SHRI ABHEY RAM (DEAD) BY LRS. AND ORS. A

v.

UNION OF INDIA AND ORS.

APRIL 22, 1997

[K. RAMASWAMY, S. SAGHIR AHMAD B
AND G.B. PATTANAIK, JJ.]

Land Acquisition Act, 1894 :

Ss. 4(1), 5-A and 6(1) Explanation II—Delay in publication of declaration u/s. 6(1)—Stay by High Court of a composite notification u/s. 4(1) in respect of some of the land owners, and limiting of controversy to quashing of declaration u/s. 6 for non-compliance with s. 5A in respect of writ petitioners before the High Court—Effect of as regards other land owners—Held declaration qua the appellants has not been barred by proviso to s. 6 nor is it vitiated by any error of law warranting interference—In view of the fact that the notification under s. 4(1) is a composite one and, equally the declaration under s. 6 is also a composite one, unless the declaration under s. 6 is quashed in toto, it does not operate as if that the entire declaration requires to be quashed—Besides, the appellants had not filed any objections to the notice issued under s. 5-A. C D E

Delhi Development Authority **v.** *Sudan Singh & Ors. Etc.,* **45 (1991) Delhi Law Times 602 SC, held not applicable.**

Yusufbhai Noormohmed Nendoliya **v.** *State of Gujarat & Anr.,* **[1991] 4 SCC 531 and** *B.R. Gupta* **v.** *U.O.I. & Ors.,* **37 (1989) Delhi Law Times 150, referred to.** F

Words and phrases :

"Stay of the action or proceeding"—Meaning of.

Yusufbhai Noormohmed Nendoliya **v.** *State of Gujarat & Anr.,* **[1991] 4 SCC 531;** *Hansraj Jain* **v.** *State of Maharashtra & Ors.,* **(1993) 4 JT 360;** *Sangappa Gurulingappa Sajjan* **v.** *State of Karnataka & Ors.,* **[1994] 4 SCC 145;** *Gandhi Grah Nirman Sahkari Samiti Ltd. Etc. Etc.* **v.** *State of Rajasthan & Ors.,* **(1993) 3 JT 194;** *G. Narayanaswamy Reddy (dead) by Lrs. & Anr.* **v.** *Govt. of Karnataka & Anr.,* **(1991) 3 JT 12 and** *Roshnara Begum Etc.* **v.** G H

A *U.O.I. & Ors.*, **(1986) 1 Apex decision 6, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3358 of 1997.

From the Judgment and Order dated 2.9.87 of the Delhi High Court
B in C.W. No. 2657 of 1985.

Rajinder Sachhar and B.R. Sabharwal for the Appellants.

Ravinder Sethi, V.B. Saharaya, Shashi Kiran and D.S. Mehra for the Respondents.

C

The following Order of the Court was delivered :

Leave granted. Heard counsel for the parties.

This appeal by special leave arises from the judgment of the Division
D Bench of the High Court of Delhi passed on 2.3.1987 in C.W. No. 2657/85.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the "Act") was published on November 5, 1980 acquiring a large extent of land admeasuring 50,000 bighas situated in several villages including Khirkee village. The land in Khirkee village admeasures 1011 bighas of
E which the appellant is in possession of 25 bighas. Declaration under Section 6 was published on June 7, 1985. Challenging the declaration, several writ petitions came to be filed in the High Court. The primary contention was that the declaration having been published after 3 years, is barred by law. The notification under Section 4(1) stands lapsed. Similar to the appellants,
F several persons approached the High Court. The Full Bench in *Balak Ram Gupta* v. *Union of India,* C.W.P. No. 1639/85 decided on May 27, 1987 upheld the validity of the notification under Section 4(1) and declaration under Section 6 on the ground that some of the land owners whose land was covered under the common notification under Section 4(1) had already approached the High Court and obtained stay of further proceedings
G including publication of declaration under Section 6. As a consequence, the stay obtained continuing in operation stood excluded by operation of Explanation II to Section 6(1) of the Act. Accordingly, the declaration published under Section 6(1) was held valid in law. When the present writ petition had come up for hearing, the Division Bench of the High Court
H passed an order stating that the controversy raised was covered by the

judgment of the Full Bench and no other point has been raised or argued before the Division Bench. The Writ Petition has been dismissed. Thus this appeal by special leave.

Shri Rajinder Sachhar, learned senior counsel appearing for the appellants, contends that the view taken by the Full Bench of the High Court is not correct in law. In view of the fact that the appellants had not obtained any stay pending the writ petition qua the appellants, there is no prohibition for the respondent-U.O.I., to proceed further by publishing the declaration under Section 6 and that, therefore, the declaration having been published beyond three years, is invalid in law. He further contends that after the Full Bench judgment was rendered, the matter was remitted to the Division Bench, which quashed the declaration under Section 6 on the ground that the objections filed under Section 5A were not properly considered and that, therefore, publication of the declaration under Section 6 was quashed in respect of the writ petitioners therein. The same benefits should enure to the appellants as well. In support thereof, he placed reliance on the judgment of this Court in *Delhi Development Authority* v. *Sudan Singh & Ors.*, (1991) Delhi Law Times 602. He also sought support from the judgment in *Yusufbhai Noormohmed Nendoliya* v. *State of Gujarat & Anr.*, [1991] 4 SCC 531. Learned counsel for the respondents, on the other hand, contends that the appellants have not filed any objections before the Land Acquisition Collector for enquiry under Section 5A. Therefore, the need to consider their objections does not arise. The Division Bench, after remittance, confined the controversy of quashing the declaration in respect of the lands of the writ petitioners. Therefore, it operates only with regard to them and not the persons who were not eonominee parties to that judgment. In fact, many persons had accepted the award, received the compensation and sought and had reference. Therefore, the publication of the declaration under Section 6 was not bad in law on the ground of non-consideration of the objections. Under these circumstances, the view taken by the Full Bench is correct in law.

Having regard to the respective contentions, the question that arises for consideration is : whether the view taken by the Division Bench and the Full Bench in *Balak Ram Gupta's* case is correct in law? It is an admitted position that notification under Section 4(1) was published on November 5, 1980 and the declaration under Section 6(1) came to be published on June 7, 1985. Therefore, *ex facie*, it is beyond three years as

A contemplated under the proviso to section 6(1) of the Act. The question is : whether the stay obtained by some of the persons would enure the benefit to other persons under Explanation II to Section 6? It is seen that notification under Section 4(1) is a common notification with reference to all the lands situated in 12 villages. The Full Bench has noted in paragraph 6 as under :

B

> "6. In the case before us, the declaration under S. 6 were made on 27.5.1985, 6.6.1985, 7.6.1985 and 26.2.1986 (the individual details of which need not be set out here). This is clearly beyond a period of three years from the dates of the notifications under s. 4, viz. 5.11.1980 and 25.11.1980. They are clearly barred by limitation
> C under the proviso to S. 6(1) unless the period can be got extended by invoking the terms of the explanation newly substituted in 1984 (which is the attempt of the respondents here)."

It has extracted the various orders passed by the Court from time to
D time in paragraphs 20, 21 and 22 which read as under :

> "20. It may be useful here to refer to the stay orders which the respondents rely on to bring the S. 6 declarations within the scope of the explanation. In *Munni Lal* v. *Lt. Governor,* (CW 426 of 1981) wherein the validity of the notification dated 25.11.1980 was chal-
> E lenged by certain residents of village Satbari, the following interim order was passed in CM 668/81 on 18.3.1981.
>
> '.....Case for 27.4.1981. In the meanwhile, respondents 1 and 2 are restrained from issuing any declaration under S. 6.....'.
>
> F The above interim order was made absolute on 4.5.1981, when the writ petition was admitted.;
>
> '.....Stay order passed on 18.3.81 made absolute till further orders with liberty to the appropriate authorities of the respondents to take action according to law if the existing conditions and
> G requirements of the Master Plan and Zonal Plan, if any, are breached or violated by the petitioners'.
>
> This writ petition was dismissed on 15.11.1983 (see ILR (1985) 1 Delhi-469 : AIR (1984) NOC 230). In *Laguna Farms (P) Ltd.* v. *Lt. Governor* (CW 1251/81) also, the petitioner challenged the
> H validity of the S. 4 notification dated 25.11.80. The writ petition

was admitted on 26.5.81 when an interim order in the following terms was also made in CM 1717/81. A

'Notice for 29.7.1981. In the meanwhile, we stay further proceedings in consequence of the impugned notification under S. 4 and declaration under S. 6 Land Acquisition Act'.

B

This order was made absolute on 29.7.1981 and this C.W. along with a number of other C.Ws., was disposed of on 15.11.83 along with C.W. 426/81. In *Gogia* v. *Lt. Governor,* (CW 175/82) the writ petition was admitted on 21.1.82. An interim order was made in C.M. 250/82 on the same date staying "further proceedings in pursuance of the impugned notification dated 25.11.80". This order was made absolute on 4.3.82 "with liberty to the respondents to move this Court for variation of the order, if so advised. "This C.W. was also disposed of on 15.11.83 along with C.W. 426/81 (though the list of cases given at the top of the judgment in C.W. 175/81, apparently by oversight). An order similar in terms to that set out above was made on 11.2.82 in CM 4514/81 in *Ansal Housing & Estates Pvt. Ltd.* v. *Lt. Governor,* (CW 2451/81); *Vijay Narain* v. *Lt. Governor,* (CW 2450/81); *Smt. Bherco Duggal* v. *Lt. Governor,* (CW 2468/81); *Daryao Singh* v. *Lt. Governor,* (CW 2135/82). Except the last, other were disposed of on 15.11.83 with CW 426/81. C D E

21. The operation of the notification dated 5.11.1980 was stayed in similar terms by orders dated 30.9.81 and 11.2.82 in CM 4226/81 in CW 2263/81 (*Bishamber Dayal* v. *Lt. Governor*), a writ petition filed by some of the residents of the village of Tughlakabad following similar orders in *Om Prakash* v. *Lt. Governor,* (CW 1250/81). These writ petitions were also disposed of on 15.11.83. But this list is not exhaustive and it appears, there are other writ petitions pending in this court today in which the stay order passed continues to be in force (e.g. CW 861/82). F

22. Reference has also been made on behalf of the petitioners to certain orders in CW 1203/82 (*Budh Vihar Welfare Society* v. *Lt. Governor)*, though that was a writ petition which challenged the validity of a S. 4 notification dated 31.12.1981. In that case, the court had granted an interim order on 23.4.82 "restraining the respondents from taking further proceedings in consequence of G H

A the impugned notification" and this was apparently, later made absolute till disposal of the writ petition. The petitioner thereafter moved C.M. 315/84 on 24.1.1984 alleging that "the respondents are misinterpreting the aforesaid stay order....and are saying that the aforesaid stay order is in respect of the entire village of Rithala" and praying, therefore, that as the petitioners had prayed for stay B only in respect of their lands, the court should be please "to clarify the order dated 23.4.1982 to the effect that the stay is only in respect of the petitioners' land, Khasra Nos. of which have been mentioned in the writ petition". The above position was contested by the Union of India which urged that the stay order had been C granted qua notification under S. 4 and was not in respect of particular land. After hearing both parties, the court passed the following order on 24.2.1984.

".....We do not understand that clarification is needed. The prayer in CM 1759/82 was in respect of the petitioners' land. It D follows necessarily that the interim order we passed was in regard to the petitioners. No further order is, therefore, necessary."

22A. The petitioners also seek to derive support from an order passed by this Court on 7.8.1985 CCP 152/85 in CW 861 of 1982 E (*Manakvala* v. *Chaudhary*). That contempt petition was moved because the respondents had made a declaration under S. 6 in respect of some lands covered by the notification under S. 4 dated 25.11.1980 during the subsistence of a stay order at the request of some petitioners who had challenged the said notification. The F court observed :

'It is no doubt true that there was stay of other proceedings but in land acquisition matters it is really the dispossession which is of consequence. Apart from this position, a large number of other lands were obviously the subject matter of notification under G Ss. 4 and 6 and it could not be expected that the authorities should delay further acquisition proceedings in regard to them.

Mere notification under S. 6 may be technically not right qua the petitioners but we cannot agree that it amounts to contempt H calling for any action.

Of course, as long as stay order stands dispossession of the petitioners cannot take place ..... and no one has passed the order ordering dispossession. Dismissed." A

Ultimately, after consideration of all the respective contentions, the Full Bench has observed in paragraphs 30 and 31 which read as under : B

"30. Secondly the nature of proceedings in which stay orders are obtained are also very different from the old pattern of suits confined to parties in their scope and effect. Section 4 notifications are challenged in writ petitions and it is now settled law that in this type of proceedings, the principle of *locus standi* stands considerably diluted. Any public spirited person can challenge the validity of proceedings of acquisition on general grounds and when he does this the litigation is not inter parties simpliciter : it is a public interest litigation which affects wider interests. The grounds of challenge to the notification may be nothing personal to the particular landholder but are, more often than not, grounds common to all or substantial blocks of the land owners. In fact, this group of petitions now listed before us raise practically the same contentions just as the previous batch of writ petition challenging the notifications under S. 4 raised certain common contentions. To accept the contention that the challenges and their lands would virtually provide persons with common interests with a second innings. If the initial challenge succeeds, all of them benefit; and, if for some reason that fails and the second challenge succeeds on a ground like the one presently raised, the first batch of petitioners also get indirectly benefited because of the impossibility of partial implementation of the scheme for which the acquisition is intended." C D E F

"31. We have, therefore, to give full effect to the language of the section and the stay orders in question, in the above context and background. The use of the word "any" in the explanation considerably amplifies its scope and shows clearly that the explanation can be invoked in any case if some action or proceeding is stayed. It may be a complete stay of the operation of the entire notification or may even be a partial stay - partial in degree or in regard to persons or lands in respect of whom it will operate. The words G H

A used in the explanation are of the widest amplitude and there is no justification whatever to confine its terms and operation only to the cases in which the stay order is actually obtained."

It concluded in paragraph 39 as under :

B "39. We have, for the reasons stated above, come to the conclusion that the period during stay orders were in force should be excluded in computing the validity of the declaration under S. 6. So far as the notification dated 25.11.80 is concerned, we find that the latest of the S. 6 declarations was on 26.2.86. The stay order (in C.M.P. C 668/81) was in operation from 18.3.81 to 15.11.83 i.e. for a period of 2 years, 7 months and 27 days. They are, therefore, in time having been issued within three years plus 2 years 3 months, i.e. 5 years 3 months of the S. 4 notification. So far as the notification dated 15.11.1980 is concerned, we find that the latest of the S. 6 declaration was issued 7.6.1985, i.e. 4 years 7 months after the S. D 4 notification. The stay order in CMP 4226/81 was operative from 30.9.81 to 15.11.83, i.e. for 2 years and 1-1/2 months. In this period is excluded the declaration is within time. We answer the principal issue debated before us accordingly."

E Accordingly, the Full Bench has upheld the validity of the notification. It is true, as contended by Mr. Rajinder Sachhar, that the Division Bench after remittance has quashed the declaration published under Section 6. The operative part reads as under :

"The orders of Land Acquisition Collectors under Section 5-A and F the notification issued by the Lt. Governor under Section 6 of the Land Acquisition Act together with further land acquisition proceedings in all the above writ petitions are quashed and set aside with cost. There shall be two set of counsel's fees at Rs. 1500 each as the group of petitions were heard mainly in the two writ petitions. The respondents have also not filed the counter affidavits G in all the petitions as it was agreed to complete two sets of petitions with counter affidavits. The rule is made absolute. 'Reasons to follow."

Therefore, the reason given in *B.R. Gupta* v. *U.O.I. & Ors.*, 37 (1989) H Delhi Law Times 150 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 & Anr.*, [1991] 4 SCC 531; *Hansraj Jain* v. *State of Maharashtra & Ors.*, (1993) 4 JT 360; *Sangappa Gurulingappa Sajjan* v. *State of Karnataka & Ors.*, [1994] 4 SCC 145; *Gandhi Grah Nirman Sahkari Samiti Ltd. Etc. Etc.* v. *State of Rajasthan & Ors.*, (1993) 3 JT 194; *G. Narayanaswamy Reddy (dead) by Lrs. & Anr.* v. *Govt. of Karnataka & Anr.*, (1991) 3 JT 12 and *Roshnara Begum Etc.* v. *U.O.I. & Ors.*, (1986) 1 Apex Decision 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.

The question then arises is : whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also? Though, *prima facie*, the argument of the learned counsel is attractive, on deeper consideration, it is difficult to give acceptance to the contention of Mr. Sachhar. When the Division Bench expressly limited the controversy to the quashing of the declaration qua the

A writ petitioners before the Bench, necessary consequences would be that the declaration published under Section 6 should stand upheld.

It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this Court. If it were a case entirely relating to
B Section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under Section 16 and 17(2) of the Act free from all encumbrances. But it is seen that the Division Bench confined the con-
C troversy to the quashing of the declaration under Section 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under Section 6 by the Division Bench does not enure to the appellants.

It is true that a Bench of this Court has considered the effect of such
D a quashing in *Delhi Development Authority* v. *Sudan Singh & Ors. Etc.,* reported in 45 (1991) Delhi Law Times 602 SC. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in *Yusufbhai*
E *Noormohmed Nendoliya's* case (supra), this Court has also observed that it would enure the benefit to those petitioners. In view of the fact that the notification under Section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed *in toto*, it does not operate as if that the entire declaration requires to be quashed. It is seen that the appellants had not
F filed any objection to the notice issued under Section 5-A.

Under these circumstances, there is no need to consider their objections, as pointed out by the Division Bench of the High Court in *Delhi Development Authority* case (supra) which, relied on by Mr. Sachhar, has
G no application. Thus we hold that the declaration qua the appellants has not been barred by proviso to Section 6 nor is it vitiated by any error of law warranting interference.

The appeal is dismissed. No costs.

H R.P. Appeal dismissed.