

Aircraft Employees' Housing Cooperative Society Ltd.

Vs

Secretary, Rural Development and Panchayat Raj, Govt. of Karnataka, Bangalore and Others

Civil Appeal No. 3961 of 1988

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

08.08.1996

ORDER

1. An interesting question of law has been raised in this case. Notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1994) (for short "the Act") was published in the State Gazette on 24-9-1981 acquiring an extent of 137 acres of land for housing scheme of the appellant. We are concerned with 2 acres 28 gunthas of land belonging to Respondents 3 to 7 in this appeal. The objections under Section 5-A of the Act were filed by the respondents on 12-11-1981. He appeared through counsel on 21-11-1981 and sought further time to file further objections. The matter was posted for 25-11-1981. He filed a memo stating that the additional objections already filed on 12-11-1981 would be treated as on record and sought time for hearing and accordingly the matter was posted for 30-11-1981 on which date the respondent appeared neither in person nor through counsel. The Land Acquisition Officer, therefore, considered the objections and submitted his report to the Government for consideration by his proceedings dated 12-1-1982. The Government after considering the objections and the report and on rejection thereof published the declaration under Section 6(1) in the Gazette on 28-10-1982. Thereafter, the respondents filed Writ Petition No. 43227 of 1982 sometime in October 1982. The High Court directed stay of further proceedings. The High Court in the impugned judgment dated 27-5-1987 held that the enquiry under Section 5-A was vitiated on account of failure to give opportunity of hearing to the respondents on the objections. Since the writ petition came to be filed after the declaration under Section 6 was published, Explanation 1 to Section 6 is not attracted; the Explanation postulates exclusion of the time taken in pursuance of the notification under Section 4(1). Since stay of further proceedings of the declaration under Section 6 was granted, Explanation 1 to Section 6 is inapplicable. Therefore, the time taken during the pendency of the proceedings cannot be excluded in computing the period of three years as envisaged in the first proviso to sub-section (1) of Section 6. Therefore, the declaration under Section 6 and the notification under Section 4 have elapsed. Thus, this appeal by special leave. Though the respondents have been served, none is appearing either in person or through counsel. We requested Shri Juneja, who is well experienced in this branch of law, to assist as amicus.

2. Shri Nagaraja, the learned counsel for the appellant, contended that the view taken by the High Court is not valid in law. The language of the Explanation that period during which any action or proceedings taken in pursuance of the notification under Section 4(1) is stayed by an order of the court requires to be construed to mean that all steps taken from the stage of issuance of the notification under Section 4(1) should be understood meaningfully. If the Explanation would be construed strictly to mean that after the notification was published but before the declaration under Section 6 was published, the steps taken in pursuance of sub-section (1) of Section 6 only were stayed and were to be excluded, the operational efficiency would be in jeopardy. The stay of the further proceedings, therefore, should include all steps to be taken after the notification under

Section 4(1) is published including the declaration under Section 6 which are necessarily to be excluded. Otherwise, an interested person would wait for publication of declaration under Section 6 and then only would impugn the validity of declaration without challenging Section 4(1) and get further proceedings stayed and on expiry of three years even if the writ petition is dismissed or withdrawn, no further steps could be taken since three years from that date stood expired and resultantly notification under Section 4 and declaration under Section 6(1) would stand lapsed. Such an interpretation would not be in the public interest to sustain the acquisition by the Government for public purpose. Shri Juneja, the learned counsel contended that Section 7 of the Act provides clue to the interpretation. Section 7 envisages that whenever any land has been declared under Section 6, as needed for a public purpose, the appropriate Government may authorise some officer on its behalf to take order for the acquisition of the land which would show that the steps are required for issuance of the notice under Section 9 read with Section 10; award enquiry under Section 11 to pass an award thereunder and to take possession of the land under Section 16 only would be stayed. Therefore, the interpretation of Explanation 1 should be understood to mean that during the period of stay taking further steps pursuant to sub-section (1) of Section 6 alone would be excluded. If so excluded, only the declaration could be made within three years after the compliance of the mandatory requirement of Section 5-A in this case. Since three years have already elapsed on 24-9-1994 the notification under Section 4(1) shall stand elapsed by operation of the first proviso to Section 6(1). Even otherwise, he contends that the declaration under Section 6 was to be published within three years. The notification under Section 4(1) was admittedly published on 24-9-1981. On 23-9-1984, three years' period had expired. Therefore, the notification under Section 4(1) and declaration under Section 6 shall automatically stand elapsed.

3. Therefore, two questions that arise in this case for decision are : (1) whether the interpretation given to Explanation 1 to Section 6(1) by the High Court is correct in law; and (2) whether the failure to give opportunity of hearing to the counsel for the respondent triggers off Section 5-A enquiry ? With a view to appreciate the contention it is necessary to look into the relevant provisions. Section 4(1) envisages the publication of the notification in the Gazette and also in the locality etc., as required thereunder. An enquiry under Section 5-A shall be conducted unless the power under Section 17(1) is exercised dispensing with the same and possession under Section 17(4) is taken by the Government. In this case, these steps were not taken. Necessarily, therefore, enquiry under Section 5-A had to be conducted. In fact, the notice was served on the owners/interested persons including the father of the respondents who had filed the objections and the case was adjourned on four occasions. On the last occasion, it was adjourned to 30-11-1981 on which date neither respondent nor the counsel was present. Consequently, the enquiry was closed, objections were considered and recommendations were made to the Government to take appropriate action. The declaration under Section 6 came to be published on 6-10-1982 after overruling the objections. Thereafter, the writ petition was filed and stay of further proceedings was obtained. Explanation 1 to Section 6 reads as under :

"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."

4. If it is read in isolation, as was done by the High Court, it would be obvious that the period during which action or proceedings to be taken in pursuance of the notification issued under Section 4 sub-section (1) is stayed by an order of the Court, alone is required to be excluded. Since that stage had passed by at the time of publication of declaration under Section 6(1), the question arises as to what is the meaning of the words "in pursuance of the notification issued under Section 4, sub-

section (1)" ? "In pursuance of" would mean under the authority of or by virtue of or in the course of carrying out in accordance with the scheme or plan or direction or order or anything in consequence or conformable to or according to; act of pursuing, carrying out and performance, prosecution. The scheme of the Act envisages that after the notification under Section 4(1) was published, the owner/interested person is entitled to a notice, after compliance of the requirements under sub-section (1) of Section 4. Thereafter owner/person interested is entitled to file his objections. In this case, admittedly, objections were filed on 30-11-1981 when neither the counsel nor the respondent was present at the time of hearing. After the objections were considered and obviously rejected, declaration under Section 6(1) came to be made and published. The writ petition was filed and further steps were stayed. Consequently, the notice under Sections 9 and 10 and award and further steps were stayed. The question is what is the meaning to be given to the words "in pursuance of" ? In our considered view, these words would be read widely to give effect to the steps to be taken including the enquiry under Section 5-A and declaration under Section 6 and further action thereafter. Otherwise, when a person challenges the notification under Section 4(1) but pending challenge if the proceedings are stayed, that period alone shall be excluded by operation of Explanation 1 to Section 6. If a person challenges the declaration, he may file objections to the publication of the declaration in the Gazette under Section 6 and then challenge the declaration for the non-compliance of the requirement under Section 5-A without going into the validity; he could contend that three years from the date of the publication of the notification under Section 4(1) had elapsed and Explanation 1 is not attracted; it would be unnecessary to go into the question and the writ petition may be got dismissed as his object gets achieved. If the High Court disposes of the matter within two years from the date of publication of the notification under Section 4(1) before the expiry of three years' period, certainly the Government could reconsider the objections filed under Section 5-A and declaration under Section 6 could be published. But when there is a stay of the further proceedings, then necessarily the Government cannot make the declaration. In this case, three years' period was to expire on 23-9-1984 by which date the High Court had already stayed further proceedings and writ came to be disposed of in 1987 by which date three years' period already stood expired. If the period of stay was not to be excluded, the Government has no power even to hear the objections and if the objections are untenable and overruled and public purpose was found to be subsisting, the Government could get the declaration under Section 6(1) published. Considered from this perspective, we are of the view that the words "in pursuance of" would be widely understood and all steps required to be taken including the declaration under Section 6 are to be considered as part of the scheme. Accordingly, we hold that there is no impediment in such an interpretation and the restricted interpretation given by the High Court is clearly illegal.

5. The next question is whether the view taken by the High Court that the enquiry under Section 5-A is vitiated in law, is correct ? In our view, the High Court has not correctly interpreted the legal position. It is seen that the respondent was given opportunity thrice to file his objections. At his instance the case was posted for hearing on 30-11-1981 on which date neither the respondent nor his counsel was present. Under these circumstances, the respondent having failed to present himself either in person or through counsel on 30-11-1981, the omission to give a right of hearing to him does not vitiate enquiry under Section 5-A. On the other hand, the respondent denied himself of the opportunity of being heard. Therefore, enquiry under Section 5-A is not vitiated by the error of law. Consequently, the declaration under Section 6 is not vitiated by any error of law. Shri Juneja equally is not correct in contending that even under the unamended Act by operation of the first proviso to Section 6(1), the three years' period had expired by 19-11-1994 and therefore, the notification under Section 4(1) stood elapsed. Admittedly, the notification under Section 4(1) was published on 24-11-1981. The writ petition was filed in 1982 sometime after October 1982. Therefore, the stay was

granted. In the interregnum, the Government was disabled to take further steps and, therefore, it cannot be said that though the stay was granted the notification under Section 4(1) stood elapsed for non-publication of the declaration under Section 6 within three years up to 23-9-1994. We place on record our deep appreciation for the valuable assistance rendered by Shri Juneja.

6. The appeal is accordingly allowed, but, in the circumstances without costs.