

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 14083 of 2000 (O&M)

Date of decision : 03.7.2017

M/s L. G. Hotels Limited

.. Petitioner

versus

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Ramendra Jain**

Present: Mr. R. Kartikeya, Advocate, for the petitioner.
Mr. Ankur Mittal, Additional Advocate General, Haryana.

Rajesh Bindal, J.

1. The petitioner has approached this Court claiming that the acquisition proceedings have lapsed as the award was not announced within the statutory period.

2. Learned counsel for the petitioner submitted that the petitioner is a public limited company incorporated under the Companies Act, 1956. It had purchased land measuring 20 bighas 8 biswas located in village Chauki, District Panchkula, vide registered sale-deed dated 17.4.1996, for the purpose of building a recreational resort. It applied for change of land use vide application dated 8.7.1996. The petitioner obtained clearance from Department of Tourism and no objection certificate from DIG (CID), Haryana. While the change of land permission was pending consideration before the Government, notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 26.6.1998,

seeking to acquire the land for public purpose, namely, for use as recreational and public/ semi-public Sector-32, Panchkula. Objections were filed by the petitioner under Section 5-A of the Act, however, without considering the same objectively, notification under Section 6 of the Act was issued on 23.6.1999. In terms of Section 11-A of the Act, award could be announced by the Land Acquisition Collector (for short, 'the Collector'), within statutory period of two years from the date of issuance of notification under Section 6 of the Act. Before that time expired, CWP No. 876 of 2001 – Dr. B. Singh vs Government of India and others was filed in public interest indirectly challenging various acquisitions carried out in the periphery control area around Chandigarh. In the list of notifications annexed with the aforesaid writ petition, there was mention of notification dated 26.6.1998 as well. Though the writ petition was filed on 17.1.2001, however, this Court stayed further proceedings on 18.5.2001, while issuing notice to the Advocate General, Haryana. The writ petition was finally disposed of on 7.2.2003, giving liberty to the petitioner therein to file representation within a period of six weeks from the date of order and with a direction to the appropriate authority of the Government to dispose of the same objectively and expeditiously preferably within a period of three months from the date of receipt of copy of the order.

3. It was submitted that the petitioner in the aforesaid writ petition was not the owner of any land which had been acquired, rather he was a third party, who filed the writ petition as public interest litigation. As is evident from the reply to the writ petition filed by the State, representation was filed on 14.3.2003, which was rejected by the State on 2.7.2003, after 144 days of its filing. If the period granted by this Court is taken as

sacrosanct, the same expired much prior to the disposal of the representation by the State as admittedly even after filing of the writ petition, the same remained pending with the authorities for 144 days, whereas the maximum period granted by this Court was 90 days from the date of receipt of copy of the order. From the date of issuance of notification under Section 6 of the Act, till the stay was granted by this Court, only 37 days were available for announcement of award by the Collector and that period having expired, the award was beyond limitation, hence, deserves to be set aside.

4. Learned counsel for the petitioner further submitted that there were number of notifications, list of which was attached by the petitioner in Dr. B. Singh's case (supra), which was sought to be challenged, though in many cases the Collector had got the entry made in the record regarding the interim stay granted by this Court, whereas it was not done in the case of acquisition in question. Meaning thereby the State was not taking this to be a case where any interim stay was granted by this Court, hence, if the period is calculated from 23.6.1999, award announced on 30.7.2003 was clearly beyond the period of limitation. Referring to judgment of Hon'ble the Supreme Court in Ashok Kumar and others vs State of Haryana and another 2007 (3) SCC 470, it was submitted that the interim stay granted by this Court on 18.5.2001 in the writ petition filed by Dr. B. Singh was not extended beyond the date of its disposal on 7.2.2003, hence, any period subsequent thereto cannot be considered to be included in the period during which proceedings remained stayed.

5. Learned counsel for the petitioner further submitted that the land in question is of no use to the State as it is surrounded by land which was released from acquisition or was not acquired initially. It is only a small

portion of land which is sandwiched in between the land released subsequent to notification under Section 4 of the Act. The action of the respondents is sought to be challenged on the plea of discrimination as the land owned by M/s Polo Hotels Limited, which is adjoining to the land of the petitioner, was released from the acquisition later on. The facts were identical.

6. On the other hand, learned counsel for the State submitted that the award in question is not beyond the period of limitation provided in Section 11-A of the Act. Before the period for announcement of award by the Collector expired, interim stay was granted by this Court in Dr. B. Singh's case (supra). While disposing of the writ petition, this Court granted period of six weeks to the petitioner therein for filing representation from the date of order, which was to be disposed of within a period of three months from the date of receipt of copy of the order passed by this Court from any quarter. After the representation was filed by Dr. B. Singh on 14.3.2003 along with copy of order passed by this Court, the same was disposed of by the competent authority on 2.7.2003. Period of three months granted by this Court was not a dead line as observations by the Court were that the representation should be decided preferably within a period of three months. The same was disposed of expeditiously. After the disposal thereof, if the period from the date, the stay was granted by this Court and the representation was disposed of in terms of directions issued by this Court, is counted, the time for passing the award had not expired, hence, the same was not beyond limitation. Prior to the grant of stay, 38 days were still available for passing the award and after disposal of the representation, the award was announced within 28 days.

7. Learned counsel for the respondents further submitted that plea of discrimination is not tenable as each case depends on its own merit. Merely because, if a person is granted change of land use permission, it does not mean that the land cannot be acquired. In the case of the petitioner even change of land use permission was not granted. The entire land owned by the petitioner abuts the road, hence, can be properly utilised even if the land adjoining to it has either not been acquired or was released from the acquisition. The portion of land is not that small.

8. Heard learned counsel for the parties and perused the paper book.

9. Certain dates, which are not in dispute, are as under;

Date of notification u/s 4 of the Act	26.6.1998
Date of notification u/s 6 of the Act	23.6.1999
Stay of further proceedings granted by this Court in CWP No. 876 of 2001	18.5.2001
Writ Petition disposed of	7.2.2003
Representation filed by the petitioner in the aforesaid writ petition.	14.3.2003
Representation rejected by the competent authority	2.7.2003
Award announced by the Collector	30.7.2003
The period during which interim stay was operative.	18.5.2001 to 7.2.2003

10. Relevant provisions of Section 11-A of the Act are reproduced hereunder:-

“[11A. Period within which an award shall be made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall

lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]”

11. To resolve conflicting opinions on the issue as to whether after the judgment of a Court quashing any notification, fresh period is available for issuing the notification, the matter was referred to be heard by a Constitution Bench. One view was that after quashing of notification under Section 6 of the Act, fresh period of one year was available for issuance of notification after considering objections under Section 5-A of the Act, whereas another was that if the notification under Section 6 of the Act is quashed, fresh notification cannot be issued beyond the period prescribed under the Act. The matter was considered by the Constitution Bench of Hon'ble the Supreme Court in Padma Sundara Rao (dead) and others vs State of T.N. And others (2002) 3 SCC 533. While considering the pleas raised by the parties regarding rewriting of statute and casus omissus, Hon'ble the Supreme Court opined that the Court is only to interpret the provisions and not to rewrite the language of Section 6(1) of the Act, which is plain and unambiguous. There was no scope of reading something into it, as was done by Hon'ble the Supreme Court in N. Narasimhaiah vs State of Karnataka 1996 (3) SCC 88. The period as provided could not be stretched

to run from the date of service of the High Court's order, as such an interpretation could not be construed with the language of Section 6(1) of the Act. Relevant paras from Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra) are extracted below:-

“12. The rival pleas regarding re-writing 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* 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

13. In *Dr. R Venkatchalam and Ors. etc. vs. Dy. Transport Commissioner and Ors. etc.* (AIR 1977 SC 842) it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own pre-conceived 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. 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 Narasimhaiah's case (supra). In Nanjudaiah's case (supra), 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. xx xx xx

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K Chinnathambi Gounder (supra) 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(1) 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's case (supra) and Oxford's case (supra) is affirmed.”

12. The Judgment of the Constitution Bench of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra) was followed by a Division Bench of this Court in CWP No. 1123 of 2006 Devander Sagar etc. vs State of Haryana and others, decided on 12.3.2008. The same was upheld by Hon'ble the Supreme Court in Devander Sagar's case (supra). The facts as are available from the judgment of the High Court are that:

Notification u/s 4 of the Act	18.1.2001
Notification u/s 6 of the Act (invoking urgency provisions)	19.1.2001
Challenge in the High Court to the notifications	CWP No. 4887/2002
Interim stay granted	7.2.2002
Award by the Collector	8.2.2002
High Court set aside notification u/s 6 of the Act as no opportunity to file objections u/s 5-A of the Act was granted	12.1.2004
Objections u/s 5-A were filed	11.2.2004
Fresh notification u/s 6 of the Act	30.12.2004

13. In a challenge to the aforesaid acquisition proceedings, a Division Bench of this Court opined that even if the period of 23 months during which there was interim stay granted by this Court is excluded, still the declaration under Section 6 of the Act was beyond the period of one year, hence, the notification under Sections 4 and 6 of the Act and other proceedings were quashed. The State challenged the aforesaid judgment of this Court before Hon'ble the Supreme Court. Specific fact noticed in the aforesaid judgment by Hon'ble the Supreme Court is that before interim stay

was granted by this Court in the first round of litigation, where the grievance of the landowners was that they were deprived of filing objections under Section 5-A of the Act, on 7.2.2002 one year period prescribed for issuance of notification under Section 6 of the Act from 18.1.2001, when notification under Section 4 of the Act was issued, had already been lapsed. The Division Bench of this Court while setting aside the notification under Section 6 of the Act vide judgment dated 12.1.2004 in CWP No. 4887 of 2002 Neelam Ram and others vs State of Haryana and others, permitted the landowners to file objections under Section 5-A of the Act and subsequently the State to issue notification under Section 6 of the Act. While noticing the fact that the High Court was in error in allowing filing of objections under Section 5-A of the Act and issuance of notification under Section 6 of the Act when on that date after quashing of notification under Section 6 of the Act, even the notification under Section 4 of the Act lapsed, should have left the matter as such. But still finding that no party can be made to suffer any disadvantage due to an act of the Court and finally relying upon Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra), order of the Division Bench judgment of this Court was upheld. Relevant para from Devander Sagar's case (supra), is extracted below:-

“11. The Division Bench has predicated its decision to set aside the Notification as well as the Declaration on Padma Sundara Rao, which ironically the previous Division Bench had failed to follow. The decision of the Constitutional Bench in Padma Sundara Rao held that the language in Section 6(1) is clear and unambiguous, and the time period cannot be stretched as this would not be in

keeping with the legislative intent. The contention of the Appellant State that the Declaration dated 30.12.2004 is a continuation of the initial Declaration is thus clearly erroneous, as such a finding would be in the face of the strict interpretation of time prescribed by Padma Sundara Rao and the unambiguous language of Section 6. Had the Legislature intended to allow for such a continuation, it would have done so by specifically providing for it, as it has done for periods covered by orders of stay and injunction. Furthermore, the Appellant State cannot place reliance on an erroneous Order which caused grave prejudice to the rights of the Respondents. It would be apt to mention the legal principle that no party should suffer for the mistake of the Court. Since compensation is calculated based on the value of the land on the date of the Section 4 Notification, the Order of the Division Bench dated 12.1.2004 resulted in the landowners getting compensation at 2001 rates even though the Award was finally passed in 2006 and the compensation is yet to be paid to the Respondents. Had the Division Bench Order struck down only the Declaration, which in turn would have resulted in the entire acquisition lapsing, the Appellant State would have had to reinitiate acquisition proceedings, resulting in the Respondents receiving compensation at the market rates current at the time of the fresh Notification. We therefore find that the Declaration dated 30.12.2004 cannot be upheld merely by virtue of the previous Division Bench's erroneous and prejudicial Order. We are in agreement with the decision of the High Court in the impugned

Judgment and consequently dismiss the Appeal.”

14. The issue was further considered by Division Bench of this Court in Anil Gupta and another vs State of Punjab and others 2013 (4) R.C.R. (Civil) 326. In that case notification under Section 4 of the Act was issued on 22.12.2010, which was followed by notification under Section 6 of the Act dated 18.5.2011. CWP No. 19449 of 2011 was filed challenging the acquisition. Interim stay was granted on 18.10.2011. The writ petition was disposed of 15.3.2012, while setting aside the notification under Section 6 of the Act and directing the respondents therein to consider the objections filed by the petitioners therein after affording opportunity of hearing. After rejection of the objections on 11.6.2012, notification under Section 6 of the Act was issued on 3.10.2012. After excluding the period of stay i.e. from the date of interim stay was granted and the writ petition was disposed of, notification under Section 6 of the Act was found to be beyond the period of one year, hence, quashed. As a consequence, even the notification under Section 4 of the Act was also considered to have lapsed. Relevant para of the judgment is extracted below:-

“9. Admittedly, in the present case, the interim order was granted by this Court on 18.10.2011 in CWP No. 19449 of 2011 filed by the petitioners earlier which remained in operation till 15.3.2012. Thus, after excluding the period between the aforesaid dates, the limitation for issuance of notification under Section 6 of the Act was upto 12.8.2012. The notification having been issued on 3.10.2012 was, thus, clearly beyond limitation. Consequently, the writ petition is allowed and the notification dated 3.10.2012 issued under Section 6 of the Act (Annexure P-12), is quashed. As a

consequence, notification under Section 4 of the Act shall also be considered to have lapsed. Any consequential proceedings taken in pursuance to the aforesaid notifications shall also be *nonest*.”

15. In Padmashree Smt. Anjolie Ela Menon vs The State of Haryana and others 2013 (4) R.C.R. (Civil) 1021, again under similar circumstances notification was quashed being beyond limitation. In this case, the date of issuance of notification under Section 4 of the Act was 24.6.2008. Notification under Section 6 of the Act was issued on 14.7.2008 by invoking urgency provisions under Section 17 of the Act. CWP No. 6809 of 2009 was filed challenging the acquisition in which interim stay was granted on 6.8.2009. On 28.1.2011, declaration under Section 6 of the Act was quashed. The petitioners therein were given liberty to file objections, which were to be decided within one month from the date of decision. After decision of the objections under Section 5-A of the Act, notification under Section 6 of the Act was issued on 3.2.2012. The plea raised by the State therein, that the notification under Section 6 of the Act was within limitation, if considered from the date of receipt of copy of the order passed by this Court quashing notification under Section 6 of the Act, was rejected and while following earlier judgment of this Court in Anil Gupta's case (supra), acquisition proceedings were quashed.

16. Similar was the view taken by a Division Bench of this Court in CWP No. 28430 of 2013 - Bharat Singh and another vs The State of Haryana and others, decided on 5.5.2015.

17. If the aforesaid enunciation of law is considered in the facts of the present case, the only possible conclusion is that the award announced by the Collector is beyond the period of two years, excluding the period of

stay granted by this Court. The relevant dates have been noticed in para 9 of the judgment. The plea raised by learned counsel for the State that the direction issued by this Court had been complied with, period of three months as directed was 'preferably' and not limited. In minimum possible time, the representation was decided and award was announced by the Collector. Arguments are misconceived. As held by Hon'ble the Supreme Court and followed by this Court in the aforesaid judgments, period for any action to be taken under the Act cannot be extended by the Court by re-writing the statute. In the case in hand, even after the judgment of this Court, still 37 days were available for announcement of award, but needful was not done. The award having been announced after the period of two years, the same deserves to be set aside and consequence thereof entire acquisition proceedings lapsed.

18. The quashing of the aforesaid notifications in any case will not debar the State for carrying out any fresh exercise for acquisition of the land, if legally permissible.

19. The writ petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

03.7.2017
vs

(Ramendra Jain)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No