

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.3.2018	Delivered on 29.8.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.830 to 841 of 2012
and M.P.No.1 of 2012 in W.A.No.830 of 2012
and M.P.Nos.2 of 2012 in W.A.Nos.831 to 841 of 2012

1 NATARAJAN ... Appellant in WA No.830 of 2012
1 P.MURUGESAN ... Appellant in WA No.831 of 2012
1 M.GOVINDASAMY GOUNDER ... Appellant in WA No.832 of 2012
1 P.MARATHAL ... Appellant in WA No.833 of 2012
1 R.JAGANATHAN ... Appellant in WA No.834 of 2012
1 R.RAMASAMY ... Appellant in WA No.835 of 2012
1 G.THANGAVEL ... Appellant in WA No.836 of 2012
1 N.RAMASAMY GOUNDER ... Appellant in WA No.837 of 2012
1 R.MARATHAL ... Appellant in WA No.838 of 2012
1 R.VENKIDASAMY ... Appellant in WA No.839 of 2012
1 M.RAMASAMY GOUNDER ... Appellant in WA No.840 of 2012
1 R.VANIJAPPA KUMAR ... Appellant in WA No.841 of 2012

Vs.

1. The Union of India,
Rep.by its Secretary
Department of Road Transport and Highways,
1, Parliament Street, Transport Bhavan,
New Delhi.

2. The Competent Authority (Land acquisition) - cum-
District Revenue Officer,
National Highways,
Tiruppur Collectorate, Tiruppur.

3. The National Highways Authority of India,
Rep.by its Project Director,
National Highways Authority of India,
No.10, Kamadhenu Nagar,
Karur - 639 001.

... Respondents (in all W.A.Nos.830
to 841 of 2012)

Prayer in W.A.Nos.830 to 841 of 2012 :

Writ appeal has been filed under clause 15 of Letters Patent
against the order of this Court dated 30.3.2012 made in
W.P.No.16959 of 2011, 16960 of 2011, 17272 of 2011, 19101 to
19108 of 2011

Prayer in All Wps:-

Petition filed under Article 226 of Constitution of India
praying for a Writ of certiorari to call for the records
relating to the issue of impugned proceedings in Roc.
No.F4.15695 of 2009 dated 22.06.2011 by the 2nd Respondent and
quash the same.

For Appellants : Mr.V.Raghavachari
for Mr.G.Saravanan
(in W.A.Nos.830 to 836 of 2012)

Mr.N.Subramaniyan
(in W.A.Nos.837 to 841 of 2012)

For Respondents : Mr.G.Rajagopal
ASGI Assisted by
Mr.Venkataswamy Babu, for R1
(in all Writ Appeals)

Mrs.A.Srijayenthi, Spl.G.P., for R2
(in all Writ Appeals)

Mr.P.Wilson, for
M/s.P.Wilson Associates, for R3
(in all Writ Appeals)

COMMON JUDGEMENT

P.VELMURUGAN, J.

Whether sub-section (3) of Section 3-D of the National Highways Act, 1956, is peremptory in nature and as to whether a fresh declaration must be issued within the period of one year from the date of publication of notification under Section 3-A even after quashing the earlier declaration under Section 3-D, is the core issue that arises for consideration in the batch of intra court appeals filed by the landowners.

2. The Central Government issued a notification on 26 October 2007 proposing to acquire the land owned by the appellants for widening the National Highways 67 from km 284.600 to 332.600 from Karur to Coimbatore. It was followed by a declaration under Section 3-D of the National Highways Act. The declaration was issued on 16 July 2008. The appellants challenged the land acquisition proceedings before the writ court. The Writ Petitions were dismissed by the writ Court by order dated 3 February 2010.

3. The intra court appeals filed by the appellants were allowed by the Division Bench by judgment dated 9 November 2010 in W.A.Nos.339 to 349 of 2010. The Division Bench was pleased to quash the declaration dated 16 July 2008 issued under Section 3-D of the National Highways Act and remitted the matter to the Competent Authority to consider the objections filed by the appellants afresh under Section 3-C (2) of the Act. The Competent Authority was directed to dispose of the matter in accordance with law. The Competent Authority pursuant to the direction given by the Division Bench by judgment dated 9 November 2010 issued a fresh declaration under Section 3-D of the National Highways Act. The proceedings dated 22 June 2014 acquiring the property was once again challenged by the appellants before the writ court in W.P.Nos.16959, 16960, 19101 to 19105 of 2011. The challenge to the land acquisition proceedings was on multiple grounds. The substantial contention relates to the limitation in issuing the declaration under Section 3-D of the Act. The appellants attacked the proceedings also on the ground that the subject land is not necessary for widening the National Highways 67.

4. The learned Single Judge negatived the contentions advanced by the appellants and dismissed the Writ Petitions. Feeling aggrieved, the appellants have come up with these intra court appeals.

5. The learned counsel for the appellants contended that the declaration under Section 3-D is legally unsustainable on account of the statutory period of limitation. According to the

learned counsel, the declaration under Section 3-A(1) was made on 26 October 2007. The declaration made under Section 3-D(1) on 16 July 2008 was quashed by the Division Bench. Thereafter, the declaration was made only on 15 October 2011. The declaration is therefore barred by limitation. The learned counsel further contended that the project was not technically sanctioned by the Central Government as per the legislative mandate under Rule 3 of the National Highways Rules. According to the learned counsel, since there was no satisfaction by the Central Government with regard to the proposed highway, acquisition by invoking Section 3-A is non est in law.

6. The learned Additional Solicitor General appearing on behalf of the respondents supported the view taken by the learned Single Judge in the common order under appeal. According to the learned Additional Solicitor General, the appellants are now taking advantage of their own wrong by pleading limitation. According to him, in view of the liberty granted by the Division Bench to proceed with the matter, there is no question of quashing the declaration under Section 3-D on the ground of limitation.

7. We have perused the order passed by the writ court and the materials available on record.

8. There are two substantial contentions raised by the appellants in support of the plea for quashing the land acquisition. The first contention relates to the failure on the part of the Central Government to arrive at a satisfaction under Rule 3 of the National Highways Rules before issuing the notification under Section 3-A and declaration under Section 3-D of the National Highways Act.

9. The appellants have taken a contention that the value of the work being more than Rs.5 lakhs, a detailed estimate of the course for the project shall be forwarded to the executing agency at the Central Government. The project must obtain the technical approval of the Central Government and thereafter only, the notification under Section 3-A could be issued by the Competent Authority.

10. The counter affidavit filed by the National Highways Authority of India clearly indicates that the project was approved by the Central Government. Even otherwise, the notification under Section 3-A(1) of the Highways Act was issued only by the Central Government. The notification was published in the gazette. There is a clear indication in the said notification that the Central Government being satisfied that for the public purpose of widening the National Highways 67, the land shown in the schedule is required to be acquired. There are

no materials produced by the appellants before us to show that there was no such satisfaction before issuing the notification. In the absence of any such positive materials, there is no question of extending the scope of judicial review for taking a contra decision notwithstanding the notification issued by the Government of India. We therefore reject the first contention raised by the appellants with regard to the failure on the part of the Central Government to arrive at a satisfaction with regard to the public purpose before acquiring the property.

11. The next contention relates to the question of limitation under sub-section (3) of Section 3-D of the National Highways Act.

12. Section 3-D of the National Highways Act, 1956, provides for issuance of declaration of acquisition. The provision reads thus :-

3-D. Declaration of acquisition.-

(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect: Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

13. There is a similar provision under Section 6(1) of the Land Acquisition Act, 1894. The said statutory provision provides that no declaration in respect of any particular land covered by sub-section (1) of Section 4 shall be issued after the expiry of one year from the date of publication of the notification.

14. The notification issued by the Competent Authority under Section 3-D(1) of the National Highways Act is challenged mainly on the ground that it was made beyond the period of one year, even after excluding the period of stay granted by the High Court.

15. There is a legal question raised by the appellants as to whether section 3-D(2) is mandatory in nature and as to whether a declaration under Section 3-D(1) must be issued within the same limitation period prescribed under the said proviso where declaration under Section 3-D was quashed earlier by the Court.

16. The legal question is no more res integra in view of the judgment rendered by the Constitutional Bench of the Hon'ble Supreme Court in Padma Sundara Rao (dead) and others vs. State of T.N. and ors. (2002(3) SCC 533).

17. The Supreme Court in Padma Sundara Rao framed a question as to whether after quashing the notification under Section 6 of the Land Acquisition Act, 1894, a further period of one year is available to the State Government to issue another notification under Section 6.

18. The Hon'ble Supreme Court in Padma Sundara Rao scanned various provisions of the Land Acquisition Act and the related judgments on the point and affirmed the view taken earlier in A.S.Naidu vs. State of Tamil Nadu (SLP (C) Nos.11353-55 of 1988) and Oxford English School vs. Government of Tamil Nadu (1995 (5) SCC 206).

19. In A.S.Naidu, a Bench of three judges of the Supreme Court held that once a declaration under Section 6 of the Act has been quashed, a fresh declaration under Section 6 cannot be issued beyond the prescribed period of the notification under sub-section (1) of Section 4 of the Land Acquisition Act. Similar view was taken by another Bench of the Hon'ble Supreme Court in Oxford English School. However, a contrary view was taken in State of Karnataka vs. D.C.Nanjudaiah, 1996(10) SCC 619 and it was held that the limitation period for publication of declaration would start running from the date of receipt of the

order passed by the High Court and not on the date on which the original publication under Section 4(1) came to be made.

20. The Hon'ble Supreme Court in Padma Sundara Rao overruled the earlier views expressed in N.Narasimhaiah v.s State of Karnataka, 1996 (3) SCC 88, which was followed in State of Karnataka vs. D.C.Nanjundiah, 1996(10) SCC 619.

21. In Padma Sundara Rao, the Hon'ble Supreme Court took the view that if the Legislature intended to give new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not be specifically provided for it. The Hon'ble Supreme Court further observed that Legislature specifically provided for periods covered by orders of stay or injunction and it clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. Since the declaration challenged before the Supreme Court was beyond the period of limitation, taking into account the notification issued under Section 4(1) of the Land Acquisition Act, the Hon'ble Supreme Court quashed the declaration.

22. Section 3-D(1) of the National Highways Act, is a pari materia provision. Similar to the period of limitation under Section 6 of the Land Acquisition Act, there is a prescribed period of limitation for issuing a declaration under Section 3-D. Declaration should be issued within the period of one year from the date of publication of the notification under sub-section (1) of section 3-A. Similar to the exception given in section (6) sub-section (1) of Section 6 of the Land Acquisition Act, there is a proviso appended to Section 3-D which provides that in computing the limitation period of one year, the period or periods during which any action taken or proceedings to be taken in pursuance of the notification issued under sub-section (1) of Section 3-A is stayed by the order of the Court must be excluded. In view of the similarity of the provision under Section 6(1) of the Land Acquisition Act and section 3-D(3) of the National Highways Act, 1956, the judgment of the Constitutional Bench in Padma Sundara Rao would apply with all force in respect of the proceedings under the National Highways Act, 1956. The authority must therefore issue a declaration within a period of one year from the date of publication of the notification under sub-section(1) of Section 3-A and the only period to be excluded is the period during which the proceedings were stayed by the Court.

23. Now that the legal position is clear on account of the law declared by the Supreme Court in Padma Sundara Rao we must ascertain as to whether declaration under Section 3-D was issued by the Competent Authority within the period of limitation

prescribed under the National Highways Act.

24. The notification under Section 3-A(1) of the National Highways Act proposing to acquire the subject property was gazetted on 26 October 2007. The notification was published in Daily Thanthi on 27 October 2007. We would take the date of publication of the notification in the newspaper viz., 27 November 2007. The declaration under Section 3-D(1) was originally published in the gazette on 23 May 2008. The declaration was challenged by the appellant in W.A.No.17530 of 2008 by filing Writ Petition in W.P.No.16960 of 2000. The High Court was pleased to pass interim order of stay of dispossession. The interim order was in operation from 24 July 2008 to 22 July 2011. Subsequently, some of the other appellants filed Writ Petitions in W.P.No.19946 to 19954 of 2008. There was an interim order in those Writ Petitions from 18 August 2008. The Writ Petitions were disposed of by order dated 3 February 2010. Thereafter, writ appeals were filed on 24 February 2010. The Division Bench was pleased to pass an order on 1 July 2010, directing the parties to maintain status quo. Thereafter, by judgment dated 9 November 2010, the writ appeals were allowed. The Competent Authority after the disposal of the writ appeals conducted fresh enquiry and issued a declaration under Section 3-D(1) of the National Highways Act on 15 October 2011. In case the period of stay during the currency of the earlier round of Writ Petitions and the interim order granted by the Division Bench pending writ appeals are excluded, it is clear that the latest declaration was made beyond the period of limitation.

25. The notification under Section 3-A was published in the newspaper on 27 November 2007. The declaration under Section 3-D (1) was after the disposal of the writ appeals. Even if the period during which the interim stay was in operation viz., 26 October 2007 to 23 July 2008 (271 days) and from 10 November 2010 to 14 October 2011, (338 days), which would come to 609 days, is excluded, still, the declaration is barred by limitation.

26. The respondents are relying on the observation made by the Division Bench in its judgment dated 9 November 2010 to the effect that the matter is remitted back to the Competent Authority to consider the objection and dispose of the same in accordance with law. It is the contention of the respondents that in view of the liberty granted by the Division Bench, there is no need to pass a declaration under Section 3-D(1) within the period of limitation.

27. There is absolutely no merit in the above contention. The Division Bench made it very clear that the Competent Authority must dispose of the matter in accordance with law. The

said direction would also include the need to pass a declaration within the period of limitation. The Competent Authority was obliged to pass a declaration within a period of one year from the date of notification under Section 3-A(1) of the Act after excluding the time during which there was a stay granted by the High Court. The declaration dated 15 October 2011 issued under Section 3-D of the National Highways Act was issued beyond the period of limitation provided under sub-section (1) of Section 3-D of the National Highways Act. We therefore agree with the submissions made on behalf of the appellants that the impugned declaration is unsustainable in law as it is barred by limitation.

28. The order passed by the learned Single Judge upholding the validity of the declaration by disregarding the period of limitation is set aside.

29. In the upshot, we allow the intra court appeals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rm/tsh/tar

To

1. The Secretary,
Department of Road Transport and Highways,
1, Parliament Street, Transport Bhavan, New Delhi.
2. The Competent Authority (Land acquisition)
- cum-District Revenue Officer,
National Highways, Tiruppur Collectorate, Tiruppur.
3. The Project Director,
National Highways Authority of India,
No.10, Kamadhenu Nagar, Karur - 639 001.

+1cc to Mr.G.Saravanan, Advocate, S.R.No.59728

+12ccs to Mr.Venkataswamy Babu,, Advocate, S.R.No.59538 TO 59549

+1cc to Mr.N.Subramaniyan, Advocate, S.R.No.59571

+1cc to the Government Pleader, S.R.No.59793

W.A.Nos.830 to 841 of 2012

KAN(CO)

GSP/27/09/18