

CASE NO.:

Appeal (civil) 7889 of 2001

Special Leave Petition (civil) 17502 of 2001

PETITIONER:

SRINIWAS RAMNATH KHATOD

Vs.

RESPONDENT:

STATE OF MAHARASHTRA & ORS...

DATE OF JUDGMENT: 19/11/2001

BENCH:

K.T.Thomas, S.N.Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

This Appeal is against a Judgment dated 24th August, 2001 by which the Writ Petition filed by the Appellant has been dismissed.

Briefly stated the facts are as follows:

The 3rd Respondent required certain lands in Aurangabad city. Thus land acquisition proceedings were started. A Notification under Section 4(1) of the Land Acquisition Act was published in the Government Gazette on 21st January, 1986. It had earlier been published in local newspapers on 3rd November, 1985 and 6th November, 1985. The local publication in the village took place on 30th January, 1986. The declaration under Section 6 was issued on 29th January, 1987. This declaration was published in the local newspaper on 30th January, 1987. It was then published in the Official Gazette on 19th March, 1987 and in the concerned locality on 24th April, 1987. At this stage it must be mentioned that notice under Section 9 was received by the Appellant on 13th March, 1989. On 14th March, 1989 the Appellant filed his reply opposing the acquisition. Respondent No. 2 passed the final award on 21st April, 1989.

On 16th March, 1989 the Appellant filed this Petition in the High Court of Bombay at Aurangabad. On 20th March, 1989 he obtained an ad-interim stay preventing the Government from taking possession. However, this Writ Petition ultimately came to be dismissed by the impugned Order.

Before us only one point has been urged. It has been submitted that the Declaration under Section 6 of the Land Acquisition Act had not been published within a period of one year from the last date of publication of the Notification under Section 4. It is submitted that for this reason the acquisition proceedings are vitiated and should be set aside.

At this stage it would be appropriate to set out Sections 4(1), 6 and 11-A of the Land Acquisition Act. These Sections read as follows:

"4. Publication of preliminary notification and powers of officers thereupon. - (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification 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

publication of the notification].

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 5A, 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 authorised 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, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 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
(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 is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate 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 date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, 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.

(3) The said declaration shall be 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 a manner hereinafter appearing.

11A. Period within which an award shall be made. - (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has

been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement."

(emphasis supplied)

Thus under Section 4 a notification has to be published in the manner laid down therein. As against this, under Section 6 a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6(2) of the Land Acquisition Act. Also the first proviso to Section 6(1) lays down a time limit within which declaration has to be made. Very significantly it does not lay down a time limit within which publication of the declaration is to be made. Significantly the first proviso does not lay down that publication cannot take place after the period prescribed therein. As the first proviso to Section 6(1) only provides a time limit for a declaration and not for publication, it has been incorporated in section (1) of Section 6. It is for this reason that the legislature has not put this proviso after sub-section (2) of Section 6.

It is admitted that the last publication of the notification under Section 4 was on 30th January, 1986. The declaration under Section 6 was admittedly made on 29th January, 1987. If this date is taken into consideration then the declaration is within a period of one year from the last date of publication of the notification under Section 4. However, it is submitted that under Section 6(2) every declaration has to be published in the Official Gazette, in two daily newspapers circulating in the locality in which the land is situated and also at convenient places in the locality. It is submitted that a declaration under Section 6 becomes effective only after it has been published. It is submitted that, therefore, the date of declaration necessarily has to be the date when it was published in the Official Gazette and in the manner provided in Section 6(2). It is submitted that as the declaration was published in the Official Gazette on 19th March, 1987 and in the village on 24th April, 1987 the declaration has been made after the expiry of one year from the last date of publication of the notification under Section 4.

In support of this submission reliance was placed upon the case of *Eugenio Misquita v. Sate of Goa* reported in (1997) 8 SCC 47. In this case it was *inter alia* held as follows:

"7. It is now well settled that the last of the dates in the series of the publications made under Section 4(1) of the Act is the relevant date to reckon the starting point of limitation for the purpose of proviso to Section 6(1)(ii). Now, the question is which is the relevant date to reckon the last date for the purpose of clause (ii) of the first proviso to Section 6(1). In other words, whether the modes of publication prescribed under Section 6(2) obviously for the purpose of reckoning limitation under Section 11-A of the Act have any part to play in the matter of computing the period prescribed under clause (ii) of the first proviso to Section 6(1).

xxx

xxx

xxx

xxx

xxx

xxx

17. In the light of the law laid down by this Court, we have no hesitation to hold that the declaration published under Section 6 of the Act was well within one year and the challenge to the same has been rightly rejected by the High Court. However, the view taken in the judgment of the High Court under appeal that the relevant date for reckoning the period of limitation will be the date of making of the declaration under Section 6, may not be correct. As held in *Krishi Utpadan Mandi Samity* case [(1995) 2 SCC 497] mere making of declaration is not enough. The making of declaration under Section 6 is complete for the purpose of clauses (i) and (ii) of the first proviso to Section 6(1) when it is published in the Official Gazette."

Relying heavily on the above observations it has been submitted that this

Court has already held that the relevant date for reckoning of limitation is not the date of making of the declaration under Section 6. It is submitted that this Court has held that a declaration under Section 6 is complete only when it is published in the Official Gazette.

At first blush it does appear that the above observations support the Appellant. If that were so then this question would have had to be referred to a larger bench as such a finding would be against the clear wording of Section 6 which admits of no ambiguity.

However, in our view, in Eugenio Misquita's case (supra) this Court is not holding that a declaration under Section 6 is not within time provided it is published at a later date. This question has been left open. This is clear from the observations in para 17 which read as follows:

" However, the view taken in the judgment of the High Court under appeal that the relevant date for reckoning the period of limitation will be the date of making of the declaration under Section 6, may not be correct."

The words "may not be correct" clearly show that the question is left open. In our view the wordings of Sections 4, 6 & 11-A leave no room for doubt that the Land Acquisition Act made a distinction between a "declaration" and "publication". To be noted that under Section 4 the notification has to be published. Again under Section 11-A the period of two years has to be commuted from the date of "publication of the declaration". As distinct from this under the first proviso to Section 6(1) a "declaration" cannot be made after the expiry of one year from the date of "publication of the notification under Section 4". The words published in clauses (i) and (ii) of the first proviso to Section 6(1) refer to the publication of notification under Section 4. A plain reading of Section 6 shows that a distinction is made between a "declaration" and a "publication". Viewed from this angle the wordings of the first proviso to Section 6(1) become important. The proviso lays down that "no declaration (under Section 6) shall be made after expiry of three years [under clause (i)] where the notification under Section 4 is published before the commencement of the Land Acquisition Act, 1984 and after expiry of one year [under clause (ii)] where notification under Section 4 was published after commencement of Land Acquisition Act, 1984. Thus the proviso clearly talks of "Publication" in respect of notification under Section 4 and then provide a time for "making of declaration" under Section 6. The legislature is purposely omitting to use the words "Publication of declaration" in the proviso to Section 6.

In our view, it is clear that the "declaration must be made" within one year from the date of "last publication of the Notification" under Section 4. Thereafter the publication under Section 6(2) may take place at a later date as it is merely a ministerial act.

Even if Eugenio Misquittas case was laying down what is canvassed by counsel the Appellant cannot succeed. To be noted that the paras 8 and 9 of that Judgment read as follows:

"8. According to the learned counsel, the limitation prescribed under clause (ii) of the first proviso to Section 6(1) has to be considered with reference to the different dates/modes of publication prescribed under Section 6(2) of the Act. In support of this submission, learned counsel refers to the judgments of this Court rendered on Section 4(1) of the Act holding that the last of the dates of such publication in the series is the relevant date for computing the period of limitation under clause (ii) of the first proviso to Section 6(1).

9. Let us examine whether the learned counsel is right in his submission. As seen from the above extracts of relevant provisions, while Section 4(1) commands publication of notification under that section, Section 6 speaks of the declaration being made to the effect that any particular land is needed for public purpose or for a company. There are judicial

decisions that have interpreted the word "made" to mean "published" for the reasons stated in those decisions. Therefore, strictly speaking, but for those judicial decisions the date of making of the declaration under Section 6(1) will be the relevant date for reckoning the period of limitation. However, in the interest of the general public, the courts have taken the view that the declaration made will stand accomplished only when it is published. This publication has, therefore, nothing to do with the publication referred to in Section 6(2) of the Act which is for a different purpose, inter alia, for reckoning the limitation prescribed under Section 11-A of the Act. This construction is supported by the language employed in Section 6(2) of the Act. In particular, the word "hereinafter" used in Section 6(2) will amply prove that the last of the series of the publication referred to under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11-A. The language employed in second proviso to Section 6(1) also supports this construction. Therefore, the contention of learned counsel cannot be accepted." (emphasis supplied)

Thus a contention similar to the one made here had been rejected. Learned Judges then observed in para 16 as follows:

16. .that for the purpose of calculating the limitation prescribed under clause (ii) of the first proviso to Section 6(1), it is not the last of the publications in the series that should be taken into account, but the publication that was made in the first instance under the Section . Thus a detailed reading of the authority makes it clear that the last date under Section 6(2) is only for purposes of computing limitation under Section 11-A. Publications under Section 6(2) are ministerial acts and procedural in nature. In any case, in this case the date of first publication of declaration is 30th January, 1987. This is also within one year of last date of notification under Section 4. The High Court was thus right in holding that the proceedings were not vitiated. We, therefore, see no substance in the appeal. We see no infirmity in the impugned Judgment. Accordingly the appeal stands dismissed. There will be no order as to costs.