

Eugenio Misquita & Ors.

Vs

State of Goa & Ors.

(Dr. A. S. Anand, K. Venkataswami JJ)

29.09.1997

JUDGMENT

K.VENKATASWAMI.J

1. Though before the High Court of Bombay, Panaji Bench (Goa) three questions were raised and answered, before us learned counsel for the appellants confined the argument to one of the questions raised before the High Court, namely, whether the declaration made/published under the Land Acquisition Act, 1894 (hereinafter called the 'Act') was barred by limitation.

2. To appreciate the above question certain dates are necessary. Initially a Notification under Section 4(1) of the Act for acquiring land for construction and black topping of St. Sebastian Chapel Road was published on 8.11.90. That Notification lapsed as no declaration as required under Section 6 of the Act as amended by Act 68 of 1984 was made. Therefore, a fresh Notification was made under Section 4(1) of the Act for the same purpose on 23.6.92. The said Notification under Section 4(1) was first published in the English daily "Herald" on 29.6.92, and in the Marathi daily "Nav Prabha" on 2.7.92. Public Notice in the locality of the Notification was given on 8.7.92 as required under Section 4 of the Act. Lastly, it was published in the Official Gazette of the Goa Government on 6.8.92. Immediately the validity of the said Notification was challenged in Writ Petition No.436/92 as "urgency provision" under Section 17(4) of the Act was also invoked. The High Court allowed the Writ petition on 25.11.92 by directing the appellants (writ petitioners before High Court) to file their objections under Section 5A on or before 4.12.92 and directing the respondents to decide the said objections on or before 18.12.92 after hearing the aggrieved parties. After complying with directions of the High Court, a declaration under Section 6 of the Act was made on 3.8.93 and it was published in the Official Gazette on 5.8.93. The same declaration was published in Marathi daily "Gomantak" on 6.8.93 and in the English daily "Navhind Times" on 7.8.93 respectively. Public Notice of the declaration was given in the locality on 28.8.93. Under these circumstances, the appellants challenged the validity of the declaration under Section 6 on the ground that the publications of the declaration was beyond one year taking 28.8.93 as the date of publication and, therefore, the acquisition proceedings had lapsed.

3. The contention advanced on behalf of the appellants before the High Court was that on a correct understanding and interpretation of Section 6(1) & (2), of the Act, the declaration must be taken to have been made/published for the purpose of proviso to Section 6(1) (ii) on the date on which the last in the series of publications under Section 6(2) was published. In this case, it was on 28.8.93. If so understood on this case, according to the appellants, the declaration having been published in the locality on 28.8.93 it was beyond one year prescribed under proviso to Section 6(1) (ii) of the Act. Therefore, that declaration was barred by limitation. On the other hand, it was contended before the High Court on behalf of the authorities that under Section 6(1) the relevant date for the purpose of limitation was the date on which the declaration was made and that declaration having been made

3.8.93 was well within one year from the date of Notification published under Section 4(1), namely, on 6.8.92. The High Court in the light of the earlier Division Bench Judgment of the same court held as follows:-

"Applying the ratio of these two decisions, it is clear that Section 4 Notification was published in Government Gazette on 6th August, 1992 and in fact that was the last of such publication. Admittedly, Section 6 Notification is dated 3rd August, 1993 and it is common ground that it was published in the Government Gazette on 5th August 1993. It is, therefore, clear that regard being had to the date of making of the declaration under Section 6, which is 3rd August, 1993, it falls within the limitation prescribed and, therefore, it cannot be held that the publication of the declaration is outside the limitation prescribed under the Act."

4. Mr. Dhruv Mehta, learned counsel for the appellants, elaborately argued the matter bringing to our notice several judgments of the High Court and of this Court both for and against the appellants. In short, the argument of learned counsel for the appellants was that having regard to the language employed in sub-section (2) of Section 6 of the Act, the last in the series of publication must be taken as the date of publication for calculating the limitation prescribed under proviso to Section 6(1) (ii) of the Act. According to learned counsel, the purpose of introducing the limitation of one year by Act 68 of 1984 was to make the officials concerned to speed up the proceedings and to avoid the delay. This object, according to him, cannot be achieved unless the construction of Section 6 as advanced by him is accepted. He heavily placed reliance on judgment of the Rajasthan High Court in *Jagrup Singh Vs. State of Rajasthan & Ors.*-AIR 1993 Rajasthan 157. He also brought to our notice. In all fairness, a recent judgment of this Court reported in *Krishi Utpadan Mandi Samiti & Anr. Vs. Makrand Singh & Ors.*-(1995)2 SCC 497, which holds against the contention to our notice a decision of the Kerala High Court which is also against the appellants.

5. We would have dealt with the matter elaborately but for the recent judgment of this Court in *Krishi Mandi Samiti's case* (supra), which is directly on the point answering identical contention raised before this Court in the said judgment.

6. Still, we would like to give our reasons in brief for reaching the same conclusion.

7. Section 4(1), 6(1) & (2) and Section 11-A read as follows: "Section 4. Publication of preliminary notification and powers of officers thereupon-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification". Section 6. Declaration that land is required for a public purposes-(1) Subject to the provision of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some Officer duly authorized to certify its order and different declarations may be made from time to time in respect of different parcels and any land covered by the same notification under Section 4, sub-section (1), irrespectively of whether one report of different reports has or have been made (wherever required) under Section 5-A, sub-section (2): Provided that no declaration in

respect of any particular land covered by a notification under Section 4. sub-section (1).-(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication; or(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification: Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. Explanation 1.-In computing any of the periods referring 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. Explanation 2.-Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected."

"Section 11-A-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 proceedings 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."

8.It is now well settled that the last of the dates in the series of the publications made under Section 4(1) of the Act is at the relevant date to reckon the starting point of limitation for the purpose of proviso of Section 6(1) (ii).Now, the question is which is the relevant date to reckon the last date for the purpose of proviso to Section 6(1) (ii).In other words, whether the modes of publication prescribed under Section 6(2) obviously for the purpose of reckoning limitation under Section 11-A of the Act have any part in the matter of computing the period prescribed under proviso to Section 6(1) (ii).

9.According to the learned counsel, the limitation prescribed under proviso to Section 6(1) (ii) has to be construed with reference to the different dates/modes of publication prescribed under Section 6 (2) of the Act. In support of this submission, learned counsel refers to the judgments of this Court rendered on Section 4(1) of the Act holding that the last of the dates of such publication in the series is the relevant dated computing the period of limitation under proviso to Section 6(1) (ii).

10. Let us examine whether the learned counsel is right in his submission. As seen from the above extracts of relevant provisions. While Section 4(1) commands publication of notification under that Section. Section 6 speaks of the declaration being made to the effect that any particular land is needed for public purpose or for a company. There are judicial decisions that have interpreted the word 'made' to mean 'published' for the reasons stated in those decisions. Therefore, strictly speaking, but for those judicial decisions the date of making of the declaration under Section 6(1) will be the relevant date for reckoning the period of limitation. However, in the interest of general public, the courts have taken the view that the declaration made will stand accomplished only when it is published. This publication has, therefore, nothing to do with the publication referred to in Section 6(2) of the Act which is for a different purpose, inter alia, for reckoning the limitation prescribed under Section 11-A of the Act. This construction is supported by the language employed in Section 6(2) of the Act. In particular, the word "hereinafter" used in Section 6(2) will amply prove that the last of the series of the publication referred to under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11-A. The language employed in second proviso to Section 6(1) also supports this construction. Therefore, the contention of learned counsel cannot be accepted.

11. This is also the view taken by this Court in *Krishi Utpadan Mandi Samiti's* case. The learned Judges framed question thus:-

"The question, therefore, is that which date of the publication is three steps i.e. publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years' limitation prescribed in clause (1) of the proviso to Section 6(1) of the Act."

12. It may be noted that this Court in that case was considering a case which arose before the coming into force of the Amending Act 68 of 1984. The case on hand has arisen after the Amending Act 68 of 1984. The only difference is the period of limitation: for the cases arising before the Amending Act it was three years and one year for the cases arising after the Amending Act. Otherwise, the principle is the same. The learned Judges after referring to the relevant provisions observed thus:-

"The question, therefore, is that which date of the publications in three steps i.e. publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years limitation prescribed in Clause (1) of the proviso to Section 6(1) of the Act. Prima facie it gives an impression that the last of any of the three steps puts in motion, the running of limitation of three years. So it is necessary to understand the scheme and policy of the Act to get the crux of the question. It would be seen that the purpose of notification under Section 4(1) is an intimation to the owner or person having an interest in the land that Government exercised the power of eminent domain in relation to his land and for public purpose his land is needed or likely to be needed: puts an embargo on his freedom to deal with the land as an unencumbered land and also pegs the price of the land prevailing as on that date. It also is a caveat to the Collector to make the award under Section 11 as well as to determine the market value prevailing as on the last of the dates to be date and the award should be made within a period prescribed by Section 11-A, lest the entire acquisition shall stand lapsed. The word 'hereinafter' is for such purposes as well as for the purpose of determination of the compensation under Chapter III of the Act as well. Therefore, the word 'hereinafter' referred to as the last date of the publication of the notification is the date from which the prevailing prices of the land

is to be computed etc." The last dated under Section 6(2) shall be the date for the purposes "hereinafter referred to "would be not for computing the period of three years prescribed in clause (i) of proviso to Section 6(1) of the Act as it was already done. But purposes to be followed hereinafter. Otherwise language would have been "hereinbefore done". Sub-section (2) as such did not prescribed any limitation within which the declaration under Section 6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award under Section 11 or in computation of the period prescribed in Section 11-A. The publication of the declaration in two daily newspapers having circulation in the locality one of which is in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is procedural part. It appears that these publication are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose under Section 6(1) and also to provide limitation to make the award under Section 11 by the Collector. In other words, the limitation prescribed under Section 11-A is for the purpose of making the award and if the Collector fails to do so, the entire proceeds under Section 4(1) and 6(1) shall stand lapsed. If this consistent policy of the Act is understood giving scheme of the Act and public purpose the Act seeks to serve, we are of the considered view that publication in the Official Gazette already made under clause (1) of complete, as soon as the declaration under Section 6(1) was published in the Official Gazette. That will be the date for the purpose of computing of three years period from the last of the dates of the publication of the notification under Section 4(1). The procedural ministerial acts prescribed under sub-section (2) are only for the purpose of the procedure to be followed 'hereinafter'. In other words, the steps to be taken subsequent to the publication of the declaration under Section 6(1) of the Act. We cannot agree with Shri Rana, the learned Senior Counsel, that the date of making the declaration by the Secretary to the Government or the Authorised Officer is the date for computing period of three years. Equally, we cannot agree with the learned counsel for the respondents. Shri Upadhyaya, that publication of the substance being the last date from which the period of three years needs to be computed. Acceptance of either contention would easily defeat the public policy under the Act by skillful manner of management with the lower level officials."

13. In *Lt.K.Padmadas Vs.State of Kerala & Ors.*-AIR 1992 Kerala 158, a Division Bench of the Kerala High Court while answering an identical question held as follows:-

"In this view of the matter, the last date of publication envisaged by Sec.4(1) is 28.6.1989. Being so, the order of the Board of Revenue made on 30.04.90 and the declaration under Sec.6 published in the Gazette on 29.5.1990 are within the period prescribed by the first proviso to sub-section (1) of Sec.6, namely, one year from the date of publication of the notification under Sec.4 (1). The question then arises whether all the requirements of a valid declaration as laid down in sub-section (2) of Sec.6, namely publication in two daily newspapers and in the official gazette and the giving of public notice in the locality should be complied with within the period prescribed in sub-Sec.(7). It is stated that the sub-section defines the date of publication of the declaration as the last of the dates of the publication in the gazette and the newspapers and giving of public notice and therefore unless all the publications and the public notice fall within the one year period, the bar of the first proviso to Sec.6(1) operates. The publication in the gazette was on 29.5.1990 and in

the Kerala Times and Mathrubhumi dailies on 29.5.1990 and 4.6.1990 respectively. The counter-affidavit of the third respondent does not disclose as to when public notice was given in the locality. We must even at the outset mention that a plea in this form has not been put forward at the earlier stages. The contention before the learned Single Judge (as evident from paragraph 7 of his judgment) was that the declaration under Sec.6 should have been made within one year of the publication in the newspapers. The respondents did not therefore have any opportunity of meeting the present case or of placing before court the necessary details regarding the public notice of the declaration in the locality. We need not however rest our decision on this point as we are even otherwise of the opinion that the declaration under Sec.6 was in time, in view of the publications effected on 29.5.1990. Sub-section (2) of Sec.6 reads:

"Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected." It is evident from the parenthesis, which is relevant, that any reference in the subsequent provisions of the Act, to the date of publication of the declarations is to be taken as the last of the dates of publication and the giving of public notice. The use of the expression "hereinafter referred to" makes it clear that the definition of the last date of publication is for the purpose of the subsequent provisions of the Act. It is not possible to project it back for the purpose of sub-Sec.(1). The High Court of Andhra Pradesh had taken the same view in (1991)2 Andh LT (Notes on Recent Cases) page 41(2) between the Executive Officer.T.T.D.Vs.N.S.Venugopal (to which one of us, the Chief Justice, was a party). We are in agreement with this view. The publication of the declaration in the gazette on 29.5.1990 is therefore within the period prescribed by sub-section (1) and therefore the proceedings are not vitiated in any manners."

14. Undoubtedly, the judgment of Rajasthan High Court in Jagrup Singh (supra) supports the contention raised by learned counsel for the appellants. A learned Single Judge of the High Court differing with the view taken by the Kerala High Court held as follows:-

Thus, viewing from any angle, whether applying the test of plain literal dictionary meaning to the language used in the Act or, applying the test of Mischief Rule of interpreting the Statute, or looking from the point of view of legislative intention, the conclusion is irresistible that the act of 'making declaration' by the appropriate Government that any particular land is needed for public purpose, include the act of making it known public, in official manner and, that act has to be performed within a period of one year from the date of notification under Sec.4(1). The act of making declaration known in the official manner has been prescribed under Sec.6(2) of the Act. The principle is well settled that where any statutory provision provides a particular manner for doing particular act, then, that thing or act must be done in

accordance with the manner prescribed. Therefore, the act of making declaration of Government's satisfaction in regard to the requirement of the particular land for any public purpose is complete only when the same is made known by publishing the said satisfaction in the manner prescribed under Sec.6(2), for the purpose of further proceedings in the matter of land acquisition, in terms of the other provisions of the Act. It is only after the publication of the declaration in the manner prescribed under s.6(2) that it becomes a declaration which is conclusive proof of the fact that land is needed for public purpose and it is only 'making of such declaration', which furnishes conclusive proof of such satisfaction that authorises the appropriate Government to acquire land in the manner thereafter provided under the Act. It is only after making such declaration that the appropriate Government can issue directions to the Collector to take orders for acquisition of land under S.7 of the Act. It is only after making of such declaration which includes publication thereof also, that provisions of S.11-A becomes effective in suppressing the mischief for which it has been enacted. Summing up of aforesaid discussion, is that making of a declaration u/s 6(1) within its ambit includes the act of making the document of declaration known or published officially, Sub-sec.(2) of S.6 provides only the modes of publication of declaration, which is a part of the act of making of a declaration and the publication of declaration in all the modes prescribed under S.6(2) has to be made within the period prescribed under S.6(1)."

15. The learned Judge of the Rajasthan High Court is right to a limited extent when he observed: "the conclusion is irresistible that the act of 'making declaration' by the appropriate Government that any particular land is needed for public purpose, include the act of making it known public, in official manner and, that act has to be performed within a period of one year from the date of notification under S.4(1)." However, the learned Judge erred in holding thus; "It is only after the publication of the declaration in the manner prescribed under S.6(2) that it becomes a declaration which is conclusive proof of the fact that the land is needed for public purpose and it is only 'making of such declaration'. Which furnishes conclusive proof of such satisfaction", because there is nothing in the Statute to suggest by publishing in the Official Gazette the 'making of declaration' has not been achieved nor is there anything in the Statute to show that the modes of publications prescribed under Section 6(2) notwithstanding the express language used in that Section about which we have already pointed out, namely, 'hereinafter' those modes also govern the publication at the prior stage, namely, under Section 6(1).

16. Therefore, we hold that the judgment of the Rajasthan High Court does not correctly lay down the law.

17. In State of Haryana & Anr. Vs. Raghbir Dayal-[(1995) 1 SCC 133, this Court had occasion to consider the effect to failure to publish the substance of the declaration under Section 6 in the locality. This Court in that context held thus:-

"The purpose of publication of the declaration is to give effect the conclusiveness of the extent of the land needed for the public purpose or for a company as made under Section 6(3) of the Act. Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the inquiry under Section 5-A. Or otherwise in case of dispensing with inquiry under Section 5-A unless they show any grave prejudice caused to them in non-publication of the substance of the declaration under Section 6(1), the omission to publish the

substance of the declaration under Section 6(1) in the locality would not render the declaration of Section 6 invalid. We are not intending to say that the officer should not comply with the requirement of law and it is their duty to do it. But their dereliction to do so per se does not render the declaration under Section 6 illegal or invalid."

18. The above view of this Court lends support to the view that for the purpose of calculating the limitation prescribed under proviso to Section 6(1) (ii), it is not the last of the publication in the series that should not be taken into account, but the publication that was made in the first instance under Section 6.

19. In the light of the law laid down by this Court. We have no hesitation to hold that the declaration published under Section 6 of the Act was well within one year and the challenge to the same has been rightly rejected by the High Court. However, the view taken in the judgment of the High Court under appeal that the relevant date for reckoning the period of limitation will be the date of making of the declaration under Section 6, may not be correct. As held in *Krishi Utpadan Mandi Samiti's* case, mere making of declaration is not enough. The making of declaration under Section 6 is complete for the purpose of Proviso to Section 6(1) (i) & (ii) when it is published in the official gazette.

20. On facts we have seen that the Notification was lastly published on 6.8.92 in the Official Gazette and declaration under Section 6 was published in the Gazette on 5.8.93 which is well within one year. In the result, the appeal fails and the same is dismissed with no order as to costs.