

(2003) 04 MP CK 0107

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4176 of 1998

Gopal Agrawal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 4, 6

Citation : (2003) 04 MP CK 0107

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : N.S. Kale, with Harbinder Singh, for the Appellant; R.S. Jha, D.A.G. for Respondents No. 1 to 3 and Rakesh Jain with V. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner in this writ petition seeks the quashment of notification P.1 issued u/s 4 of the Land Acquisition Act on 3-11-1995 published in gazette dated 24-11-1995 and order P.2 date 6-1-1993 passed by the Land Acquisition Officer with regard to issuance of declaration u/s 6 and the order passed by the Collector to issue declaration u/s 6 on 31-3-1998. Prayer is also made to quash the declaration P.3 issued u/s 6 of the Land Acquisition Act on 23-4-1998 published in gazette on 15-5-1998.

2. The matter of acquisition of the land for establishing yard of Krishi Upaj Mandi Samiti, Bhopal, is having chequered history. The notification P.1 Issued u/s 4 of the Act was published in gazette on 24-11-1995. Enquiry u/s 5A was dispensed with. Section 17(1) of the Act was invoked. The declaration u/s 6 (Annexure R.3) was initially issued on 2-2-1996. Two writ petitions were preferred before this Court W.P. No. 416/96, Ranjit Thakur & another vs. State of M.P. and others and W.P. No. 487/96, M/s Sodhi Commercial Company vs. State of M.P. and others challenging the acquisition which were decided by common order (R.4) dated 24-4-1997. This Court quashed the part of the notification u/s 4 with respect to invoking the urgency clause dispensing with the enquiry u/s 5A. It was directed

that objection u/s 5A of the Act shall be heard by the Land Acquisition Officer and then he shall pass appropriate order in accordance with law. The Government shall then proceed further in accordance with the provisions of the Act. Nothing was stated in the order with respect to the declaration u/s 6. After the decision was rendered by this Court on 24-4-1997 objections were heard and decided by the Land Acquisition Officer as per order P.2 dated 6-1-1998. The objections were rejected. The Collector ordered on 31-3-1998 to issue the declaration u/s 6 of the Act. The order passed by the Collector on 31-3-1998 to issue declaration u/s 6 is within period of one year from the date of the decision rendered by this Court in abovesaid two writ petitions. The declaration was prepared on 23-4-1998 for publication and it was published in the gazette on 15-5-1998.

3. The petitioner in the writ petition has challenged the acquisition on the ground that declaration u/s 6 was published in the gazette dated 15-5-1998 which is beyond one year period from the date of the decision of this Court. The same ought to have been issued within a period of one year as provided under second part of first proviso to sub-section (1) of section 6 of the Land Acquisition Act. The same ought to have been Issued within a period of one year as notification u/s 4 was published after the commencement of the Land Acquisition Act, 1984. Another ground which is raised is that acquisition is not for the avowed public purpose. The choice of the land is not appropriate. The order P.20 of Minister to locate the market yard in a different place has also been relied upon. It is submitted that acquisition is colourable exercise of power. The land in question is not suitable for establishing the market yard. It is also alleged that acquisition is mala fide.

4. It is stated by Krishi Upaj Mandi Samiti that return filed in W.P. No. 2551/98 has been adopted in the instant case. Said return is perused. It is contended in the return that compensation has been deposited by the Krishi Upaj Mandi Samiti. A sum of Rs. 75,23,865/- has been deposited. Krishi Upaj Mandi was put in actual possession of 130.68 acres of land in the month of October, 1993. Out of 130.68 acres of land, there was encroachment by members of the Pushpa Grih Nirman Sahkari Samiti, Bhopal. Notification u/s 4 for acquisition of 28.71 acres of land belonging to Sondhi Commercial Company and Sarvodaya Grih Nirman Sahkari Samiti, Bhopal, was issued on 24-11-1995 which was subject matter of two writ petitions in which decision was rendered by this Court on 24-4-1997. The land is on Berasia road around 8 kms. away from main city of Bhopal. Mandi Samiti requires a big area of land which was not available anywhere except on Berasia road and, therefore, a decision to acquire the land was taken. The views of the Minister did not find favour with the Government and were not accepted. The acquisition is valid, proper and for public purpose.

5. No return has been filed by the other respondents.

6. Shri N.S. Kale, Sr. counsel appearing for the petitioner, has raised two submissions; first that the acquisition is bad in law for the reason that

declaration u/s 6 was not issued within a period of one year as per second part of first proviso to sub-section (1) of section 6 of the Act. Notification was published on 15-5-1998 which is beyond one year period of the decision rendered by this Court. It is also submitted that acquisition is not for the so called public purpose and is in colourable exercise of the power.

7. Shri R.S. Jha, Dy. A.G. appearing for respondents No. 1 to 3, has supported the acquisition and has contended that limitation has to be computed with reference to the date of passing of order by the Collector u/s 6. The substantial land has also been acquired and compensation paid to other persons.

8. Shri Rakesh Jain with Shri Vikram Singh, counsel appearing for respondent No. 4, Krishi Upaj Mandi Samiti, Bhopal, submit that for determining the period of limitation under second part of first proviso to sub-section (1) of section 6 of the Act, gazette publication of the declaration u/s 6 of the Act is not material but the passing of the order to that effect is only material and order was passed by the Collector in the instant case filed along with P.2 dated 31-3-1998 which is within a period of one year from 24-4-1997 which is the date of the decision of this Court in two writ petitions, thus, acquisition is proper. It is also submitted that only a part of the land remains to be acquired. Compensation has been paid to the substantial number of persons which was deposited way back in the year 1993 and the petitioner cannot have much say as to the choice of the land. The decision has been taken considering all the circumstances and acquisition is not colourable or mala fide.

9. The primary submission of the learned counsel appearing for the petitioner is that declaration u/s 6 was not within the period of limitation. He placed reliance on the decision of the Apex Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . The few relevant dates which are not in dispute are; notification u/s 4 was published on 24-11-1995 in the official gazette. It is also not in dispute that initially declaration R.3 u/s 6 was published on 2-2-1996. The decision R.4 was rendered in the above two writ petitions by this Court on 24-4-1997. The objections were rejected on 6-1-1998 and the Collector has passed the order to issue the declaration u/s 6 on 31-3-1998 and the declaration u/s 6 was prepared for publication on 23-4-1998 and published in the gazette dated 15-5-1998. If the date of the order is considered to be determinative factor for computing one year of period of limitation as prescribed under sub-section (1) of section 6 of the Act, the order has been passed within one year from the date of the decision, R.4 rendered by this Court on 24-4-1998. The Collector has exercised the power of appropriate Govt, u/s 6. The precise question is whether the date of the order is material or the date of publication of declaration in official gazette u/s 6 is determinative of the period of limitation under second part of first proviso to sub-section (1) of section 6 of the Act. In other words whether the other steps under sub-section (2) of section 6 are required to be taken within a period of one year in addition to the order being passed to issue the declaration as provided under sub-section (1) of section 6 of

the Act.

10. Sub-section (1) of section 6 of the Act does not deal with the publication. The word "published" which is mentioned in second part of first proviso to sub-section (1) of section 6 of the Act is with respect to publication of notification u/s 4. The publication of declaration u/s 6 is dealt with under sub-section (2) of section 6 of the Act, in my opinion, what is necessary is that appropriate Govt, to pass an order within a period of one year. The Apex Court, has held that where the Courts has interdicted and has quashed the declaration u/s 6 and has directed enquiry u/s 5A the period of one year has to be computed from the date of the order passed by the Court. When this Court on 24-4-1997 as per order R.4 has quashed the part of the notification u/s 4 dispensing with the enquiry u/s 5A by the necessary implication it follows that declaration u/s 6 was set at naught as declaration u/s 6 of the Act is required to be issued only after completion of the enquiry u/s 5A of the Act. The Apex Court in Padma Sundara Rao and others vs. State of Tamil Nadu and others (supra) has held:

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 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 Narasirinhaiah case. In Nanjudaiah case the period was further stretched to have the time period run from date of service of the High Court's order. Such a 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.

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K. Chinnathambi Gounder 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 u/s 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the 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 curiae neminem gravabit* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

11. The Apex Court has emphasized that the 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 curiae neminem gravabit* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of

this case. The view taken in *N. Narasimhaiah and Others Vs. State of Karnataka and Others* and *Union of India (UOI) and Others*, and *P. Siddalingappa Vs. State of Karnataka and Others*, is not correct and is overruled while that expressed in *A.S. Naidu vs. State of Tamilnadu*, SLPs (C) No. 11353-55 of 1988 and *Oxford English School Vs. Government of T.N. and Others*, is affirmed. There cannot be a dispute with the above proposition but the precise question which is the date for computing the period of one year whether the date of publication of declaration u/s 6 is relevant or the date of pasting of the order by the appropriate authority u/s 6; this question has also been answered by the Apex Court in *S.H. Rangappa Vs. State of Karnataka and Another*, in para 9 which is quoted below:

9. It is pertinent to note that sub-section (2) of section 6 does not prescribe any time-limit within which the declaration made u/s 6(1) is to be published. It is well known that after an order of declaration is made there can be a time gap between the making of the order or a declaration and its publication in the Official Gazette. Whereas the time-limit for the making of an order is provided u/s 6(1), the legislature advisedly did not provide for any time limit in respect of the steps required to be taken under sub-section (2) of section 6. If the contention of Mr. G.L. Sanghi, the learned Senior counsel for the appellant is correct, the effect would be that not only the declaration would have to be published within the time prescribed under the proviso to section 6(1) but all other steps, like publication in the daily newspaper and the Collector causing public notice of the declaration to be given at convenient places in the locality, must also be completed within a period of one year of section 4 notification. This could certainly not be a consequence contemplated by the legislature. As already observed, the purpose of section 6 notification being to give a final declaration with regard to the need of the land for public purpose, the interest of the landowners was sufficiently safeguarded with the requirement of the making of the declaration u/s 6(1) within a prescribed period. It is difficult for us to read into sub-section (2) the provisions of the proviso to section 6(1) which relate to the time limit for issuance of the notification u/s 6(1).

12. It is clear from above that passing of the order to issue declaration u/s 6(1) is relevant for determination of the period of limitation. Thus, the first submission raised by learned counsel for petitioner for computing the period of limitation with reference to the date of publication of declaration u/s 6 in the official gazette is liable to be rejected.

13. The other submission raised by learned counsel appearing for the petitioner is that acquisition is colourable exercise and is not for the avowed public purpose and is mala fide. The submission is not acceptable for various reasons. Firstly not only the land in question is being acquired but in addition some more land has already been acquired finally and with respect to that award has also been passed. Compensation was deposited long back and necessity of establishing new market yard is obviously a public purpose. The mentioning in P.12 to the effect that land abutting road be acquired so that market committee is able to

obtain better land which are available to the other private traders cannot make the acquisition mala fide one; that is only way of expression by the Incharge officer of the Mandi. On facts, in my opinion, acquisition cannot become mala fide by the mentioning of said words in P.12 which is to ensure that Mandi obtains appropriate better and proper place. The suggestion of the Revenue Minister P.20 was not accepted by the appropriate Govt. part of land has been acquired and it is not open to the petitioner once the acquisition is for the public purpose to point out some other piece of land ought to have been acquired the land is shown to be suitable for the purpose it has been acquired and I find that acquisition is not colourable or mala fide and the submission raised in that regard is rejected

14. No other submissions were raised.

15. Resultantly, I find no merit in the petition. Writ petition is dismissed. No order as to costs.