THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.04.2014

+ WPC No.3049/2013

SUNIL GOEL & OTHERS ... Petitioners

versus

THE STATE AND ORS … Respondents

WITH

+ WPC No.2779/2013

KRISHNA KAUSHIK ... Petitioner

versus

LT. GOVERNOR OF DELHI & ORS … Respondents

AND

+ WPC No.8138/2013

HARPREET SINGH & ANOTHER ... Petitioners

versus

THE STATE & ORS … Respondents

AND

+ WPC No.3055/2013

CHAKIT JINDAL ... Petitioner

versus

THE STATE & ORS … Respondents

AND

+ WPC No.3056/2013

SHRI NIWAS AND SONS ... Petitioner

versus

THE STATE & ORS … Respondents

AND

+ WPC No.3249/2013

RAJ KUMAR & OTHERS ... Petitioners

versus

GOVT OF NCT OF DELHI & ORS … Respondents

AND

+ WPC No.3284/2013

RAM DHARI JINDAL MEMORIAL TRUST (REGD) ... Petitioner

versus

UNION OF INDIA & OTHERS … Respondents

AND

+ WPC No.3490/2013

CHANDRAKANTA C. MESHRAM ... Petitioner

versus

UNION OF INDIA & OTHERS … Respondents

AND

+ WPC No.3549/2013

GIRISH CHHABRA ... Petitioner

versus

LT GOVERNOR OF DELHI & ORS … Respondents

AND

+ WPC No.3700/2013

BHAGWAN SINGH & OTHERS ... Petitioners

versus

STATE & OTHERS … Respondents

AND

+ WPC No.3868/2013

OM PRAKASH MAHESHWARI & ANR ... Petitioners

versus

THE LT. GOVERNOR, NCT OF DELHI & OTHERS … Respondents

AND

+ WPC No.5145/2013

ANU MADAN ... Petitioner

versus

LT. GOVERNOR OF DELHI & OTHERS … Respondents

AND

+ WPC No.6375/2013

RAKHI RUGHWANI & OTHERS ... Petitioners

versus

LT GOVERNOR OF DELHI & ORS … Respondents

Advocates who appeared in this case:-

For the petitioners	: Mr Akhil Sachar (in WPC Nos.3049/13, 3055/13, 3056/13 & 3868/13)
For the petitioners	: Ms Esha Mazumdar with Ms Sethi Niket (in WPC Nos.2779/13, 3549/13, 5149 & 6375)
For the petitioners	: Mr V.P. Rana (in WPC No.8138/13)
For the petitioner	: Mr Pramod Kumar Sethi with Mr Vinit Kumar Sethi (in WPC No.3490/13)
For the petitioners	: Mr Manish Raghav (in WPC No.3284/2013)
For the petitioners	: Mr Vinod Kumar Pandey with Mr Sanjeev Sagar
For the petitioners	: Mr Manish Vashisht with Mr Dhruv Rohatgi and Mr Abhinav Sharma (in WPC No.8138/2013)
For the petitioners	: Mr Satinder Singh (in WPC No.3700/2013)
For the Respondents/ GNCTD/LAC	: Mr Sanjay Kumar Pathak with Ms K.Kaomudi,

Ms Kiran Pathak (in WPC Nos. 3049/13, 2779/13, 8138/13, 3055/13, 3056/13, 3249/13, 3284/13, 3490/13, 3549/13, 3700/13, 3868/13, 5145/13 & 6375

For the Respondent/L&B/LAC: Ms Yeeshu Jain with Ms Jyoti Tyagi (in WPC Nos.2779/13, 8138/13, 3490/13, 3868/13 & 5145/13)

For the Respondent/DDA : Mr Ajay Verma

For the Respondent/ GNCTD& DDA : Ms Shobhna Takiar (in WPC Nos.3549/2013)

For the Respondents 1 &2 : Mr Siddharth Panda (in WPC No.3249/2013)

For the Respondents 1 & 4 : Ms Vibha Mahajan Sethi (in WPC No.3549/2013)

For the Respondent/UoI : Mr Malaya Chand (in WPC No.3249/2013)

For the Respondent/UoI : Mr Apar Gupta (in WPC No.3284/2013)

For the Respondent/UoI : Mr M.P. Singh with Mr Sunil Jha (in WPC No.3490/2013)

For the Respondent/GNCTD : Mr H.S. Sachdeva (in WPC No.3490/2013)

For the Respondents 1 & 4 : Mr V.K. Tandon (in WPC Nos.3549/2013)

For the Respondent/GNCTD : Ms Zubeda Begum (in WPC No.3549/2013)

For the Respondent/GNCTD : Mr Chetan Singh with Mr Dhanesh Pal (in WPC No.3700/2013)

For the Respondent No.1 : Mr Gautam Gupta with Mr Aditya Madan (in WPC No.8138/2013)

For the Respondent/NDMC : Mr Parvinder Chauhan (in WPC No.3249/2013)

For the Respondent : Ms Shipra Shukla

For the Respondent/UoI : Ms Sweety Manchanda with Mr Debashish Mukherjee

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These petitions are being taken up together as they involve identical issues. WP(C) 3049/2013 (Sunil Goel and Others v. Government of NCT of Delhi and Others) was, by an earlier order, directed to be taken as the lead matter and the pleadings were to be

completed in that matter alone. We shall, therefore, refer to the facts in Sunil Goel *(supra)*.

2. On 27.10.1999, a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as '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, Rohini Residential Scheme. The said notification also mentions that the Lt. Governor of Delhi was satisfied that the provisions of sub-Section (1) 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) of the said Act, to direct that all the provisions of Section 5A of the said Act would not apply.

3. This was followed by a declaration under Section 6 of the said Act, which was issued on 03.04.2000 stating that the land mentioned therein was acquired for the public purpose, namely, the Rohini Residential Scheme. The land specified under the said Section 4 and Section 6 notifications, include lands at village Shahbad Daulatpur, Pehladpur Bangar and village Pansali. A number of writ petitions were filed before

this court challenging the above notifications. The petitioners in this batch of matters are all those persons, who had challenged the said initial notifications. On 19.04.2000, this court, while issuing notice in the petition in the case of Sunil Goel [being WP(C) 1638/2000] also directed that *status quo* as regards possession be maintained in the meanwhile. The said stay order operated till 09.07.2007, when the decision of a Division Bench of this court came in the said batch of writ petitions. The Division Bench dismissed all the writ petitions and the interim orders were recalled.

4. Thereafter, an application had been filed by Sunil Goel and Others seeking a certificate for leave to appeal to the Supreme Court. That application was disposed of by an order dated 01.08.2007, whereby this court granted the certificate to file an appeal under Article 134A of the Constitution of India. The operative portion of the said order was as under:-

> "In our view, the following substantial questions of general importance of law arise in respect of which we grant Certificate to file an Appear under Article 134 A of the constitution of India:

(1) Once Section 17 of the LA Act is invoked, does it have the effect of the suspension of the right to file objections under section 5A?

(2) Is it essential that separate Orders under Section 17(4) must be passed if it is intended that there should be a suspension of the right to file Objections under Section 5A ?

Application stands disposed of."

5. Thereafter, Sunil Goel filed a Civil Appeal before the Supreme Court being Civil Appeal No.3513/2007. Other similar appeals were also filed and they were heard by the Supreme Court. By an order dated 09.08.2007, the Supreme Court granted interim stay of the order of the High Court, whereby the writ petitions had been dismissed.

6. In one of the batch matters before the Supreme Court, namely, ***Ram Dhari Jindal Memorial Trust v. Union of India & Others*** (Civil Appeal No.3813/2007), the Supreme Court delivered the judgment on 21.03.2012 by allowing the appeal. The operative portion of the Supreme Court judgment in ***Ram Dhari Jindal Memorial Trust*** *(supra)* was as under:-

"22. Consequently, the appeal is allowed. The Notification dated October 27, 1999 to the effect the Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of 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 5(A) shall not apply insofar as appellant's land is concerned is quashed. The declaration dated April 3, 2000 issued and published under Section 6 of the Act concerning the subject property is also quashed. The Competent Authority may now invite objections under Section 5A of the Act pursuant to the Notification dated October 27, 1999 and proceed with the matter in accordance with law. No order as to costs."

7. On the same date, i.e., on 21.03.2012, the civil appeal pertaining to Sunil Goel (being Civil Appeal No.3513/2007) was also disposed of by the Supreme Court by allowing the appeal and for the reasons given in the judgment in the case of ***Ram Dhari Jindal Memorial Trust*** *(supra)*. The operative portion of the said appeal in the case of Sunil Goel *(supra)* was as under:-

> "2. The clause in the Notification dated October 27, 1999 to the effect "the Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of 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 appellants' land. The declaration dated April 3, 2000 issued and published under Section 6 of the Land Acquisition Act (for short "the Act") concerning the subject property is quashed. The Competent Authority may now invite objections under Section 5A of the Act pursuant to the Notification dated October 27, 1999 and proceed with the matter in accordance with law. No order as to costs."

Similar orders, as in the case of Sunil Goel, were passed in the other batch matters following the decision of the Supreme Court in ***Ram Dhari Jindal Memorial Trust*** *(supra)* on different dates.

8. In compliance with the decision in ***Ram Dhari Jindal Memorial Trust*** *(supra)* and ***Sunil Goel*** *(supra)*, etc., objections under Section 5A of the said Act were invited. Thereafter, the petitioners herein submitted their objections under Section 5A. Ultimately, on 20.03.2013, the declaration under Section 6 of the said Act was issued by the respondents.

9. The said declaration dated 20.03.2013 under Section 6 of the said Act is, *inter alia*, under challenge in this batch of petitions. Three issues had been postulated by the orders dated 22.07.2013 as modified by the order dated 12.09.2013 by this court, while hearing this batch of writ petitions. The three issues were as under:-

1) 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 ?

2) Whether the LAC Report indicates sufficient application of mind to the objections of the petitioner as required by law ?

3) Whether the de-notification by the DDA under Section 12 of the Delhi Development Act, in any way, adversely affects the acquisition process in the present case ?

10. Insofar as the first 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 provision 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 (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 (68 of 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.

(2) … … … … ...
(3) … … … … ...”

11. It was pointed out by the learned counsel appearing on behalf of the petitioners 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. 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.

12. Taking the facts of the case in Sunil Goel, it is evident that the Section 4 notification was issued on 27.10.1999 and that, in the earlier round, this court had granted a stay by virtue of its order dated 19.04.2000. This meant that a period of 5 months and 23 days had elapsed between the publication of Section 4 notification and the grant of stay by the court. As noted above, this court finally disposed of those petitions on 09.07.2007 and vacated the interim orders, which had earlier been passed. Therefore, it was contended that the period from 19.04.2000 till 09.07.2007 would have to be excluded in view of Explanation No.1 after Section 6(1) of the said Act. Subsequently, when the parties approached the Supreme Court, the Supreme Court also

granted stay of operation of the High Court order by virtue of its order dated 09.08.2007. The judgment in those matters finally came on 21.03.2012, as indicated above. It was, therefore, contended that the period from 09.08.2007 to 21.03.2012 would also have to be excluded for the purposes 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 by the Supreme Court on 21.03.2012, a fresh Section 6 declaration could have been issued within 6 months and 7 days, which was the balance period remaining after the publication of the notification under Section 4 and after excluding the periods during which stay orders of the High Court as well as of the Supreme Court were in operation. But, the learned counsel for the petitioners submitted that the Section 6 declaration was not made during this balance period of 6 months and 7 days. On the contrary, it was made much later, that is, on 20.03.2013.

13. Consequently, it was the submission of the learned counsel for the petitioners that the declaration under Section 6, which was issued on 20.03.2013, was outside the period of one year as stipulated under

Section 6(1) by a period of 6 months and 22 days. As a result, the entire acquisition proceedings were a nullity.

14. In support of their contentions, the learned counsel appearing on behalf of the petitioners placed reliance 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**. They drew our attention to paragraph 3 of the said report wherein the Supreme Court observed that the controversy in that matter lay within a narrow compass and the issue was – whether after quashing of notification under Section 6 of the Land Acquisition Act, 1894, a fresh period of one year was available to the State Government to issue another notification under Section 6 ?

15. In paragraph 4 of the said decision, the Supreme Court noticed that the appellants therein had placed reliance on an unreported decision of the court 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. The Supreme Court also noticed that the same view was taken by the Supreme Court in the case of ***Oxford English School v. Government of Tamil Nadu and Others*: 1995 (5) SCC 206**. However, the Supreme Court in the case of ***Padmasundara Rao*** (*supra)* also noticed that a contrary view had also been taken by the Supreme Court in two decisions, namely, ***State of Karnataka and Others v. D.C. Nanjudaiah*: 1996 (10) SCC 619** and ***N. Narasimhaiah v. State of Karnataka and Others*: 1996 (3) SCC 88**. 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 the correct view and was overruled and the view expressed in ***A.S. Naidu*** *(supra)* and ***Oxford English School*** *(supra)* was affirmed. We may also note that, while doing so, the Supreme Court had observed that the said decision in ***Padmasundara Rao*** (*supra)* would operate prospectively to the extent that the cases where awards had been made and the compensation had been paid, would not be reopened by applying the ratio of the said judgment. Consequently, the Supreme Court allowed

the appeals before it and the subsequent notifications containing the declarations under Section 6 of the Act were quashed.

16. On the strength of the said Constitution Bench decision, the learned counsel for the petitioners submitted that the quashing of the earlier Section 6 declaration by the Supreme Court by virtue of the judgment dated 21.03.2012 did not give a fresh lease of life insofar as the making of a declaration under Section 6 of the said Act was concerned. The Supreme Court order quashed the earlier Section 6 declaration leaving it to the authorities to continue with the process of inviting objections under Section 5A of the said Act and completing the process "in accordance with law". 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 within the balance period of 5 months and 7 days. 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.

17. The learned counsel appearing on behalf of the respondents made a two-fold submission. In the first instance, they submitted 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. According to them, the Section 6 declaration, which was made on 20.03.2013, was within the period of one year from the date of the said decision of the Supreme Court in the case of ***Ram Dhari Jindal Memorial Trust*** *(supra)* and other matters. The second submission was that since there was one matter relating to the same Section 4 notification and the earlier Section 6 notification dated 03.04.2000, which was pending before the Supreme Court and a stay order was operating in that matter, that order of stay would enure to the benefit of the respondents for non issuance of a declaration under Section 6 of the said Act. Reliance for this proposition was placed on the judgment of the Supreme Court in the case of ***Abhey Ram (Dead by LRs) & Others v. Union of India*****: 1997 (5) SCC 421**. Reliance was also placed on a decision of a Division Bench of this court in the case of ***Rajinder Kumar Aggarwal v. Lt. Governor of Delhi & Others*****: 2010 (116) DRJ 500 (DB)**.

18. Having considered the submissions made by the learned counsel on both sides, we are of the view that the submissions made by the learned counsel for the petitioners ought to be accepted. This is so because the decision of the Supreme Court in the case of ***Padmasundara Rao*** (*supra)* covers the present case on all fours. 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 ***Padmasundara 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.

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.

20. The argument of the learned counsel for the respondents that as another Special Leave Petition being ***Velaxan Kumar v. Union of India and Others*** being ***SLP 16578/2007*** is pending before the Supreme Court and a stay order is operating therein, they can issue a Section 6 declaration at any time till the Supreme Court renders a decision in that case, is not tenable. We do not agree with this submission of the learned counsel for the respondents. The respondents would have to take a clear stand as to whether the Section 6 declaration issued on 03.04.2000 stands or has been quashed. In our view, once the Supreme Court has quashed the said declaration by virtue of its judgments dated 21.03.2012 in ***Ram Dhari Jindal Memorial Trust*** *(supra)* and ***Sunil Goel*** *(supra)*, the

respondents cannot contend that the earlier Section 6 declaration dated 03.04.2000 subsists today. Since the Section 6 declaration pertained to the lands belonging to the petitioners herein and that has been quashed, the respondents cannot make the submission that they can wait for the ultimate disposal of the Special Leave Petition in ***Velaxan***'s case. Incidentally, we may point out that the land covered in ***Velaxan***'s case has also been included in the Section 6 declaration dated 20.03.2013, which is impugned before us. Even on this ground, the submission made by the learned counsel for the respondents is untenable.

21. For the foregoing reasons, we decide question No.1 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.

22. In view of the fact that we have decided the first issue in favour of the petitioners and the writ petitions are liable to be allowed on that count alone, we are not examining the other two issues, which are kept open.

23. Consequently, the declaration dated 20.03.2013 being F.10(29)/96/L&B/LA/19599 under Section 6 of the Land Acquisition

Act, 1894 is quashed insofar as the petitioners are concerned. As a result, the notification dated 27.10.1999 being Notification No. F.10(29)/96/L&B/LA/11394 issued under Section 4 of the said Act, insofar as the petitioners' lands are concerned, would be regarded as having lapsed. The writ petitions are allowed as above. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

APRIL 29, 2014
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