
(2010) 03 P&H CK 0371
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5140 of 1998

Hari Parshad Sharma and Another	Vs	APPELLANT
State of Haryana And Others		RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

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

Citation : (2010) 2 ILR (P&H) 962

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The petitioners have challenged the notification dated 18th July. 1994 issued u/s 4 of the Land Acquisition Act, 1894 (for brevity the "Act") acquiring their land and the declaration dated 10th February, 1998 made u/s 6 of the Act, by filing CWP No. 8645 of 1995. The writ petition was filed on 6th June, 1995, which came up for motion hearing on 7th June. 1995 when the dispossession of the petitioners from the land in dispute was stayed by the Division Bench. Eventually, declaration dated 28th April. 1995 made u/s 6 of the Act was quashed on 30th May, 1997 by this Court and the respondents were given the option to issue fresh declaration u/s 6 of the Act. The basic reason for quashing the declaration made on 28th April. 1995 u/s 6 of the Act was that the objections filed by the petitioners were not decided as they were allegedly found to be time barred. The Division Bench issued directions to the respondents to decide the objections irrespective of the fact whether the objections were time barred or not. The respondent-State was granted liberty to the respondents to issue notification afresh in accordance with law. The aforesaid order attained finality and therefore, declaration u/s 6 of the Act was again made on 10th February, 1998.

2. The petitioners filed the present writ petition, namely, CWP No. 5140 of 1998 pleading numerous grounds including the plea that the declaration u/s 6 of the Act has been made after lapse of one year. However, this time their petition was

dismissed on 7th September. 1999. Aggrieved by the judgment of Division Bench of this Court, the petitioners approached Hon''ble the Supreme Court urging that fresh declaration made u/s 6 of the Act on 10th February. 1998 had lapsed. On the basis of pleadings. Hon''ble the Supreme Court found that no satisfactory reply was given to the categorical averments made by the petitioners in the para 17 of their writ petition with regard to lapsing of the declaration made u/s 6 of the Act. After considering the aforesaid factual position. Hon''ble the Supreme Court set aside the judgment dated 7th September. 1999 of the Division Bench of this Court and remanded the matter to this Court so as to enable the parties to complete the pleadings. The view of Hon''ble the Supreme Court is discernible from the last three paras of the order dated 20th January. 2009, which reads thus :-

On a careful reading of the stand taken by the respondents in their respective written statements, it is clear that the State Government and the Land Acquisition Collector have not cared to give clear and specific answers in their counter affidavits on the point of issuing declaration dated 10th February, 1998 u/ s 6 of the LA Act alter prescribed period of limitation as raised by the appellants in the writ petition. The High Court in its judgment has not recorded any specific and conclusive finding on the question whether Section 6 declaration dated 10th February, 1998 was issued after the period of one year had lapsed from 18th July, 1994, when notification u/s 4 of the LA Act was issued by the State Government and further, whether the time period of operation of stay granted by the High Court with effect from 7th June. 1995 to 30th May, 1994 have to be deducted from the total time between Section 4 notification dated 18th July, 1994 and Section 6 declaration dated 10th February. 1998 for calculating the limitation as prescribed u/s 6(1) Proviso (ii) of the LA Act.

The learned counsel for the parties have agreed before us that instead of deciding the issues by this Court raised in this appeal, it would be in the interest of the parties to refer the case back to the High Court for deciding the writ petition a fresh on its merits. We feel that, in the facts and circumstances of the case, justice would be sub-served if the judgment and order of the High Court impugned in this appeal is set aside. We accordingly order.

The Civil Writ Petition No. 5140/1998 is ordered to be restored to its original number on the file of the High Court, which shall be decided by the High Court in accordance with law within 3 months from the date of receipt of copy of the order of this Court. We however, make it clear that the appellants shall not be entitled to urge the plea of malafides which had been given up by them against the then Minister, at the time of hearing of the writ petition by the High Court. The parties, if they desire may file additional pleadings before the High Court. The parties are directed to maintain status quo with regard to the possession of the suit-land till the writ petition is finally decided by the High Court. Needless to say that we have not expressed any opinion on the merits of the case and the High Court shall decide the writ petition uninfluenced by any observation made

by us in this order.

The appeal is allowed in the aforesaid terms. Costs on parties.

3. After remand when the matter came up before us on 16th February, 2010, we noticed the view taken by their Lordships of Hon"ble the Supreme Court holding that substantial issue with regard to lapsing of declaration u/s 6 of the Act was raised. However, the State Government or its Agency failed to reply the averments made by the petitioners. The learned State counsel sought time to file a specific affidavit as to how the declaration made on 10th February, 1998 was within a period of one year, as per the provisions of Section 6(1) proviso (ii) of the Act. Accordingly, affidavit by respondents No. 1 and 2 has been filed. The stand taken in para 4 of the affidavit of both the respondents is that period of one year has to be reckoned by excluding the period taken for hearing of the objections, preparation of the report and receipt of the same by the Government. If the aforesaid stand is accepted, then the declaration made u/s 6 of the Act would be within a period of one year within the meaning of proviso (ii) to Section 6(1) of the Act.

4. Mr. Sunil Chadha, learned counsel for the petitioners, has argued that according to the provisions of Section 6(1) proviso (ii) of the Act the declaration made after expiry of one year from the date of publication of the notification u/s 4 of the Act would be in flagrant violation of the provisions of proviso (ii) to Section 6(1) of the Act. He has urged that if the time for which the stay order passed by the Court is knocked out from the total period then the declaration made u/s 6 of the Act is delayed by about seven months. According to Mr. Chadha the total period between notification issued u/s 4 on 18th July; 1994 and declaration made u/s 6 on 10th February. 1998 works out to be 42 months 23 days and the period of stay order spent while pursuing CWP No. 8645 of 1995 would come to 23 months 23 days i.e. 7th June, 1995 to 30th May. 1997. The total period which is consumed for making declaration u/s 6 to 19 months which is obviously over and above the period of one year as provided u/s 6(1) proviso (ii) of the Act. Learned counsel for the petitioners has further placed reliance upon a judgment of Hon"ble the Supreme Court passed in the case Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

5. Both the learned counsel for the respondents have taken the similar stand by urging that the period which has been spent in hearing of the objections, preparation of report and receipt of the same by the Government has to be excluded and cannot be counted for the purpose of working out one year as provided by proviso (ii) to Section 6(1) of the Act.

6. Having heard the learned counsel for the parties, we are of the view that the instant petition deserves to succeed. It is obvious that after knocking out the period during which the interim order of stay of dispossession was operating, it comes to more than one year as has been rightly urged by the learned counsel for the petitioner. The declaration made u/s 6 of the Act is delayed by seven

months and therefore, would be hit by the provisions of proviso (ii) to Section 6(1) of the Act. There is ample support to the view taken by us in Padmasundara Rao's case (supra), which has been followed in Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others, .

7. The stand of the respondents is that declaration made on 1st March, 1998 was within a period of one year. They have projected that the last Gate of issuance of notification u/s 6 of the Act was 1st March, 1998 whereas it was issued on 10th February, 1998. A period of 81 days is taken as a balance time left after subtracting 284 days from the period of one year as per the provisions of Section 6 of the Act. Likewise, the other argument that report dated 27th November, 1997 given by the D.R.O:-cum-Land Acquisition Collector, Kaithal was received on 2nd January, 1998 and the period from 2nd January, 1998 to 10th February, 1998 only works out to be 39 days to issue a fresh declaration u/s 6 of the Act. The argument seems to be that the total period comes to 324 days. However, the aforesaid calculation of the time period is absolutely contrary to the judgment of Hon"ble the Supreme Court rendered in the case of Padmasundara Rao's case (supra). It has been held by their Lordships that the "legislature specifically provided for periods covered by orders of stay or injunctions which would clearly show that no other period was intended to be excluded and therefore, there was no scope for providing any other period of limitation. Causus omissus cannot be supplied by the Court". Once the aforesaid position of law is clear then the argument raised by the respondents would be without any substance. Moreover in their counter affidavit filed in CA No. 5355 of 2000 a similar stand was