

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3654 OF 2008

Baban Homaji Phadtare and Others. .. Petitioners
Vs
The State of Maharashtra and Others. .. Respondents
—
Shri S.P. Thorat for the Petitioners.
Shri V.S. Gokhale, AGP for the Respondent Nos.1 to 3.
Shri Vijay D. Patil for the Respondent No.4.
—

CORAM : A.S. OKA &
V.L. ACHLIYA, JJ
DATED : 11TH SEPTEMBER 2015

ORAL JUDGMENT (PER A.S. OKA, J)

. Heard learned counsel appearing for the Petitioners and the learned AGP for the first to third Respondents. We have also heard the learned counsel appearing for the fourth Respondent.

2. By this Petition under Article 226 of the Constitution of India, the challenge is to the Notification dated 22nd August 2006 published in the Government Gazette dated 14th September 2006 under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short “the said Act”). The challenge is also to the declaration dated 12th August 2008 issued by the Divisional Commissioner, Pune Division, Pune, under Section 6 of the said Act. The acquisition was for the

public purpose of an irrigation project at Village Bopgaon, Taluka – Purandar, District – Pune. The acquisition is challenged on several grounds. The allegations of malafide have been made against the fourth Respondent by contending that the acquisition has been initiated at the instance of the fourth Respondent. The land subject matter of the acquisition has been described in Paragraph 2 of the Petition. Various contentions have been raised in support of the plea that the public purpose is not in existence. One of the legal challenges is on the ground that the declaration under Section 6 of the said Act has not been issued within a period of one year from the date of publication of the Notification under Sub-section (1) of Section 4 of the said Act. It is specifically contended in the Petition that the declaration under Section 6 of the said Act has been issued after the expiry of the period of one year. The case of the first to third Respondents is that the last date of publication of the Notification under Sub-section (1) of Section 4 of the said Act in the village Bopgaon is dated 20th February 2007. The said contention has been disputed by the Petitioners. The prayer is for setting aside the acquisition on the ground that the acquisition has lapsed as the declaration under Section 6 of the said Act was not issued within the statutory period of one year from the date of publication of the Notification under Sub-section (1) of Section 4 of the said Act. The substantive prayer in the Petition is for grant of declaration that the acquisition proceedings is null and void.

3. The learned counsel appearing for the Petitioners has taken us through the grounds in the Petition. He urged that the declaration under Section 6 of the said Act has been made after the expiry of the statutory period provided for making such a declaration. He pointed out the averments made in Paragraph 3(a) of the Writ Petition. He also relied upon the judgment and decree dated 11th January 1989 in Regular Civil Suit No.1131 of 1976. He contended that the public purpose is not in existence and only at the instance of the fourth Respondent that the acquisition has been initiated. He invited our attention to the affidavit-in-rejoinder and in particular Paragraph 3 thereof. He urged that though it is contended by the State Government that the Notification under Sub-section (1) of Section 4 of the said Act was published in daily newspapers “Divas Ratri” and “Katib”, the names of the said newspapers have not been even heard of by the villagers. He pointed out that in the rejoinder, the so called publication of the Notification under Sub-section (1) of Section 4 of the said Act on 20th February 2007 at Tahsil Office of Village Bopgaon and Bhivari has been specifically denied.

4. The learned AGP invited our attention to the reply filed by Shri Sharad S. Dabholkar, the Executive Engineer, Minor Irrigation Division Mo.1, Pune, as well as the additional reply filed by Shri D.P

Bhalekar, the Special Land Acquisition Officer No.19, Pune, dated 29th April 2009 enclosing therewith a report submitted under Section 5A of the said Act. There is one more affidavit filed by Shri Dilip Dnyandeo Jagdale dated 11th August 2008 who was the Special Land Acquisition Officer No.19, Pune, at the relevant time who has stated that the date of last publication of the notification under Sub-section (1) of Section 4 of the said Act is 20th February 2007.

5. We have carefully considered the submissions. We had called upon the learned AGP to produce the record of the case. Accordingly, the record has been produced. Firstly, we deal with the issue of the validity of the declaration under Section 6 of the said Act. The affidavit dated 11th August 2008 of Shri Jagdale, Special Land Acquisition Officer No.19, Pune, has been filed first in point of time. As far as the publication of the Notification under Sub-section (1) of Section 4 of the said Act is concerned, in Paragraph 2, Shri Dilip Dnyandeo Jagdale has stated thus:

“I state that the Notification issued under Section 4 of the Land Acquisition Act was issued by the Special Land Acquisition Officer No.19, Pune on 22.8.2006, which was published in Government Gazette dt. 14.9.2006 at Page-4730-4734. I say that the said Notification was published on the Notice Board of the office of Special Land Acquisition Officer No.1, Pune on 25.9.2006. It was published at Tahsildar Officer, Purandar on 8.11.2006. It was also published at Tahsil Office of Village-Bopgaon and Bhivari on

20.2.2007. I state that the said Notification was published on 18.10.2006 in the local newspaper "Dainik Divas Ratri" and on 15.9.2006 in local newspaper "Dainik Katib". I state that 20.2.2007 is the last date of publication of Notification under Section 4 of the Land Acquisition Act, which was published at Village-Bopgaon and Village-Bhivari."

(Underline supplied)

6. As stated earlier, the date of declaration under Section 6 of the said Act is 12th February 2008. Thus, going by the stand taken as aforesaid by Shri Dilip Dnyandeo Jagdale, only if it is established that on 20th February 2007, there was a valid publication of the Notification under Sub-section (1) of Section 4 of the said Act in the Village Bopgaon and village Bhivari then it can be said that the declaration under Section 6 of the said Act was made within the time specified in Clause (2) of Sub-section (1) of Section 6 of the said Act. If the publication on 20th February 2007 is not established, the last publication of the declaration was made on 18th October 2006 in the alleged local newspapers "Dainik Divas Ratri".

7. Before we go into the record, we must make a reference to the affidavit of Shri D.P. Bhaledar, the Special Land Acquisition Officer No.19, Pune which is dated 29th April 2009. To the said affidavit, he has annexed the information furnished by him to the Collector in accordance with Section 5A of the said Act. In fact, copies of the three separate reports submitted by him under Section 5A of the said Act

have been annexed as “Exhibit-1” Collectively. It will be interesting to note what is stated in the said three reports. The first report on page 95 is in respect of the village Bopgaon. Apart from the publication of the Notification, in the daily newspapers “Dainik Divas Ratri” and “Katib”, on 18th October 2006 and 15th September 2006 respectively, it is stated that the Notification under Sub-section (1) of Section 4 dated 22nd August 2006 of the said Act was published on Talathi Chavadi on 12th October 2006. It is stated that the last objections were to be filed on 8th and 9th November 2006. The second report on Page 96 is in respect of the Village Bopgaon and Bhivari. Apart from the aforesaid two publications in the said newspapers, no further publication is referred in this second report. The date on which the Notification was published on Chavadi is kept blank. It is stated that the last objections were to be filed on 8th and 9th November 2006. In the third and last report on Page 97 which relates to village Bopgaon, again there is a reference to the aforesaid publication in the two newspapers and it is stated that the Notification under Sub-section (1) of Section 4 of the said Act was published on Chavadi on 12th October 2006. It is stated that the last objections were to be filed on 8th and 9th November 2006. A chart in the prescribed format along with the said report has been submitted by the said Special Land Acquisition Officer. When these reports (Pages 95 to 97) under Section 5A of the said Act were submitted, the Notification under Sub-section (1) of Section 4 of the said Act was lastly published

on Talathi Chavdi on 12th October 2006. In the said reports, there is not even a reference to any publication in the Village Bopgaon on 20th February 2007. The document on page 100 shows that hearing of objections under Section 5A at Bopgaon was on 8th and 9th November 2006. The document on page 102 shows that the hearing of objections under Section 5A at Bopgaon was on 11th December 2006. Copies of the same reports which are annexed to the said affidavit on pages 95 to 97 have been produced by the learned counsel appearing for the Petitioners yesterday during the course of hearing. Thus, what is stated in the first affidavit of Shri Dilip Jagdale dated 11th August 2008 is completely falsified by the aforesaid annexures to the subsequent affidavit filed on 29th April 2009 by Shri Bhalekar, the Special Land Acquisition Officer No.19, Pune. If the case that the publication made on 20th February 2007 was really true, that would have been stated so in the affidavit filed on 29th April 2009. Moreover, the publication cannot be after the hearing under section 5A was conducted in the village Bopgaon.

8. The matter does not rest here. The perusal of the record shows that on 8th November 2006, there are reports submitted by the Gav Talathi of Village Bopgaon and Bopgaon Bhivari stating that the publication of the Notification under Sub-section (1) of Section 4 of the said Act has been made in the Village Bopgaon and Bopgaon Bhivari.

Thereafter, there is one more document on record in the form of a letter which is undated and which is in the printed form addressed by the Tahsildar, Purandar Taluka addressed to the Special Land Acquisition Officer No.19 stating that the Notification under Sub-section (1) of Section 4 of the said Act was published on the Village Chavdi on 20th February 2007. To the naked eyes, it appears that the original date of publication written in hand mentioned in the said letter has been erased and the date 20th February 2007 has been subsequently overwritten. There is a serious doubt about the genuineness of such publication as in the affidavit dated 29th April 2009 of Shri D.P. Bhaledar, the Special Land Acquisition Officer, there is not even a reference to such publication on 20th February 2007. Therefore, it is impossible to believe that there was such a declaration made in the village Bopgaon on 20th February 2007. As stated earlier, on 8th November 2006, the publication of the Notification was already made in both the villages.

9. Sub-section (1) of section 4 of the said Act 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 publication of the notification)].”

10. It contemplates publication of the notification under Sub-section (1) of Section 4 of the said Act in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one should be in regional language. A public notice of the substance of such declaration is required to be given at any convenient places in the said locality. Sub-section (1) of Section 4 of the said Act provides that the last of the dates of such publication and the giving of such public notice shall be the date of publication of the notification. Thus, the compliance with the sub-section (1) of Section 4 of the said Act is made when the notification is published by all the three modes contemplated by Sub-section (1) thereof. Once the publication of such notification by all the three modes contemplated by Sub-section (1) of Section 4 is complete, the date of the last of such publications becomes the date of publication of the notification.

11. Section 6 of the said Act reads thus:

“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 (I) 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.]”

12. Clause (ii) of Sub-section (1) of Section 6 of the said Act provides for a period of one year to make a declaration from the date of publication of the notification under Sub-section (1) of Section 4 of the said Act. Thus, the date of last of the publication by the three modes provided in sub-section (1) of Section 4 will be the date of publication of the notification from which date a declaration under Section 6 of the said Act is required to be issued in one year. In the present case, going by the stand taken in the reply of Shri D.P. Bhaledar, the Special Land Acquisition Officer No.19, and the reports under Section 5A of the said Act, the last of such publications is made 18th October 2006 which is the publication in the newspaper "Daily Divas Ratri. The publication in village is of 12th October 2006 as stated in the reports on pages 95 to 97. Thus, 18th October 2006 becomes the date of publication of the Notification under Sub-section (1) of Section 4 of the said Act and the time provided in Clause (ii) of Sub-section (1) of Section 6 of the said Act starts running from the said date. The provision regarding the outer limit for making the declaration under Section 6 has been made for the benefit of the land owners. The object seems to be to ensure the expeditious conclusion of the acquisition proceeding. The reason being the market value is pinned down to the date of the notification under sub-section (1) of section 4.

13. Once the Notification under Sub-section (1) of Section 4 of the said Act is published by all the three modes, the date of publication of the Notification is finally fixed which is of the last of such publications by the three modes. Only for the purposes of bringing the declaration under Section 6 of the said Act within the time limit prescribed, the repeated publication of the notification under Sub-section (1) of Section 4 of the said Act cannot be made. While we are taking this view, we are fortified by the view taken by the Apex Court in the case of *Devender Kumar Tyagi and others v. State of Uttar Pradesh and others*, [(2011) 9 SCC 164]. Paragraphs 13 and 14 of the said decision read thus:

“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.”**

(emphasis supplied)

14. The aforesaid paragraph will show that this was a case where after the publication of the notification under Sub-section (1) of Section 4 of the said Act by all the three modes, one more publication was made which was not at all warranted. The Apex Court held that such unnecessary publication will not assist the State to extend the period envisaged under Sub-section (1) of Section 6 of the said Act.

15. In the present case, assuming that there was a publication of the notification under Sub-section (1) of Section 4 of the said Act in village Bopgaon on 20th February 2007, it was an additional publication made long after 18th October 2006 when the publication by all three modes was completed. The alleged publication of the notification under Sub-section (1) of Section 4 of the said Act in village Bopgaon on 20th February 2007 was not warranted at all. Moreover it is purportedly made after the hearing of the objections in accordance with section 5A was completed. Thus, only conclusion which can be drawn in the present case even on the admitted facts which are stated in the affidavits of the respondents is that the declaration under Section 6 of the said Act in the present case was made after the expiry of the period provided under Clause (ii) of Sub-section (1) of Section 6 of the said Act. In the circumstances, only on this ground that the acquisition proceedings initiated on the basis of the Notification dated 22nd August 2006 issued under Sub-section (1) of Section 4 of the said Act stand vitiated.

16. In view of this position, it is not necessary for us to consider any other grounds raised in the Petition. It is also not necessary for us to go into the questions regarding genuineness and the existence of public purpose.

17. Hence, the Petition succeeds and we pass the following order:

ORDER :

- (a) The acquisition proceedings initiated on the basis of the Notification dated 22nd August 2006 bearing No. VIBHUSA/19SR/201/94 stand vitiated only as far as the lands claimed by the Petitioners are concerned;
- (b) The Rule is made absolute on above terms with no orders as to costs.

(V.L. ACHLIYA, J)

(A.S. OKA, J)