

(2009) 10 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 5948 of 2008

Sri Suresh Jugaraj, Sri Ashok Kumar, Sri Dinesh Kumar and
Sri Dilip Kumar

APPELLANT

Vs

State of Karnataka and Karnataka Housing Board

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

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

Citation : (2010) ILR (Kar) 1160

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Vaishali Hegde, for the Appellant; M. Keshava Reddy, AGA for R-1 and Basavaraj V. Sabarad, for R-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Challenge in this writ petition is to the Preliminary and Final Notifications issued u/s 4(1) and 6(1) of the Land Acquisition Act (hereinafter referred to as "the Act", for short) on 16.04.2001 and 19.07.2007 vide Annexures-C and F respectively, insofar as it pertains to the lands of the petitioners.

2. Petitioners are the owners of the land bearing Sy.Nos.202 and 204 of Kengeri Village, Bangalore South Taluk. Earlier, by a Preliminary Notification dated 31.08.1989 which was followed by the Final Declaration dated 12.10.1990, the State Government notified the lands for acquisition for the purpose of Karnataka Housing Board. As the name of the father of the petitioners was not shown In the Notifications and as he had no opportunity of putting forward his objections opposing the acquisition, Writ Petition No. 1718/1991 was filed by the father of the petitioners herein. By order dated 20.03.1997, this Court allowed the writ petition quashing the Final Notification dated 12.10.1990 insofar as it related to the petitioner's land reserving liberty to the authorities to proceed with the acquisition proceedings from the stage of Preliminary Notification. The Court

further held that the respondent-authorities were not justified in invoking the urgency Clause and dispensing with the enquiry initiated u/s 5-A of the Act. It also found that the petitioners being the owners of the lands were entitled for being notified.

3. Pursuant to the order passed by this Court in Writ Petition No. 1718/1991, the State Government issued another Notification dated 16.11.1998 published in the Karnataka Gazette on 19.11.1998 u/s 6 of the Act. However, in the said Notification, the name of the petitioner's father was not shown as "khatedar" or "anubavdar" of the land. Consequently, the petitioners herein challenged the said Notification in Writ Petition No. 6368/1999. This Court quashed the Notifications issued under Sections 4(1) & 6(1) of the Act on the ground that the time frame within which the Final Declaration u/s 6(1) had to be issued was not adhered to. The Karnataka Housing Board - respondent herein unsuccessfully preferred Writ Appeal No. 3888/2000.

4. It is relevant to notice here that there was some dispute between the petitioners and the persons who had filed application Form-7 claiming occupancy rights as tenants in respect of the lands in question. The Land Tribunal, Bangalore South Taluk had granted occupancy rights to the applicants. This was challenged by the petitioners in Writ Petition No. 4131/1983. The matter was pending before the Land Reforms Appellate Authority which was later on converted as Writ Petition No. 4244/1999. The said Writ Petition was allowed by this Court on 20.11.2002 setting aside the order passed by the Tribunal with a direction to the Tribunal to dispose of the matter afresh. After remand, the Tribunal rejected the claim of the applicants on 27.02.2004. Being aggrieved by the same, the applicants (tenants) preferred Writ Petition No. 16464/2005. However, on 21.01.2008, the said Writ Petition was dismissed as withdrawn recording a memo filed by the tenants-petitioners therein stating that the matter was settled out of Court.

5. In the meanwhile, the State Government issued another Preliminary Notification u/s 4(1) of the Act on 16.04.2001 published in the Karnataka Gazette on 12.07.2001 proposing to acquire 10 acres 7 guntas in Sy.No.202 and 16 acres 9 guntas in Sy.No.204. Even in this Notification, the names of the petitioners were not shown and consequently no notice was issued to them about the proposed acquisition. The Government issued Final Declaration on 21.09.2002 u/s 6(1) of the Act which was gazetted on 24.10.2002. Both these notifications were challenged in Writ Petition No. 26533/2003. This Court, by order dated 08.11.2006 quashed the Final Notification dated 21.09.2002 reserving liberty to the respondents to commence the proceedings from the date of Preliminary Notification issued u/s 4(1) of the Act, produced as Annexure-D to the writ petition. Paragraph-12 of the said order reads as under:

Writ Petition stands allowed. The final notification u/s 6(1) dated 21.09.2002 Gazetted on 24.10.2002, a copy at Annexure-F stands quashed. The proceedings are remitted to the respondents to commence the same from the issuance of

preliminary notification u/s 4(1). Needless to say, the petitioners shall file their objections to acquisition proceedings within a period of 30 days from the date of receipt of this order. Thereafter the authorities shall consider the said objections and proceed with the matter. Rule is issued and made absolute.

6. Pursuant to this order, the respondents issued notice to the petitioners. Petitioners filed objections and an enquiry has been held, as contemplated u/s 5-A of the Act. The objection raised by the petitioners that they are the agriculturists and the lands are required for their own purpose has been repelled and thereafter the Final Declaration has been Issued u/s 6(1) on 19.07.2007 published in the Gazette on 04.10.2007. It is these Notifications issued u/s 4(1) and 6(1) of the Act that are now challenged in this writ petition.

7. The main contention urged by the Counsel for the petitioners is that Section 6(1) Notification is issued after a lapse of one year from the date of 4(1) Notification and therefore the entire acquisition proceedings have stood lapsed. To substantiate this contention, learned Counsel for the petitioners invites the attention of the Court to the pleadings and the documents produced to contend that the period of one year would begin to run from the last of the publications, which according to the respondents themselves was published in the Municipal Office on 24.09.2001, whereas the Government has proceeded to issue 6(1) Notification on 19.07.2007. Counsel for the petitioners seeks support from the Constitution Bench judgment of the Apex Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . Excluding the period during which the interim order passed in Writ Petition No. 26533/2003 was in operation from 09.06.2003 till the disposal of the writ petition on 08.11.2006, the Notification issued u/s 6(1) was clearly beyond the period of one year specified u/s 6 of the Act.

8. Learned Counsel appearing for the respondent-Karnataka Housing Board Sri Basavaraj V. Sabarad and the learned Additional Government Advocate Sri Keshava Reddy strongly contend that the petitioners are not entitled to take up this contention in the light of the order passed by this Court in Writ Petition No. 26533/2003 disposed of on 08.11.2006. Their contention is that this Court remitted the matter back to the respondent-authority with a direction to commence the proceedings from the stage of issuance of Preliminary Notification u/s 4(1) with a further direction to the petitioners to file their objections to the acquisition proceedings within a period of 30 days from the date of receipt of the order which has become final and the question whether Section 6(1) Notification is issued within the time limit prescribed u/s 6 of the Act pales into insignificance and cannot be raised. It is also contended that the petitioners have acquiesced-in, inasmuch as the order passed in Writ Petition No. 26533/2003 is not challenged and is allowed to attain finality.

9. Having heard the learned Counsel for the parties and upon careful perusal of the entire materials, it is seen that indisputably from the date of last of the publications of Section 4(1) Notification on 24.09.2001, the Final Declaration

issued on 19.07.2007 published on 04.10.2007 is not within the period of one year even excluding the period during which the interim order passed by this Hon"ble Court staying the proceedings was in force. However, all that requires to be considered is in the light of the direction issued in Writ Petition No. 26533/2003 at paragraph-12 stating that the Final Notification dated 21.09.2002 alone was quashed and that the proceedings shall commence from the issuance of Preliminary Notification u/s 4(1) with an opportunity to the petitioners to file their objections to the acquisition proceedings within a period of 30 days from the date of receipt of the order of the Court, whether it is open to the petitioner to contend that the impugned acquisition proceedings have lapsed on the ground that the Final Notification is not issued within the period of one year from the date of last of the publications u/s 4(1) Notification. In the case of N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, , the Apex Court had an occasion to deal with a similar question wherein a Declaration was published after the expiry of a period of one year from the date of 4(1) Notification as a result of the quashing of the proceedings by the High Court with a direction to hold an enquiry u/s 5-A of the Act afresh. In the facts of the said case, after dispensing with the enquiry u/s 5-A, Final Declaration had been published. This was found fault with and therefore the acquisition proceedings were quashed reserving liberty to the State to proceed further in accordance with law, that is to say by conducting an enquiry u/s 5-A. Even after conducting enquiry u/s 5-A, pursuant to the direction issued, the Government was of the opinion that the land was required for public purpose and accordingly a Final Declaration had been issued u/s 6(1) of the Act. In that background, a question arose as to whether the limitation prescribed under Clause (ii) of the first proviso to Sub-section (1) of Section 6 would still remain operative and capable of being complied with. The Apex Court held in the said judgment that if the Final Declaration is published within one year from the date of receipt of the order of the Court by the Land Acquisition Officer, then the Final Declaration published u/s 6(1) would be valid. In yet another judgment in the case of Oxford English School v. Government of Tamil Nadu AIR 1995 SC 2398, the Division Bench of the Apex Court held that 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) was 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. Consequently, the directions issued by the High Court regarding a fresh enquiry u/s 5-A and Declaration u/s 6, to be issued within six months of the impugned judgment therein, if the Government were to decide to proceed with the acquisition, came to be set aside. These two conflicting views of the Apex Court came to be considered by the Constitution Bench in Padma Sundara Rao's case referred to supra. Paragraphs-14, 16 and 17 of the said judgment which are relevant for our purpose can be usefully extracted as under:

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. v. 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 *Narasimhaiah* 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.

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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 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.

17. The view expressed in *Narasimhaiah* case and *Nanjudaiah* case is not correct and is overruled while that expressed in *A.S. Naidu* case and *Oxford* case is affirmed.

10. It is thus clear from the aforementioned judgment of the Constitution Bench that the view expressed in *Narasimhaiah*'s case is held to be no longer a good law and the same is overruled, while the view expressed in the case of *Oxford English School* is affirmed. The Apex Court has further held that only when the literal construction of a particular Clause in the statute leads to manifestly absurd or anomalous results which would not have been intended by the legislature, the principle of construction of a statute by resorting to *casus omissus* could be applied. It is also laid down that the fact that the legislature specifically provided for periods covered by orders of stay or injunction to be excluded clearly showed that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The Court also pointed out that the maxim *actus curiae neminem gravabit* meaning the act of Court shall not prejudice anybody" also had no application in the fact situation of the said case.

11. In the light of the law declared by the Constitution Bench of the Apex Court in *Padma Sundara Rao*'s case, it is clear that the respondents cannot contend now that in view of the order passed by this Court in the earlier Writ Petition No. 26533/2003 it was not necessary for them to comply with the requirement of the period of limitation prescribed under Clause (ii) of the first proviso to Sub-section

(1) of Section 6 of the Act. The declaration of law made by the Apex Court applies in all force to the present case as well.

12. Petitioners are right and justified in contending that the respondents had failed to notify the names of the petitioners though they were the owners while issuing the Impugned 4(1) and 6(1) Notifications, despite a direction issued in this regard in the earlier proceedings wherein it was held that the petitioners were owners of the land and were entitled for an opportunity of being heard. Though the earlier acquisition proceedings were quashed at the instance of the petitioners, who had taken up a specific contention that they were not notified and heard, the respondent-authorities repeated the mistake while issuing the Notifications dated 16.04.2001 and 21.09.2002 which were challenged in Writ Petition No. 26533/2003. The main issue canvassed by the authorities in the said writ petition was whether the names of the petitioners ought to have been notified and whether they were entitled for being heard. Referring to the observations made in the earlier Writ Petition No. 1718/1991, this Court found that at every stage the acquisition proceedings were terminated at the behest of the original land owners, namely the petitioners, and therefore the respondent-authorities are not right to state that the petitioners were not required to be notified. Based on such observations, the Court directed that the petitioners should be provided an opportunity to file objections and the matter should proceed from the stage of Preliminary Notification. Though in the earlier proceedings this Court has held that the matter has to proceed from the stage of issuance of Preliminary Notification u/s 4(1) by providing an opportunity to the petitioners to file their objections, this cannot non-suit the petitioners from taking up a contention that the entire acquisition proceedings have stood vitiated on account of violation of the mandatory provisions pertaining to limitation contained under the Clause (ii) of the first proviso to Sub-section (1) of Section 6 of the Act. There was no concession made in this regard by the petitioners. Principle of Estoppel cannot operate in such circumstances as there can be no estoppel against the statute. In this regard, reliance is placed in the case of *Vijaya Narayana Thatte and Ors. v. State of Maharashtra and Ors.* 2009 AIR SCW 5353 wherein it is held in paragraph-21 that there can be no estoppel against a statute. Since the statute is very clear, the period of limitation provided under Clause (ii) of the first proviso to Sub-section (1) of Section 6 of the Act has to be followed. Moreover, as held by the Constitution Bench of the Apex Court in *Padraa Sundara Rao's* case, by a direction from the Court the period of limitation cannot be extended. The earlier view expressed by the Apex Court in *Narasimhaiah's* case to the contrary has been specifically overruled and the view expressed in the case of *Oxford English School* is affirmed. This Court, in the earlier writ petition had no occasion to examine this aspect of the matter while dealing with the question raised regarding not mentioning the names of the petitioners in the Notification and not providing an opportunity to the petitioners before issuing the Final Declaration in Writ Petition No. 26533/2003. At any rate, the petitioners cannot be denied of an opportunity to take up such legal

contention which is open to them as per law and this Court cannot shut them off on the ground that they have not raised such a contention in the objections filed. In the present writ petition, they have specifically raised such a contention taking support from the judgment of the Apex Court in Padma Sundara Rao's case.

13. In the light of the above, it has to be held that the acquisition proceedings have lapsed in the light of Clause (ii) of the first proviso to Sub-section (1) of Section 6 of the Act. Hence, this writ petition is allowed. Consequently both the impugned Notifications issued u/s 4(1) and 6(1) of the Act are set aside. It is however made clear that the respondents are at liberty to initiate fresh proceedings in accordance with law, if they so desire.