

State of Karnataka and Others

Vs

B.S. Nanjundaiah

Civil Appeal No. 2331 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

11.01.1996

ORDER

1. Leave granted.

2. We have heard the counsel on both sides.

3. This appeal by special leave arises from the order of the High Court of Karnataka made on 15-2-1991 in WP No. 9544 of 1986. Notification under Section 4(1) of the Land Acquisition Act was initially published on 6-2-1973. The declaration under Section 6 was published on 3-2-1975. Writ Petition No. 10402 of 1977 was filed in the High Court challenging the notification under Section 4(1) and the declaration under Section 6 questioning the act of the Government in dispensing with the enquiry under Section 5-A. The writ petition was allowed by the High Court on 27-7-1984 directing the appellant to conduct an enquiry under Section 5-A from the stage where the objections were filed by the respondent. Thereafter, the copy of the record was received by the Land Acquisition Officer on 19-1-1985. Notice under Section 5-A was given on 20-2-1985 and after giving reasonable opportunity to the respondent, enquiry was concluded and the Land Acquisition Officer submitted his report to the Government on 31-7-1985. The declaration under Section 6 was published on 10-4-1986. The respondent again filed the writ petition in the High Court on 7-6-1986 challenging the validity of the notification under Section 4(1) and the declaration under Section 6.

4. The High Court in the impugned judgment has held that from 6-12-1973 till 11-10-1977, there was no order of court staying the proceedings by which date the three years' period prescribed under Section 6(1) of the Land Acquisition Act had expired by efflux of time and the declaration under Section 6 came to be published on 10-4-1986. Consequently, the notification under Section 4(1) and the declaration under Section 6 stood lapsed by operation of Section 11-A of the Act as amended by Act 68 of 1984.

5. It is contended by the counsel for the appellants that the view of the High Court is clearly illegal. In view of the fact that the notification under Section 6 was quashed giving liberty to the Government to proceed with the acquisition from that stage and consider the objections raised by the respondent, the declaration under Section 6 came to be published within two years thereafter. Therefore, the declaration under Section 6 had not lapsed. Consequently, Section 11-A has no application. It is contended for the respondent that as pointed out by the High Court from 1973 to 1977, there was no impediment for the appellants to have the declaration published under Section 6 within three years and since the declaration was not published, the High Court was right in holding that the land acquisition proceedings shall stand lapse.

6. Having considered the respective contentions, the question arises whether the view taken by the High Court is correct in law. It is true that from the date of the notification published under Section 4(1) till 11-10-1977 there was no stay granted by the Court and the three years' period had lapsed. But, unfortunately, the point was not canvassed before the High Court in the first proceedings. Consequently, by operation of Explanation (iv) to Section 11, CPC, 1908 it was open to the respondent to raise that contention. But since that point was not pressed for consideration by constructive res judicata, the question is no longer to be considered by the High Court.

7. It is seen that the Land Acquisition Officer received the record on 19-1-1985. He issued the notice under Section 5-A to consider the objections filed by the respondent on 20-2-1985. Thereby there is a delay of one month between the date of receiving the record and the date of issuing the notice. Thereafter the proceedings went on from time to time at the instance of the parties. Ultimately, the arguments were concluded on 31-7-1985. Therefore, the limitation, again began to run from 1-8-1985. The declaration was published on 10-4-1986. Therefore, the declaration, after the order was set aside, in the proceedings of the first writ petition was published within three years from the date of the order. By operation of clause (i) on proviso to sub-section (1) of Section 6 the declaration has been published within three years from the date of the order passed by the High Court. Consequently, the operation of Section 11-A is not attracted to the facts of this case. As a result, neither the notification under Section 4(1) nor the declaration under Section 6 shall stand lapsed. The appellants are directed to conduct and conclude the award enquiry as expeditiously as possible, preferably within a period of six months from the date of the receipt of this order.

8. The appeal is accordingly allowed. No costs.