. No. 39, Revenue Department dated 28.03.1995 and the same was published in the gazette of Pondicherry Government on 11.04.1995. The said 4(1) notification was published in the local dailies on 30.03.1995 and by public affixture on 16.04.1995. Therefore, the last mode of publication of Section 4(1) notification being the one on 16.04.1995, the declaration under section 6 ought to be made within one year from the date of such publication. Accordingly, the Section 6 declaration was issued in G.O.Ms. No. 41 dated 12.04.1996 and published in Government Gazette on 23.04.1996 within the statutory period of limitation. Further publication of the declaration was made in the local dailies on 16.04.1996 and by public affixture on 15.04.1996. Therefore, there is no dispute with regard to the fact that the original declaration under section 6 issued in G.O.Ms. No. 41 dated 12.04.1996 was well within the period of one year as contemplated under section 6(1)(ii) of the Land Acquisition Act. The said declaration was in fact made just four days prior to the date of expiry of the limitation period of one year.

12. Thereafter, the said 4(1) notification and Section 6 declaration were challenged before this Court in W.P. Nos. 6951, 6953 and 6954 of 1996 wherein interim stay was granted on 10.06.1996, 14.06.1996 and 17.06.1996. Finally, those writ petitions were allowed in part on 04.08.2009, quashing the Section 6 declaration alone and remitting the matter back to the second respondent for conducting fresh enquiry under section 5(A) of the said Act and to pass fresh Section 6 declaration thereafter. The learned Single Judge also granted six months time for completion of such proceedings.

13. In pursuant to the order passed by the learned Single Judge, the fresh declaration under Section 6 came to be issued on 21.04.2010 in G.O.Ms. No. 7 and published in the Government Gazette on 11.05.2010. Such passing of declaration on 21.04.2010 and the consequential award proceedings are challenged in the present writ petitions by the land owners mainly on the ground that the fresh declaration was passed beyond the statutory period of limitation of

one year from the date of publication of Section 4(1) notification. On the other hand, such declaration is sought to be saved by the respondents by contending that the same was passed well within one year from the date of the order passed by this Court in the earlier writ petitions and therefore it is within the limitation period especially, when this Court has granted six months time for passing such declaration. Based on these rival contentions, we need to answer issue Nos. 1 and 3.

14. In our considered view, the above issues No. 2 and 3 are no more res integra in view of the categorical pronouncement made by the Constitution Bench of the Hon"ble Supreme Court reported in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , Padma Sundara Rao v. State of Tamil Nadu, Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others, . The issue that arose before the Constitution Bench of the Hon"ble Supreme Court was as to whether, after quashing of notification under section 6 of the Land Acquisition Act, 1984, fresh period of one year is available to the State Government to issue another notification under section 6 and whether such period would start running from the date of receipt of the order of the Court. The Hon"ble Supreme Court has also considered as to whether the Court can extend the period of limitation. For proper appreciation of the law laid down by the Hon"ble Supreme Court, the relevant paragraphs 3, 4, 12, 13, 14, 17 in the decision reported in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , (cited supra) are extracted hereunder:

"3. The controversy involved lies within a very narrow compass, that is, whether after quashing of notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") fresh period of one year is available to the State Government to issue another notification under Section 6. In the case at hand such a notification issued under Section 6 was questioned before the Madras High Court which relied on the decision of a three-Judge Bench in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, and held that the same was validly issued.

4. Learned counsel for the appellants placed reliance on an unreported decision of this Court in A.S. Naidu v. State of T.N. SLPs) Nos. 11353-55 of 1988 wherein a Bench of three Judges held that once a declaration under Section 6 of the Act has been quashed, fresh declaration under Section 6 cannot be issued beyond the prescribed period of the notification under sub-section(1) of Section 4 of the Act. It has to be noted that there is another judgment of two learned Judges in Oxford English School Vs. Government of T.N. and Others, which takes a view similar to that expressed in A.S. Naidu case, SLPs (C) Nos. 11353-55 of 1988, However, in State of Karnataka and Others Vs. D.C. Nanjudaiah and Others, view in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, was followed and it was held that the limitation of 3 years for publication of declaration would start running from the date of receipt of the order of the High Court and not from the date on which the original

publication under Section 4(1) came to be made.

12. The rival pleas regarding rewriting of statute and causes omissus need careful consideration. It is well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). The view was reiterated in *Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama*, .

13. In *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, , it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.*, The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *N. Narasimhaiah and Others Vs. State of Karnataka and Others* and *Union of India (UOI) and Others*, . In *State of Karnataka and Others Vs. D.C. Nanjudaiah and Others*, , the period was further stretched to have the time period run from date of service of the High Court's order. Such view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

17. The view expressed in *N. Narasimhaiah and Others Vs. State of Karnataka and Others* and *Union of India (UOI) and Others*, and *State of Karnataka and Others Vs. D.C. Nanjudaiah and Others*, is not correct and is overruled while that expressed in *A.S. Naidu case* and *Oxford case* is affirmed."

(Emphasis supplied)

15. From the above said decision of the Hon"ble Supreme Court, it is evident that once declaration under section 6 of the Act is quashed, fresh declaration under section 6 cannot be issued beyond the period of one year from the date of publication of the 4(1) notification. The earlier view in *Narasimmah's case* and

Nanjundan's case holding that the limitation period would start run from the date of receipt of the order of the High Court was held not correct and overruled by the Constitution Bench of the Hon'ble Supreme Court in the above case.

16. Further, the above said decision was subsequently followed in *Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others*, (cited supra), wherein more or less on identical facts, the fresh declaration passed under section 6 was found to be not valid as the same was not passed within the period of limitation. The relevant paragraph Nos. 2, 3, 4, 21, 23, 24, 25, 26 are extracted hereunder:

"2. The facts in brief are that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short "the Act") was issued in respect of the land in question on 29.8.2002. Thereafter a Notification under Section 6 of the Act was issued on 18.6.2003. The said Notification under Section 6 was challenged and the writ petition filed by the appellants was allowed on 20.1.2004 and the Notification under Section 6 of the Act dated 18.06.2003 was quashed. Subsequently a second Notification under Section 6 dated 30.10.2006 was issued by the State Government.

3. The short question that arises for consideration is whether the Notification under Section 6 dated 30.10.2006 is valid.

4. In our opinion, the said Notification was clearly barred by clause (ii) of the proviso to Section 6 of the Act which reads as under:-

"6. Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) ***

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification;"

It can be seen from the aforesaid proviso to Section 6 that it is couched in negative language. It is well settled that when a Statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature. [See *Principles of Statutory Interpretation* by Justice G.P. Singh 11th Edition, 2008 pages 390 to 392].

21. In view of the above discussion, it is evident that the proviso to Section 6 of the Land Acquisition Act is totally mandatory and bears no exceptions. In fact, a Constitution Bench decision of this Court in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, is clearly in support of the submission of the learned counsel for the appellants that the proviso to Section 6 is mandatory, and hence the Notification under Section 6 dated 30.10.2006 is time barred.

22. In our opinion, when the language of the Statute is plain and clear then the literal rule of interpretation has to be applied and there is ordinarily no scope for consideration of equity, public interest or seeking the intention of the legislature.

It is only when the language of the Statute is not clear or ambiguous or there is some conflict, etc. or the plain language leads to some absurdity that one can depart from the literal rule of interpretation. A perusal of the proviso to Section 6 shows that the language of the proviso is clear. Hence the literal rule of interpretation must be applied to it. When there is a conflict between the law and equity it is the law which must prevail. As stated in the Latin Maxim "dura lex sed lex" which means "the law is hard but it is the law".

23. Learned Attorney General appearing for the respondents submitted that the judgment of the High Court dated 20.1.2004 permitted the authorities to issue a second Section 6 Notification even beyond the time provided by the proviso to Section 6 of the Act. He has invited our attention to paras 2 and 3 of the said judgment which read:-

"2. Having gone through the record of the petition and the file which is made available to us by Mr. Patil, with respect to the acquisition of lands of the Petitioners, we are of the view that the Petitioners did not appear to have been afforded reasonable opportunity as is required under Section 5A of the Land Acquisition Act, 1894. No reasons are insisted upon in justification of this conclusion which we have arrived at as declaration under Section 6 issued concerning the lands of the Petitioners dated 29.8.2002 will have to be set aside and the same is hereby quashed and set aside. The Petitioners need inspection of the record from the office of the Land Acquisition Officer. Mr. Patil, AGP assures that within one week from today, inspection will be offered to the Petitioners. Dr. Tulzapurkar states that the Petitioner will file their objections within two weeks thereafter.

3. All parties agree that hearing contemplated under Section 5A by the Special Land Acquisition Officer should be completed within two months thereafter as far as possible. Dr. Tulzapurkar makes a statement on instructions from the Petitioner that the objections with respect to the period within which Section 6 notification has to be issued from the date of Section 4 notification, will not be raised by the Petitioners if the Petitioners are finally aggrieved by the 5-A report and subsequent declaration under Section 6. Needless to say that the Special Land Acquisition Officer should pass a reasoned Order when he considers the objections from the petitioners. The entire proceeding will be based on Section 4 notice which has led to the present proceedings and that notice will continue to govern the acquisition of these lands."

24. In our opinion, there can be no estoppel against a Statute. Since the Statute is very clear, the period of limitation provided in Clause (ii) of the proviso to Section 6 of the Act has to be followed, and concessions of the counsel can have no effect. As already stated above, the proviso is mandatory in nature, and must operate with its full rigour vide *Ashok Kumar and Others Vs. State of Haryana and Another*, .

25. Mr. Shekhar Naphade, learned senior counsel appearing for the State of

Maharashtra then submitted that the judgment dated 20.1.2004 in the earlier writ petition No. 9248/2003 is res judicata and since the said judgment was not challenged before this Court, it had become final. He submitted that in the aforesaid judgment it had been clearly stated by the learned counsel for the petitioners on instructions from the petitioners that the objection with respect to the limitation period within which the second Section 6 Notification will be issued will not be raised by the petitioners if the petitioners are finally aggrieved by the Section 5A report and subsequent declaration under Section 6 of the Act. Accordingly, he submitted that now no objection can be taken in the present proceedings urging the bar of limitation provided in clause (ii) to the proviso to Section 6 of the Act.

26. In this connection, we wish to state that no statement or concession of a learned counsel can override a mandatory statutory provision.

17. From the perusal of the above decision of the Hon''ble Supreme Court, it is further made clear that there cannot be no estoppel against a statute and a concession cannot override a mandatory statutory provision. In fact, the facts of the above case would further disclose that the earlier order passed by the High Court therein quashing the original 6 declaration was not at all challenged by the land owners. Even then the Hon''ble Supreme Court has found that there can be no estoppel against the statute and no statement or concession can override a mandatory statutory provision.

18. Applying the above said decisions of the Apex Court to the facts of the present case, we find that the subsequent declaration passed under Section 6 on 21.04.2010 is undoubtedly barred by limitation in view of the fact that only four days were left from the date of publication of the section 4(1) notification, when the original Section 6 declaration was passed on 12.04.1996. Therefore, if at all, the declaration is to be passed, it should have been passed within the said left out period of four days. No doubt, the proceedings were subsequently stayed by this Court during the pendency of the earlier writ petitions. However once the writ petitions were disposed of on 04.08.2009, the fresh declaration ought to have been passed within the statutory period of limitation from the date of publication of the original Section 4(1) notification of course by excluding the period of stay. In any event it cannot be passed from the date of the order passed in the writ petition, as held by the Hon''ble Supreme Court in the decisions cited supra. Such limitation period also cannot be extended by order of Court, in view of the categorical pronouncement made by the Hon''ble Supreme Court in the decisions cited supra. Therefore, the learned Single Judge was not correct in extending the period of limitation by granting six months time. The above referred two decisions of the Hon''ble Supreme Court are very clear on the above said issues and we find that those decisions are directly against the stand taken by the respondents in these proceedings.

19. Learned Additional Government Pleader appearing for the respondents relied on Gurbinder Kaur Brar and Another Vs. Union of India (UOI) and Others, , to

contend that fresh declaration under section 6 can be issued as has been directed in the above said decision. There is no dispute with regard to the power of the Court to quash the original declaration and direct the authorities to issue fresh declaration under section 6. But the question is as to what is the period of limitation available for passing such fresh declaration. That issue was not considered by the Hon''ble Supreme Court in the decision relied on by the learned Additional Government Pleader and on the other hand, the same was considered only by the Constitution Bench of the Hon''ble Supreme Court which we have referred to in detail supra. Therefore, we find the above decision relied on by the learned Additional Government Pleader is not relevant to the facts and circumstances of the present case.

20. Likewise, the other decision reported in State of Rajasthan and Others Vs. D.R. Laxmi and Others, relied on by the learned Additional Government Pleader to contend that a void order need not be set at naught if the party does not approach the Court within a reasonable time, is also not helpful to the respondents, in view of the fact that the petitioners have approached this Court immediately after the declaration made in the year 1996 and are continuing to agitate against the acquisition proceedings all along. Therefore, we find that there is no delay or laches on the part of the petitioners. Consequently, the above decision is also not relevant to the facts and circumstances of the case.

21. One more aspect also to be noted in this case. The Hon''ble Supreme Court in the above said Constitutional Bench decision has finally observed that the said decision should operate prospectively to the extent that the cases where awards have been made and compensation has been paid shall not be reopened by applying the ratio of the said judgment. The said decision was rendered by the Hon''ble Supreme Court on 13.03.2002. In this case, the award enquiry notice itself was issued on 05.06.2012 only after the said decision. As admittedly the award has not been passed before the decision of the Constitution Bench decision of the Hon''ble Supreme Court, we have no hesitation in applying the above said decision of the Hon''ble Supreme Court to the facts and circumstances of the present case to reject the contentions of the respondents. Since we hold that the subsequent 6 declaration passed is beyond the statutory period of limitation and as such, it is not valid as held by the Hon''ble Supreme Court in the decisions referred to supra, it follows that the 4(1) notification also gets lapsed automatically. Since the 4(1) notification gets lapsed, in view of the invalid 6 declaration, there is no necessity to go into other points raised against the said 4(1) notification. Accordingly, all the writ petitions, M.P. Nos. 1 to 1 of 2014 in all the three writ appeals and the writ appeals are allowed and the impugned proceedings are set aside. No costs. The other connected miscellaneous petitions are closed.