

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 28430 of 2013

Date of Decision: 05.05.2015

Bharat Singh and another

---Petitioners

versus

The State of Haryana and others

---Respondents

**Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. S.P.Chahar, Advocate
for the petitioners**

Mr. Deepak Balyan, Addl. A.G. Haryana

**Mr. Dheeraj Chawla, Advocate
for respondent No.3**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition filed under Articles 226/227 of the Constitution of India lays challenge to the notifications dated 19.8.2009 (Annexure P-9) issued under Section 4 read with Section 17(2)(c) of the Land Acquisition Act, 1894 (in short “the Act”) and dated 18.5.2011 (Annexure P-13) issued under Section 6 of the Act primarily on the ground that declaration under Section 6 of the Act has been made after the

prescribed period of one year envisaged therein.

2. The State of Haryana issued notification on 19.8.2009 by invoking the provisions of Section 4 read with Section 17(2)(c) of the Act for acquisition of land for a public purpose namely expansion of Industrial Development Centre, Bawal to be planned as an integrated complex for industrial, recreational and other public utilities in villages Jaliawas, Asalwas, Suthani, Karnawas, Suthana, Chirahara, Banipur, Bawal, Patuhera tehsil Bawal, District Rewari, followed by declaration under Section 6 of the Act vide notification No. 1/6/18-1B-2-2009 dated 2010 published in Aaj Samaj dated 11.2.2010. The aforesaid notifications dated 19.8.2009 and 11.2.2010 were challenged by way of Civil Writ Petition Nos. 9834 of 2010 and 10633 of 2010. In these writ petitions, order of status quo was passed on 28.5.2010 and were eventually disposed of vide order dated 8.2.2011 (Annexure P-11) whereby the respondent was directed to grant an opportunity of hearing to the petitioners under Section 5-A of the Act and thereafter, if needed, a declaration may be issued under Section 6 of the Act. After providing an opportunity of hearing to the petitioners in compliance with the direction issued by this Court, declaration under Section 6 of the Act by way of notification dated 18.5.2011 (Annexure P-13) was made.

3. The sole submission made by counsel for the petitioners is that even after excluding the period of stay in the earlier writ petitions from 28.5.2010 to 8.2.2011 in terms of Explanation 1 to Section 6 of the Act, the notification issued under Section 6 of the Act on 18.5.2011 is beyond limitation and thus, liable to be set aside. In support of his contention, he has placed reliance upon judgment of the Hon'ble Supreme Court of India

Padmasundara Rao vs. State of Tamil Nadu and others 2002 (3)

Supreme Court cases 533.

4. Counsel for the respondents, on the contrary, supported the notification issued under Section 6 of the Act on the premise that after order dated 8.2.2011 passed by this Court allowing Civil Writ Petition Nos. 9834 and 10633 of 2010, the notification under Section 6 of the Act was issued within the statutory period with effect from 8.2.2011.

5. We have heard counsel for the parties and perused the records.

6. Before proceeding to advert to the rival submissions made by counsel for the parties, it is appropriate to extract relevant portion of Section 6 of the Act, reads thus:-

Declaration that land is required for a public purpose:-

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 authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification 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, 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.”

7. A plain reading of Explanation 1 to Section 6 of the Act makes it evident that the period during which any action or proceeding to be taken

in pursuance of the notification issued under Section 4(1) of the Act remained stayed by an order of the Court, the same is to be excluded for the purpose of determining the period of limitation for issuance of notification under Section 6 of the Act. The explanation does not say that a fresh period of limitation for issuing notification under Section 6 of the Act would commence after decision of the Court wherein the proceedings had remained stayed. In **Padmasundara Rao's case (supra)**, Hon'ble the supreme Court has held that once a declaration under Section 6 of the Act has been quashed, fresh declaration under Section 6 of the Act cannot be issued beyond the prescribed period under the Act. A relevant extract from paras 14 to 17 of the judgment reads thus:-

“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. vs. P.N.B. Capital Services Ltd.* (2000 (5) SCC 515)]. ‘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 *N. Narasimhaiah and others vs. State of Karnataka*, 1996(1) RRR 640 (SC). In *State of Karnataka and others vs. D.C.Nanjudaiah and others* 1996(10) SCC 619, the period was further stretched to have the time period run from date of service

of 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 clauses (i) and/or (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* (1966 1 QB 878), "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. I.R.C.* (1966 AC 557) where at p. 577 he also observed: "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 and another vs. Government of Tamil Nadu and another*, AIR 1980 Madras 251 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 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 curia neminem gravabit' highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

17. The view expressed in *Narasimhaiah's case* (supra)

and Nanjudaiah's case (supra), is not correct and is over-ruled while that expressed in A.S. Naidu and others vs. State of Tamil Nadu and others, SLP(c)Nos. 11353-11355/1988 and Oxford English School vs. Government of Tamil Nadu and others, 1995(5) SCC 206 is affirmed."

8. It is an admitted position of the case that the interim order was passed by the Court on 28.5.2010 in CWP No. 9834 of 2010 and the same remained in operation till 8.2.2011. After excluding the period of stay, the notification issued under Section 6 of the Act on 18.5.2011 is beyond limitation of one year reckoned with effect from 19.8.2009 (the date of notification under Section 4 of the Act). In this view of the matter, the notification under Section 6 of the Act issued on 18.5.2011 is clearly beyond limitation.

9. In view of what has been discussed hereinabove, the writ petition is allowed, the notification dated 18.5.2011 issued under Section 6 of the Act is quashed. As a natural consequence, notification under Section 4 of the Act shall be deemed to have lapsed. Any proceedings taken in pursuance to the abovesaid notifications shall also be non est. No order as to costs.

(Rekha Mittal)
Judge

(Ajay Kumar Mittal)
Judge

05.05.2015

PARAMJIT