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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8989/2014 & CM No.20537/2014

N.K. BAKSHI & ORS Petitioners
Through Mr.L.B.Rai and Mr.Mohit Kumar
Sharma, Advs.

versus

UNION OF INDIA & ORS Respondents
Through Mr.Yeshu Jain and Ms.Jyoti Tyagi,
Advs. for LAC.
Mr.Dhnesht Relan, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **16.05.2017**

1. The petitioners claims that the acquisition made through the notification published on 26.04.2013 is contrary to The Land Acquisition Act (hereinafter referred as 'Act'), therefore, seeks a directions for its quashing and consequential direction that they should be directed/ restricted from dispossession of the land i.e. land khasra no.261,264 and 265 falling in the revenue estate of Village Shahbad Daulatpur, Delhi (hereinafter referred as 'suit lands').
2. The facts necessary for deciding this case are that the notification issued on 28.04.1995 by the Lieutenant Governor sought to acquire the land for the purpose of Phase-IV, Rohini Residential Scheme. The notification also invoked the urgency clause of Section 17(4) of the Act dispensing with the requirement of hearing Section 5 of the erstwhile Act.

3. The petitioners claim that being the members of the residential association known as Prahlad Vihar Residential Welfare Association, they preferred a proceedings under the aegis of that association before this court. This Court vide its judgment dated 09.03.2017 rejected the claims of the petitioners. Apparently, the Prahlad Vihar Residential Welfare Association sought and was granted leave to appeal by the Hon'ble Supreme Court. On 21.03.2012, the Hon'ble Supreme Court declared that the notification dated 28.04.1995 stand quashed. The Supreme Court inter-alia records the following facts:

“Mr. V.Giri, learned Senior Counsel for the applicants prays for withdrawal of LA. Nos. 17-18 of 2012 with liberty to the applicants to raise their grievance before the appropriate authority. It will be open to the appropriate authority to consider such grievance in accordance with law.

Leave granted.

2. Although the notifications under challenge are different but the controversy with regard to the invocation of urgency clause in section 17 of the Land Acquisition Act, 1894 (for short " the Act") and dispensation of enquiry under section 5-A of the Act for the public purpose namely; Rohini Residential Scheme" is same. Therefore, for the reasons given by us in our judgment delivered on today (March 21,2012) in Civil appeal No.3813 of 2007 -Rain Dhari Jindal Memorial Trust Vs. Union Of India and others, which arises from very judgment which is impugned in the present appeals, these appeals are allowed to the extent immediately following.

3. The clause in the Notification dated April 28, 1995 to the effect" Lt. Governor, Delhi is also satisfied that the land falls under sub-section 1 of Section 17 of the said land and is also mentioned that section 5 A does not come under purview of sub-section 4 of the said sub-section of section 17" is quashed in respect of the appellant's land. The declaration dated April 26,

1996 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 5-A of the Act pursuant to the Notification dated April 28, 1995 and proceed with the matter in accordance with law. No order as 'to costs.'

4. In these circumstances, the petitioners preferred their objections to the proposal to acquire land on 16.11.2012. The appropriate Government on 26.04.2013 issued a notification under Section 6 of Land Acquisition Act, 1894, now being impugned.

5. The petitioners relied upon the judgment of this Court in *Sunil Goel v. State & ors*, 211 (2014) DLT 382 where the Court had noticed the mandate and purpose of Section 6(1) and the proviso of Section 6 and contended that where the time stipulated for publication under Section 6 has lapsed, the entire acquisition proceedings had lapsed. While doing so, the Court took notice of a series of judgments including the authority of Supreme Court. The relevant discussion of Sunil Goel(supra) case are as follows:

“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."

6. The respondent did not initially dispute the material facts. However, the contention of the LAC is that the petitioners were not impleaded as independent petitioners like in the present case but by the Welfare Association. It is submitted that though the Supreme Court held that the invocation of the Urgency clause in Section 17 is illegal, the relief of declaration has to be with respect to the specific land notified, which is not

evident from the order of the Supreme Court in the Prahlad Vihar Residential Welfare Association case.

7. The purported proviso of Section 6 (1) of the Act 1894 is clearly well settled. The fact that more than a one year period has lapsed between the order passed by Hon'ble Supreme Court and the Notification under Section 6 of the Act establishes that the entirety of the acquisition has lapsed. This plan has been emphasised and repeated time and again by several judgments in the last 15 years. Officially, the petitioners were entitled to the relief because the Supreme Court quashed the dispensing of Section 5(A) of the Act by order dated 21.03.2012. It is clear that the proceedings under Section 6 had to be necessarily issued within a year of that date i.e. on or before 20.03.2013. However, in the present case notification was issued on 26.04.2013. In view of the above, the petitioners' non-inclusion as petitioner(s) by name before the Supreme Court cannot disentitle them to the relief. This is because the notification now challenged undoubtedly contains the specific reference to khasra No.261,264 and 265 which belongs to the petitioners. Had the position been otherwise, there is no need for the respondent to have included petitioner's land in notification under Section 6 of the Act. In fact in that case, they would have been within their right to acquire the lands on the basis of the Urgency clause earlier. It is not their case that compensation was deposited earlier in accordance with the law or that the possession was taken over on the basis of a valid acquisition.

8. In these circumstances, the respondent's objections are not sustainable and the writ succeeds and consequential direction is issued. Therefore, the

acquisition of the suit land i.e. land in khasra no.261,264 and 265 falling in the revenue estate of Village Shahbad Daulatpur, Delhi is deemed to have lapsed. The writ petition is allowed.

S. RAVINDRA BHAT, J

NAVIN CHAWLA, J

MAY 16, 2017/vp