

(2007) 02 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 6827 of 2006

Sukumar M. Khot and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Constitution of India, 1950 — Article 141

Land Acquisition Act, 1894 — Section 4, 4(1), 5(2), 5A, 5A(2)

Citation : (2007) 4 BomCR 779

Hon'ble Judges : Vazifdar S.J., J;Rebello F.I., J

Bench : Division Bench

Advocate : A.V. Anturkar and Sugandh B. Deshmukh, for the Appellant; R.D. Rane, A.G.P. for Respondent Nos. 1 to 3 and Y.S. Jahagirdhar and H.V. Kode and N.V. Bandiwadekar, for the Respondent

Final Decision : Allowed

Judgement

Rebello F.I., J.—Rule. Heard forthwith.

2. The petitioners are owners of lands in respect of which proceedings for acquisition were initiated under the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

The petitioners had earlier moved this Court by a writ petition, being Writ Petition No. 6022 of 2005, challenging the declaration made u/s 6, dated 23.6.2005 which was published on 22.8.2005. A learned Bench of this Court by an order dated 21.3.2006 set aside the declaration u/s 6 of the Land Acquisition Act for the area of 54 hectares and 16.30 acres and remitted the matter to the land acquisition officer for fresh inquiry in terms of Section 5-A of the Land Acquisition Act.

3. Pursuant to those directions, a notice was issued to the petitioners for an inquiry to be conducted u/s 5-A of the Land Acquisition Act, read with the Rules framed by the State of Maharashtra.

Subsequent to the notice and after giving a hearing to the petitioner, the Appropriate Government has been pleased to issue a fresh declaration u/s 6 of the Land Acquisition Act, dated 10.8.2006. The notification recites that the report of the officer competent to send report as per Section 5(2) has been considered and it is necessary to acquire lands for the public purpose at the cost of the Government.

4. We may point out that the notification u/s 4, was issued on 20.9.2004 and the declaration u/s 6 was made on 23.6.2005, within the time prescribed by Section 6 of the Land Acquisition Act. The petition was filed on 25.9.2006 and the judgment of this Court came to be delivered on March 21, 2006. The effect of the judgment was that the declaration u/s 6 was quashed and set aside and the matter was remitted back to the Collector for completing the inquiry u/s 5-A of the Land Acquisition Act in terms of directions issued in the judgment. The State Government was directed on receiving the report of the Collector and his recommendations to the objections, to take recourse to its powers in accordance with law.

5. The petitioner by the present petition, impugns the fresh declaration. Various grounds have been urged. At the hearing of the petition before us, it was submitted that it was not open to the Appropriate Government to have made the declaration, as the time for making the declaration u/s 6 had already expired.

The learned Counsel placed reliance on the judgment of the Apex Court in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, . There are some other contentions which, in our opinion, considering the order we intend to pass, need not be dealt with.

On the other hand, on behalf of the respondents, the learned Counsel submitted, placing reliance on a Full Bench judgment of the Madras High Court in *K. Chinnathambi Gounder and Anr. v. Government of Tamil Nadu and Anr.* AIR 1980 Mad 251 and the judgment of the Division Bench of this Court in *Anna Shankar Walvekar Vs. The State of Maharashtra and Others*, that the prescribed period u/s 6 is only in respect of the first declaration and not in the event subsequent declarations are made, consequent upon the first declaration being quashed. It is therefore submitted that in the instant case as what is impugned is the second declaration, the time prescribed u/s 6 would not apply and, consequently, there is no infirmity or illegality which can result in the declaration being set aside.

On behalf of the State, respondents, it is submitted that they have only complied with the orders of this Court. The petitioner, it is submitted, ought not to be permitted to raise such a contention, considering the judgment of this Court. At least, in the exercise of its Extra Ordinary Jurisdiction, this Court ought not to interfere with the declaration issued, and consequently, the petition be dismissed.

6. We have given our anxious consideration to the contentions advanced. More so, in the context that it is this Court which had remitted the matter to the land acquisition officer, after the quashing the declaration u/s 6 of the Land

Acquisition Act. Whether we should accept the argument canvassed on behalf of the State/respondents, will be considered after examining the issue of law arising in this petition.

7. For the purpose of discussion, we may reproduce the relevant portion of Section 6 of the Land Acquisition Act, 1894:

6. Declaration that land is required for a public purpose. - (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made u/s 5A, Sub-section (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 u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5A, Sub-section (2);

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, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) shall be made after the expiry of three years from the date of the publication of the notification; or

(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 a local authority.

Explanation I. - 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. -

....

....

We shall first examine, as to whether the time limit for the declaration u/s 6 is only in so far as the first declaration that is made and not the subsequent declaration, on the first declaration being quashed. K. Chinnathambi Gounder and Anr. (supra), was a proceeding initiated before the amendment to Section 6,

by Act 68 of 1984 with effect from 24.9.1984. Considering the section as it stood before this amendment, the learned Full Bench of the Madras High Court was pleased to hold that the maxim "actus curiae neminem gravabit" 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 courts order. This maxim, the Court held, is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law. The Court therefore held that the time prescribed u/s 6, as it then stood, would not apply to a subsequent declaration, as on account of the stay order in favour of the petitioners, the Government was not a free agent during that period to set right any mistakes committed by it.

The Full Bench of the Madras High Court, was considered by a learned Division Bench of this Court in Anna Shankar Walvekar [supra]. Here also, the land was sought to be acquired for the Vadgaon Agricultural Produce Market Committee. It was submitted before the learned Division Bench that Section 6 as applicable at the relevant time, provided that a declaration could not be made after the expiry of the time set out therein. Relying on the judgment in K. Chinnathambi Gounder and Anr. (supra), the learned Division Bench noticed that the second declaration made beyond a period of three years, could not be held to be invalid and there was no necessity that a second declaration should be made within the period of three years from the date of the notification u/s 4. The Court held that the first proviso to Section 6(1) refers only to the declaration u/s 6 and does not say that effect to declaration shall be made within three years. Nor does the section say that in the event of the declaration being quashed by the Court, the subsequent declaration should be made within three years. From the judgment of the learned Division Bench of this Court, which followed the judgment of the Full Bench of the Madras High Court, it would appear, that in so far as the fresh declaration u/s 6, the time prescribed to make a fresh declaration, will not apply.

8. We will now consider the judgment of the Supreme Court relied upon on behalf of the petitioners. Reliance was placed on the judgment in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, . The matter had came up in Appeal to the Supreme Court from the judgment of a Division Bench of the Karnataka High Court. The learned Division Bench there, had noted that the declaration u/s 6, published in the first instance was within the period prescribed under the proviso to Section 6(1). The learned Division Bench had held that after the declaration u/s 6 was quashed in the first instance, the limitation of one year does not apply. It further held that the view-that the declaration u/s 6 is still required to be published from the date of the notification u/s 4(1) is not correct in law. Before the Supreme Court, reliance was placed on the judgment in Oxford English School Vs. Government of T.N. and Others, and P. Chinnanna and Others Vs. State of A.P. and Others, to contend that the view of the High Court is not correct in law.

On behalf of the respondents, it was contended that on facts, the notification u/s

4(1) and the declaration u/s 6 were published within the limitation prescribed under the Act. By an act of the court, if the declaration u/s 6 of the Act was quashed, giving power to the Government to conduct an enquiry u/s 5-A, after giving opportunity to the claimants, declaration u/s 6 can never be made within the original period of limitation and public purpose would be in jeopardy since, under no circumstance, the enquiry and declaration u/s 6 could be done within the limitation prescribed in the first instance and second exercise will be rendered fruitless since by that the limitation prescribed under the proviso would stand expired. The Apex Court posed to itself a question, whether the limitation prescribed under the second (sic first) proviso to Section 6(1) would be applicable after the notification has been quashed by the High Court? Considering the scheme of the Act, the Court posed another question, whether the State is required to have the declaration published u/s 6 within the limitation prescribed under the proviso to Section 6(1) of the Act?

After considering the judgments in *Oxford English School v. Govt. of T.N.*, (supra) and *P. Chinnanna* (supra), the Court answered the issue as under:

Thus, we hold that the limitation prescribed in Clause (ii) of the 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 the receipt of the order of the court, by Land Acquisition Officer, declaration published u/s 6(1) would be valid.

Thus, the Supreme Court held that the declaration must be made within the time prescribed by Section 6. However, in a case where the declaration was quashed and the matter has been remitted by an act of the Court, the period would start running from the date of the receipt of the order of the Court by the Land Acquisition Officer. If such declaration is made within time prescribed in terms of the proviso, such declaration would be valid. In other words, the Court did not accept the law as laid down by the Full Bench of the Madras High Court, that for the second declaration, no time limit is prescribed. The Court, considering Section 6, held, that a declaration has to be made within the time prescribed, but in a case where a fresh declaration has to be made on account of the order of the Court, then a fresh period would commence from the date of receipt of the order of the Court by the Land Acquisition Officer, to make the declaration in terms of the period prescribed u/s 6. The judgment of the Division Bench of this Court in *Anna Shankar Walvekar* (supra) stands overruled.

If the judgment is to be followed and applied to the facts of this case, it would be clear that the judgment of this Court is dated March 21, 2006 and that declaration u/s 6 was made on 10.8.2006 and, consequently, it would have been possible to hold that the declaration was made within time. The learned Counsel however has drawn our attention to the subsequent judgment of the Constitution Bench of the Supreme Court in the case of *Padma Sundara Rao (Dead) and Ors.* (supra).

9. The Supreme Court in Padma Sundara Rao (supra), noted the conflict between the decision in N. Narasimhaiah and Ors. v. State of Karnataka and Ors. and in an unreported judgment of the Supreme Court in A.S. Naidu v. State of Tamil Nadu, where a Bench of three Judges, held that once a declaration u/s 6 has been quashed, a fresh declaration u/s 6 cannot be issued, if the prescribed period for the declaration to be made, has expired. The judgment in Oxford English School v. Govt. of T.N. (supra) had also taken a view similar as in A.S. Naidu's case. After reviewing the law, the Court was pleased to observe as under:

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. 2000 DGLS 970 : AIR 2000 S.C. 1583. 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.

After so holding, the Court held that the view expressed in Narasimhaiah case (supra) and Nanjudaiah case (supra) is not correct and was overruled while that expressed in A.S. Naidu case and Oxford case was affirmed:

It would therefore be clear from the judgment of the Constitution Bench that the period prescribed by the proviso to Section 6 to issue the declaration u/s 6 cannot be extended either by an act of the Court.

10. Though there is a judgment of the Constitution Bench in the field, yet it appears that an attempt was once again made to reopen the argument considering the practical difficulties faced in Fulchand Bhagwandas Gugale and Another Vs. State of Maharashtra and Others, . A Bench of two Judges of the Supreme Court before whom that argument was sought to be contended was pleased to hold that considering the law laid down in Padma Sundara Rao (supra), the prescription of time-limit in Section 6 is peremptory in nature and there is no scope for stretching the period further to have the time period run from the date of the Supreme Court's order.

Considering the case laws discussed and the ratio of the judgment of the Supreme Court in Padma Sundara Rao (Dead) and Ors. (supra), as understood in Fulchand Bhagwandas Gugale and Anr. (supra), it would be clear that there the period prescribed for is declaration u/s 6 cannot be extended. In the instant case, considering the facts, the subsequent declaration pursuant to this Court's

remitting the matter, is clearly beyond the period prescribed.

11. Once the law is so declared by the Supreme Court, will it be open to the respondents to contend that though the law has been declared, yet this Court in the exercise of its Extra Ordinary Jurisdiction, ought not to grant the relief to the petitioner. Unfortunately, the judgment of the Supreme Court was not brought to the attention of the Bench when the matter was first argued. Once the law is declared by the Supreme Court, that law is binding on this Court under Article 141 of the Constitution of India. It is not open to this Court therefore to refuse relief to a petitioner on the ground that the petitioner is trying to take advantage of the order of this Court. No question of waiver would arise in the case like the present, where the issue of law has been declared by the Supreme Court. It would not be possible, considering the law declared by the Supreme Court to refuse relief to the petitioners.

12. In the light of the above, petition would have to be allowed. Rule is made absolute in terms of prayer (a). We make it clear that quashing of the declaration will not stand in the way of the respondents State in issuing a fresh notification u/s 4, if so advised. That would be subject to whatever objections the petitioners may have. In the circumstances of the case, there shall be no order as to cost.