

(1993) 04 KAR CK 0012

In the Karnataka High Court

Case No : W. As. No's. 2189 to 2197 of 1992 etc.

Union of India (UOI)

APPELLANT

Vs

Muniswamappa

RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

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

Citation : (1993) ILR (Kar) 1745 : (1992) 2 KarLJ 431

Hon'ble Judges : K.A. Swami, Acting C.J.; A.J. Sadashiva, J

Bench : Division Bench

Advocate : J.M. Rajanna Setty, Addl. Central Govt. Stdg. Counsel, N. Santosh Hegde, for N.K. Ramesh and K. Suryanarayana Rao, for the Appellant; A.M. Farooq, Government Advocate, Mahabaleswara Gowda and Ram Mohan Reddy, for the Respondent

Judgement

K.A. Swami, Ag. C.J.

1. The Writ Appeals are preferred against the Order dated 16.4.1991 passed in W.Ps Nos. 19245 to 19253/1989. However, it is necessary to mention here that W.A.No. 2193/92 arising out of W.P.No. 19249/89 was dismissed as withdrawn. Therefore, there was no necessity for the appellant to file an Appeal against the order passed in that Writ Petition dismissing it as withdrawn. Hence it is not necessary to consider W.A.No. 2193/92 because it is unnecessarily filed. As such, it stands disposed of accordingly.

2. The petitioners in W.P.Nos.13653 to 13665/1989; & 17655 to 17662/89 - stand in the same position as the petitioners in W.P.No. 19245 to 19253/89 because all these petitioners were parties to the Decision dated 31.5.1988 rendered by Bopanna, J. The lands concerned in these Writ Petitions and the Writ Appeals were also concerned in the Decision dated 31.5.1988 rendered by Bopanna, J.

3. The lands concerned in these Writ Appeals and the Writ Petitions are as

follows:

W.P.No.19251/89

..

S. No. 126 (4 sites) situated in Benniganahalli;

W.P.No.19252/89

..

S. No. 126 (4 sites) situated in Benniganahalli;

W.P.No.19253/89

..

S. No. 107/5 (sites) situated in Benniganahalli;

(W.A.Nos.2189 to 2192 & 2194 to 2197/92)

W.P.No.13653/89

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The names of the petitioners in these W.Ps. are not found in the Notification.

W.P.No.13654/89

W.P.No.13655/89

W.P.No.13656/89

..

S. No. 99/2 measuring 19 guntas situated in Benniganahalli

W.P.No.13657/89

..

S. No. 100 measuring 21 guntas situated in Benniganahalli;

W.P.No.13658/89

..

S.No.101/1 measuring 7 guntas

S. No. 101/2 measuring 3 guntas

S.No.101/3 measuring 4 guntas

(all situated in Benniganahalli)

W.P.No.13659/89

..

S.No.101/4 measuring 17 guntas situated in Benniganahalli;

W.P.No.13660/89

..

S. No. 101/6 measuring 17 guntas &

S.No.101/5 measuring 16 guntas

both situated in Benniganahalli

W.P.No.13661/89

..

Names of these petitioners are

W.P.No.13662/89

..

not found in the Notification

W.P.No.13663/89

..

S.No.117/1 measuring 2.24 acres (including 10 guntas P.K.) situated in Benniganahalli;

W.P.No. 13664/89

..

S.No.33/2 measuring 4.25 acres (including 10 guntas P.K.) situated in B.Narayanapura;

W.P.No.13665/89

..

S.No.107/4, measuring 21 guntas situated in Benniganahalli;

W.P.No.17665/89

..

S.No.43/3 of B.Narayanapura, K. R. Puram Hobli, Bangalore South Taluk;

4. At this stage, it is necessary to refer to the Decision of Bopanna, J., rendered in W.P.Nos. 13316 to 13320/87; WP.No. 12677/87 c/w 12826 to 12833/87; c/w 13440 to 13453/87; 13619/87; 14505 to 14513 to 14513/87 and 14527 to 14529/1987 dated 31.5.1988. In those Writ Petitions, acquisition of the lands of question for the very purpose was challenged. The Notification issued under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to

as the "Act") bearing No. LAQ.SR.(2) 4/86-87 dated 22.1.1987 was published on applying the urgency clause and thereafter a Final Notification bearing No. RD 117 AQB 79(p) dated 24.6.1987 was issued u/s 6(1) of the Act. The validity of both these Notifications was challenged in the aforesaid Writ Petitions, which were heard and decided by Bopanna, J. on 31.5.1988. In the said Decision, the declaration issued u/s 6(1) of the Act was quashed. The application of urgency clause was also quashed. Section 4(1) Notification was kept in tact and it was treated to be one issued without the application of the urgency clause. A direction was also issued to receive the objections from the petitioners within a stipulated period and proceed with the acquisition in accordance with law, The relevant portion of the Judgment of Bopanna, J. is as follows:

"However, it is contended by the learned Government Advocate that this payment would be made to the petitioners if a suitable direction is made in this regard. The purpose of the amendment of Section 17 by Act No. 68 of 1984 may be noticed in this regard. It is only because of the delay in settling the compensation amount due to the aggrieved parties, this salutary provision is introduced by the amendment Act so that the parties who are deprived of their lands would get substantial compensation even before surrendering possession of their lands. Section 17(4) which dispenses with the enquiry u/s 5A of the Act does not control the provisions of Section 17(3)(a) Therefore, the enduring of 80% of the compensation is a condition precedent for the taking of possession of the land by the authorities concerned. The impugned notice u/s 9 of the Act calls upon the petitioner to deliver possession of the land without enduring of 80% of the compensation due to the petitioners and therefore, the impugned proceedings are bad in law even on this ground. For all these reasons, the declaration made by the authorities u/s 6 read with Section 17(4) of the Act are liable to be quashed. But since the petitioners have taken notice of the acquisition proceedings, and have challenged the same in this Court, it is open to the petitioners to file their objections against the proposed acquisition and present themselves before the authorities concerned for an enquiry u/s 5A of the Act.

In the result these petitions are partly allowed and the declaration dated 24.6.1987 published in the Gazette dated 6.8.1987 made u/s 6(2) of the Act read with Section 17(1) of the Act as also that portion of the Preliminary Notification u/s 4(1) of the Act dispensing with the enquiry u/s 5A of the Act in so far as the petitioners lands are concerned and also the notice u/s 9(1) of the Act dated 12.8.1987 are quashed reserving liberty for the authorities to continue the acquisition proceedings from the stage of preliminary notification. The petitioners shall file their objections against the preliminary notification within 30 days from the date of receipt of this order and they shall file their objections against the preliminary notification within 30 days from the date of receipt of this order and they shall present themselves before the Land Acquisition Officer - 3rd respondent on 15.7.1988 without awaiting any fresh notices from the said officer. The Land Acquisition Officer shall hold the enquiry u/s 5A of the Act expeditiously

and complete the proceedings in accordance with law.

Parties to bear their own costs."

Thus the Notification dated 22.1.1987 was kept in tact.

5. Pursuant to the aforesaid directions, the Land Acquisition Officer proceeded to acquire the lands, received the objections, enquired into them, and ultimately submitted his report u/s 5A of the Act which in turn was accepted by the State Government and a final declaration u/s 6(1) of the Act was issued as per Annexure-C which was published in the Karnataka Gazette dated 30.5.1989.

6. The petitioners in W.P.No. 19245 to 19253/1989 challenged the validity of both these Notifications.

7. The learned Single Judge by the order dated 16.4.1991 has quashed both the Notifications on the ground that the declaration u/s 6(1) of the Act has been issued beyond the period of one year from the date of publication of the Preliminary Notification dated 22.1.1987 published in the Gazette of the same date issued u/s 4(1) of the Act; therefore, the entire acquisition proceedings are vitiated having regard to the provisions to Sub-section (2) of Section 6 of the Act. The order of the learned Single Judge reads thus;

"Without expressing any opinion on other contentions of the petitioners, these Writ Petitions are disposed of on a short ground that lands were acquired not complying with Section 6 Sub-section (2)(ii) of the Land Acquisition Act. Because the Preliminary Notification was published in the Karnataka Gazette on 22.1.1987 and the final notification was issued on 30.5.1989. Hence there is nearly 1 1/2 years delay even excluding the time that was spent in the earlier proceedings.

Hence both the notifications are quashed reserving liberty to the authorities if they so desire to proceed with Acquisition proceedings afresh after adhering to the requirements of Section 6(1)(ii) of the Act. No costs."

8. Being aggrieved by the order of the learned Single Judge dated 16.4.1991 passed in W.P.No. 19245 to 19253/1989, the Union of India for whose benefit the acquisition in question has been made has come up in W.A.No. 2189 to 2197/1992.

9. As the learned Single Judge has quashed the Notifications in so far they related to the petitioners in W.P.No. 19245 to 19253/89, the other objectors have preferred W.P.Nos. 13653 to 13665 of 1989 and W.P.No. 17655 to 17662 of 1989 challenging the very Notifications issued under Sections 4(1) and 6(1) of the Act dated 22.1.1987 and 30.5.1989 respectively.

10. As the subject matter of these Writ Petitions is connected with the subject matter of W.A.Nos. 2189 to 2197/1992, we directed by the order dated 3.2.1993 to post the above Writ Petitions also along with W.A.Nos. 2189 to 2197/1992. Accordingly, they are posted along with the above Writ Appeals.

11. We have heard both sides on the merits of the Writ Appeals and the Writ Petitions.

12. Having regard to the contentions urged on both sides, the following Points arise for Consideration:

1) Whether it is necessary for the State Government to adhere to the time schedule prescribed under Clause (ii) of the first proviso to Sub-section (1) of Section 6 of the Act in a case where it has been complied with by issuing such notification within the statutory period and the same having been quashed and the matter remitted with a direction to continue the acquisition from the stage subsequent to issuance of the Notification u/s 4(1) of the Act ?

2) Whether the acquisition proceeding has lapsed because of the fact that the Awards in respect of the lands in question are passed on 25.4.1991 ?

3) Whether the acquisition in question is vitiated by mala fides?

POINT NO.1:

13. It is contended on behalf of the petitioners that the acquisition is commenced after the coming into force of the Land Acquisition (Amendment) Act, 1984 (Act No. 68/84); therefore, it is necessary for the State Government to adhere to the time schedule prescribed under the first Proviso to Sub-section (1) of Section 6 of the Act and failure to adhere to the time schedule prescribed under the said Proviso would render the acquisition bad in law; that as in the instant case, the declaration u/s 6(1) of the Act is published beyond the period of one year from the date of publication of the Preliminary Notification issued u/s 4(1) of the Act, both the Notifications are vitiated, as such, the learned Single Judge is justified in quashing the Notifications in question.

14. On the contrary it is contended on behalf of the appellant and also the respondents in the Writ Petitions that the requirement as to publication of the declaration u/s 6(1) of the Act within the time schedule mentioned in Clause (ii) of the first Proviso to Sub-section (1) of Section 6 of the Act was complied with when such Notification dated 24.6.1987 was published in the Official Gazette dated 24.8.1987. The fact that it was quashed and the matter was remitted to the authorities to proceed with the acquisition from the stage subsequent to issuance of the Notification u/s 4(1) of the Act, not being in dispute, it is not necessary that the second Notification should be issued within the time prescribed under Clause (ii) of the first proviso to Section 6(1) of the Act.

15. In support of the respective contentions, the learned Counsel have placed reliance on various Decisions which will be considered a little later.

16. Section 6(1) with the first proviso reads thus:

"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 5-A 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 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."

It is also necessary to refer to Section 4(1) of the Act because what is necessary to be decided for the purpose of determining as to whether the declaration u/s 6(1) of the Act has been made within a period of one year is as to the last of the dates of publication of the Notification issued u/s 4(1) of the Act. Therefore, we consider it necessary to extract Section 4(1) of the Act also which reads thus:

"4. Publication of preliminary Notification and powers of officers thereupon. - (1) - Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification."

In the instant case, no material is placed before us as to what was the last of the dates of the publication of the Notification issued u/s 4(1) of the Act because as per Section 4(1) of the Act, the notification has to be published in the Official Gazette, two daily newspapers having circulation in the locality of which one should be in the regional language, and in addition to this, the Collector has to cause public notice of the substance of the notification to be given at convenient places in the locality where the property proposed to be acquired is situate, All these publications in the very nature of things, cannot take place simultaneously on the same date. Therefore, the law provides that the last of dates of such publication and the giving of such public notice shall be the date of publication of the notification. Therefore, on what date the Notification issued u/s 4(1) of the Act was last published is required to be proved. This fact is not proved in the

instant case. Therefore, the starting point of the period of one year is not established by the petitioners. Absence of proof of essential fact disables us from determining as to whether the declaration made u/s 6(1) of the Act published in the official Gazette dated 30.5.1989 is beyond the period of one year from the last of the date of publication of the notification dated 22.1.1987.

This contention was advanced on the basis that the declaration dated 24-6-1987 published in the Karnataka Gazette dated 6-8-1987 cannot be taken into account for the purpose of determining the question as to whether the notification dated 30-5-1989 published in the Gazette of the same date u/s 6(1) of the Act has been issued within a period of one year. Therefore, it became necessary for us to refer to Section 4(1) of the Act. If we are to ignore the Notification dated 24-6-1987 published in the Gazette dated 6-8-1987, it is necessary for the petitioners to establish the fact as to what was the last of the dates of publication of the Notification and giving of public notice of the substance of such notification issued u/s 4(1) of the Act. This fact, the petitioners have failed to prove.

17. We now turn to the question as to whether it is necessary to publish the declaration u/s 6(1) of the Act within one year from the date of publication of the Notification issued u/s 4(1) of the Act in a case where, on a earlier occasion a declaration was issued within the period stipulated by the Act, and the same was quashed, but the acquisition was allowed to be continued from the stage of publication of the Notification u/s 4(1) of the Act, and thereafter on complying with Section 5A of the Act, the declaration was issued u/s 6(1) of the Act.

This question does not require much exercise because, in our view it is covered by a Decision of the Supreme Court in the The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, . That was a case in which an assessment order was passed u/s 132(5) of the Income Tax Act, 1961. It was challenged in appeal and the same was set aside. The matter was remitted to the assessing authority for fresh assessment. As per Section 132(5) of the Income Tax Act as it stood at the relevant point of time, the Assessing Authority was required to pass an assessment order within a period of 90 days from the date of seizure. After remand, as the order was not passed within a period of 90 days from the date of seizure, it was contended before the Supreme Court that the Income Tax Officer had no jurisdiction to pass an order of assessment beyond the period of 90 days prescribed under Sub-section (5) of Section 132 of the Income Tax Act. In that case, the first order of assessment was passed by the Income Tax Officer on 12-1-1972 and the same was challenged in W.P.No. 82/1972 which was disposed of on 6.4.1972 on the basis of the consent of the parties, and the matter was remitted to the I.T.O. to look into the matter afresh after giving an opportunity to the petitioner to place his case before the Department in respect of the contention that the property belonged to the firm and not to Pooran Mall individually. After remand, a fresh order of assessment was made on 5.6.1972. The seizure had taken place on 16.10.1971. While dealing with this contention their Lordships of the Supreme

Court have held thus:

"6. 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 u/s 132(5). Once the order has been made within ninety days, the aggrieved person has got the right to approach the notified authority u/s 132(11) within thirty days and that authority can direct the Income Tax officer to pass a fresh order. We cannot accept the contention on behalf of the respondents that even such a fresh order should be passed within thirty days. It would make the Sub-sections (11) and (12) of Section 132 ridiculous and useless. It cannot be said that what the notified authority could direct u/s 132 could not be done by a Court which exercises its powers under Article 226 of the Constitution. To hold otherwise would make the powers of Courts under Article 226 wholly ineffective. The Court in exercising its powers under Article 226 has to mould the remedy to suit the facts of a case. If in a particular case, a Court takes the view that the Income Tax Officer while passing an order u/s 132(5) did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on material before him, the conclusion arrived at by the Income Tax Officer was correct or dismissing the petition because otherwise the party would get unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of the case, the Court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the Court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a Court quashes an order because the principles of natural justice have not been complied with it should not while passing that order permit the Tribunal or the authority to deal with it again irrespective of the merits of the case. A Division Bench of the Punjab High Court in Commissioner of Income Tax and Others Vs. Ramesh Chander and Others, took the view that what the notified authority could do u/s 132(12) a Court could do in writ proceedings. Though the observation was obiter, we consider that it is correct. In this connection we must refer to the decision of the Gujarat High Court, relied upon by the respondents in Ramjubhai Kalidas Vs. I.G. Desai Income Tax Officer and Others, . In that case, it was held that Rule 112-A, which provides that a show cause notice in respect of an inquiry u/s 132(5) is to be made within 15 days from the date of the seizure, is mandatory and if that is not done, no order u/s 132(5) can be passed. It seems to have been admitted before the Bench by the Advocate General who

appeared on behalf of the revenue that he did not dispute that the period of 90 days prescribed u/s 132(5) is a mandatory period. That decision, is therefore, no authority for the proposition that the period fixed u/s 132(5) is mandatory. But even if it were the decision that Rule 112-A is also mandatory is clearly erroneous. When Section 132(5) permits an Income Tax Officer to pass an order within ninety days, that power cannot be in any way whittled down by a rule made under that Section".

Therefore, from the aforesaid Decision it is clear that when a statute requires that a particular thing shall be done within a period prescribed therein and that requirement is complied with and thereafter it is challenged before a Court of Law and the matter is remitted for fresh consideration, on the second occasion it is not necessary to adhere to the period prescribed therein. In other words, as the seizure had taken place on 16.10.1971 in the case and the order of assessment was passed on 12.1.1972 which was within a period of ninety days and thereafter it was challenged before the Court in a Writ Petition which was disposed of on 6.4.1972 by remitting the matter, though on the basis of the consent of the parties, to the I T.O. for holding a fresh enquiry and passing a fresh order. The i.T.O. accordingly passed afresh order on 5.6.1972 which was clearly beyond the period of 90 days. Therefore, in such a case, as held by the Supreme Court, even if the requirement of passing an order of assessment within a period of ninety days was held to be mandatory, it was not necessary to be complied with, in a case where such a requirement was complied with while passing the first order and that order was quashed and remitted to the authority for fresh consideration. The underlined portions of the Judgment of the Supreme Court specifically make it clear that in the second round, the adherence to the time schedule mentioned in the statute cannot be insisted upon. The aforesaid Decision squarely applied to the case on hand.

18. We may also point out that a Full Bench of the Madras High Court in K. CHINNATHAMBI GOUNDER AND ANR. v. GOVERNMENT OF TAMIL NADU AND ANR. AIR 1980 Mad 251 following the Decision of the Supreme Court in Pooran Mal's case has also taken, a similar view. Similar view is also expressed by a Division Bench of the same High Court in C. Kamatchi Ammal Vs. Kattabomman Transport Corporation Ltd. and Others, .

19. This is a case in which as already pointed out, the Notification u/s 4(1) of the Act was published in the Karnataka Gazette dated 22.1.1987. A declaration u/s 6(1) of the Act was also published in the Karnataka Gazette dated 6.8.1987 within a period of one year from the date of publication of the Preliminary Notification u/s 4(1) of the Act even ignoring the last of the dates of the publication of the Notification u/s 4(1) of the Act as required u/s 4(1) of the Act. As already pointed out, the declaration published in the Official Gazette dated 6.8.1987 was quashed by this Court by Bopanna, J. on 31.5.1989 and the acquisition was allowed to be proceeded with by treating the Preliminary Notification as the one issued without invoking the urgency clause. Time

schedule was also prescribed for filing the objections and thereafter to proceed with the matter in accordance with law. Pursuant to that order, as already pointed out, the notification was issued u/s 6(1) of the Act and the same was published in the Karnataka Gazette dated 30.5.1989.

20. No doubt the declaration published as per Annexure-C on 30.5.1989 is beyond the period allowed from the date of publication of the Notification issued u/s 4(1) of the Act in the Official Gazette dated 22.1.1987. In this regard, we have already pointed out that 22.1.1987 cannot also be taken as the date of publication of the notification u/s 4(1) of the Act because, as per Section 4(1) of the Act, it is the last of the dates of publication which has to be taken as the date of publication of the notification u/s 4(1) of the Act. Therefore, as already pointed out, in the absence of proof of the last of the date of publication of Section 4(1) notification, it is not possible to hold that the declaration in question made u/s 4(1) of the Act is beyond the period of one year.

20.1. The declaration published in the Karnataka Gazette dated 30.5.1989 u/s 6(1) of the Act is within a period of one year from the date of the Order of Bopanna, J. In this regard, we would like to point out that Bopanna, J., by the Order dated 31.5.1988 treated the Notification issued u/s 4(1) of the Act applying the urgency clause as the one issued without applying the urgency clause and directed the acquisition proceedings to be continued from the stage of the preliminary notification and further directed the petitioners to file their objections to the Preliminary Notification within 30 days from the date of receipt of the order and shall present themselves before the Land Acquisition Officer on 15.7.1988 without awaiting for fresh notices from the Land Acquisition Officer. It was further directed that the Land Acquisition Officer should hold an inquiry u/s 5A of the Act and complete the same in accordance with law, Thus, the nature of the directions issued by Bopanna J., makes it clear that the notification issued u/s 4(1) of the Act applying the urgency clause was treated as the one issued on the date of the order without applying the urgency clause. Therefore, it is possible in the instant case to hold that the date of the preliminary notification is the date of the order passed by Bopanna, J. The petitioners have acquiesced in the order-passed by Bopanna, J. Therefore, it is not open to them to oppose and they are estopped from opposing or objecting to the consequences that flow out of the order of Bopanna, J. The final declaration issued u/s 6(1) of the Act is well within one year from the date of the order of Bopanna, J. In the facts and circumstances of this case, this reasoning becomes an additional reasoning because the reasons already given by us would be sufficient to sustain the notification issued u/s 6(1) of the Act.

21. However, the learned Counsel for the petitioners placed strong reliance on a Decision of the Supreme Court in *Martin Burn Ltd. Vs. The Corporation of Calcutta*, That was a case in which the High Court directed the Small Cause Court to fix the rates on the basis of a valuation made by a Court which was not contemplated under the relevant statute. Further, the High Court order resulted

in fastening the liability on the petitioners therein which had become barred by time. The Supreme Court did not approve the same and held thus:

"7. We think that there are other more fundamental objections to the order of remand. The order was made so that a legal liability for rates assessed on the valuation made under it might fasten on the appellant. Indeed the High Court expressly stated that it was making the order so that the Corporation might not be deprived of its rates. The liability for rates is however a statutory liability under the Act, it is not a liability to be imposed by order of Court. So much is clear and not in dispute. In order that the statutory liability might arise the valuation had to be made as provided in the statute. Now the Act nowhere states that rates may be fixed on the basis of a valuation made by a Court; it does not at all contemplate a valuation made by a Court on its own. Such a valuation would be futile and would create no statutory liability. Therefore, the High Court's order sending the case "back to the Small Cause Court, Calcutta with a direction to that Court, to ascertain the annual value" if it was intended to allow the Court to make an independent valuation itself, was useless; the valuation made under it would give rise to no liability for rates fixed on the basis of it. It would not be an order which can be sustained.

8. Though the Act does not empower a Court to make a valuation itself, it does seem to contemplate, in Sections 147 and 164 a valuation made by the Corporation being revised and a previous valuation altered, by a Court in an appeal. If, therefore, it could be said that the valuation which the Court of Small Causes was to make under the order of the High Court would be a revised valuation, that valuation would have been within the statute and the order of the High Court would then have been an effective order. We do not, however, think that that valuation can be said to be a revised or altered valuation. First, the High Court did not direct the Court of Small Causes to revise a valuation or to alter a previous valuation it directed that Court to make a fresh valuation itself. Secondly, it seems to us, irrespective of how the High Court described the valuation to be made under its order, that that valuation cannot by any stretch of imagination be called a revised valuation or a previous valuation altered. What has happened here is that the previous valuation has been cancelled. That valuation no longer exists. The Court of Small Causes has now to make a valuation of its own on a different basis and on different data. The valuation has now to be made on the basis of the letting value of the premises instead of on the market value of the land and the cost of construction of the building as had previously been done by the Corporation. It would hardly be appropriate to call such a process, the revising of a valuation or the altering of a valuation previously made. Nothing is here revised or altered; what is done is to create a new thing from the start and this without any reference whatsoever to any existing thing. We should suppose that a thing is revised or altered when it is retained with some modifications. Thus when the figures of rent cost or value on which a valuation is based are altered as excessive or unfair or a larger depreciation than given is allowed and the total is suitably altered that would be

a case of revising or altering a valuation. The present is a wholly different case. The valuation which the High Court ordered to be made cannot hence be a revised or altered valuation.

(9-10). It is necessary now to refer to *Royal Asiatic Society of Bengal v. Corporation of Calcutta*, 58 Cal. WN 537. In that case, as in the case in hand, the rate-payer had appealed to the Court of Small Causes contending that the valuation had been made by the Corporation by applying a wrong method, namely, Clause (a) of Section 127. The contention was rejected by the lower Court but upheld by the High Court. The High Court then remanded the case to the Court of Small Causes for a determination of the annual value in terms of Clause (b) of Section 127. The High Court took the view that in such an appeal the Court of Small Causes had the right to make a revised valuation as contemplated in Section 147. Basing itself on that Section and Section 164, it put its reasoning in this way at P.544:

"the scheme of the Act is that where an assessee is aggrieved by a valuation made by the Corporation and prefers an objection, till the objection is finally adjudicated upon, the consolidated rate has got to be paid on the existing valuation and that after the objection is finally disposed of in appeal, the final valuation fixed will determine the consolidated rate payable and will, in terms of Section 147, remain in force for the period for which the first mentioned valuation was made".

With respect, we are unable to agree that this is the scheme of the Act. Where the valuation is in fact revised, the observation quoted would no doubt be fully applicable. It would not apply to other cases. The fallacy of the reasoning lies in the assumption that once there is an appeal, there must always be a revised valuation. There is no warrant for that assumption. We have earlier stated that there is no scope for making a revised valuation where the appeal seeks an annulment of the existing valuation. Further, neither Section 147 nor Section 164 on which the reasoning was based requires a valuation to be revised nor says when that is to be done. They deal only with cases where a valuation has in fact been revised and thereby indicate that there may be cases where the valuation is not revised. In *Governor-General of India in Council Vs. Corporation of Calcutta*, the High Court upheld the order of the Court of Small Causes cancelling a valuation as having been made under the wrong clause of Section 127 but did not direct the valuation to be made afresh by that Court. We may also observe here that in the case in hand, the High Court referred to the *Royal Asiatic Society's* case, 58 Cal.WN 537, only to support the proposition that it had a power of remand and for no other purpose. It did not say that in all appeals the Court must make a revised valuation".

It may be relevant to notice as pointed out in the aforesaid Decision itself that the direction issued by the High Court, while remitting the case to the Small Cause Court, Calcutta, to ascertain the annual value amounted to empower a Court to make a fresh valuation itself, was not contemplated by the enactment

concerned in the case. The Corporation had made the valuation of the premises on the market value of the land, and the cost of construction of the building whereas under the direction of the High Court the Court was to make a valuation of its own on a different basis on a different data as it was to be made on the basis of the letting value of the premises. It was also further pointed out that it would hardly be appropriate to call such a process as the revising of a valuation or altering of a valuation previously made by the Corporation. The valuation which the High Court ordered to be made could not be a revised or altered valuation. There was no scope for making a revised valuation where the appeal sought an annulment of the existing valuation. It was also pointed out that by the time the High Court had remitted the matter for continuing the proceedings, assessment for certain period had become time-barred. As a result of remitting the matter, the High Court brought the barred assessment within the period of limitation which was not permissible. Therefore, it is clear that the aforesaid Decision is distinguishable on the facts of the case, as such it cannot be made applicable to the case on hand.

22. Reliance was also placed on a Division Bench Decision of this Court in Dr. G.N. Shivashankar Vs. State of Karnataka, No doubt in that case, the declaration issued u/s 6 of the Act, was quashed by the High Court and the Notification issued u/s 4(1) of the Act, was not quashed. The authority proceeded to continue the acquisition proceeding and issued a declaration u/s 6(1) of the Act, on 3.5.1990. The Court held that as the declaration was issued beyond the period of one year from the date of publication of the Notification u/s 4(1) of the Act, the acquisition was bad in law. The relevant portion of the Judgment is as follows:

"5. The proviso speaks for itself. An analysis of the Explanation is necessary. It says that in computing the period of three years mentioned in the proviso, the period during which any action or proceeding which is required to be taken in pursuance of a Section 4 Notification is held up on account of a stay or injunction granted by a Court has to be excluded. The Explanation, therefore, mandates the exclusion of the period during which a stay or injunction order prevents action consequent upon a Section 4 Notification, and no more. It does not require the exclusion of any period of time which might be consumed subsequent to the vacation of the stay or injunction order even though the same might be on account of directions issued by a Court. We cannot therefore, accept the argument on behalf of the respondents that the period of time subsequent to the date of remand and until the issuance of the Section 6 Notification has also to be excluded.

It may be pointed out that the question as to whether once the time schedule is adhered to and the declaration u/s 6(1) of the Act, is issued within the time schedule and the same is quashed, whether it is necessary to adhere to or apply the time-schedule in a case where the Court permits the acquisition-proceedings to be continued after quashing the declaration made u/s 6(1) of the Act, was neither raised nor considered and decided in the aforesaid Dr.Shivashankar's

case. Therefore, the said Decision cannot be taken to have decided the Point which "we are called upon to decide.

23. Reliance was also placed on a Division Bench Decision of this Court in Rangappa Vs. State of Karnataka, In that case, the question as to whether the period occupied by the stay order can be excluded, was considered. The point, in question, was not at all considered. What was considered was Explanation-1 to the First proviso to Section 6(1) of the Act. Therefore, we do not see any relevancy of the said Decision on the point in question. The contention that if the Decision in the aforesaid Rangappa's case is not applied to the case on hand, the proviso becomes redundant cannot at all be accepted as sound proposition. We have already pointed out that when the time schedule as prescribed by Section 6(1) of the Act, is adhered to in the first instance and thereafter the declaration issued u/s 6(1) of the Act, is quashed and the matter is allowed to be proceeded with from the stage of Section 4(1) Notification, it is not at all possible to hold that even in the second round also, the time schedule should be adhered to. In many cases, it would be almost impossible. Of course, it would be open to the Court to quash Section 4(1) Notification, while quashing the Notification issued u/s 6(1) of the Act. But, in a case where the Court, after quashing Section 6(1) Notification, directs the matter to be proceeded with from the stage subsequent or pursuant to issuance of the Notification u/s 4(1) of the Act, it will not be necessary for the acquiring authority to satisfy the time schedule as prescribed by the First proviso to Section 6(1) of the Act, in the second round, Accordingly, Point No. 1 is answered in the negative.

24. POINT NO.2: It is contended by the petitioners as well as the respondents in the Writ Appeals that if the declaration u/s 6(1) of the Act, published on 6.8.1987 is held to be good for the purposes of the time schedule to be maintained between the notification issued u/s 4(1) and the declaration issued u/s 6(1) of the Act, for the purposes of passing of the Award in compliance with Section 11-A of the Act, the date of that notification alone should be taken into consideration and not the second Notification dated 30.5.1989. It is further contended that if the second Notification is taken into account, there will be two declarations u/s 6(1) of the Act, which is not permissible in law. The argument suffers from a serious infirmity. While considering Point No. 1, we have held that it is not necessary to adhere to the time schedule in a case where the declaration issued within the prescribed time u/s 6(1) is quashed by the Court and the matter is allowed to be proceeded with from the stage of issuance of the Notification u/s 4(1) of the Act, for making a declaration u/s 6(1) of the Act. We have not held that such a declaration holds good for all purposes. The declaration which is made u/s 6(1) of the Act, and published in the Gazette of 30th May 1989, holds the field today. The earlier declaration has been quashed as far as the petitioners and the respondents in the Writ Appeals are concerned. Therefore, the contention is not sound. Section 11-A of the Act, specifically provides that the award has to be passed within two years from the date of the declaration made u/s 6(1) of the Act. In the instant case, the declaration u/s

6(1) of the Act, has been published in the Gazette on 30th May 1989. The Awards have been passed on 25.4.1991 well within two years. Therefore, Point No. 2 is answered in the negative.

25. POINT NO. 3: It is the contention of the petitioners that even though large extent of land was proposed to be acquired for public purpose, namely for D.R.D. Complex in favour of the Defence Department, Bangalore, but a major portion has been withdrawn from the acquisition. It is only in respect of the lands in question and some other lands the acquisition has been pursued. It is submitted that this amounts to malafide exercise of power under the Act. No material is placed before us as to under what circumstances and on what ground the other portions of the lands which were proposed to be acquired along with the lands in question were withdrawn from the acquisition. It is also not possible to consider this contention and hold that the withdrawal is bad in law in the absence of the owners of the lands in respect of which the acquisition was withdrawn. No material is also placed before us to show that the extent of the land that is now acquired is not at all sufficient for the purpose for which it is acquired. However, it is contended that the portions that are withdrawn from the acquisition affects the compactness of the area acquired, consequently it would not serve the purpose of the acquisition. We may point out that it was demonstrated before us that inspite of deleting certain portions of lands from the acquisition, the area now acquired - forms one compact block and it can very well be used for the purpose for which it is acquired. Therefore, we are of the view that there is no case made out by the petitioners that the acquisition in question is vitiated by mala fides. We may also point out that in Chandra Bansi Singh and Others Vs. State of Bihar and Others, it has been held that where a large extent of land is acquired and after the notification u/s 6 of the Act, a portion of it is withdrawn from acquisition, it does not invalidate the entire notification, but it would invalidate only a portion released. It has also been held that as a result of withdrawal of a portion of the land acquired, the original notification would be restored to its position excluding the lands withdrawn. In the instant case also, because of the fact that certain portions are withdrawn from the acquisition, the acquisition regarding the remaining portion cannot be held to have been invalidated. Accordingly, Point No. 3 is answered in the negative.

26. For the reasons stated above the Writ Appeals are allowed. The Order dated 16.4.1991 passed in Writ Petitions Nos.19245 to 19253 of 1989 is set aside. Writ Petitions Nos.19245 to 19253 of 1989 and the other Writ Petitions in question are dismissed. In the facts and circumstances of the case, there will be no order as to costs.

After we delivered the Judgment, it is submitted on behalf of the petitioners that they intend to approach the Supreme Court and seek appropriate relief, therefore to enable them to approach the Supreme Court and to protect their possession, operation of the Judgment may be stayed for a period of two months. In view of the submission made, the operation of the Judgment is suspended for a period of

two months from today.