
(2002) 02 AP CK 0035
In the Andhra Pradesh High Court
Case No : WA No. 1306 of 1997

Dr. Vinod Chandra and Others	Vs	APPELLANT
State of A.P. and Another		RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

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

Citation : (2002) 3 ALD 766

Hon'ble Judges : S.R.K. Prasad, J; S.R. Nayak, J

Bench : Division Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; Government Pleader for Land Acquisition and N. Subba Reddy, SC for Singareni Collieries Company Limited, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This writ appeal is directed against the order of the learned single Judge dated 27-10-1997 made in WP No. 24150 of 1997. The appellants are the petitioners in the writ petition.

2. The background facts leading to the filing of the writ petition be noted briefly as under: The petitioners are the owners of the premises bearing No. 11-4-660, Mehar Manzil, Red Hills, Hyderabad. The said property was under lease to respondent No. 2. The 1st respondent issued notification u/s 4(1) of the Land Acquisition Act, 1894 (the Act, for short) in G.O.Rt. No. 198 dated 3-5-1994, published in A.P. Gazette on 10-5-1994 proposing to acquire an extent of 3050 sq. meters. Thereupon Section (5-A) enquiry was held that the petitioners filed their objections. However, no action was taken. The 1st respondent issued Errata to Section 4(1) Notification published in the press on 19-5-1995 wherein the area was altered as 3780 sq. meters in the place of 3050 sq. meters originally notified. Questioning the said action of the respondents in issuing errata, thereby increasing the extent covered under the original notification issued u/s 4(1), and also the declaration u/s 6 the petitioners filed WP No. 13766 of 1995. However,

the said writ petition was dismissed by a learned single Judge of this Court by order dated 25-3-1997. Against the said order, WA No. 774 of 1997 was filed and the same was allowed on 11-9-1997. M/s. Singareni Collieries, who is the beneficiary of the acquisition and who is the 2nd respondent in this appeal, being aggrieved by the said order of the Division Bench in the writ appeal, preferred SLP (C) No. 1592 of 2000 to the Supreme Court of India. The Supreme Court, by its order dated 11-4-2001, has opined that acquisition of the land to the extent covered by the errata is illegal and irregular and, therefore, there is no error in the judgment of the Division Bench of the High Court. The Supreme Court while holding so and considering the contention of the learned Counsel for the appellant therein, that in no case the entire acquisition proceedings could be quashed, as the original notification covering an area of 3050 sq. is legal and valid, was pleased to observe-

"We do not find that the High Court has quashed the entire acquisition proceedings. It may possibly has led to the confusion by the last paragraph of the order of the judgment. It is quoted hereunder:

"Accordingly, the writ petition and the writ appeal are allowed and the draft declaration u/s 6 of the Act as published in the Gazette on 10-5-1995 is quashed in respect of 3750 sq. meters of land, but in the circumstances, each party is directed to bear their own costs."

We have no hesitation to interpret this last paragraph of the impugned judgment by holding that the appellate Court quashed only the extended land as covered by the Errata as included in Section 6 notification published in the gazette on 9th May, 1995. It is true, Section 6 refers to the total area of 3750 sq., meters, but it referred to show the illegality by including the entire area of acquisition in other words include even the area covered by the errata. We have no hesitation to hold, it is only to the extent of the area covered by the Errata which is held to be illegal and not the original Section 4(1) notification to the extent of 3050 sq. meters."

3. In pursuance of the order of the Division Bench in the writ appeal, the respondents issued declaration in Memo dated 16-9-1997 u/s 6 of the Act in respect of 3050 sq. meters and the same was published in the press on 17-9-1997. The said notification is challenged in the writ petition.

4. Before the learned single Judge, it was contended on behalf of the petitioners that Section 4(1) notification was published on 20-5-1994 and, therefore, Section 6(1) declaration should have been made on or before 19-5-1995 i.e., within one year of Section 4(1) notification; the memo dated 9-5-1995 (errata) and Section 6 declaration were published in the press on 19-5-1995; since the impugned declaration u/s 6 is beyond one year, the notification has to be set aside and consequently Section 4(1) notification dated 3-5-1994 is also liable to be quashed. In support of their contentions, the petitioners placed reliance on a two-Judge Bench judgment of the Supreme Court in Oxford English School Vs.

Government of T.N. and Others, .

5. On the other hand, on behalf of the respondents it was contended that Section 6 declaration is within time and the same cannot be interfered with. In support of this contention, reliance was placed on a three-Judge Bench judgment of the Supreme Court in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, . The learned single Judge, on consideration of the facts of the case, the ratios of the aforementioned judgments of the Supreme Court and the relevant statutory provisions, dismissed the writ petition by order dated 27-10-1997, holding that in the light of the judgment of the Supreme Court in Narasimhaiah's case (supra), the limitation of one year started from the date of receipt of the order of the Division Bench dated 11-9-1997 made in WA No. 774 of 1994 by the LAO, and he, in fact, issued declaration u/s 6 of the Act, within one year from the date of receipt of the order. Hence this writ appeal by the unsuccessful writ petitioners.

6. Sri Vilas V. Afzul Purkctr, learned Counsel appearing for the appellant/writ petitioners would reiterate the same contentions raised before the learned single Judge and would place strong reliance on the judgment of the Supreme Court in Oxford English School case (supra) in support of his contentions and would maintain that the judgment of the Supreme Court in Narasimhaiah's case (supra) has no application to the facts of the case.

7. The short question that arises for decision in this appeal is whether the period of limitation of one year prescribed for declaration u/s 6 of the Act, in the facts and circumstances of the case, began to run from the date of publication of the notification u/s 4(1) of the Act or it began to run from the date of which the LAO received a copy of the order dated 11-9-1997 in WA No. 744 of 1994 made by this Court.

8. Before dealing with this question, for proper appreciation of the case, it is appropriate to notice Sub-section (1) Section 6 after Amendment Act 68 of 1984 came into force. It reads-

"6. Declaration that land is required for a public purpose:--(1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such Government or any other officer duly authorized to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification u/s 4, Sub-section (1):

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Provided that no declaration in respect of any particular land covered by a

notification u/s 4, Sub-section (1):--

(i) Published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance , 1957 (1 of 1957), but before 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;

(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;

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by local authority.

Explanation 1 :--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.

Explanation 2 :--Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenue."

(2) xxx

(3) xxx

It is true that Section 6 declaration has to be made within one year from the date of publication of the notification u/s 4(1) of the Act. Therefore, the question to be considered is whether the declaration made by the Government u/s 6 of the Act on 16-9-1997 is within the limitation prescribed u/s 6.

9. In Oxford English School's case (supra), the notification issued by the authority dated 24-8-1982 was published in the Gazette on 8-9-1982 and the declaration u/s 6 was made on 19-12-1983. The notification was published in the Gazette on 15-2-1984. On 13-8-1984, Sections 9 and 10 notices were served. Till April, 1987 no award was passed. At that point of time, writ petition was filed and interim stay of dispossession was obtained. The Division Bench set aside the acquisition proceedings after the stage of Section 4(1) notification and directed fresh enquiry u/s 5A of the Act. It may be noted that in that case the enquiry u/s 5A was dispensed with. The Division Bench further directed that if the Government decides to proceed with the acquisition, it shall issue Section 6 notification within six months from the date of judgment and the award shall be passed within four months thereafter. Aggrieved by the said order of the Division Bench, the matter was carried to the Supreme Court. The question that arose before the Apex Court was whether a fresh declaration u/s 6 can be made in respect of any land notified u/s 4(1) by notification dated 24-8-1982 after the expiry of 3 years from the date of publication of the notification u/s 4(1). The

Supreme Court, answering the question in the negative, observed that Explanation 1 to the proviso which provides that in computing the period of three years the period during which any action or proceeding to be taken, pursuant to the notification u/s 4(1) is stayed by an order of the Court, shall be excluded. In that the case, stay was obtained from High Court on 2-4-1987 i.e., beyond the expiry of 3 years. Therefore, the Supreme Court held that the High Court could not have given any direction permitting issuance of declaration u/s 6 within six months and also for passing the award within 4 months.

10. In Narasimhiah's case (supra), the appellants therein challenged the exercise of emergency power u/s 17(4) of the Act by filing writ petitions in the High Court of Karnataka. A learned single Judge of Karnataka High Court quashed the order of the Government dispensing with the enquiry u/s 5A of the Act and directed-

"In the result, these writ petitions are partly allowed and the declaration dated 24-6-1987 published in the Gazette dated 6-8-1987 made u/s 6(2) of the Act read with Section 17(1) of the Act as also the portion of the preliminary notification u/s 4(1) of the Act dispensing with the enquiry u/s 5A of the Act insofar as the petitioners' lands are concerned and also the notice u/s 9(1) of the Act dated 12-8-1987 are quashed reserving liberty for the authorities to continue the acquisition proceedings from the stage of preliminary notification. The petitioners shall file their objections against the preliminary notification within 30 days from the date of receipt of the order and they shall present themselves before the Land Acquisition Officer 3rd respondent on 15-7-1988 without awaiting any fresh notices from the said officer. The Land Acquisition Officer shall hold the enquiry u/s 5A of the Act expeditiously and complete the proceedings in accordance with law."

In pursuance of the above direction issued by the learned single Judge, enquiry u/s 5A of the Act was conducted and declaration thereof was published on 13-5-1988. The validity of that declaration was again questioned by filing writ petitions. The learned single Judge again allowed the writ petitions. The Division Bench allowed the appeals preferred against the order of the learned single Judge and consequently upheld the declaration published u/s 6 of the Act. The validity of the order of the Division Bench was assailed before the Apex Court. Before the Apex Court, it was contended on behalf of the appellants, that in view of the judgments of the Apex Court in Oxford English School case (supra) and P. Chinnanna and Others Vs. State of A.P. and Others, , the view of the Division Bench is not correct in law. It was also contended that if the view of the Division Bench of the High Court is upheld, there would be two dates of notification u/s 4(1) viz., the notification as initially published u/s 4(1) and the one deemed to be published consequent to upholding of second declaration u/s 6 of the Act, and such an interpretation would lead to incongruous situation and it would be inconsistent with the scheme of the Act. The Apex Court, on a detailed consideration of the above judgments, has handed down the opinion that the

limitation to publish the declaration u/s 6(1) of the Act would begin to run from the date of receipt of the order of the Court. In paragraphs 12, 13 and 16, the Apex Court held--

"Having considered the respective contentions, we are of the considered view that if the construction as put up by the learned Counsel for the appellants is given acceptance, i.e., it should be within one year from the last of the dates of publication u/s 4(1), the public purpose would always be frustrated. It may be illustrated thus; in a given case where the notification u/s 4(1) was published, dispensing with the enquiry u/s 5A and declaration was published within one month and as the urgency in the opinion of the Government was such that it did not brook the delay of 30 days and immediate possession was necessary, but possession was not taken due to dilatory tactics of the interested person and the Court ultimately finds after two years that the exercise of urgency power was not warranted and so it was neither valid nor proper and directed the Government to give an opportunity to the interested person and the State to conduct an enquiry u/s 5A, then the exercise of the power pursuant to the direction of the Court will be fruitless as it would take time to conduct the enquiry. If the enquiry is dragged for obvious reasons, declaration u/s 6(1) cannot be published within the limitation from the original date of the publication of the notification u/s 4(1). A valid notification u/s 4(1) becomes invalid. On the other hand, after conducting enquiry as per Court order, and, if the declaration u/s 6 is published within one year from the date of the receipt of the order passed by the High Court, the notification u/s 4(1) becomes valid since the action was done pursuant to the orders of the Court and compliance with the limitation prescribed in Clauses (i) and (ii) of the first proviso to Sub-section (1) of the Act would be made."

"It is true that this Court in Oxford English School case in paragraph 7 had held that when declaration u/s 6 was quashed and the notification u/s 4(1) was upheld, the second declaration is required to be published within the same period prescribed in Clause (1) of the first proviso. In that case, the limitation of three years under Clause (i) of the first proviso to Sub-section (1) could not be complied with. The notification u/s 4(1) was held to be invalid. Unfortunately, the above distinction was not brought to the notice of this Court when the case was considered and decided. Similarly, the ratio in P. Chinnanna, case (supra) directly does not with the problem but observations in paragraph 5 do support the contention of the appellants as possession was not taken in these cases and the observations get attracted. But it was not necessary in that case to deal with that question since the possession u/s 17(2) was already taken and the land stood vested in the State."

"We are of the opinion that running of the limitation should be counted from the date of the order of the Court received by the LAO and the 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. Parliament amended the Act and prescribed limitation since the acquisition proceedings were unduly delayed

for years and the owners of lands were put to hardship. If operation of limitation under Clause (ii) of first proviso to Section 6(1) is not applied, we would come back to square one and defeat the legislative purpose of limitation prescribed under the Act. 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 as indicated above. 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, we hold that the limitation prescribed in Clause (i) of 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 receipt of the order of the Court by LAO, declaration published u/s 6(1) would be valid."

11. The observations made by the three-Judge Bench of the Supreme Court in *Narasimhiah's case* (supra) would clearly indicate that as per the learned Judges, if the distinction made by them in para 12 of the judgment had been presented to the learned Judges who decided the case in *Oxford English School's case* (supra), the decision would have been different. Be that as it may, the three-Judge Bench of the Supreme Court in *Narasimhiah's case* (supra), in categorical terms, held that limitation of one year prescribed u/s 6 of the Act for publication of the declaration begins to run from the date of receipt of the order of the Court by the LAO and such an interpretation is consistent with the scheme of the Act and it would subserve the public purpose.

12. In the present case, as noticed above, Section 6 declaration was published within time if we apply the ratio of the judgment in *Narasimhiah's case*. Nevertheless, the validity of the same was challenged on the ground that the extent shown in Section 4(1) notification is different than what is notified in Section 6 declaration. It is true that excess extent was notified in the declaration published u/s 6 of the Act basing on the Errata. But it needs to be emphasized that the Division Bench of this Court, in WA No. 774 of 1997, quashed only Section 6 declaration dated 19-5-1995 in respect of 3780 sq. meters of land and it has not quashed the entire acquisition proceedings. This position is quite clear from the observations of the Apex Court itself in the order dated 4-11-2001 extracted above. The resultant position is that Section 4(1) notification issued by the Government as regards 3050 sq. meters stands and that is not quashed either by the Division Bench of this Court or by the Apex Court. The judgment of the two-Judge Bench of the Supreme Court in *Oxford English School case* (supra) would in no way advance the case of the writ petitioners.

13. As per the proviso to Section 6 of the Act extracted above, declaration cannot be made u/s 6 of the Act in respect of any land covered by a notification u/s 4(1) after expiry of 1 year from the date of publication of the said notification. In *Oxford English School case* (supra), Section 4(1) notification was published in the Tamil Nadu Gazette on 24-8-1982. The notification u/s 6 of the Act dated

19-12-1983 has been published in the Tamil Nadu Gazette within the period of three years prescribed under the proviso. This declaration was quashed in a writ proceeding. In those circumstances, the question that arose for consideration before the Apex Court was whether a fresh declaration u/s 6 of the Act could be made in respect of any land notified u/s 4(1) of the Act by the notification of 24-8-1982 after the expiry of three years from the date of publication of the notification u/s 4(1). While answering this question in the negative, the Apex Court held-

"The respondents have relied upon Explanation 1 to the proviso which provides that in computing the period of three years the period during which any action or proceeding to be taken pursuant to the notification u/s 4(1) is stayed by an order of Court shall be excluded. In the case of the appellant such a stay was obtained by them from the High Court of Madras on 20-4-1987. This was long after the expiry of the period of three years provided under the proviso to Section 6. Even if one excludes the period during which the subsequent stay operated, the issuance of a fresh declaration u/s 6 would be clearly beyond the period of three years prescribed under the proviso to Section 6. Since the prohibition on issuance of a declaration u/s 6 after the expiry of three years from the date of publication of the notification u/s 4(1) is absolute, the High Court could not have given any direction permitting issuance of the declaration u/s 6 within six months from the date of its judgment."

14. It needs to be emphasized that in Oxford English School case (supra), the notification issued u/s 4(1) itself was held to be invalid. As pointed out supra, in the present case, neither the Division Bench of this Court nor the Supreme Court set aside the entire acquisition proceedings, including the notification issued u/s 4(1) of the Act. Looking from that angle, the judgment of the Apex Court in Oxford English School case (supra) can be distinguished on facts. Be that as it may, the three-Judge Bench of the Supreme Court in Narasimhaiah's case (supra), after specifically considering the two-Judge Bench judgment in Oxford English School case (supra), has opined that the period of limitation begins to run from the date of receipt of the order by the LAO, and if declaration is published within one year from that date, it would be consistent with the scheme of the Act. Even assuming that certain observations made by the learned Judges in the Oxford English School's case (supra) are favourable to the writ petitioners, even then, they cannot be given effect in view of the categorical statement of law made by the three-Judge Bench in Narasimhaiah's case (supra).

15. In the result and for the foregoing reasons, we do not find any merit in this writ appeal and it is accordingly dismissed with no order as to costs.