

Supreme Court of India

Krishi Utpadan Mandi Samiti & Anr vs Makrand Singh & Ors on 1 December, 1994

Equivalent citations: 1995 SCC (2) 497, JT 1995 (1) 487

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

KRISHI UTPADAN MANDI SAMITI & ANR.

Vs.

RESPONDENT:

MAKRAND SINGH & ORS.

DATE OF JUDGMENT 01/12/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 SCC (2) 497 JT 1995 (1) 487

1995 SCALE (1) 48

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. These appeals by special leave arise from the judgments of the Division Bench of the High Court of Allahabad dated, January 22, 1991 and May 13, 1992 made in C.M.W.P. No.4177/85 and C.M.W.P. No.7146/88. The lands bearing plot No.325 situated in village Chiloli in Dist. Farrukhabad, of a total extent of 5.13 acres out of 8.21 woes was notified and published in the State Gazette on February 19, 1982 for acquisition to establish Model Market Yeard of Krishi Utpadan Mandi Samiti, Kaimganj in Dist. Farrukhabad. The declaration under s.6(1) was published in the Gazette on February 7, 1985, in the newspapers on June 4, 1987 and the substance in the locality subsequent thereto. The respondents who owned about 1 acre and odd land have challenged the validity of the declaration on the ground that it was published after the expiry of three years. Therefore, the notification under

s.4(1) and declaration under s.6(1) should be deemed to be void. That contention, was found favour with the High Court and it allowed the writ petitions. Thus these appeals by special leave.

3. The only question is whether the High Court was right in its conclusion that the, declaration under s.6 was published after 3 years and the last of the publications shall be the last date for the purpose of computing three years period envisaged in clause (i) of the proviso to sub- s.(1) of s.6 of the Land Acquisition Act, 1894 (for short, 'the Act') as amended by Land Acquisition (Amendment) Act 68 of 1984. Section 6(1) postulates that subject to the provisions of part VII of the Act, when the appropriate Government was satisfied, after considering the report, if any, made under s.5-A(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 that any land covered by the same notification under s.4(1), irrespective of whether one report or different reports has or have been made (wherever required) under s.5-A(2). The proviso itself places an embargo and limitation on the exercise of the power under s.6(1) and publication of the declaration in the gazette with the language thus- : " provided that any land covered by notification 4(1) 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 yews from the date of the publication of the notification under s.4(1). Sub-s.(2) provides that every declaration shall be published in official Gazette, in two daily newspapers in the locality in which the land is situated 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 land is situated, 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. Sub- s.(3) makes such declaration as 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 the manner hereinafter appearing. (emphasis supplied)

4. The question, therefore, is that which date of the publications in three steps i.e. publication in the Gazette, two news papers and local publication to be the last date for the purpose of computing three years limitation prescribed in Clause (i) of the proviso to s.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. But on deeper probe, it does not appear to be so and such a construction would easily defeat the public purpose and deflects the course of justice. So it is necessary to understand the scheme and policy of the Act to get the crux of the question. It is seen that Sub-s.(1) of s.4 gives power of eminent domain to the State to acquire the land, whenever it appears to it that the land is needed or likely to be needed for any public purpose or for any company, by a notification published in the official gazette and two daily newspapers circulating in that area and at least one of them should be in the regional language and also the Collector is enjoined to cause public notice of the substance of notification to be given at convenient places in the said locality in which the land is situated. It is also mentioned thereunder that the last date of such publication and the giving of such

public notice "being hereinafter referred to " as the date of publication of the notification. It would be seen that the purpose of notification under s.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 s. 11 as well as to determine the market value prevailing as on the last of the dates to be the date and the award should be made within a period prescribed by s. 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.

5. Clause (i) of the proviso to s.6(1) mandates the publication of the declaration in the official gazette and it should be within three years from the date of the publication of the notification under s.4(1) i.e. the last of the dates referred to in s.4(1). The word 'publish' emphasises the act accomplished i.e. declaration under s.6(1) being published in the official Gazette. The last date under s.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 s.6(1) of the Act as it was already done, but purposes to be followed hereinafter. Otherwise language would have been "hereinbefore done". Sub-s.(2) as such did not prescribe any limitation within which the declaration under s.6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award under s. 11 or in computation of the period prescribed in s. 11A. The publication of the declaration in two daily newspapers having circulation in the locality one of which in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is a procedural part. It appears that these publications are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose under s.6(1) and also to provide limitation to make the award under s. 11 by the Collector. In other words, the limitation prescribed under s. 11A is for the purpose of making the award and if the Collector fails to do so, the entire proceeds under s.4(1) and 6(1) shall stand lapsed. If this consistent policy of the Act is understood giving teeth to the operational efficacy to the 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 (i) of proviso to subs.(1) of s.6 is complete, as soon as the declaration under s.6(1) was published in the official gazette. That will be the date for the purpose of computation of three years period from the last of the dates of the publication of the notification under s.4(1). The procedural ministerial acts prescribed under sub-s.(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 s.6(1) of the Act. We cannot agree with Sri 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, Sri Padhaya, 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 or management with the lower level officials. The High Court, therefore, was not right in its conclusion that since declaration was published in the

newspapers on June 4, 1987, after the expiry of three years, the declaration under s.6(1) and the notification under s.4(1) stood lapsed. It is clearly illegal. The further contention of the learned counsel for the respondent that other contention raised in the writ petitions need to be dealt with and so the cases need to be remanded; has no force for the reason that though they were pleaded but the parties have chosen to argue only the above contention. So it is not a fit case for remand. The writ petitions would stand dismissed. The appeals are accordingly allowed but in the circumstances without Costs.