

ASHOK KUMAR AND ORS.
v.
STATE OF HARYANA AND ANR.

JANUARY 23, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Land Acquisition Act, 1894—ss. 4 and 6—Notification u/s 4—Challenged in suit—Interim order upto a particular date—After some adjournments dismissal of suit—Declaration under Section 6, challenged as time barred—High Court holding that declaration not time barred in view of the period of stay before Civil Court upto dismissal of the suit—On appeal, held: Any declaration made after expiry of one year from the date of publication of Notification under Section 4(1) would be void and have no effect—Declaration was beyond permissible period as the stay order was only upto a particular date—Interlocutory Order.

A Notification under Section 4(1) of Land Acquisition Act, 1894 was issued on 20-12-1996 for acquisition of the land in question. The validity of the Notification was questioned by appellants by filing a suit. Interim injunction was granted and the same was extended from time to time. However when the matter was adjourned to 9.9.1998 the order of injunction was not extended. After some adjournments suit was dismissed for default on 19.8.2000. A declaration under Section 6 of Land Acquisition Act was issued on 29.11.1998. The legality of the declaration was questioned. The Writ Petition was dismissed by High Court. The question for consideration in the present appeal was whether the order of ad interim injunction granted by the Civil Judge was operative till 9.9.1998 or 19.8.2000.

Allowing the appeal, the Court

HELD: 1.1 There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise; the same would continue to operate. [Para 18] [1197-B-C]

1.2 The term of the order of the Civil Judge does not leave any manner of doubt whatsoever that the interim order was only extended from time to

A time. The interim order having been extended till a particular date, it cannot be said that the respondents were under a bona fide belief that the injunction order would continue till it was vacated.[Para 12] [1195-F-G]

B 1.3 The purport of the order passed by the Civil Judge, in extending the order of injunction is absolutely clear and explicit. From a bare perusal of the order it is evident that the order of injunction was not extended. Even on the subsequent dates, the order of injunction was not extended.

[Para 13] [1195-H, 1196-A]

C 2.1 Proviso (ii) appended to sub-section (1) of Section 6 of Land Acquisition Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that in computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section, 4(1), is stayed by an order of a Court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law. [Para 14] [1196-C-D]

E 2.2 Provisions of the Act should be construed having regard to the purport and intent thereof. Section 6 of the Act is beneficent to the land owners. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by reason of the explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by Act 68 of 1984 and which came into force w.e.f. 24.09.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, is absolutely clear and explicit. [Paras 15 and 17] [1196-E, H, 1197-A-B]

H *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Ors.*, [2005] (7) SCC 622, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 324 of 2007. A

From the Final Judgments and Orders dated 16.10.2003 and 30.9.2004 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 11329/2002 and R.A. No. 419/2003 in C.W.P. No. 11329/2002 respectively.

M.N. Krishnamani, Sr. Adv., Dinesh Kumar Garg and Fateh Singh Saini for the Appellants. B

Ravindra Srivastava, Sr. Adv., P. Dahiya, T.V. George, Kunal Verma, Arjun Garg and Rajul Shrivastava for the Respondents.

The Judgment of the Court was delivered by C

S.B. SINHA, J. : 1. Leave granted.

2. Appellants herein are owners of lands appurtenant to Khasra Nos. 3829, 3830 and 3831. They acquired the said lands in 1993 and allegedly raised certain construction thereupon. A notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 20.12.1996 for acquisition of the said lands. A suit was filed by the appellants herein in the Court of the Civil Judge, Senior Division, Panipat, questioning the validity of the said notification, *inter alia*, on the premise that the said proceeding was illegal and in any event the constructions raised by them cannot be demolished in view of a policy decision taken by the State. On an application for grant of injunction filed by the appellants, an order of interim injunction was passed on 30.08.1997 in the following terms : D E

"...For written statement, no reply to injunction application and arguments on the same, to come up on 23.9.1997. In the meantime, the defendants are restrained from demolishing the construction and initiating further action on the memo in dispute as according to the Jamabandi disputed property is in the shape of Gair Mumkin Plots and it is arguable point as to whether the provisions of Punjab Scheduled Roads Act are applicable to the Gair Mumkin plots or not." F G

3. Indisputably, the said interim order was extended from time to time, as would be noticed hereinafter. By an order dated 24.09.1997 while adjourning H

A the suit to 29.11.1997, the order of stay dated 30.08.1997 was extended. On 29.11.1997, the following order was passed :

“...The case is adjourned to 09.01.1998 for filing of written statement and reply to the injunction application. *Till then stay order dated 30.8.98 is extended.*”

B [Emphasis supplied]

C 4. Yet again by an order dated 09.01.1998, the stay order was extended till 23.03.1998. Similar order was passed on 23.03.1998. The matter was, however, placed on 28.07.1998 on the ground that the Presiding Officer was to remain on leave on 29.07.1998. The matter was adjourned to 09.09.1998. However, the order of injunction was not extended.

D 5. After some adjournments, the suit was dismissed for default on 19.08.2000.

6. A declaration under Section 6 of the Act was issued on 29.11.2000.

E 7. A writ petition was filed questioning the legality and/or validity of the said direction before the Punjab & Haryana High Court, which was registered as C.W.P. No. 11329 of 2002. By reason of the impugned judgment the said writ petition has been dismissed by a Division Bench of the High Court, *inter alia*, opining :

F “...The position, as explained in the written statement, appears to be correct. Simply because, while adjourning the case the Presiding Officer was not holding the Court, a day earlier to the date fixed, where orders with regard to stay are silent, would not mean that stay was vacated. In any case, case remained pending after the adjourned date, as mentioned above, as well and it is the positive case of respondents that stay was operative till such time suit was dismissed in default on 19.8.2000. Even otherwise, we are of the firm view that if once stay is granted and same is not specifically vacated and the case is simply adjourned, it cannot be interpreted to mean that stay was operative only upto a date when case was adjourned without passing any order with regard to extension or otherwise of stay. The petitioners, it appears, have intentionally

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withheld the orders passed after the case was adjourned to 9.9.1998...”

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8. A review application filed there against was also dismissed.

9. Submission of Mr. M.N. Krishnamani, learned Senior Counsel appearing on behalf of the appellants, is that having regard to the fact that the order of injunction was operative only for the period between 24.09.1997 and 09.09.1998, the High Court went wrong in dismissing the writ petition filed by the appellants herein inasmuch as the declaration made under Section 6 of the Act on 29.11.2000 was clearly beyond the period of one year from the date of issuance of notification issued under sub-section (1) of Section 4 of the Act, as enshrined under Section 6 thereof.

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10. Mr. Ravindra Shrivastava, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the nature of the order of injunction passed on 30.08.1997, it must be held to have remained operative till 19.08.2000 when the suit was dismissed for default.

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11. The short question which arises for consideration in this appeal is as to whether the order of ad interim injunction granted by the learned Civil Judge, Senior Division, Panipat, was operative till 09.09.1998 or 19.08.2000. We have noticed hereinbefore the nature of the orders passed by the learned Civil Judge. Although in its order dated 30.08.1997, the learned Civil Judge, used the term “In the meantime”, which was repeated in its order dated 24.09.1997, but in the subsequent orders beginning from 29.11.1997, the expression used was “till then”.

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12. The term of the order of the learned Judge, in our opinion, does not leave any manner of doubt whatsoever that the interim order was only extended from time to time. The interim order having been extended till a particular date, the contention raised by the respondents herein that they were under a bona fide belief that the injunction order would continue till it was vacated cannot be accepted.

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13. In our considered opinion, the purport of the order passed by the learned Civil Judge, Senior Division, Panipat, in extending the order of injunction is absolutely clear and explicit. It may be true that the date was

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A preponed to 28.07.1998, but from a bare perusal of the order passed by the learned Civil Judge, Senior Division, it is evident that the order of injunction was not extended. Even on the subsequent dates, the order of injunction was not extended. In fact, no order extending the period was passed nor any fresh order of injunction was passed by the learned Civil Judge, Senior Division, subsequent thereto.

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14. Proviso (ii) appended to sub-section (1) of Section 6 of the Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that in computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section, 4(1), is stayed by an order of a Court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law.

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15. Provisions of the Act should be construed having regard to the purport and intent thereof. Section 6 of the Act is beneficent to the land owners.

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16. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Others*, [2005] 7 SCC 622, it was held :

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“The Act is an expropriatory legislation. This Court in *State of M.P. v. Vishnu Prasad Sharma* observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also *Khub Chand v. State of Rajasthan* and *CCE v. Orient Fabrics (P) Ltd.*”

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17. We have noticed hereinbefore that the proviso appended to sub-section (1) of Section 6 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by

H reason of the explanation appended thereto, but the same was done only for

the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by act 68 of 1984 and which came into force w.e.f. 24.09.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, in our opinion, is absolutely clear and explicit.

18. There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise; the same would continue to operate.

19. We, therefore, are of the opinion that the judgment of the High Court cannot be sustained, which is set aside accordingly. The appeal is allowed. In the facts and circumstances, there shall, however, be no order as to costs.

K.K.T.

Appeal allowed.