N. Narasimhaiah & Ors. Etc vs State Of Karnataka & Ors.Union Of India & ... on 17 January, 1996

Equivalent citations: 1996 SCC (3) 88, JT 1996 (2) 269, AIRONLINE 1996 SC 1078

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria, S.B Majmudar

PETITIONER:
N. NARASIMHAIAH & ORS. ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.UNION OF INDIA & ORS.

DATE OF JUDGMENT: 17/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (3) 88 JT 1996 (2) 269
1996 SCALE (2)170

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

Notification under Section 4(1) of the Land Acquisition Act [1 of 1894] [for shorts "the Act"] acquiring total extent of 114 acres of land in Narayanpura Village in Bangalore Districts Karnataka was published for public purpose, viz., Defence Research & Development Organization, Government of India. The Government, exercising the power under Section 17(4), dispensed with the enquiry

under Section 5A of the Act and the modification under Section 4(1) was accordingly published on January 22, 1987. Thereafter, the declaration under Section 6 was published on June 24, 1987.

The appellants had challenged the exercise of emergency power under Section 17(4) by filing W.P. No.13316-20/1987 and batch in the High Court of Karnataka and the learned single Judge quashed the order of the Government dispensing with enquiry under Section 5A and directed as under:

> "In the result these petitions are partly allowed and the declaration dated 24.6.1987 published in the Gazette dated 6.8.1987 made under Section 6(2) of the Act read with Section 17(1) of the Act as also that portion of the Preliminary Notification under Section 4(1) of the Act dispensing with the enquiry under Section 5A of the Act in so far as the petitioners lands are concerned and also the notice under Section 9(1) of the Act dated 12.8.1987 are quashed reserving liberty for the authorities to continue the acquisition proceedings from the stage of preliminary notification. The petitioners shall file their objections against the preliminary notification within 30 days from the date of receipt of this order and they shall file their objections against the preliminary notification within 30 days from the date of receipt of this order and they shall present themselves before the Land Acquisition Officer
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> - 3rd respondent on 15.7.1988 without awaiting any fresh notices from the said officer. The Land Acquisition Officer shall hold the enquiry under Section 5A of the Act expeditiously and complete the proceedings in accordance with law."

Thereafter, enquiry under Section 5A was conducted and declaration thereof was published on May 13, 1989. The validity of this declaration was again questioned in present Writ Petition No.19245/89 and batch. The learned single Judge again allowed the writ petitions. The Division Bench by judgment dated April 22, 1993 in Writ Appeal No.2189-97 of 1992 and batch allowed the appeals; set aside the order of the learned single Judge and consequently upheld the declaration published under Section 6 of the Act.

The learned single Judge had quashed the notification in the first instance giving liberty to the Government to conduct an enquiry under Section 5A and it was accordingly completed within one year from the date of the judgment. Declaration under Section 6 was published. The declaration under Section 6 published in the first instance was within the period prescribed under proviso to Section 6(1). The Division Bench has held that after the declaration under Section 6 was quashed in the first instance, the limitation of one year does not apply. It further held that the view that the declaration under Section 6 is still required to be published from the date of the notification under Section 4(1) is not correct in law. lt also found that since there was no evidence on record as to which was the last of the dates of the publications contemplated under Section 4(1), it could not be said that the limitation under Section 6 from that date is barred by limitation.

Shri Rama Jois, learned senior counsel appearing for the appellants, contended that in view of the judgments of this Court in Oxford English School vs. Government of Tamil Nadu & Ors. [(1995) 5 SCC 206] and P. Chinnanna & Ors vs. State of A.P. Ors. [(1994) 5 SCC 486], the view of the High

Court is not correct in law. It is further contended by Sri Haresh Kaushik that if the view of the High Court is upheld there would be two dates of notification under Section 4(1), namely, the notification as originally published under Section 4(1) and the date which was upheld by the Court after the publication of second declaration under Section 6. The date of declaration under Section 6 will be the date for determination of compensation under Section 23(1). That would be incongruous with the schemas of the Act. Therefore, construction should be put up in such a way that both Section 4(1) notification and Section 5 declaration should be consistent with the scheme of the Act.

Shri Shukla, the learned senior counsel appearing for the Union of India, contended that since the validity of the notification under Section 4(1) was upheld in the first round of the litigation, what was left to the Government was to conduct enquiry under Section 5A in terms of the direction issued by the High Court and on completion thereof, if the declaration is published under Section 6, the statutory compliance is made. Notification under Section 4(1) stands upheld. Otherwise incongruity would arise in every case. Though the notification under Section 4(1) and the declaration under Section 6 were published within the limitation prescribed under the Act, by act of the Court, if the declaration under Section 6 is quashed giving power to the Government to conduct an enquiry under Section 5A after giving opportunity to the claimants, declaration under Section 6 can never be made within original period of limitation and public purpose would be in jeopardy since under no circumstance the enquiry and declaration under Section 6 could be done within the limitation prescribed in the first instance. The second exercise would be rendered fruitless since by that date the limitation prescribed under the proviso would stand expired. In a given case though the action of the Government may be within limitation, the orders of the Court would intervene to defeat the public purpose. He, therefore contended that the construction would be such as would subserve not only the public purpose but also the orders of the court would be complied with and the remedy of judicial review would be meaningful.

Having given careful and anxious consideration to the respective contentions, the question is; whether the limitation prescribed under second proviso to Section 6(1) would be applicable after the notification under Section 4(1) has been quashed by the High Court? With a view to appreciate the contentions, it is necessary to look into the scheme of the Act. Section 4(1) of the Act gives power of eminent domain, viz,, to acquire the land of an owner for public purpose. Section 4(1) enables the officers to have the notification published in the State Gazette or the local Gazette, as the case may be, amended as per the State Amendment. The local publication in the prescribed manner enables the authorities under the Act to take measurement etc. to determine extent of the land required for public purpose and then to take a decision to proceed with the accusation as contemplated in Chapter III of the Act. Under Section 17(1) read with Section 17(2), if the State Government is of the opinion that the lands are urgently required for taking possession of the land for public purpose, Section 17(4) gives power to the State Government to dispense with the enquiry under Section 5A. Thereafter Section 6 declaration is required to be published. After 15 days from the date of expiry of the notice issued under Section 9, the Government is empowered to take possession of the land. By operation of Section 17(2) though award has not been made, the lands stand vested in the State free from all encumbrances. In other cases, after the declaration under Section 6 was published in the prescribed manner, public purpose mentioned in Section 4(1) becomes conclusive. Award enquiry in Part III shall be done through and after passing the award, the possession of the land would be

taken and under Section 16 of the Act the lands stand vested in the State free from all encumbrances. Determination of compensation under Section 18 etc. would be followed by stages.

In the light of the scheme of the Act, when the exercise of the power under Section 17(4) dispensing with enquiry under Section 5A is quashed by the Court, the question would be whether the State is required to have the declaration published under Section 6 within limitation prescribed under proviso to Section 6(1) of the Act? Section 6(1) reads thus :

> "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, subsection (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section (2):
>
> Provided that no declaration in respect of any particular land covered by a notification under Section 4 subsection (1),
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> (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 of the notification; or
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> (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 to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.
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> Explanation I. 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.
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> 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.

The limitation, under the first proviso begins to run from the last of the date on which the notification under Section 4(1) is published. By operation of clause (ii) of first proviso to sub-section (1), the declaration under Section 6 shall be published within one year from the date of the last of the dates of the publication of the notification as required under Section 4(1) of the Act. Explanation I to Section 6(1) postulates that in computing the period 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 (1) is stayed by an order of the Court, the period during which the proceedings are pending, shall be excluded. In other words, before the declaration under Section 6 is published, if further proceedings are stayed by an order of the Court, further action stands interdicted, the running of limitation stops and the time occupied in the Court proceedings should be excluded in computation of the period of limitation mentioned in proviso to Section 6(1). After the said period is excluded and if the declaration published is within the limitation of one year, then necessarily the notification under Section 4(1) would remain valid.

If that be the position, when the exercise of the power under Section 17(4) dispensing with enquiry under Section 5A is quashed by the Court and liberty is given to the State to proceed further in accordance with law, i.e., to conduct enquiry under Section 5A and even after conducting the enquiry as prescribed under Section 5A the Government forms opinion that the land was needed for public purpose and declaration was published, the question is: whether the limitation prescribed under clause (ii) of the first proviso to sub-section (1) would still remain operative and be capable to be complied with?

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 5A 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 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 5A, then the exercise of the power pursuant to the direction of the Court will be fruitless as it would take time to conduct 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) becomes 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.

It is true that this Court in Oxford > School's case (supra) in paragraph 7 had held that when declaration under Section 6 was quashed and the notification under Section 4(1) was upheld. the second declaration is required to be published within the same period prescribed in clause (i) of first proviso. In that case, the limitation of three years under clause (i) of the first proviso to sub-section <1) could not be complied with. The notification under Section 4(1) was held to be invalid. Unfortunately, the above distinction was not brought to the notice of this Court when the case was considered and decided. Similarly, the ratio in P.Chinnanna's case (supra) directly does not deal with the problem but observations in paragraph S do support the contention of the appellants as possession was not taken in these cases and the observations get attracted. But it was not necessary in that case to deal with that question since the possession under Section 17(2) was already taken and the land stood vested in the State.

This conclusion reached by us gets support from a decision of this Court rendered in Director of Income-tax, New Delhi & Anr v. Pooran Mal and Sons & Anr [(1975) 2 SCR 104] under the Income Tax Act, in an analogous situation. Under Section 132 of the Income Tax Act, 1961, it is mandatory that an order is requires to be made under sub- section (5) within one year from the date when the proceedings are taken. In that case proceedings were taken and order was made within one year, but without any notice to the assessee. The order was quashed. From the date of initial period of limitation the subsequent order was barred. It was contended that the action initiated under Section 132 was required to be done within the original period and an order made after expiry of the period, was invalid in law. This Court considered the contention and held that if the period of time prescribed under Section 132(5) is held to be mandatory, and if any direction was given by a Court in a writ proceedings, an order made in pursuance of such a direction would not be subject to limitation prescribed under Section 132(5). Even if the period of time fixed under Section 132(5) is held to be mandatory that requirement was satisfied when the first order was made. Thereafter, if any direction is given under Section 132(12) or by a court in writ proceedings, as in this case, it cannot be said that an order made in pursuance of such a direction would be subject to the limitation prescribed under Section 132(5). Once the order has been made within ninety days, the aggrieved person has got the right to approach the notified authority under Section 132(11) within thirty days and that authority can direct the Income-tax Officer to pass a fresh order. The contention that even such a fresh order should be passed within ninety days, would make the sub-sections (11) and (12) of Section 132 ridiculous and useless. It cannot be said that what the notified authority could direct under Section 132, could not be done by a High Court while exercising its power under Article 226 of the Constitution. To hold otherwise would make the powers of the Court under Article 226 wholly ineffective. The Court in exercising its powers under Article 226 has to mould the remedy to suit to the facts of a case. When Section 132(5) permits fn Income-tax Officer to pass an order within ninety days that power cannot in any way be whittled down by a rule made under that

section.

It is contended by Shri Naresh Kaushik that ratio as noted above was founded on concession and, therefore, the ratio would not be applied to the facts of this case. We are afraid, we cannot accept the contention. This Court had pointed out at page 111 at D that apart from the consent of the parties, even on point of law, that would be the result. Similar view was taken by a Full Bench of Madras High Court in K.C. Grounder & Anr. v. Govt. of Tamil Nadu & Anr. [AIR 1980 Madras 251].

We are of the opinion that running of the limitation should be counted from the date of the order of the court received by the Land Acquisition Officer and declaration is published within one year from that date. It would be consistent with the scheme of the Act and it would subserve the public purpose. Parliament amended the Act and prescribed limitation since the acquisition proceedings were unduly delayed for years and the owners of lands were put to hardship. If operation of limitation under clause [ii] of first proviso to Section 6(1) is not applied, we would come back to square and defeat the legislative purpose of limitation prescribed under the Act. The Government is bound under the order of the Court to hold an enquiry under Section 5A. Thereafter, if the Government still opines that the land is needed for publication purpose, declaration under Section 6 should be published within one year as indicated above. This interpretation would render judicial review efficacious and meaningful and public purpose subserved and the aggrieved owner would get an opportunity to vindicate his grievance. Thus, we hold that the limitation prescribed in clause (ii) of the first proviso to sub-section {1) of Section 6 would apply to publication of declaration under Section 6(1) afresh. If it is published within one year from the date of the receipt of the order of the Court by Land Acquisition Officer, declaration published under Section 6(1) would be valid.

The second contention that there would be two dates of notification under Section 4(1) as initially published and the one deemed to be published consequence to upholding of second declaration under Section 6(1) and that the compensation under Section 23(1) is required to be determined with reference to second date, is untenable. The declaration under Section 6(1) gives only conclusiveness to the public purpose specified in Section 4(1) and the notification under Section 4(1) still remains valid which is relevant for the purpose of computation of market value as envisaged under Section 23(1) of the Act. When the Court upholds the declaration it would relate back to the date of publication under Section 4(1) Therefore, there are no two dates for the purpose of computation of the market value as contended for the purpose of enquiry under Section 5A is to determine whether the land is needed for the public purpose and the affected owner or interested person gets a right to show that the public purpose mentioned in Section 4(1) is not the public purpose or some other land is more suitable or is available for the public purpose or his lands need to be excluded from public purpose as the proposed land may be in excess of requirement. Once the Government, after holding the enquiry has considered the objections and decided that the land is needed for public purpose, declaration published under Section 6 would become conclusive of the public purpose. Nonetheless, relevant date for Section 23(1) is the date of the publication of the notification under Section 4(1).

Admittedly, in this case the second declaration was published within one year even from the date of the order passed by the High Court and, therefore, the view of the Division Bench is required to be upheld. Thus, we hold that the declaration published under Section 6(1) on May 13, 1989 is valid

and the notification dated January 22, 1987 under Section 4(1) does not become invalid. The Land Acquisition Officer should conduct and complete award enquiry within one year from the date of the receipt of the order of this Court.

The appeals are accordingly dismissed but, in the circumstances, without costs.