
(1979) 06 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 3469 of 1976

K.C. Gounder and Another

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 22-06-1979

Acts Referred:

Land Acquisition (Amendment) Act, 1967 — Section 4(1), 6, 6(1)
Land Acquisition Act, 1894 — Section 4(1), 6(1)

Citation : (1979) 06 MAD CK 0053

Hon'ble Judges : Venugopal, J;Natarajan, J;Gokulakrishnan, J

Bench : Full Bench

Advocate : D. Raju and H. Venkatachalapathy, for the Appellant;
Ramajagadeesan, for Govt. Pleader, for the Respondent

Judgement

Natarajan, J.—The question referred to the Full Bench is whether the fundamental principles *actus curiae neminem gravabit* (an act of a Court shall prejudice no man) and *actus legis nemini est damnosus* (an act in law shall prejudice no man) will have application in construing the time-limit prescribed in the first proviso to S. 6(1) of the Land Acquisition Act, 1894, limiting there under the period for declaration to "three years from the date of the notification under S. 4(1) of the Land Acquisition Act (hereinafter referred to as the- Act).

2. For an appreciation of the question, it is necessary to set out the facts of the case. On 25th June, 1969, a notification under S. 4(1) of the Act was made by the, second respondent herein notifying the intention of the. Government to acquire a certain extent of land in Nanjanapuram. village, Erode taluk Coimbatore district, comprised in the Survey Numbers mentioned in the notification, for the purpose of providing house sites to Harijans. Among the items of land notified was, an extent of 1.17 acres in Survey No. 48/1 belonging to the petitioners herein. The enquiry under S. 5-A of the Act was held on 10th February, 1970 and then followed a declaration of the Government -under S. 6(1) of the Act by Gazette Notification dated 27th May, 1970 declaring. that the

lands were required for a public purpose.

3. The petitioners filed Writ Petn. No. 2544 of 1970: (Reported in (1972) 85 Mad LW 624) on or about 16th August 1970, to challenge the validity of the declaration. Palaniswami, J., held that there was no valid service of notice regarding the enquiry under S. 5-A of the Act and, therefore, the enquiry under S. 5-A was vitiated and the declaration under S. 6(1) that followed was also vitiated. Consequently, by order dated 3rd November, 1971, the learned judge allowed the writ petition and held that "the enquiry proceedings and the declaration u/s 6(1) have to be quashed without prejudice to the respondent continuing the proceedings in accordance with law, if so advised."

4. In view of this order, fresh enquiry after notices were served on the petitioners, under S. 5-A was held on 2nd June, 1972. Thereafter, a declaration under S. 6 was again made by the Government on 26th September 1972 and the declaration was published, in the Gazette dated 11th October, 1972. Then followed the award enquiry and the passing of the award on 16th July, 1974. It was thereafter, the petitioners filed the present writ petition contending that inasmuch as the declaration under S. 6(1) had been made beyond a period of three years from the date of the notification under S. 4(1) of the Act, the declaration was out of time as it was not in accordance with, the first proviso to S. 6(i)(1) of the Act and, therefore, the declaration should be quashed by means of a writ of certiorari..

5. When the petition came up for hearing before Mohan, J. the petitioners relied on an order of a Division Bench of this Court in Writ Petition No. -1418 of 1972 (Reported in (1978) 91 Mad LW 1) where it was held that the first proviso to S. 6(1) was unequivocal in its terms and therefore, any declaration under S. 6(1) made after a period of three years from the date of the notification under S. 4(1), whatever may be the reason for the delay, will automatically attract the interdiction contained in the proviso. In so rendering its decision, the Bench overruled the decision of Ismail, in Writ Petition No. 842 of 1909 and the order of Alagiriswarni, J. (as he then was) in Writ Petition Nos. 2897 to 2399 of 1966, where the view taken was that the general principle that the pendency, of proceedings before a Court cannot operate to the prejudice of parties, will come into operation so that the period for which the acquisition proceedings remained stayed under an order of the Court would be excluded for the purpose of determining the period of three years mentioned in the first provision to S. 6(1). On the other hand, it was urged on behalf of the Government before Mohan, J. that the fundamental principles *actus curiae neminem gravabit* and *actus legis neminiest. datmnosus* would, undoubtedly be attracted when acquisition proceedings remained stayed by reason of an order of Court and by the application of the said maxims the period mentioned in the first proviso to S. 6(1) would get extended for such time as the order of stay passed by the Court remained in force.

6. It is with reference to this controversy, the matter has been referred to the

Full Bench by the learned Chief justice.

7. As already stated, Writ petition No. 2544 of 1970 (Reported in (1972) 85 Mad LW 624) was filed. on August 16, 1970 and disposed of on November 3, 1971, and during. that period the stay of further proceedings was ordered by the Court, If this excluded from, consideration, the subsequent declaration under S. 6(1) of the Act, made. On October 11, 1972, will fall within a period of three years from the date of the notification under S. 4(1). If, however, there is no exclusion of the period when the order Of, stay was in force, then, undoubtedly the impugned declaration will fall beyond the period, prescribed. in the proviso in question..

8. Before we consider. the arguments of. counsel in support of- the conflicting positions, we -may, with advantage, refer to certain - changes made in S. 6 of the Act and the circumstances under which the changes had been made. Before amendment by AI 13 of -1967, S. 6 of the Act read as follows:

"Section 6. Declaration that land is required for a public purpose :-

(1) Subject the -Provisions of Pad VII orders Act when the appropriate Government is satisfied, after consider the report, if any made under S. 5-A, sub s. (2), that any particular land is, needed for a public purpose, or for a Company, a declaration shall be made to that, effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders Provided 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 a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial, division in which the land is situating, the purpose for which it is. needed, its approximate area, and, where a plan shall have been, made a the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be and after making such declaration, the appropriate Government may acquire the land In manner hereinafter appearing.

In State of Madh Pra. v. Vishnu Prasad AIR1966SC1598 the Supreme Court had to consider whether, after the notification under S. 4(1) of -the Act had been made in respect of an area or an extent of land it was open to the Government to make more than one declaration Under S. 6(1) of the Act.. The Supreme Court held that it was not open to the Government to make more than one declaration under S. 6(1) of the Act in respect of single, notification under S. 4(1) of the Act. After dealing with the scope of Ss, 4 5-A, and 6 of the Act, the Supreme Court held notification under S. 4(1), only a single declaration under .S. 6 can be in the following words :

"Ss. 4, 5-A and 6, in our opinion, are integrally connected, S. 4 specifies the locality in which the land is acquired and provides for survey to decide what

particular land out of the locality will be needed. S. 5-A provides for hearing of objection to the acquisition and after these objections are decided, the Government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a declaration as to the particular land out of the locality notified in S. 4(1) which it will acquire. It is clear from this intimate connection between Ss. 4, 5-A and 6 that as soon as the Government has made up its mind what particular land out of the locality it requires, it has to issue a declaration under S. 6 to that effect. The purpose of the notification under S. 4(1) is at this stage over and it may be said that it is exhausted after the notification under S. 6. There is nothing in Ss. 4, 5-A and 6 to suggest that S. 4(1) is a kind of reservoir from which the Government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind Ss. 4, 5-A and 6, we would have found some indications of it in the language used therein. But, as we read those three sections together, we can only find that the scheme is that S. 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the Government as to what particular land out of that locality it needs. This is followed by a declaration under S. 6 specifying the particular land needed and that, in our opinion, completes the process and the notification under S. 4(1) cannot be further used thereafter. At the stage of S. 4(1) the land is not particularised, but only the locality is mentioned; at the stage of S. 6 the land in the locality is particularised and thereafter it seems to us that the notification under S. 4(1) having served its purpose, exhausts itself. The sequence of events from a notification of the intent to acquire under S. 4(1) to the declaration under S. 6 unmistakably leads one to the reasonable conclusion that when once a declaration under S. 6 particularising the area out of the area the locality specified in the notification under S. 4(1) is issued, the remaining non-particularised area stands automatically released. In effect, the scheme of these three Govt. of T. N. (FB) A. L. R. sections is that there should be one notification under S. 4(1) followed by one notification under S. 6 after the Government has made up its mind which land out of the locality it requires." In view of this judgment the President of India promulgated an Ordinance, namely The Land Acquisition (Amendment and Validation) Ordinance, 1967 on January 20, 1967. This Ordinance was replaced by the Land Acquisition (Amendment and Validation) Act, 1967 (Act 18 of 1967). S. 6(1) in its amended form, reads as follows:-

"Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under S. 5-A, sub-s. (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of

different parcels of any land covered by the same notification under S. 4, sub-s. (1), irrespective of whether one report or different reports has or have been made (wherever required) under S. 5-A sub-s. (2):

Provided that no declaration in respect of any particular land covered by a notification under S. 4, sub-s. (1) published after the commencement of the Land Acquisition (Amendment and Validation) 1967 (1 of 1967), shall be made after the expiry of three years from the date of, such publication:

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 a local authority.

(2) & (3).....

It may thus be seen that the amendment effected to S. 6(1) was intended mainly to overcome the limitations contained in old S. 6 of the Act, viz., that only one declaration under S. 6(1) can be made in respect of a notification under S. 4(1) of the Act. While, therefore, providing for plurality of declarations under S. 6(1) in its amended form, the legislature had also deemed it necessary to fix a time-limit within which a series of declarations or even a single declaration under S. 6(1) should be made from the date of the notification under S. 4(1) of the Act. The first proviso had, therefore, been incorporated, to safeguard the interests of the owners of lands as, otherwise, taking umbrage under the provision for making several declarations in respect of a single notification under S. 4(1), the Government may treat the notification under S. 4(1) as a kind of reservoir from which it can from time to time draw out land and make declarations, but at the same time, keep the owners of lands at bay by having the compensation payable for the Lands drawn out at successive stages, pegged down at the rates that were prevalent when the notification under S. 4(1) was made.

9. It is in this background of legislative change, we have to consider the question referred to us for consideration. This question, in a slightly different form came up for consideration before Alagiriswami, (as he then was) in Writ Petitions Nos. 2397 to 2399 of 1966. In those petitions, the validity of certain acquisition proceedings was challenged. Therein, the notification under S. 4(1) of the Act had been made before the Land Acquisition (Amendment and Validation) Ordinance, 1967 had been passed by the President. In respect of such cases, S. 4 of the Land Acquisition (Amendment and Validation) Act, 1967 provided a two year time-limit from the date of the notification under S. 4(1) of the Act for a declaration being made under S. 6(1). In the writ petitions referred to above, a contention was raised that since two years had elapsed after the Ordinance was issued on 20th January, 1967, it was not open to Government to issue a declaration under S. 6(1) thereafter, Alagiriswarni, J. repelled that contention and held as follows:

"It is obvious that the delay in the issue of a notification, in holding an enquiry under S. 5-A and issuing a declaration under S. 6 has been caused only as a

result of the order of stay issued by this Court It is a well established proposition of jurisprudence that no order passed by a Court can be allowed to injure a litigant's interests. The petitioners, Kaving obtained an order of stay, cannot now be allowed to take advantage of that stay order to urge that notwithstanding the order of stay, the Government should either have issued a fresh notification under S. 4(1) or that they would be debarred from issuing a declaration under S. 6, if they did not do so within two years of the promulgation of the Ordinance".

Again, a similar question came up for consideration before Ismail, J. in Writ Petition No. 642 of 1969. In that case, the notification under S. 4(1) was published in the Gazette on 2nd November, 1966. Since the Government issued a direction under S. 17(4) of the Act, dispensing with the enquiry under S. 5-A of the Act, a draft declaration under S. 6(1) of the Act was also approved by the Government simultaneously and consequently, the declaration under S. 6 was also published in the Gazette dated 2nd November, 1966. On 24th January, 1967 the land owner filed Writ Petition No. 182 of 1967 for the issue of a writ of certiorari to quash the order of the Government. That petition was admitted on 25th January, 1967 and the Court passed an interim order of stay. The Writ Petition was allowed on 26th November, 1968 and the declaration under S. 6 was washed, but the notification under S. 4(1) was allowed to stand. The Government then issued a notice dated 12th February, 1969 for holding then under S. 5-A. The land-owner again filed a writ petition, viz., W. P. No. 642 of 1969 and contended therein that in as much as a period of two years had elapsed from the date of notification under S. 4(1), the Government was not entitled to the say further proceedings in relation to said notification.

10. Ismail, J. repelled the contention on two grounds, the first one being that S, 4 (2) of . the Land Acquisition (Amendment and Validation) Act will apply case only where the Government, having made a notification under S. 4(1) of the Act, have not taken any steps to make a declaration under S. 6(1) of the Act, and will not apply to a case like that of the petitioner therein, where, along with the notification under S. 4(1) of the Act, the Government had also made a declaration under S. 6(1) of the Act. Lie second ground was that in a case where the Government have made a declaration under S. 6(1) of the Act prior to the commencement of the Ordinance and the declaration was subsequently -found to be not valid and therefore was quashed, it will not be governed by S. 4(2) of the Land Acquisition (Amendment and Validation) Act. Elaborating this point, the learned judge has held as follows :-

"It is in this context that the general principle that the pendency of proceedings before a Court cannot operate to the prejudice of the parties, will come into the picture, and the fact that the writ petition was pending on the file of this Court beyond, the period prescribed by S. 4(2) of the Amendment and Validation Act cannot operate to the prejudice of the Government and disable them from making a declaration under S. 6(1) of the Act. The present case is not one where the Government had not made a declaration under S. 6(1) of the Act. On the

other hand, a declaration under S. 6(1) of the Act had already been made by the Government and that declaration was demolished or extinguished only by the issue of a writ of certiorari by this Court on 26th November, 1968. In my opinion, a case in which the Government had already made a declaration and the declaration was subsequently found to be vitiated and was quashed, will not stand on the same footing as a case in which the Government, having issued a notification under S. 4(1) of the Act, had not taken steps to complete the acquisition by making a declaration under S. 6(1) of the Act. The anomaly of the acceptance of the argument of the learned counsel for the petitioner in this behalf will become apparent in such a case, because, without there being any delay on the part of the Government it will be said to have been disabled from completing that acquisition.

11. The matter came up for consideration once again in Writ Petition No. 1418 of 1972: (reported in (1978) 91 Mad LW 1). A notification under S. 4(1) of the Act regarding the acquisition of certain land in Vadarnaruthur village, Thirukkkoilur taluk, South Arcot District, was published in the Government Gazette on March 29, 1967. Simultaneously, a declaration under S. 6 of the Act was also published, the enquiry under S. 5-A having been dispensed with. The owner of the land challenged the declaration and filed Writ Petition No. 2793 of 1968 which was allowed on 21st January, 1970 and the declaration was struck down. Thereafter, the acquisition authorities invited objections and held the enquiry under S. 5-A and a fresh declaration under S. 6 of the Act was published by Government on 9th September 1971. The owner of the land again challenged the validity of the declaration in Writ Petition No. 1418 of 1972 and contended that the declaration had been published beyond a period of three years from the date of notification under S. 4(1) and therefore, it was in contravention of the first proviso to sub-s. (1) of S. 6 of the Act. Koshal, J. (as he then was) referred the petition to a Division Bench as he differed from the view taken in Writ Petition No. 642 of 1969 and was of the view that the principle that an act of Court shall prejudice nobody, though well established, will not apply to a specific legislative measure providing limitation which does not except from its domain causes which are delayed by reason of the issuance of a Court's order. The Writ Petition then came to be considered by a Division Bench presided over by Kailash C. J. and Balasubrahmanyam, J. The Bench considered the order of Alagiriswami, J. in Writ Petitions Nos. 2397 to 2399 of 1966 and Ismail, J., in Writ Petition No. 642 of 1969, and disagreed with the views taken by the learned judges in those two cases and held as follows:

"With respect, we are unable to accept the view taken by the learned judges. The proviso is unequivocal in that it provides that no declaration in respect of any particular land covered by a notification under S. 4, sub-s. (1) shall be made after the expiry of three years from the date of such publication. The period of

limitation in the case of debt relief enactments which stay the filing of suits, it is specifically provided that certain periods, during which the matter was pending before Courts, should be excluded. It is legislative practice to provide for such exclusion. No such exclusion is provided in the proviso. We do not think that there would be any justification for reading into,, the proviso the words which are not there. We respectfully agree with the view of the referring Judge, Koshal, J., who was of the view that the proviso is couched in unambiguous language and there is no scope for exception being grafted on to it. The learned Judge proceeded to observe that the principle that an act of Court shall prejudice nobody is well established, but then, it will not apply to a specific legislative measure providing limitation which does not except from its domain causes which are delayed by reason of issuance of a Court's order. We agree with the above view and hold that the period of three years specified in the proviso is absolute and that any time during which writ proceedings are Pending cannot be excused.

12. It is the correctness of this view, we- have to consider in the present reference. Mr. Sivasubramaniam learned counsel for the petitioners, mainly relied on the judgment of the division bench referred to above and argued that inasmuch as no provision has been made by the Legislature for the period of limitation for making a declaration under S. 6(1) of the Act being extended on account of the pendency of proceedings Court, the Court must construe the section with reference to the plain and unambiguous language in which it has been framed and it is not open to the Courts to supply any omission engrafting on or introducing in the section something which they think to be a general principle of justice and equity because, "to do "so would be entrenching upon the preserves of Legislature, the primary function of Courts of law being jus decree and not ins dare. His further argument was that, in any event, the Government is not a Court and therefore, there is no possibility of applying the savings provisions contained in Ss. 15 and 29 of the Limitation Act, 1963, for extending the time-limit provided in the first proviso to S. 6 (1) of the Act for making a declaration under S. 6(1). In support of this argument, he cited before us the following decisions where it has been held that statutory bodies are not Courts and therefore, the provisions of the Limitation Act will not apply to proceedings pending before them. The Labour Court is not a Court within the Indian Limitation Act, 1963. Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, . The appellate authority and the judge (Revisions), Sales Tax, exercising jurisdiction under the Sales Tax Act are not "Courts", but are merely administrative tribunals, and S. 14, Limitation Act, therefore, does not, in terms, apply to proceeding before such tribunals - The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, . Rent Controller and Appellate Authority under the Tamil Nadu Buildings (Lease and Rent Control) Act, (18 of 1960) are not Courts, but persona designata and therefore, Ss. 5 and 29(2) of the Limitation Act are not applicable to the proceedings before them - S. Ganapathi Vs. N. Kumaraswami, , decided by one

of us.

13. The learned counsel then argued that where a period of limitation had been prescribed in a particular enactment, then computation of time regarding matters covered by the legislation should be made only in accordance with the provisions of that particular Act. As authority for this contention, Mr. Sivasubramaniam cited three cases: Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, . Chacko Scaria.v. R. T. A., AIR 1967 Ker 153 and K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, . The further contention of Mr. Sivasubramaniam was that in construing the periods of limitation fixed in an enactment, equitable considerations are out of place and strict grammatical meanings of the words alone would be the safe guide. With reference to this argument, he cited AIR 1932 165 (Privy Council) . He also relied upon a decision of a Full Bench of this Court, in Athiappa Gounder and Others Vs. S.A. Athiappa Pandaram, , in which it was held that, the maxim *actus curiae neminem gravabit* could not be invoked generally to interpret the second proviso to sub-s. (4) of S. 145 Cr. P. C. in a liberal manner. Lastly, the petitioners' counsel referred to Jang Singh Vs. Brijlal and Others, to argue that only if a mishad been committed by Court in the passing of an order, the maxim *actus curiae neminem gravabit* can be applied to enlarge the period of limitation. The above said case was cited to buttress the argument that since the Court had allowed the earlier petition viz., Writ Petition No. 2544/1970 and quashed the enquiry under S. 5-A and the declaration under S. 6(1), the Court had not committed any mistake in passing the order of interim stay and therefore the respondents were not entitled to put forth the plea that the period of stay should be excluded from the computation of the three years' period prescribed in the first proviso to S. 6(1), of the Act.

14. We shall now deal with the several contentions of Mr. Sivasubramaniam. It is, no doubt, true the Government is not a Court as envisaged under the Limitation Act, and therefore, the provisions contained in Ss. 15 and 29 of the Limitation Act will not apply to acquisition proceedings resorted to by Government so as to enlarge the period of three years fixed by the legislature for a declaration being made under S. 6(1) after the publication of a notification under S. 4(1) of the Act. So far as the authorities cited by counsel for projection an argument that the Land Acquisition It is a- self-contained Code and therefore the period of limitation pre bed therein must be strictly construed in accordance with the provisions of that Act, we do not think the authorities can be of much assistance to the petitioners. In Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, which arose under the U. P. Sales Tax Act, 1948, the assessee's contention was that the re-assessment proceedings were barred by limitation. This was not accepted by the High Court because, in its view, the three years' period . prescribed under the Act would be attracted only if the assessing officer exercised his *suo motu* powers of revision, but it will have no application if the reassessment was sought to be made in pursuance of an order passed by an appellate or revisional authority It was this differentiation in the application of the period of limitation, that was disapproved by the Supreme Court in the case

referred to. above. No such situation exists here. Moreover, the application of the maxim *actus curiae neminem gravabit* did not arise for consideration in that case. In *Cbacko Searia v. R. T. A.*, AIR 1967 Ker 153 the maxim *nunc pro tunc* was refused to be applied because the actual facts of the case did not warrant the application of the maxim. *K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others*, was a case relating to an election petition and the Supreme Court held that the Limitation Act can. not apply to an election petition inasmuch as the Representation of the People Act is a complete and self-contained Code and it does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act. In the present proceedings, the respondents do not rely upon the saving provisions contained in the Limitation Act to get over the interdiction contained in the proviso to S. 6(1). On the other hand, they pray for the application of the equitable principle that the act of Court should not prejudice them. The decision of the Full Bench in *Athiappa Gounder and Others Vs. S.A. Athiappa Pandaram*, does not really lend support to the contention of the petitioners and, on the other hand, the ratio in that case runs somewhat counter to their contention. The Full Bench had to consider the question whether a Magistrate, in exercise of his powers under the second proviso to Section 145(4) Cr. P. C. can order restoration of possession of land to a party whose dispossession had taken place beyond period of two months next before the date of the preliminary order, by the application of the maxim *actus curiae neminem gravabit*. The Full Bench held that by means of the proviso, the person who had been forcibly and wrongfully dispossessed within two months next before the date of the preliminary order was deemed, as it were by a legal fiction, to be in possession on the date of the preliminary order though he did not have actually any such possession but the principle of the fiction could not be stretched further to hold that the party wrongfully and forcibly dispossessed should be deemed to be in possession not only on the date of the preliminary order, but also on the date of the petition. But, in so holding, the Full Bench did not say that the maxim cannot ever be invoked by a party. In the words of the Full Bench, "the maxim could be invoked and applied in individual cases to a party who has done all he should do under the statute and is prejudiced solely by the delay or mistake of the Court." Thus, what the Full Bench held was that the maxim *actus curiae neminem gravabit* cannot be invoked generally to interpret the second proviso to sub . (4) of S. 145 Cr. P. C. in a liberal manner so as to enlarge the period fixed under the proviso by applying the fiction, *nunc pro tunc* and treat the preliminary order made on a later date as one passed on the date of the petition. Therefore, all that the Full Bench has stated is that the maxim will not call for automatic and mechanical application in all cases to enlarge the period fixed under the proviso to sub-s. (4) of S. 145 Cr. P. C., but it can only be invoked and applied in appropriate cases.

15. It is common ground that in the present case a declaration under S. 6(1) of the Act was factually made by the first respondent on 27th May, 1970 which was well within three years from 25th 1969 when the notification under S4 (1) was

made. It is not therefore a case where no declaration as at all effected by Government under S. 6(1) of the Act within a period of the years from the date of Gazette notification under S. 4(1). In such a case, can it be contended that merely, because a second declaration had been made beyond a period of three years as the first declaration under S. 6(1) had been quashed by an order of Court, the first declaration had become honest and the second declaration should also be made within a period of three years from the date of the notifications We think not, because, though the first declaration had been quashed, the effective of declaration cannot be disputed or effaced. The effect of the quashing order passed by the Court will only remove the validity and legal force of the declaration which had been quashed. The first proviso refers only to a declaration under S. 6 and does not say that an effective declaration should be made within three years. Nor does it say that in the event of the declaration being quashed by Court, subsequent declaration too should be made within three years. We cannot, therefore, import more words into the proviso than what is contained therein. We are fortified in our view by the ratio laid down by the Supreme Court in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, . That. was a case where certain silver bars recovered in the course of a search were seized under S. 132(3) of the Income Tax, Act, 1961. The validity of the order of seizure was challenged by means of a writ petition. Subsequently, the parties consented to the attachment order being quashed and the Income Tax Department being entitled to look into the matter afresh after giving the petitioners an opportunity to prove that the seized silver bars belonged to a firm and not to one Pooran Mal individually. The writ petition was disposed of on the basis of the consent arrived at between the parties. After fresh enquiry, the Income tax Department held once again that the silver bars belonged to Pooran Mal and therefore, they were liable to attachment. This order was again challenged in a further writ petition and therein, it was contended that since the second order under S. 132(5) had been passed beyond a period of three months from the date of the recovery of the silver bars, it was barred by limitation. The Supreme Court rejected the contention and held that the period of limitation was intended for the benefit of the person whose property had been seized and therefore, it was open to him to- waive the benefit and, as the petitioners had earlier consented to the come-tax Department dealing with the matter afresh, they must be deemed to have agreed to the Income Tax Officer exercising his Jurisdiction in the particular mode agreed to between the parties. The further view taken by the Court was as follows:

"Even if the period of time fixed u/s 132(5) is held to be mandatory, that was satisfied when the first order was made; thereafter if any direction is given u/s 132(12) or by a Court in writ proceedings as in this case, we do not think an order made "in pursuance of such a direction would be subject to the limitations prescribed under S. 132(5).... We cannot accept the contention on behalf of the respondents that even such a fresh order should be passed within ninety days."

The above said ratio will, in our view, squarely apply to the case on hand.

Therefore, even if we are to hold that the period of three years fixed under the first proviso to Section 6(1) is held to be mandatory, that direction was complied with when the first declaration was made on 27th May, 1970. As pointed out by Ismail, J. in Writ Petition No. 642 of 1969, . a case in which the Government had already made a declaration and the declaration was subsequently found to be vitiated and was quashed, will not stand on the same footing as a case in which the Government, having issued a notification u/s 4(1) of the Act, had not taken steps to complete the acquisition by making a declaration under S. 6(1)."

The petitioners cannot, therefore, be heard to say that the making of the first declaration within time should be eschewed from consideration and the second declaration should be treated as one made for the first: time by the Government as if nothing bad". Happened between the notification u/s 4(1) mid the second declaration u/s 6(1) of the Act.

16. We will now proceed to consider the application of the maxim *actus curiae neminem gravabit* to the proceedings in question. This maxim "is founded upon justice and good sense; and affords a safe and certain guide for the administration .of the law." (Vide. Broom's Legal Maxims, page 99). We have already adverted to the period during which Writ Petition No. 2544 of 1970 remained pending on the file of the Court. During that period there was an order of stay in favour of the petitioners. The Government was not therefore a free agent during that period to set right any mistakes committed by it. In spite of it, can time run out against Government so as to denude it of its full period of three years to make a declaration under S. 6(1) of the Act for acqniri4g the petitioners" lands? It is this anomaly which has been pointed out by Ismail, J. in Writ Petition No. 642 of 1969 in the following words:

"The anomaly of the acceptance of the argument of the learned counsel for the petitioner in this behalf will become apparent in such a case because, without there being any delay on the part of the Government, it will be said to have been disabled from completing that acquisition.

17. The Division Bench which disposed of Writ Petition No. 1418 of 1972 (reported in (1978) 91 MadLW 1) has conceded, "that the principle that an act of Court shall prejudice nobody is well established." It, however, refused to apply the principle to a case of land acquisition because, the period of three years specified in the proviso is absolute." The Supreme Court has, however; taken a different view in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, . The Division Bench of this Court had not placed this decision for consideration. At page 71 (para 8) of the report, their Lordships have stated as follows:

"It is a well established principle of judicial procedure that where any proceedings are stayed by an order of a court or by an injunction issued by any Court, that period should be excluded in computing any period of limitation laid down by law. Especially after the Limitation Act, 1963 the provisions of which are

now applicable to all proceedings, a provision like Explanation (1) to S. 132 is superfluous and no argument can be based on it,"

Therefore, the view of the Division Bench that the maxim *actus curiae neminem gravabit* will not apply to a specific legislative measure providing limitation which does not except from its domain causes which are delayed by reason of Issuance of a Court order cannot be held a correct one. We therefore hold that as per the ratio laid down by the Supreme Court in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, the maxim under consideration will apply to the legislative measure contained in the first proviso to Section 6(1) of the Act notwithstanding there being no express provision in the proviso to causes which are delayed by reason of issuance of a Court's order.

18. We therefore approve the view taken by Alagrisiwari, J. in Writ Petition Nos. 2397 to 1966 and Ismail, J. in writ Petition No. 642 of 1909, and hold that the decision in "Writ Petition No. 1418 of 1972 (reported in (1978) 91 Mad LW 1) is not good law.

19. The reference will stand answered accordingly. We direct the papers to be placed before the learned chief justice for the writ petition being posted before a single Judge for disposal after considering the other grounds set out by the petitioners for quashing the declaration under S. 6(1) of the Act.

ORDER

V. Ramaswami, J.

20. In view of the, decision of a Full Bench of this Court In W. P. No. 3469 of 1976, this writ petition is liable to be dismissed and it is accordingly dismissed. No costs.

21. Petition dismissed.