SUPREME COURT OF INDIA

R.Indira Saratchandra

Vs.

State of T.Nadu & Ors.

C.A.No.8643 of 2011

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.,)

14.10.2011

JUDGMENT

G.S.Singhvi,J.,

SLP(Civil) No.27254/2008

1. The question which arises for consideration in this appeal is whether the acquisition of the appellant's land lapsed on account of non-passing of an award within the period specified in Section 11A of the Land Acquisition Act, 1894 (for short, 'the Act').

2. The appellant's land was acquired by the State Government for and on behalf of Tamil Nadu Housing Board. Notification under Section 4(1) of the Act was issued on 01.11.1982 and was published in the Official Gazette on 24.11.1982. The declaration under Section 6 was issued on 2.2.1985. The same was published in the Official Gazette dated 20.02.1985 and in the local newspapers on 22.5.1985.

3.The writ petition filed by the appellant and others questioning the acquisition of land, which came to be registered as Writ Petition No.3646 of 1987 was allowed by the learned Single Judge vide order dated 24.10.1991. That order was set aside by the Division Bench in Writ Appeal No.406 of 1994 filed by respondent Nos.1 to 3. Thereafter, the Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Ayyan Thirumaligam Road, Salem passed an award dated 10.12.1996.

4.Immediately thereafter, the appellant and proforma respondent Nos. 4 to 7, whose name were deleted vide order dated 25.01.2010, filed Writ Petition No.19284 of 1996 for grant of a declaration that the acquisition of their land will be deemed to have lapsed because the award was not passed within two years. Respondent Nos.1 to 3 contested the writ petition by asserting that the award was passed within two years from the date of receipt of the copy of the Division Bench judgment dated 29.8.1996.

5. The learned Single Judge allowed the writ petition and declared that the acquisition of the writ petitioners' land will be deemed to have lapsed because the award was passed after more than two years counted from the date of last publication of the declaration issued under Section 6 of the Act.

6. The Division Bench of the High Court allowed the appeal preferred by respondent Nos. 1 to 3 and set aside the order of the learned Single Judge by relying upon the judgments of this Court in *Narasimhaiah v. State of Karnataka*[1], *State of Tamilnadu v. L. Krishnan*[2], *Executive Engineer, Jal Nigam Central Stores Division v. Suresha Nand Juyal*[3] *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.*[4], *Municipal council, Ahmednagar v. Shah Hyder Beig*[5], *Tej Kaur v. State of Punjab*[6], *and Padma Sundara Rao (Dead) & Others v. State of Tamilnadu & Others*[7],. In the opinion of the Division Bench, the law laid down by the Constitution Bench of this Court in Padma Sundara Rao v. State of Tamil Nadu(supra) cannot be applied to the cases in which the acquisition proceedings had become final. The Division Bench was also of the view that the writ petition filed by the appellant herein and the proforma respondents was highly belated.

7. Learned counsel for the appellant argued that the impugned judgment is liable to be set aside because the view taken by the Division Bench of the High Court on the interpretation of Section 11A of the Act is contrary to its plain language and the judgment of the Constitution Bench in Padma Sundara Rao v. State of Tamil Nadu (supra). Learned counsel submitted that the observations made in the last paragraph of the Constitution Bench judgment suggesting that the law laid down by it will not apply to the cases in which the acquisition had become final has no application to the present case because the land owners had questioned the acquisition and at the time of decision of the Constitution Bench, the writ petition filed by them was pending consideration.

8 .Learned counsel for the respondent Nos. 1 to 3 made half-hearted attempt to support the impugned judgment by asserting that the period of two years prescribed under Section 11A of the Act should be counted not from the date of the judgment of the Division Bench but from the date, on which copy thereof was supplied to the concerned authority, i.e., 1.11.1996. He further argued that the ratio of the Constitution Bench judgment in Padma Sundara Rao v. State of Tamil Nadu (supra) cannot be invoked by the appellants because once the Division Bench set aside the order of the learned Single Judge, the acquisition proceedings became final.

9. We have considered the respective submissions. Section 11A of the Act, which has bearing on the disposal of this appeal reads as under:

> "11A. 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."

10. A reading of the plain language of the above reproduced section makes it clear that the Collector is obliged to make an award under section 11 within a period of two years from the date of the publication of the declaration. If no award is made within that period, the acquisition proceedings automatically lapses. By virtue of the explanation, the period during which any action or proceeding to be taken pursuant to the declaration is stayed by an order of a Court is to be excluded in computing the period of two years. This means that if any action or proceeding required to be taken after the issue of declaration under Section 6 is stayed by a Court, the entire period of stay will get excluded in calculating the period of two years within which an award is required to be made by the Collector. As a corollary to this, it must be held that once the stay order passed by a Court is vacated or ceases to operate, the clog put on the running of the period specified in the main section is removed.

11. There is nothing in the Section 11A from which it can be inferred that the stay order passed by the Court remains operative till the delivery of copy of the order. Ordinarily, the rules framed by the High Court do not provide for supply of copy of judgment or order to the parties free of cost. The parties to the litigation can apply for certified copy which is required to be supplied on fulfillment of the conditions specified in the relevant rules. However, no period has been prescribed for making of an application for certified copy of the judgment or order or preparation and delivery thereof. Of course, once an application is made within the prescribed period of limitation, the time spent in the preparation and supply of the copy is excluded in computing the period of limitation prescribed for filing an appeal or revision.

12. In the present case, we find that the Division Bench of the High Court had allowed Writ Appeal No.406 of 1994 vide judgment dated 29.8.1996. In the counter affidavit filed on behalf of respondent Nos. 1 to 3 to the writ petition of the appellant and the proforma respondent, the date of supply of copy of the judgment of the Division Bench was mentioned as 1.11.1996 but the date on which the application was made for supply of copy was not disclosed. In any case, the fortuitous factor i.e. the time taken in supply of copy of the judgment cannot extend the period of two years specified in Section 11A.

13.In Padma Sundara Rao v. State of Tamil Nadu (supra), the Constitution Bench referred to the earlier judgments including the judgment of three Judge Bench in *N. Narasimhaiah and Ors. v. State of Karnataka and Ors etc*[8]. and observed :

> "3. The controversy involved lies within a very narrow compass, that is, whether after quashing of notification under Section 6 of the Land Acquisiton Act, 1894 (hereinafter referred to as "the Act") fresh period of one year is available to the State Government to issue another notification under Section 6. In the case at hand such a notification issued under Section 6 was questioned before the Madras High Court which relied on the decision of a three- Judge Bench in N. Narasimhaiah v. State of Karnataka and held that the same was validly issued.

4.Learned counsel for the appellants placed reliance on an unreported decision of this Court in A.S. Naidu v. State of T.N. wherein a Bench of three Judges held that once a declaration under Section 6 of the Act has been quashed, fresh declaration under Section 6 cannot be issued beyond the prescribed period of the notification under sub-Section (1) of Section 4 of the Act. It has to be noted that there is another judgment of two learned Judges in Oxford English School v. Govt. of T.N. which takes a view similar to that expressed in A.S. Naidu case. However, in State of Karnataka v. D.C. Nanjudaiah view in Narasimhaiah case was followed and it was held that the limitation of 3 years for publication of declaration would start running from the date of receipt of the order of the High Court and not from the date on which the original publication under Section 4(1) came to be made.

10. What appears to have weighed with the three-Judge Bench in Narasimhaiah's case (supra) is set out in paragraph 12 of the judgment, which reads as under:

"Having considered the respective contentions, we are of the considered view that if the construction as put up by the learned counsel for the appellants is given acceptance i.e., it should be within one year from the last of the dates of publication under Section 4(1), the public purpose would always be frustrated. It may be illustrated thus: In a given case where the notification under Section 4(1) was published, dispensing with the enquiry under Section 5-A and declaration was published within one month and as the urgency in the opinion of the Government was such that it did not brook the delay of 30 days and immediate possession was necessary, but possession was not taken due to dilatory tactics of the interested person and the court ultimately finds after two years that the exercise of urgency power was not warranted and so it was neither valid nor proper and directed the Government to give an opportunity to the interested person and the State to conduct an enquiry under Section 5-A, then the exercise of the power pursuant to the direction of the court will be fruitless as it would take time to conduct the enquiry. If the enquiry is dragged for obvious reasons, declaration under Section 6(1) cannot be published within the limitation from the original date of the publication of the notification under Section 4(1). A valid notification under Section 4(1) become invalid. On the other hand, after conducting enquiry as per court order and, if the declaration under Section 6 is published within one year from the date of the receipt of the order passed by the High Court, the notification under Section 4(1) becomes valid since the action was done pursuant to the orders of the court and compliance with the limitation prescribed in clauses (i) and (ii) of the first proviso to sub-section (1) of the Act would be made."

11. It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing the period of limitation seems to be avoidance of inconvenience to a person whose land is sought to be acquired.

Compensation gets pegged from the date of Notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of Notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the Notification under Section 4(1) of the Act. The prescription of time limit in that background is, therefore, peremptory in nature. In *Ram Chand and Ors. Vs. Union of India and Ors*[9]. it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non-est and was effaced. It is fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh Notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K. Chinnathambi Gounder (supra) was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim 'actus curia neminem gravabit' highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

17. The view expressed in Narasimhaiah's case (supra) and Nanjudaiah's case (supra), is not correct and is over-ruled while that expressed in A.S. Naidu's case (supra) and Oxford's case (supra) is affirmed.

18. There is, however, substance in the plea that those matters which have obtained finality should not be re-opened. The present judgment shall operate prospectively to the extent that cases where awards have been made and the compensations have been paid, shall not be reopened, by applying the ratio of the present judgment. The appeals are accordingly disposed of and the subsequent notifications containing declaration under Section 6 of the Act are quashed."

(emphasis supplied)

14.In our view, the last paragraph of the aforesaid judgment has no bearing on this case because at the time of pronouncement of Constitution Bench judgment, the writ petition filed

by the appellant and the proforma respondents for grant of a declaration that the acquisition will be deemed to have lapsed due to non- making of award for two years was pending before the High Court.

15. Although, the Division Bench has referred to a large number of judgments which lay down the proposition that the High Court would not entertain belated challenge to the land acquisition proceedings but the impugned judgment does not contain any discussion on this issue. That apart, we find that the appellant and the proforma respondent had moved the High Court without any delay. Rather, they had filed writ petition immediately after pronouncement of the award. Therefore, they could not have been non-suited by the Division Bench of the High Court by invoking the rule of laches.

16. In the result, the appeal is allowed, the impugned judgment is set aside and the order passed by the learned Single Judge is restored.

Judgment Referred.

[1]*(1996) 3 SCC 0088*
[2]*(1996) 1 SCC 0250*
[3]*(1997) 9 SCC 0224*
[4]*(1996) 11 SCC 0501*
[5]*(2000) 2 SCC 0048*
[6]*(2003) 4 SCC 0485*
[7]*(2002) 3 SCC 0533*
[8]*(1996) 3 SCC 0088*
[9]*(1994) 1 SCC 0044*