

S.H. Rangappa vs State Of Karnataka And Anr on 3 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3863, 2002 (1) SCC 538, 2001 AIR SCW 4313, 2001 AIR - KANT. H. C. R. 3038, (2002) 1 PAT LJR 1, (2001) 3 UPLBEC 2449, (2002) 2 MAD LW 534, (2002) 1 CIVLJ 76, (2002) 1 LANDLR 461, (2001) 7 SUPREME 687, (2002) 1 ICC 182, (2001) 45 ALL LR 628, (2001) 4 ALL WC 3176, (2002) 1 ANDH LT 36, (2001) 4 CURCC 204, (2002) 1 MAD LJ 105, (2002) 1 ALLMR 661 (SC), (2001) 4 RECCIVR 629, (2001) 7 SCALE 219, (2002) 1 JLJR 28, 2003 ALL CJ 2 814, (2001) 8 JT 545 (SC)

Bench: B.N. Kirpal, N. Santosh Hegde, P. Venkatarama Reddi

CASE NO.:

Appeal (civil) 7077 of 2001

PETITIONER:

S.H. RANGAPPA

RESPONDENT:

STATE OF KARNATAKA AND ANR.

DATE OF JUDGMENT: 03/10/2001

BENCH:

B.N. KIRPAL & N. SANTOSH HEGDE & P. VENKATARAMA REDDI

JUDGMENT:

JUDGMENT 2001 Supp(3) SCR 545 The Judgment of the Court was delivered by KIRPAL, J.

C.A. No. 7077 of 2001 @ SLP (C) No. 22637 of 1997. Leave granted.

Whether the notification under Section 6(2) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") should be published within the period prescribed by the proviso to Section 6(1) of the said Act, is the only question which arises for consideration in this case.

The notification dated 29th November, 1987 was issued and published in the Official Gazette on 28th January, 1988. The same was published in the newspaper on 23rd February, 1988. This notification was issued under Section 4(1) of the Act wherein it was stated that the lands indicated in the Schedule thereto were intended to be acquired for the public purpose of construction of houses by the Karnataka Housing Board. Persons interested were informed that they could file objections to the proposed acquisition. This notification was published in the newspaper on 23rd February, 1988 whereafter objections were filed under Section 5A of the Act. On 22nd February, 1989 a declaration

was made signed by the competent authority under Section 6(1) of the Act. It was stated therein that after verification of the Report of the Housing Commissioner and taking into consideration objections under Section 5A, it was declared that the lands specified in the Schedule thereto were acquired for the public purpose for construction of different categories of houses by Karnataka Housing Board. This declaration which was dated 22nd February, 1989 was published in the Official Gazette on 9th March, 1989.

The appellant herein challenged the validity of the notification under Section 6 primarily on the ground that this notification was barred by time. It was contended by the learned counsel that the notification under Section 6(1) had to be issued within one year of the publication of Section 4 notification and this not having been done the said notification was liable to be quashed. The Single Judge of the High Court did not accept this argument. It was observed that the declaration was made within one year under Section 6(1) on 22nd February, 1989. The said Section 6 did not provide for any period of limitation within which the declaration had to be published and, therefore, once the declaration was made within the prescribed period, the notification was valid. The writ appeal met with no success. Hence, this appeal by special leave.

It is contended by the learned senior counsel for the appellant that on a correct interpretation of Section 6, the declaration which was issued has to be published within one year of the publication of Section 4 notification.

Section 6 reads as follows :

"6. Declaration that land is required for a public purpose - (1) Subject to the provisions 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 orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or 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 Act (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 of the notification; 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 a 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 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.

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.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing."

Declaration under Section 6 is preceded by issuance of a notification under Section 4 which indicates the intention of the Government to inter alia acquire land for a public purpose. Pursuant to the issuance of the same, objections can be filed and after hearing the same, Section 6(1) enables the appropriate authority if it is satisfied, after considering the report made under Section 5A of the Act, that if any particular land is needed for a public purpose, then a declaration is to be made under the signature of an appropriate officer. Where notification under Section 4 is published after the commencement of the Land Acquisition Amendment Act, 1984, as in the present case, proviso (ii) requires that such a declaration shall not be made after the expiry of one year from the date of the publication of Section 4 notification.

We wish to clarify that the words "publish" and "from the date of publication of the notification" occurring in proviso (ii) to Section 6(1) refer to the publication of the Section 4 notification and have no reference to the publication of any notification under Section 6. Under Section 6(1), it is only a declaration which is required to be made, the time limit being within one year of the publication of the Section 4 notification. The main purpose for the issuance of a declaration under Section 6 is provided by sub-section (3), namely, that the declaration is conclusive evidence that the land is needed inter alia for a public purpose and after the making of the declaration the appropriate Government may acquire the land in the manner provided by the Act. Sub-section (2) requires the declaration to be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate and in addition thereto the Collector is also required to cause

public notice of the substance of the declaration to be given in the convenient places in the said locality.

It is pertinent to note that sub-section (2) of Section 6 does not prescribe any time limit within which the declaration made under Section 6(1) is to be published. It is well known that after an order or declaration is made there can be a time gap between the making of the order or a declaration and its publication in the Official Gazette. Whereas the time limit for the making of an order is provided under Section 6(1), the legislature advisedly did not provide for any time limit in respect of the steps required to be taken under sub-section (2) of Section 6. If the contention of Mr. G.L. Sanghi, the learned senior counsel for the appellant is correct, the effect would be that not only the declaration would have to be published within the time prescribed under the proviso to Section 6(1) but all other steps, like publication in the daily newspaper and the Collector causing public notice of the declaration to be given at a convenient places in the locality, must also be completed within a period of one year of Section 4 notification. This could certainly not be a consequence contemplated by the legislature. As already observed, the purpose of Section 6 notification being to give a final declaration with regard to the need of the land for public purpose, the interest of the land owners was sufficiently safeguarded with the requirement of the making of the declaration under Section 6(1) within a prescribed period. It is difficult for us to read into sub-section (2) the provisions of the proviso to Section 6(1) which relate to the time limit for issuance of the notification under Section 6(1). This view which we have expressed hereinabove finds support from a decision of a Bench of four Judges of this Court in the case of *Khadim Hussain v. State of U.P. & Ors.*, [1976] 1 SCC

843. The question which arose in that case related to the time within which the declaration made under Section 6(1) had to be published in the Gazette. Repelling the contention that there was any time prescribed for publication of the declaration this Court held as follows:

"25."It is clear from the provisions set out above that the object of the notification under Section 6 is to ensure that the Government is duly satisfied, after an enquiry at which parties concerned are heard, that the land under consideration is really needed for a public purpose and that the declaration is to operate as conclusive evidence to show that this is so. The conclusiveness of this declaration cannot be questioned anywhere if the procedure dealing with its making has been observed. The notification which takes place under Section 6(2), set out above, follows and serves only as evidence of the declaration. That the declaration is shown by the fact that it has to be signed by a Secretary or other officer duly authorised. The declaration is in the form of an order. The notification is its publication and proof of its existence. It has been shown, in the case before us, that the deemed notification under Section 6 took place about three and a half months after the expiry of two years from the commencement of the ordinance of 1967. But, it is not argued on behalf of the appellant that the declaration under Section 6 was similarly delayed. Presumably, it was within time.

26. A look at the amendment introduced by the Section 4(2) of the Land Acquisition (Amendment; and Validation) Act, 1967, shows that it is declaration which has to take place within two years of the expiry of the commencement of the ordinance which came into force on January 20, 1967. In fact, Section 4(2) of the Amendment Act of 1967, set out above, itself makes a distinction between a "declaration" under Section 6 and its "notification" under Section 4 of the principal Act. It does not say that no notification under Section 6 of the principal Act can take place beyond the time fixed. The prohibition is confined to declarations made beyond the specified period. If the case of the appellant could be that no declaration was made within the prescribed time, it was his duty to prove it. He has not discharged that onus.

27. As indicated by the Division Bench of the Allahabad High Court, the amendment of 1967, was the result of a decision of this Court in the State of M.P. v. Vishnu Prasad Sharma holding successive, notifications, under Section 6, with excessive intervening delay between a notification under Section 4(2) and a declaration under Section 6, keeping the owner or other person entitled to compensation in suspense between a declaration and its notification is shown to exist, it may raise a suspicion about the existence of the declaration itself or about the bona fides of acquisition proceedings. This however, is not the position in the case before us. Neither the existence nor the bona fides of the declaration have been questioned. It has not been either asserted or shown, as already mentioned, that no declaration was made within the period of time fixed for it. We, therefore, reject the last objection also."

While referring to the decisions of this Court in *Bachhittar Singh v. The State of Punjab*, [1962] Suppl. 3 SCR 713 as well as *Krishi Utpadan Mandi Samiti & Anr. v. Makrand Singh & Ors.*, [1995] 2 SCC 497 and *Eugenia Misquita & Ors. v. State of Goa & Ors.*, [1997] 8 SCC 47, Mr. Sanghi, learned senior counsel contended that the observations of this Court in *Khadim Hussain's* case require reconsideration. With respect, we are unable to agree with this for more than one reason. Firstly, the decision in *Khadim Hussain's* case was rendered by four Judges and the said decision is binding on us, apart from the fact that on the interpretation of the provisions of Section 6 we are in agreement with the views expressed by the Bench in that case. Secondly, as far as *Bachhittar Singh's* case is concerned that related to notings on the file made by a Minister and the question which arose was whether that was an order which could have been regarded to have been passed. By referring to the provisions of Article 166 of the Constitution of India, this Court held that the said decision would not be regarded as an order of the Government. In *Krishi Utpadan's* case and *Eugenia's* case there was no reference made to the binding decision of this Court in *Khadim Hussain's* case. Even otherwise, in both these cases, declaration under Section 6 had been published within one year of the notification under Section 4 and the question in the form in which it has arisen for consideration in the instant case did not arise there.

Mr. Sanghi also drew our attention to the observations of this Court in *Senjeeva Nagar Medical and Health Employees Co-operative Housing Society v. Mohd. Abdul Bawahab*, [1996] 3 SCC 600. While referring to the various provisions of the Act at page 606, it was observed that "the declaration should be within one year." Mr. Sanghi contends that this is a decision of three Judges which we

should follow. We are unable to accept this for the reason that what arose for consideration before the Court in Senjeeva Nagar's case was the provision of Section 4 as amended by the State of A.P. which fixed time limit of 40 days for giving public notice on the substance of a notification under Section 4(1). The Court was called upon in that case to consider whether a declaration under Section 6(1) was required to be published in a Gazette within one year of the publication of Section 4 Notification. Therefore, the aforesaid observation is only an obiter and contrary to the decision of this Court of a larger Bench in Khadim Hussain 's case which decision has neither been referred to in the Senjeeva Nagar's case or in the Krishi Utpadhan Mandi's case and in Eugenia's case.

Following the decision of this Court in Khadim Hussain's case with which we agree, this appeal is dismissed but with no order as to costs.

C.A. No. 7078/2001 @ SLP (C) No. 3455 of 1999. Leave granted.

For the reasons stated hereinabove, this appeal is also dismissed.