

Supreme Court of India

Sangappa Gurulingappa Sajjan vs State Of Karnataka on 3 December, 1993

Equivalent citations: 1994 AIR 848, 1994 SCC Supl. (1) 583

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

SANGAPPA GURULINGAPPA SAJJAN

Vs.

RESPONDENT:

STATE OF KARNATAKA

DATE OF JUDGMENT 03/12/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

RAY, G.N. (J)

CITATION:

1994 AIR 848

1994 SCC Supl. (1) 583

JT 1993 (6) 615

1993 SCALE (4) 576

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. These review petitions have been filed against the order dated August 13, 1993 dismissing the SLPs. When it was represented that on similar cases notice was issued, we issued notice and now it transpires that the other cases are not similar on the point in issue. We have heard learned counsel for the parties. Six acres 35 guntas of land situated in Talikote Town, District Bijapur, Karnataka, bearing Survey No. 267/2 was notified under Section 4(1) of the Land Acquisition Act, 1894 for public purpose namely, for construction of S.K. Arts and Commerce College. It was published on May 17, 1984. Under Section 6(1) a declaration was also published in the Gazette on January 31, 1985. Thereafter the appellant filed Writ Petition No. 11804 of 1985 wherein the High Court of Karnataka found that the petitioner had not received a notice under Section 5-A. As a result, by order dated October 31, 1988 while setting aside the declaration under Section 6(1) dated January 31, 1985 directed the petitioner to be present before the Land Acquisition Officer for inquiry.

Subsequently, the petitioner appeared and his objections were considered and after overruling the objections, declaration under Section 6(1) was again published on June 15, 1989. It would appear that an award was also passed after service of notice under Sections 9 and 10. Possession of the land was taken. He sought for and reference under Section 18 of the Act was made. The petitioner again, second time, filed Writ Petition No. 13127 of 1989 challenging the declaration under Section 6(1). He also sought stay of dispossession which was granted on August 2, 1989. Ultimately the writ petitions and the writ appeals were dismissed on February 1, 1993 and on April 22, 1993, respectively.

2. The petitioner contends that the declaration under Section 6 was not published within three years from the date of the notification dated May 17, 1984 and, therefore, the notification under Section 4(1) shall stand lapsed. We find no substance in the contention. Firstly, the case would be dismissed on a short ground that though this plea was available to the petitioner, he did not raise the same in the first instance and that, therefore, by operation of Section 11 CPC, it operates as constructive res judicata. Under first proviso to Section 6(1), as amended in the Land Acquisition (Amendment) Act 68 of 1984 through Section 6 thereof that (i) no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1) shall be published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, after the expiry of three years from the date of publication of the notification; or (ii) 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. In other words, under the pre-Amendment Act the declaration under Section 6(1) shall not be published after the expiry of three years from the date of Section 4(1) publication and after the commencement of the Amendment Act, the State has no power to proceed with the matter and publish the declaration under Section 6(1) after the expiry of one year from the date of the publication of the notification. Explanation I thereto provides the method or mode of computation of the period referred to in the first proviso, namely, the period during which "any action or proceeding" be taken in pursuance of the notification issued under sub-section (1) of Section 4 being "stayed by an order of a court shall be excluded". In other words, the period occupied by the order of stay made by a court shall be excluded. Admittedly, pending writ petition on both the occasions the High Court granted "stay of dispossession". Admittedly, the validity or tenability of the notification issued and published under Section 4(1) is subject of adjudication before the High Court. Till the writ petitions are disposed of or the appeals following its heels, the stay of dispossession was in operation. Though there is no specific direction prohibiting the publication of the declaration under Section 6, no useful purpose would be served by publishing Section 6(1) declaration pending adjudication of the legality of Section 4(1) notification. If any action is taken to pre-empt the proceedings, it would be stigmatised either as "undue haste" or action to "overreach the court's judicial process". Therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in computation of the period of three years covered by clause (1) of the first proviso to the Land Acquisition Act. When it is so computed, the declaration published on the second occasion is perfectly valid. Under these circumstances, we do not find any justification to quash the notification Published under section 6 dated May 17, 1984. The review petitions are accordingly dismissed. No costs.