

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.16616 OF 2008

ORDER:

This writ petition, under Article-226 of the Constitution of India, is filed challenging the action of the respondents in proceeding further pursuant to the notification issued by the 1st respondent-District Collector vide Roc.No.F5/SW/130/2006 dated 13.05.2006 issued under Section 4(1) of the Land Acquisition Act, 1894 (in brief 'the Act').

The facts in nutshell, as per the affidavit filed in support of the writ petition, are as follows:

The 1st respondent-District Collector issued a notification under Section 4(1) of the Act, proposing to acquire the lands of the petitioner herein situated in Survey Nos. 195/2A and 196/2 of Vadapalli Village, Kovvur Mandal, West Godavari District. The said notification was published on 26.05.2006. The respondent-Authorities, by invoking the provisions of Section 17(4) of the Act dispensed with the enquiry under Section 5(A) of the Act. Hence, the petitioner herein and two others filed W.P.No.10900 of 2004 before this Court. In the said writ petition, interim stay was granted on 01.06.2006 and eventually, the said writ petition was disposed of on 06.12.2006, directing the respondents herein to hold enquiry under Section 5(A) of the Act. Subsequently, the 2nd respondent-Land Acquisition Officer issued a notice dated 13.02.2007, asking the petitioner to submit objections. When there was an attempt of interference by the 3rd respondent with the possession and enjoyment of the petitioner during the enquiry under Section 5-A of the Act, the petitioner herein approached this Court by filing W.P.No.26515 of 2007 and the same was disposed of on 18.12.2007 by recording the statement of the learned Assistant Government Pleader for Land Acquisition to the effect that Section 5-A enquiry was already held on

03.06.2007 but no orders were passed. In the said order, this Court also directed that the petitioner should not be dispossessed from the land till the completion of the legal and procedural formalities envisaged under the Act. The petitioner received the proceedings in Roc.No.G4/120/2006 dated 22.12.2007 on 18.05.2008 issued by the District Collector under Section 5-A of the Act.

Contending that the respondents cannot issue Section 6 declaration in view of the expiry of one year period from the date of publication of 4(1) notification and that the entire proceedings are lapsed, the present writ petition has been filed.

A counter-affidavit, deposed by the 2nd respondent herein, is filed on behalf of respondents 1 to 3, principally contending that the notification under Section 4(1) of the Act was approved and published by the District Collector, West Godavari District on 26.05.2006 and aggrieved by the same one of the land owners namely, Sri D.Ch.Joga Rao filed W.P.No.11764 of 2006 and this Court issued directions to the respondents therein on 16.05.2006 to hold enquiry under Section 5-A of the Act. In the counter-affidavit it is further stated that the writ petitioner herein filed W.P.No.10900 of 2006 and obtained interim stay on 01.06.2006 and the same was vacated on 06.12.2006. It is also stated that once again Sri D.Ch.Joga Rao filed W.P.No.241 of 2007 and obtained interim stay on 04.01.2007 in W.P.M.P.No.306 of 2007 and the same was vacated by this Court on 01.05.2007. It is further stated that the petitioner was issued notice to attend 5-A enquiry on 15.03.2007 and after conducting enquiry, the Land Acquisition Officer submitted a report to the District Collector and after considering the same, the 1st respondent issued proceedings dated 22.12.2007, rejecting the objections and thereafter draft declaration was published on 13.06.2008. The said counter further seeks to justify the action of respondents 1 to 3 in not issuing the declaration within one year by contending that the period covered by stay in W.P.No.10900 of 2006 i.e., 01.06.2006 to

06.12.2006 and in W.P.No.241 of 2007 i.e., from 04.01.2007 to 01.05.2007 and the period of 9 months 3 days covered by enquiry under Section 5-A of the Act are liable to be deducted from the period of one year.

Pleading in the manner indicated supra, it is prayed by the respondents herein to dismiss the writ petition.

Heard Sri G.Rama Rao, learned counsel for the petitioner, learned Government Pleader for Land Acquisition and Sri K.V.L.Narasimha Rao, learned counsel for the impleaded 4th respondent.

It is contended by the learned counsel for the petitioner that the 1st respondent issued notification under Section 4(1) of the Act, which was published on 26.05.2006. As the 1st respondent published declaration under Section 6 of the Act on 13.06.2008, but not within one year as stipulated under Section 6 of the Act, entire proceedings initiated by the respondents herein stood lapsed. It is further contended by the learned counsel for the petitioner that except the period mentioned under Section 6 of the Act, no other period is liable for exclusion while computing the period of one year for publication of Section 6 declaration from the date of 4(1) notification. In support of his submissions and contentions, the learned counsel for the petitioner places reliance on the judgment of the Hon'ble Apex Court in **Padma Sundara Rao and Others v. State of Tamilnadu**^[1], **Ashok Kumar v. State of Haryana**^[2], **Anil Kumar v. State of Bihar**^[3] and **Devendar Kumar Tyagi v. State of U.P.**^[4]

Per contra, it is contended by the learned Government Pleader that the contention of the petitioner with regard to lapsing of proceedings by afflux of time as stipulated under Section 6 of the Act is unsustainable and the respondents are justified in issuing declaration under Section 6 of the Act. It is eventually prayed by the learned Government Pleader to dismiss the writ petition.

For the purpose of effective adjudication of the issue involved in the present writ petition, it is germane and relevant to refer to the provisions of Section 6 of the Land Acquisition Act, which read as under:

“6. Declaration that land is required for a public purpose.-

[\(1\)](#) Subject to the provision of Part VII of this Act,[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 5A, 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.]

[\(2\)](#) [Every declaration] shall be published in the Official Gazette[and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration 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 declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which It is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

[\(3\)](#) The said declaration shall be conclusive evidence that the land is

needed for a public purpose or for a company, as the case may be; and, after making such declaration, the[appropriate Government] may acquire the land in manner hereinafter appearing”

A reading of the above provision of law makes it very much manifest that the respondent-Authorities are not authorized to issue declaration under Section 6 of the Act after the expiry of one year period from the date of publication of notification under Section 4(1) of the Act. The only exception as per Explanation No.1 of the said provision of law is that the period during which any action or proceedings can be taken in pursuance of the notification under Section 4(1) of the Act is stayed by an order of the Court is liable to be excluded.

In the light of the above facts and circumstances and the provisions under Section 6 of the Act, now it is to be seen as to whether the respondent-Authorities are justified in proceeding further after expiry of term of one year from the date of 4(1) notification and whether said action is sustainable and in accordance with the provisions of the legislation.

Right to property is a constitutional right enshrined under Article 300-A of the Constitution of India, which in clear and unequivocal terms mandates that no citizen shall be deprived of his/her property except in accordance with the procedure established by law. The Land Acquisition Act is an expropriatory legislation, which authorizes the State to compulsorily acquire lands of citizens notwithstanding their wish. Therefore, the provisions of the said legislation are required to be adhered to scrupulously without any deviation. In **Padma Sundara Rao and Others v. State of Tamilnadu** (supra), the Hon’ble Supreme Court at paragraphs 11 to 16 held as under:

“ 11. It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing the period of limitation seems to be the avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It

provides that the market value of the land is to be fixed with reference to the date of publication of the notification under Section 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature. In *Ram Chand v. Union of India*¹⁰ it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non est and was effaced. It is fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage*¹¹.) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*¹².

13. In *D.R. Venkatchalam v. Dy. Transport Commr.*¹³ it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*¹⁴) 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*¹. In *Nanjudaiah case*⁴ 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.

15. Two principles of construction — one relating to *casus omissus* and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J., in *Artemiou v. Procopiou*¹⁵ (at All ER p. 544-I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC*¹⁶ where at AC p. 577 he also observed: (All ER p. 664-I) “This is not a new problem, though our standard of drafting is such that it rarely emerges.”]

16. The plea relating to applicability of the *stare decisis* principles is clearly unacceptable. The decision in *K. Chinnathambi Gounder*⁸ was rendered on 22-6-1979 i.e. much prior to the amendment by the 1984 Act. If the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim *actus curiae neminem gravabit* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.”

In **Ashok Kumar v. State of Haryana** (supra) held in paragraphs 14 to 17 as under:

“ **14.** Proviso (ii) appended to sub-section (1) of Section 6 of the Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that 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(1), is stayed by an order of a court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law.

15. Provisions of the Act should be construed having regard to the purport and intent thereof. Section 6 of the Act is beneficent to the landowners.

16. In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chena*¹, it was held: (SCC p. 640, para 29)

“29. The Act is an expropriatory legislation. This Court in *State of M.P. v. Vishnu Prasad Sharma*² observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also *Khub Chand v. State of Rajasthan*³ and *CCE v. Orient Fabrics (P) Ltd.*⁴”

17. We have noticed hereinbefore that the proviso appended to sub-section (1) of Section 6 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by reason of the Explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by Act 68 of 1984 and which came into force w.e.f. 24-9-1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, in our opinion, is absolutely clear and explicit.”

In *Anil Kumar v. State of Bihar* (supra) in paragraphs 17, 18, 19 and 20 held as under:

“ 17. The use of the expression “not exceeding three years from commencement of such occupation” leaves no manner of doubt that with effect from 31-1-1979 i.e. the date on which three years’ period counted from 1-2-1976 ended, continued occupation of the appellant’s land by the respondents became illegal per se.

18. We may now advert to the main question as to whether the declaration issued under Section 6(1) was a nullity because the same was issued after expiry of the period of one year specified in the first proviso (i) to that section. This issue is no longer res integra and must be treated as settled by the judgments of this Court in *Padma Sundara Rao v. State of T.N.*⁶, *Ashok Kumar v. State of Haryana*⁷ and a recent judgment in *Devender Kumar Tyagi v. State of U.P.*⁸ In *Padma Sundara Rao case*⁶ the Constitution Bench unequivocally held that the second proviso to Section 6(1) is mandatory and a declaration issued beyond the period of one year

from the last publication of the notification issued under Section 4(1) is nullity. In view of the proposition laid down in these judgments, it must be held that the learned Single Judge had rightly held that the declaration issued under Section 6(1) was non est.

19. The learned counsel for the respondents relied upon the corrigendum dated 1-7-1994 and argued that if the period of one year is counted from the date of corrigendum then the declaration issued under Section 6(1) cannot be treated as beyond the period of one year. We are unable to accept the submission of the learned counsel for two reasons. Firstly, it has not been shown whether the corrigendum had been published in the manner prescribed under Section 4(1). Secondly, the corrigendum was issued only for correcting the typographical mistakes in the gazette publication of the notification issued under Section 4(1). Such corrigendum will relate back to the date on which the notification under Section 4(1) was issued and the same cannot be relied upon for recording a finding that the declaration under Section 6(1) was issued within the period prescribed under the first proviso (ii) to that section.

20. In the result, the appeal is allowed, the impugned judgment is set aside and the order passed by the learned Single Judge quashing the acquisition proceedings is restored. The respondents are directed to hand over □vacant possession of the acquired land to the appellant within a period of eight weeks from today. The parties are left to bear their own costs.”

In **Devendar Kumar Tyagi v. State of U.P.** (supra) in paragraphs 12 to 14 held as under:

“ **12.** The notification under Section 4 has to be published in the manner laid down therein. As against this, under Section 6, a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6(2) of the LA Act. Also, proviso (ii) to Section 6(1) lays down a time-limit within which the declaration has to be made. The said proviso (ii) significantly only provides a time-limit for a declaration and not for publication as it has been incorporated in sub-section (1) of Section 6 of the LA Act.

13. It is not in dispute that the declaration of the Notification under Section 6 was issued on 18-12-2007. It is also not in dispute that the Notification under Section 4 was issued on 3-7-2006 and the same was published in two daily newspapers in Hindi language on 4-7-2006 having circulation in the locality where the land is situated. Also, the people at Pargana Hapur in Ghaziabad District are well-conversant with the Hindi language. In our considered view, the publication of the notification in two newspapers having circulation in the locality where the land is situated and where people are well-conversant with Hindi amounts to ample compliance with the requirement of the publication under Section 4(1) of the LA Act. In view of this, the subsequent publication of English translation of the said Notification under Section 4 in two newspapers on 5-1-2007 is unnecessary and will not assist the respondents to extend the period of limitation envisaged in the

proviso to Section 6(1) of the LA Act. Hence, the last date of publication for the purpose of Section 4(1) of the LA Act, which can be treated as the date of publication, is the date on which, the second Notification under Section 4 was published in the newspaper, that is, 4-7-2006. Therefore, the period of limitation commences from 4-7-2006, which is the date of publication of the Notification under Section 4(1) of the LA Act.

14. If the declaration under Section 6 of the LA Act is made before the expiry of the period of one year starting from 4-7-2006, then, only such declaration will be considered as valid for the purpose of the acquisition of land. However, in the present case, the declaration under Section 6 was issued on 18-12-2007 which is clearly beyond the period of limitation of one year as mandated by the proviso to Section 6(1) of the LA Act. Therefore, the declaration of notification under Section 6 and its subsequent publications are clearly beyond the period of limitation of one year starting from the date of publication of notification under Section 4 of the LA Act.”

In the instant case, the 1st respondent issued notification under Section 4(1) of the Act on 26.05.2006 and paragraph No.4 of the counter-affidavit filed by respondent Nos. 1 to 3 furnishes information saying that in W.P.No.10900 of 2006 filed by the petitioner herein stay was granted on 01.06.2006 and the same was vacated on 06.01.2006 and in W.P.No.241 of 2007 filed by one Sri D.Ch.Joga Rao, stay was granted on 04.01.2007 and the same was vacated on 01.05.2007 and that it had taken nine (9) months three (3) days for conducting 5-A enquiry. While furnishing the said information, it is contended by the respondents that in toto, a period of 9 months 5 days is liable to be excluded and if such exclusion is made, the declaration published on 13.06.2008 would be within the period of limitation as prescribed under Section 6 of the Act. The said contention, even though appears to be attractive, cannot be sustained in view of the principles laid down by the Hon'ble Supreme Court in the aforesaid judgments and in view of the mandatory provisions of Section 6 of the Act. The only period which can be excluded is the period covered by the stay granted by a Court. Since the Authorities published 4(1) notification on 24.01.2006, Section 6 declaration ought to have been published within one year from the said date i.e. on or before 25.05.2007. But the declaration under Section 6, in the instant case was published on 13.06.2008. The period covered by enquiry under Section

5-A of the Act, by any stretch of imagination is not liable for exclusion in view of the express provisions of the legislation. Even if the period covered by the stay granted on 24.01.2007 is excluded, the declaration issued by the respondent-Authorities is beyond the statutory period. When the language employed under provisions of law is clear and unambiguous, the same shall be adhered to scrupulously and meticulously and any interpretation which defeats and frustrates the same and which would render the provision of law nugatory is impermissible. Benefit given to the land holder by the legislation cannot be permitted to be taken away by misconstruing the same. Having regard to the law laid down by the Hon'ble Supreme Court in the aforesaid judgments and

in view of the clear language employed in Section 6 of the Act, this Court comes to the conclusion that Section 6 of the Act does not authorize the respondents to deduct the period covered by enquiry under Section 5-A of the Act as such the contention advanced by the respondents herein has no legs to stand.

For the aforesaid reasons and having regard to the principles laid down by the Hon'ble Supreme Court and keeping in view the provisions of the legislation (Land Acquisition Act), the Writ Petition is allowed, setting aside the notification issued by the 1st respondent issued under Section 4(1) of the Land Acquisition Act vide Roc.No.F5/SW/130/2006 dated 13.05.2006 and the consequential declaration dated 13.06.2008. However, the respondents are at liberty to initiate proceedings afresh, if they so desire. No order as to costs.

Miscellaneous petitions if any, pending in this writ petition shall stand closed.

A.V.SESHA SAI,J

Date: 31.12.2013

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[\[1\]](#) (2002) 3 SCC 533

[\[2\]](#) (2007) 3 SCC 470

[\[3\]](#) 2012(12) SCC 443=AIR 1980 Pat 271=2002 (2) BLJR 1000

[\[4\]](#) (2011) 9 SCC 164