

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 19.08.2014
Judgment pronounced on : 14.10.2014

W.P.(C) 3190/2013

HARISH KOHLI AND ORS

..... Petitioners

versus

UNION OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Sumit Bansal, Advocate

For the Respondents : Mr Manish Shersia, Advocate for R-1 & R-2

Mr Yeeshu Jain and Ms Jyoti Tyagi, Advocates for R-3 & R-4

Mr Ajay Verma and Ms Shobhana Tamiar, Advocates for R-5

Mr P.C. Sharma, Advocate for R-6

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present writ petition seeks quashing of the section 4 notification and the section 6 declaration issued under the Land Acquisition Act, 1894 (hereinafter referred as the “said Act”) in respect of the lands of the petitioners.

2. The facts of the present writ petition are enunciated as below:-

3. On 05.04.1999, a notification under section 4(1) of the said act was issued indicating that the land stated therein was likely to be acquired by the

Government of Delhi for a public purpose, namely, construction of Raja Garden flyover and Right way of Intersection. The said notification also mentions that the Lieutenant Governor of Delhi was satisfied that the provisions of section 17 of the said Act were applicable to the land mentioned in the said notification and that he was pleased, under section 17(4), to direct that all the provisions of Section 5A of the said act would not apply.

4. This was followed by a declaration under section 6 of the said Act, which was issued on 26.04.1999 stating that the land mentioned therein was acquired for the public purpose, namely, construction of Raja Garden flyover and right way of intersection. The land specified under section 4 and section 6 notifications, includes lands at village Basai Darapur. The petitioners are all those persons, who had challenged the said initial notifications.

5. Some of the petitioners being aggrieved by the above, filed WP(C) Nos.3967/1999 and 4029/1999 before this Court and this Court directed *status quo* to be maintained by orders dated 08.07.1999 and 09.07.1999 respectively.

6. The petitioners thereafter impugned the aforesaid notifications before this Court and filed WP (C) No.4933/1999, *inter alia*, challenging the

acquisition proceedings on various grounds. This Court issued notice in the said writ petition.

7. The aforesaid writ petition challenging the acquisition was disposed of when this Court allowed the writ petition and quashed the acquisition proceedings. The said judgment dated 17.12.2004 considered the aspect of application of mind by the competent authority in dispensing with the inquiry under section 5A of the said Act. The said writ petition was allowed and the notification under section 4 dated 05.04.1999 and declaration under section 6 dated 26.04.1999 were quashed.

8. The GNCTD (Respondent No. 3) filed a Special Leave Petition No. 10697/2006 on 21.03.2006 impugning the judgment dated 17.12.2004. By the order dated 04.07.2006 the operation of the order of this court was stayed. The aforesaid Special Leave Petition was disposed of on 21.03.2012, permitting the respondent No.3 to proceed from the stage of section 4 by quashing the urgency clause in the notification without affecting the land which has already been used by the appellant in construction of the flyover and slip road. The relevant portion of the judgment is reproduced below:-

“2. During the course of hearing, Mr H.P. Raval, learned Additional Solicitor General appearing for the appellants and Mr Sumit Bansal, learned counsel for

the respondent Nos.1 to 5 agreed for the following order:

Paragraph 27 of the impugned judgment dated December 17, 2004 be set-aside and substituted by the following order:

“The statement that “the Lt. Governor is satisfied also that provisions of sub-section (1) of the Section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said section to direct that all the provisions of Section 5A shall not apply” is quashed in respect of the respondents’ land. The declaration dated April 26, 1999 made under Section 6 of the Land Acquisition Act, 1894 (for short “the Act”) is also quashed. However, the quashing of the urgency clause in the Notification and the declaration made under Section 6 of the Act shall not affect the land which has already been used by the appellants in construction of fly over and slip road. With regard to the remaining land specified in the above Notification, it will be open to the appellants to proceed further with the acquisition but that shall be done only after holding an enquiry under Section 5A of the Act.”

9. The Land Acquisition Collector (Respondent No.4) pursuant to the said judgment issued notices to the petitioners for filing of objections under section 5A of the said Act.
10. On the basis of the recommendation made by the Land Acquisition Collector (Respondent No.4), the competent authority issued the section 6 declaration on 20.3.2013, impugned herein.

11. The main issue involved in the present writ petition for effective adjudication is **whether the notification is a nullity as having been made beyond the time period prescribed by the Land Acquisition Act for issuing a declaration under section 6?**

12. As far as this issue is concerned, it is the contention of the learned counsel for the petitioners that the impugned declaration under section 6 of the said Act, which was issued on 20.03.2013, was beyond the stipulated period of one year and, therefore, the said notification was bad in law and the entire acquisition would have to be quashed. The learned counsel for the petitioners drew our attention to section 6(1) of the said Act, which reads as under:-

“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 under section 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 authorized 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 section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), -

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 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:

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 1. – 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 under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. – Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.”

13. The learned counsel appearing on behalf of the petitioners pointed out that the declaration under section 6(1) has to be published within one year from the date of publication of the notification under section 4 of the said

Act. By reading Explanation No.1 to the said provision, it was contended that in computing the period referred to in the first proviso, only the period during which the proceedings were stayed by virtue of a court order can be excluded.

14. It is evident that the section 4 notification was issued on 05.04.1999 and earlier, this Court had granted a stay by virtue of its order dated 08.07.1999. This meant 3 months and 3 days had elapsed between the publication of section 4 notification and grant of stay by this Court. This Court finally disposed of those petitions on 17.12.2004 wherein the above mentioned section 4 notification and section 6 declaration were quashed. Therefore, it was contended that the period from 08.07.1999 till 17.12.2004 would have to be excluded in view of Explanation 1 after section 6 (1) of the said Act. Subsequently, when the GNCTD approached the Supreme Court, the Supreme Court also granted stay of operation of the High Court order by virtue of its order dated 04.07.2006. This was disposed of by judgment dated 21.03.2012. It was, therefore, also contended that the period from 04.07.2006 to 21.03.2012 would also have to be excluded for the purpose of computing the period of one year, as required under section 6(1) of the said Act. It was the contention of the learned counsel for the petitioners that upon

the delivery of judgment of the Supreme Court on 21.03.2012, a fresh section 6 declaration could have been issued within the balance period remaining after publication of the notification under section 4 and after excluding the periods during which the stay orders of the High Court as well as the Supreme Court were in operation. It is contended that the section 6 declaration was not made during this balance period. It was made much later that is on, 20.03.2013, thus, the entire acquisition proceedings were a nullity.

15. Reliance was placed on the Constitution Bench decision of the Supreme Court in the case of **Padmasundara Rao and Others v. State of Tamil Nadu & Others**: 2002 (3) SCC 533. In paragraph 4 of the said decision, the Supreme Court noticed that the appellants therein had placed reliance on an unreported decision in **A.S. Naidu and Others v. State of Tamil Nadu and Others**: [SLP (Civil) Nos. 11353-11355/1988], wherein a Bench of three judges held that once a declaration under section 6 of the said act had been quashed, a fresh declaration under section 6 could not be issued beyond the prescribed period of notification under sub section (1) of section 4 of the said Act. It was also noticed that the same view was taken by the Supreme Court in case of **Oxford English School v. Government of Tamil Nadu and Others** : 1995 (5) SCC 206. However, the Supreme Court in the

case of *Padmasundra Rao* (*supra*) also noticed that the contrary view had also been taken by the Supreme Court in two decisions, namely, *State of Karnataka and Others vs. D.C. Nanjudaiah*: 1996 (10) SCC 619 and *N. Narasimhaiah vs. State of Karnataka and Others*:1996 (3) SCC 88.

16. After considering the said decisions and other aspects relating to the said issue, which was formulated by the Supreme Court, the Constitution Bench concluded that the view expressed in *Narasimhaiah* (*supra*) and *Nanjudaiah* (*supra*) was not correct and was over ruled and the view expressed in *A.S. Naidu* (*supra*) and *Oxford English School* (*supra*) was affirmed. While doing so, the Supreme Court had observed that the said decision in *Padmasundra Rao* (*supra*) would operate prospectively to the extent that the cases where awards had been made and compensation had been paid, would not be re-opened by applying the ratio of the said judgment. Consequently, the Supreme Court allowed the appeal before it and the subsequent notification containing the declarations under Section 6 of the said Act were quashed.

17. In view of the above decisions, the learned counsel for the petitioners submitted that the quashing of earlier section 6 declaration by the Supreme Court by virtue of judgment dated 21.03.2012 did not give a fresh lease of

life insofar as the making of a declaration under section 6 was concerned. Therefore, the respondents had to comply with the requirements of the law as interpreted by the Constitution Bench in *Padmasundara Rao (supra)* by completing the process upto the making of a declaration under Section 6 of the said Act within the balance period. Since this was not done, it was contended that the mandatory stipulation contained in the first proviso of section 6(1) of the said Act had been violated and, consequently, the section 6 declaration as well as the section 4 notification were liable to be quashed.

18. The learned counsel on behalf of the respondents stated that the period of issuing a declaration under section 6 of the said Act would have to be reckoned from the date of the Supreme Court judgment which was delivered on 21.03.2012 and, therefore, the section 6 declaration which was made on 20.03.2013 was within the period of one year from the date of the above mentioned decision of the Supreme Court. It was further contended that more time was taken by the counsel for petitioners during the section 5A hearing and even adjournment was requested for delaying the process as under section 5A of the said Act which is also the reason for delay in issuing the section 6 declaration.

19. We have heard both sides. We are of the view that the submissions made by the learned counsel for the petitioners ought to be accepted. This is because the decision of the Supreme Court in *Padmasundra Rao (supra)* covers the present case. The very issue before the Supreme Court, as pointed out by us earlier, was – whether, after the quashing of a declaration under section 6 of the said Act, a fresh period of one year would be available to the State Government to issue another declaration under section 6. This question has been answered by the Constitution Bench of the Supreme Court in *Padmasundra Rao (supra)* in the negative. In other words, when a section 6 declaration is quashed, it does not give a fresh period of one year to the Government to issue another section 6 declaration. The section 6 declaration, after such quashing, if at all, can be issued only during the balance period.

20. In the present case, the time period within which section 6 declaration has to be made was not complied with. The declaration was issued beyond the period of one year in contravention of section 6(1). This period is computed excluding the period covered by the stay orders granted by the High Court and the Supreme Court. The contention of the respondents that extended time taken for hearing and adjournment requested by the

petitioners during the section 5A hearing should necessarily condone the delay in issuing the section 6 declaration is rejected as it cannot surpass the stipulated time period in Section 6 (1).

21. It would be relevant to highlight the decision rendered by this division bench of this court in **WP(C) No. 3049 of 2013 : Sunil Goel and others vs The state and Others** which squarely covers the facts in the present petition whereby section 4 notification and the section 6 declaration were quashed. It was observed in the following terms:

19. In the facts of the present case, the Section 6 declaration was not issued in the available time by the respondents. It was issued much beyond the period of one year stipulated in Section 6(1) even after excluding the period covered by the stay orders granted by the High Court and the Supreme Court. The decision in the case of **Abhey Ram** (*supra*) and **Rajinder Kumar Aggarwal** (*supra*) do not come to the aid of the respondents as, indeed, they cannot detract from the legal position laid down by the Constitution Bench in **Padmasundara Rao** (*supra*). In both the cases referred to by the learned counsel for the respondents, the courts had taken a view which enured to the benefit of the land owners and was not to be taken as granting a benefit to the land acquiring agencies.

22. In view of the above, we decide the present issue in favour of the petitioners by holding that the impugned declaration under Section 6 dated

20.03.2013 is a nullity having been made beyond the period of time prescribed under section 6(1) of the said Act.

23. The declaration dated 20.03.2013 being No.F.7 (40)/94/L&B/LA/19574 under Section 6 of the said Act is quashed insofar as the petitioners' lands in question is concerned. As a result, notification dated 05.04.1999 being Notification No.F.7 (40)/94/L&B/LA/216 issued under section 4 of the said Act insofar as petitioners' land in question is concerned would be regarded as having lapsed.

24. The writ petition is allowed as above. There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

OCTOBER 14, 2014

dn