2018 INSC 493

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4265-4266 OF 2008

RAJ KUMAR GANDHI ... APPELLANT

VERSUS

CHANDIGARH ADMINISTRATION & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NOS.4267-4268 OF 2008

AVTAR SINGH (D) THR. LRS. ... APPELLANT

VERSUS

UNION TERRITORY OF CHANDIGARH & ANR. ... RESPONDENTS

AND

CIVIL APPEAL NO.6002-6003 OF 2009

KAILASH WATI & ORS. ... APPELLANTS

VERSUS

UNION OF INDIA & ORS. ... RESPONDENTS

J U D G M E N T

ARUN MISHRA, J.

1. The appeals have been filed aggrieved by the judgment and order passed by the High Court, dismissing the writ petitions filed to question the land acquisition made with respect to Scheme No.3, Pocket No.8.

2. A notification under section 4 of the Land Acquisition Act, 1894 (for short, "the Act") was issued on 31.1.1992. Public purpose mentioned was for the development of residential cum commercial complex in scheme No.3. Declaration under section 6 of the Act was issued on 29.1.1993. The petitioners filed a writ petition on 28.7.2004 questioning the acquisition as well as the award dated 5.3.2003. According to the petitioners it was passed after the lapse of three years of the notification issued under section 6 of the Act after excluding the period of interim stay granted by the court. The acquisition had lapsed. The second ground raised to assail the award was that it was not approved by the appropriate Government but by the Advisor to the Administrator of Union Territory.

3. In the reply filed by the Chandigarh Administration, it was contended that as many as 31 writ petitions were filed challenging the said notifications issued under sections 4 and 6 respectively. In the writ petitions including C.W.P No.2126 of 1993, further land acquisition proceedings were stayed by an interim order dated 24.2.1993. Ultimately these writ petitions were dismissed by the Division Bench on 22.9.1995. Thereafter, yet another writ petition C.W.P. No.4433 of 1996 was filed in which further proceedings stayed till further orders. It was allowed by a short order dated 11.8.1997

without noticing the earlier stay of proceedings and the notification under section 4 and declaration under section 6 were quashed. Chandigarh Administration then filed review application which was allowed by a detailed order dated 31.1.2003 and order dated 11.8.1997, allowing writ petition, was recalled. A number of other writ petitions were also filed being C.W.P. No.14804 of 1993, C.W.P. No.14892 of 1998, and C.W.P. No.14903 of 1998. There was a stay of further proceedings but ultimately these were dismissed on 30.9.1998. Another batch of writ petitions being C.W.P. No.10287 of 1997, C.W.P. No.10668 of 1997, C.W.P. No.10676 of 1997, C.W.P. No.10589 of 1997, C.W.P. No.10960 of 1997, C.W.P. No.10661 of 1997, C.W.P. No.12043 of 1997 and C.W.P. No.16715 of 1997 were also filed. There was a stay of further proceedings but ultimately these writ petitions were also dismissed by the Division Bench on 4.8.1998. Thus, there were 43 different writ petitions. Further proceedings remained under stay from 24.2.1993 to 31.1.2003. Thereafter, public notice under section 9 was issued on 6.2.2003 for filing the objections up to 28.2.2003. Public notice to this effect was published in leading newspapers on 8.2.2003 and 9.2.2003. Individual intimations were also sent to all the landowners to file their objections. Thereafter, award was pronounced on 5.3.2003 and again *ex parte interim stay* had been obtained on 1.3.2005 by mentioning the wrong facts. After

excluding the period of stay the award had been pronounced within the period of two years from the date of declaration published under section 6 of the Act. The construction raised was unauthorised and against the provisions of the Periphery Control Act. Therefore, the exemption was not granted. Notifications under section 4 were issued after sanctioning by the Administrator. Thus, there was no illegality in the acquisition.

4. The High Court by the impugned judgment and order has opined that considering the various periods of stay mentioned in the order, the award has been passed within a period of 701 days from the date of the declaration issued under section 6 and the decision in *Kailash Wati & Ors. v. Union of India*, C.W.P. No.11352 of 2004 had been followed in a large number of cases. They were related to the same notification of the very same Pocket or in respect of the other Pockets of the same scheme No.3. Notifications under section 4 with respect to scheme No.3 were issued on the same day so also declaration under section 6 of the Act as there was one common purpose and scheme No.3 was formed for the development of residential-cum-commercial complex, college building, and sports stadium. The decision in *Devinder Kumar v. UT Chandigarh* – C.W.P. No.14804 of 1998 was rendered on 30.9.1998 and *Kailash Wati* (supra) was decided on

14.12.2006. File of the award was sent for approval to the Government and was approved by the Advisor.

5. This Court has also affirmed the judgment of the High Court in C.W.P. No.10297 of 1997 and C.W.P. No.10580 of 1997 decided on 4.8.1998 in S.L.P. [C] Nos.974-975 of 1999 --- *Puran Chand Gupta & Ors. v. Union of India & Ors.* which was dismissed on 1.2.1999. In *Devinder Kumar* (supra) it was held that the moment the court grants stay, it becomes impracticable, if not impossible, to execute the scheme for the land stands notified for acquisition and everything comes to a standstill. It is wholly immaterial whether or not a particular individual had obtained stay *qua* acquisition of his land or not. The concerned authorities could not have proceeded further to execute the same. The purpose of the scheme could not be achieved if the stay was granted. With respect to land in Pocket Nos.6 and 8, in view of stay granted in any of the notifications/declarations under sections 4 and 6 either pertaining to Pocket No.8 or Pocket No.6. As the writ petitions have been dismissed by the High Court, hence the appeals have been preferred.

6. It was strenuously urged by learned counsel appearing on behalf of the appellants that the award passed is violative of the proviso to section 11A and the interpretation put on the explanation by the High

Court is erroneous. Therefore, award having been passed beyond two years of the declaration under section 6 of the Act, the acquisition stood lapsed. Learned counsel has submitted that the land is in Pocket No.8. In the case of *Partap Chand v. Union Territory, Chandigarh*, CWP No.2126 of 1993, the interim stay granted could not have been applied to the declaration under section 6 issued in the instant case with respect to Pocket No.8 which was issued on 29.1.1993 as the land of Partap Chand was in Pocket No.7 for which a different notification was issued under section 4 so also the declaration under section 6. The High Court has also counted the period of stay in *Puran Chand & Ors. v. U.T. Chandigarh* which was with respect to Pocket No.7. The aforesaid decisions were followed in the cases of *Puran Chand Gupta* (supra), *Kailash Wati* (supra), *Avatar Singh* and *Raj Kumar Gandhi* while dismissing the writ petitions.

7. It was further urged by the learned counsel that the decision of this Court in Government of *Tamil Nadu & Anr. v. Vasantha Bai* (1995) Supp 2 SCC 423 and *Abhey Ram (Dead) by LRs. & Ors. v. Union of India & Ors.* (1997) 5 SCC 421 had been misinterpreted to the extent that the stay orders granted in different notifications were also extended to other notifications. The law laid down by this Court is that the stay granted in one case filed by the landowner can be extended to

the land of other landowners. The abovesaid logic could not have been applied to different notifications with respect to different Pockets of the land. There is a distance of about 100 ft. There is a road in-between. There was no need to describe them in Pocket Nos.7 and 8 if they were not different.

8. It was also urged on behalf of the appellant that the award under section 11 is violative of the proviso to section 11 as the approval of the appropriate Government has not been taken. Award was approved by the Advisor on 28.2.2003. Chandigarh being Union Territory, the Administrator ought to have approved the award as per Article 239 of the Constitution of India. Therefore, the award suffers from the vice of not being previously approved by the appropriate Government.

9. The first question for consideration is whether the award was passed within the period stipulated under section 11A from the date of publication of declaration under section 6 excluding the period of stay. It is apparent from the notification issued under section 4 and declaration under section 6 that notification under section 4 had been issued for the development of residential-cum-commercial complex and for construction of college building and sports stadium etc. by the Notified Area Committee, Manimajra, Union Territory Chandigarh and declarations under section 6 had also been issued for the aforesaid

purpose *i.e.* Scheme No.3. Though different notification under section 21 and declaration under section 6 had been issued, they are related to scheme No.3 only. Scheme No.3 is one and this aspect has been considered by the High Court in the decisions of *Puran Chand Gupta & Ors.* (supra) and *Devinder Kumar* (supra) and the matters have travelled to this Court with respect to same notification and a 3-Judge Bench of this Court in the case of *Puran Chand Gupta & Ors. v. Union of India & Ors.*, C.A. Nos.663-664 of 2000 decided on 8.8.2001 has observed:

> "The point at issue is covered by the judgment of a Bench of three learned Judges delivered in Yusufbhai Noormohmed Nendoliya vs. State of Gujarat & Anr. (1991 (4) S.C.C. 531). That Judgment has been subsequently followed by several Benches of this court. It has been urged by Mr. R.K. Jain, learned counsel for the appellants, that the view taken therein can be contrary to the interest of the landholder and that, therefore, the Section should be so construed that it refers only to an order of stay obtained by a particular landholder in whose case alone the Explanation would apply. Having regard to the view that has consistently been taken by this court over several years, we are not disposed to take a contrary view and refer the matter to a larger Bench.
> Accordingly, the civil appeals are dismissed.
> No order as to costs."

10. In *Devinder Kumar* (supra) also the question about Pocket Nos.8 and 6 was considered and the High Court has held that it would not make any difference in the matter as the scheme was one. Thus, it is apparent that in view of the decision in *Puran Chand Gupta* (supra) rendered by a 3-Judge Bench of this Court, no case for interference is

made out on merits of the case. As the question raised is similar as urged in the aforesaid matter, a large number of matters were decided along with *Puran Chand* (supra) by the High Court. When the scheme was same *i.e.* No.3, obviously authorities could not have proceeded further pocket-wise and they were justified not to proceed further in view of the various stay orders granted by the High Court from time to time with respect to different pockets of the scheme No.3. In view of the decision in Puran Chand Gupta (supra) which has dealt with the case by a reasoned order, we do not find it appropriate to interfere on the aforesaid ground urged by learned counsel appearing on behalf of the appellants.

11. In *Abhey Ram* (supra) this Court has considered the extended meaning of the words "stay of the action or proceedings" and referring to various decisions, observed that any type of the orders passed by the Court would be an inhibitive action on the part of the authorities to proceed further. This Court has observed thus:

> "9. Therefore, the reason given in *B.R. Gupta v. U.O.I. and Ors.* 37 (1989) DLT 150 (Del) (DB) are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-a-vis the writ petitioners therein. The question thus arise for consideration is: whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact,

prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters are disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, *Yusufbhai Noormohmed Nendoliya v. State of Gujarat and Anr*. AIR 1991 SC 2153; Hansraj Jain v. State of Maharashtra and Ors. JT (1993) 4 SC 360; Sangappa Gurulingappa Sajjan v. State of Kamataka and Ors. (1994) 4 SCC 145; Gandhi Grah Nirman Sahkari Samiti Ltd. Etc. Etc. v. State of Rajasthan and Ors. JT (1993) 3 SC 194; *G. Narayanaswamy Reddy (dead) by Lrs. and Anr. v. Govt. of Karnataka and Anr.* JT (1991) 3 SC 12 and *Roshanara Begum Etc. v. U.O.I. and Ors.* (1986) 1 Apex Dec 6. The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 to be valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent union. We express no opinion on its correctness, though it is open to doubt."

12. In *Om Parkash v. Union of India & Ors.* (2010) 4 SCC 17, this Court as to the effect of interim stay has observed thus:

> "72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the

> matter by issuing declaration/notification under Section 6 of the Act."

Thus, it is apparent that when the stay has been granted in one matter and when the scheme was one, authorities were justified in the facts and circumstances of the instant case to stay their hands. Moreover, a large number of writ petitions have been dismissed by the High Court and orders have attained finality and this Court has also dismissed the appeals/S.L.P.s. Thus, we are not inclined to take a different view in the instant case.

13. Learned counsel has also referred to the decision of *Government of T.N. & Anr. v. Vasantha Bai* (1995) Supp. 2 SCC 423, in which this Court has considered the object of section 11A as delay in passing the award would cause untold hardship and in case the award was not passed within the time limit, the acquisition would lapse. *Yusufbhai's* decision (supra) has been relied upon so also the decision of *Singappa v. State of Karnataka* (supra). There is no dispute with the proposition laid down in the aforesaid decisions. However, facts of each and every case have to be seen and whether time can be excluded or not, it has also been laid down that the time spent during which there was stay, has to be excluded. Thus, no sustenance can be derived from the aforesaid decision of *Vasantha Bai* (supra) by the appellants in which it was observed:

> "5. Parliament enacted Section 11A with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award. The price to be paid for the land acquired under compulsory acquisition is the prevailing price as on the date of publication of Section 4(1) notification. The delay in making the award deprives the owner of the enjoyment of his property or to deal with the land whose possession has already been taken, and delay in making the award would subject the owner of the land to untold hardship. With a view to relieve hardship to the owner or person interested in the land and to remedy the lapses on the part of the Land Acquisition Officer in making the award, Section 11A was enacted which enjoins making of award expeditiously. So, the outer limit of two years from the last of the dates of publications, envisaged in Section 6 of the Act was fixed. If he fails to do so, all the acquisition proceedings under the Act would stand lapsed and the owner of the land or person interested in the land is made free to deal with the land as an unencumbered land. Cognizant to the fact that the acquisition proceedings are questioned in a court of law, the Parliament enacted Explanation to Section 11-A declaring that the period during which action or proceedings were taken in pursuance of the declaration under Section 6 is stayed by an order of the court, the same "shall be excluded".

14. Learned counsel has also relied upon *Yusufbhai Noormohmed Nendoliya v. State of Gujarat & Anr.* (1991) 4 SCC 531 in which this Court has opined that the Explanation to section 11A is in the widest possible terms and there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under section 11. Therefore, the period of an injunction obtained by the landholder from the High Court restraining the land acquisition authorities from taking possession of the land has to be excluded in computing the period of two years. The decision is of no help to the submission espoused on

behalf of the appellant. This Court in *Yusufbhai Noormohmed Nendoliya* (supra) observed:

> "7. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceeding referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that Section 11-A is intended to limit the benefit conferred on a landholder whose land is acquired after the declaration under Section 6 is made to in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the land-holder. In order to get the benefit of the said provision what is required, is that the land-holder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those land-holders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment."

15. Reliance has also been placed on *Sangappa Gurulingappa Sajjan v. State of Karnataka & Ors.* (1994) 4 SCC 145, in which this Court has laid down that in case there was a stay of dispossession, no useful purpose would be served by issuing a declaration under section 6. Therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in the computing period. In *Sangappa Gurulingappa Sajjan* (supra) this Court observed:

"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 C.P.C. 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 the 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 mater and publish the declaration under Section 6(1) after the expiry of one year from the date of the publication of the notification. Explanation 1 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 of 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 "over-reach 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."

16. In the instant case, various notifications and declarations under sections 4 and 6 were issued on the same date with respect to the same scheme. Thus, they were part and parcel of the same scheme. Thus, the submission raised by learned counsel for the appellant stands rejected.

17. The second and the last submission raised by learned counsel for the appellant is that the award had been approved by the Advisor to the Administrator whereas it was required to be approved by the Administrator. In this connection, reliance has been placed upon the Chandigarh (Delegation of Powers) Act, 1987 (Act No.2 of 1988). Section 3 thereof provides that any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge under any law in force in the Union Territory of Chandigarh may be exercised or discharged also by such officer or other authority as may be specified in this behalf by the Central Government or the

Administrator by notification in the Official Gazette, and any appeal or application for revision can be transferred for disposal to an officer or other authority competent under sub-section (1) to dispose of the same. Ex post facto authorisation dated 7.12.2015 has also been placed on record given by the Administrator authorising the Advisor and validating/approving awards. As the award was approved by the Advisor to the Administrator under his delegated authority, *ex-post facto* sanction had been granted by the Administrator to all the awards.

18. Apart from that the question of an award having been approved by the advisor to the Administrator was raised in C.W.P. No.17935 of 2014 – *Gagandeep Kang & Ors. v. Union Territory of Chandigarh*. The writ petition was dismissed by the High Court and the S.L.P. filed in this Court has also been dismissed by this Court. S.L.P. [C] No.355 of 2015 has also been dismissed along with two other matters by this Court.

19. In view of the various decisions rendered in the same matter which have attained finality, it would not be appropriate to take a different view. Reliance has been placed by learned counsel for the appellant on the decisions of this Court in *Surinder Singh Brar & Ors. v. Union of India & Ors.* (2013) 1 SCC 403 and *Gurbinder Kaur Brar &*

Anr. v. Union of India & Ors. (2013) 11 SCC 228. In both the cases, the matter was with respect to sanction for land acquisition which was not granted by the appropriate Government *i.e.*, the Administrator. In the instant case, the Advisor had approved the award. Since there is *ex-post facto* approval and a large number of other matters have already been dismissed, it is not considered appropriate to make interference in this matter on the aforesaid ground, particularly when sanction for acquisition had been granted by the appropriate authority, is not in dispute in the instant matter.

20. Resultantly, the appeals being devoid of merits deserve dismissal and the same are hereby dismissed. Parties to bear their own costs, as incurred.

.....J.
(ARUN MISHRA)

.....J.
UDAY UMESH LALIT)

NEW DELHI;
MAY 11, 2018.