UNION OF INDIA & ORS. A

v.

GOPALDAS BHAGWAN DAS & ORS.

(Civil Appeal No. 3636 of 2016)

FEBRUARY 04, 2020 B

[R. F. NARIMAN, S. RAVINDRA BHAT AND V. RAMASUBRAMANIAN, JJ.]

Land Acquisition Act, 1894 – ss.4(1), 6 – In 1943, Govt. of India requisitioned 4 acres and 34 gunthas of land bearing Survey No. 120/2 (Part) of Village Malad, Mumbai – In 1949, 2.68 acres land out of the aforesaid land was de-requisitioned – In 1975, notification was issued u/s.4(1) acquiring the said extent of 8623 sq.m. – Declaration u/s.6 issued in 1978 – Draft Award passed in 1986 – Challenge made in the present case in the year 2002 – In a proceeding concerning other lands covered by the same s. 4 notification, Supreme Court in Kulsum R. Nadiadwala v. State of Maharashtra and Ors.*, allowed appeal by land owner – In view thereof, present case referred to larger Bench that delay and laches have to be ignored – Held: On facts, question of delay and laches need not be answered as s.4 notification that was struck down in* Kulsum R. Nadiadwala's *case is the very notification in the facts of this case wherein the entire acquisition proceedings were quashed – Unable to agree with appellant's contention that the s.4 notification not only deals with various other lands in Village Malad but also deals with a land in a different village altogether viz., Village Wadhawan, and that Supreme Court's judgment did not go to the extent of declaring the acquisition bad so far as village Wadhawan is concerned – So far as village Malad is concerned where the land in* Kulsum R. Nadiadwala's *case was land that was adjacent to the present land, the very s.4 notification was struck down and declared null and void – This being the case, it would not be in the interest of justice to allow the present appeal in favour of appellant, as this would amount to a discrimination between two persons who are otherwise similarly placed – Further,* Kulsum R. Nadiadwala's *case did not deal with newspaper publication at all – It only dealt with the requirement of publication in the Official Gazette and public* C D E F G H

A *notices of the substance of the notification being given in the locality in which the lands are acquired, both of which were held to be cumulative and mandatory requirements of s.4 – Given the fact that this is a Defence project in which possession has been with the Union since 1942, the same facts would obtain as in* Kulsum *R.* Nadiadwala's *case in which relief was granted – Therefore, present case cannot lead to a different conclusion on similar facts – Defence of India Rules, 1939 – r. 75A – Constitution of India – Arts. 141 and 142.*

Dismissing the appeal, the Court

C **HELD: 1.1 Though this Court has, by its order dated 27.03.2018, referred this case to a larger Bench in view of the decision in *Kulsum R. Nadiadwala*'s case that delay and laches have to be ignored, the Court is of the view that on the facts of this case, the Court need not answer this question. This is for the reason that the Section 4 notification that was struck down in** D **Kulsum R. Nadiadwala*'s case is the very notification in the facts of this case. In *Kulsum R. Nadiadwala*'s case, this Court quashed the entire acquisition proceedings stating that they be declared as null and void. Unable to agree with the contention that the Section 4 notification not only deals with various other lands in** E **Village Malad but also deals with a land in a different village altogether viz., Village Wadhawan, and that this Court's judgment did not go to the extent of declaring the acquisition bad so far as village Wadhawan is concerned. So far as village Malad is concerned, where the land in *Kulsum R. Nadiadwala*'s case was** F **land that was adjacent to the present land, the very Section 4 notification has been struck down and declared null and void, and this being the case, it would not be in the interest of justice to allow the present appeal in favour of the Union of India, as this would amount to a discrimination between two persons who are otherwise similarly placed. [Para 8][772 G-H; 773 A-D]**

G **1.2 Even though newspaper publication of the Section 4 notification came in by amendment for the first time in 1984, the requirement of public notice where the land is situate in addition to publication in the Official Gazette, was always there from the inception. *Kulsum R. Nadiadwala*'s case did not deal with**

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newspaper publication at all. It only dealt with the requirement of publication in the Official Gazette and public notices of the substance of the notification being given in the locality in which the lands are acquired, both of which were held to be cumulative and mandatory requirements of Section 4. In *Indore Development Authority*'s case, the Constitution Bench is seized of several questions, all of which pertain to the construction of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Thus, it is wholly unnecessary to adjourn this case in order to await the judgment of the Constitution Bench in this case. Given the fact that this is a Defence project in which possession has been with the Union since 1942, the same facts would obtain as in *Kulsum R. Nadiadwala*'s case in which relief has been granted to *Kulsum R. Nadiadwala*. This case, therefore, cannot lead to a different conclusion on similar facts. It is important to make a distinction between a declaration of law which would bind other future cases under Article 141 of the Constitution of India and an order made in the facts of the case which may equally be made to do substantial justice on the facts of a given case, sometimes under Article 142. In *Kulsum R. Nadiadwala*, though the appellant's claim was restricted to only 50 per cent of the land in question, so far as the other 50 per cent is concerned, the judgment itself makes a reference to the fact that the appellants are legal heirs of one deceased Ismail Nadiadwala and that there was another claimant whose name was Ibrahim Nadiadwala to whom, presumably, 50 per cent of the property went. Since only Ismail Nadiadwala's heirs were prosecuting the appeal, this direction appears to have been made. [Paras 10-15][774 B-H; 775 A-B]

Kulsum R. Nadiadwala v. State of Maharashtra and Ors. **(2012) 6 SCC 348 : 2012 (7) SCALE 212 – relied on.**

Indore Development Authority v. Manohar Lal and Others Etc. **[2019] 14 SCALE 470 – referred to.**

Case Law Reference

2012 (7) SCALE 212	**relied on**	**Para 3**
[2019] 14 SCALE 470	**referred to**	**Para 6**

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3636 of 2016.

From the Judgment and Order dated 31.07.2015 corrected on 11.09.2015 of the High Court of Judicature at Bombay in Writ Petition No.1667 of 2002.

B Ms. Rekha Pandey and Arvind Kumar Sharma, Advs. for the Appellants.

Shyam Diwan, Sr. Adv., Y. Raja Gopala Rao, Ms. Y. Vismai Rao and Bhav Ratan, Advs. for the Respondents.

C The Judgment of the Court was delivered by

R. F. NARIMAN J.

1. This matter has a somewhat chequered history.

2. In 1943, Government of India requisitioned 4 acres and 34 gunthas of the land owned by one Rajabahadur Bhagwandas Haridas, D bearing Survey No. 120/2 (Part) of Village Malad, Mumbai, in exercise of powers conferred under Rule 75A of the Defence of India Rules, 1939. On 27.07.1949, the Collector, Thane, de-requisitioned 2.68 acres in the Survey No. 120 Part 2 out of the aforesaid 4 acres 34 gunthas. Ultimately, despite the land having first being requisitioned, a notification E under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act'), was issued on 24.10.1975 acquiring the aforesaid extent of 8623 square meters. A declaration under Section 6 of the Act was issued on 30.11.1978. According to the respondents herein, a Draft Award was passed under Section 11 of the Act on 23.09.1986, against which references were made, both under Section 18 and 30, of the Act. The F respondents confirmed that after symbolic possession was taken on 06.01.1987 by the State, such possession has remained with the State till date.

3. In a proceeding that was filed, insofar as other lands in Village Malad were concerned, covered by the same section 4 notification, this G Court in *Kulsum R. Nadiadwala* v. *State of Maharashtra and Ors.* (2012) 6 SCC 348, allowed an appeal by the land owner. After stating in paragraph 2 that the very same section 4 notification was issued in order that a Central Ordinance Depot for the Union of India be made for defence purposes, the judgment records that the beneficiary of these H lands, being the Central Government, was served, but did not appear at

the time of hearing of the appeal. The appellant in *Kulsum R. Nadiadwala*'s case (supra) argued several points before this Court, which were resisted by the learned counsel appearing for the State of Maharashtra, basically on the ground that the writ petition should have been dismissed on the ground of delay and laches as was done by the impugned High Court judgment. After setting out Section 4 of the Act, this Court observed that the requirement that the notification under Section 4 be published in the Official Gazettee and the requirement that the Acquiring Authority should publish public notices of the substances of such notification in a convenient place or places in the locality in which the land proposed to be acquired is situate, are cumulative conditions, both being mandatory. The Court then held: -

> "13. In the instant case, the respondents before the High Court had filed their reply affidavit. They did not dispute the contentions of the appellants that they had not issued any public notices as required under Section 4 of the Act. They only reiterated that such notification was published in the Official Gazette. Since the mandatory requirement as required under Section 4(1) of the Act is not complied with by the respondents, while acquiring the lands in question, in our opinion, the entire acquisition proceedings requires to be declared as null and void.
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> 14. This Court in J&K Housing Board v. Kunwar Sanjay Krishan Kaul has observed that all the formalities of serving notice to the interested person, stipulated under Section 4 of the Act, has to be mandatorily complied with in the manner provided therein, even though the interested persons have knowledge of the acquisition proceedings. This Court further observed thus:
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> > "32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the landowners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to."

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15. In view of the conclusion that we have reached on the first issue canvassed by the learned counsel for the appellants, we do not think that other issues that the learned counsel for the appellants has raised and canvassed before us need to be answered."

4. It may only be mentioned that in *Kulsum R. Nadiadwala*'s
B case (supra), the challenge was made by way of a writ petition filed in 1987, as opposed to the present challenge, which was made only in the year 2002.

5. Ms. Rekha Pandey, learned counsel appearing on behalf of the appellant, has raised several points in support of this appeal. First and
C foremost, she adverted to an order of this Court dated 27.03.2018 by which a Division Bench of this Court has referred this matter to a larger Bench of three Judges. This order reads as follows:

"1. The land of the respondents was acquired vide notification dated 24.10.1975 under Section 4 of the Land Acquisition Act,
D 1894 (the Act). The said land was earlier requisitioned in the years 1942 to 1945 for defence purpose. Award was made in the year 1986 and symbolic possession of the land was taken on 06.01.1987. Objections of the award were filed by the respondents against the award. A reference under Section 18 of the Act was made which was disposed of. Thereafter, the writ petition was filed by
E the respondents mainly on the ground that there was no due publication of the notification under Section 4 of the Act which was a mandatory requirement.

2. The High Court upheld the plea of the respondents relying upon judgment of this Court in "Kulsum R. Nadiadwala Vs. State of
F Maharashtra" (2012) 6 SCC 348.

3. Learned counsel for the appellants submitted that having regard to the fact that the land was already being used for defence purpose since the year 1942 to 1945 and the notification under Section 4 issued on 24.10.1975 was challenged for the first time by the writ
G petition filed on 24.06.2002, the High Court should have dismissed the writ petition on the ground of delay and laches as entertaining such petition will seriously affect public interest. It was submitted that view taken in the relied upon judgment ignores the concept of laches.

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4. Learned counsel for the respondents submits that in spite of delay and laches, this Court in the aforesaid judgment quashed the acquisition.

5. We are of the view that delay and laches may be a bar to challenge to the acquisition after 27 years. In Tamil Nadu Housing Board, Chennaiversus M. Meiyappan and ors (2010) 14 SCC 309 this Court held that inland acquisition proceedings the Court should not encourage stale litigation as it may hinder projects of public importance. The contra view in three-Judge Bench decision in Dayal Singh versus Union of India (2003) 2 SCC 593 was held to be in conflict with the Constitution Bench judgment in Rabindranath Bose versus Union of India (1970) 1 SCC 84 and three-Judge Bench judgment in Printers (Mysore) Ltd. versus M.A. Rasheed(2004) 4 SCC 460. The said judgment was cited with approval in recent judgment of three-Judge Bench in Indore Development authority versus Shailendra (Dead) through Lrs. & Ors. (Civil Appeal No.20982 of 2017 –pronounced on 8th February, 2018).

6. In view of above, the view taken by two-Judge Bench in Kulsum R. Nadiadwala versus State of Maharashtra (2012) 6 SCC 348 to the effect that delay and laches have to be ignored is not free from doubt.

7. Thus, we are of the view that the matter needs to be placed before a Bench of three Judges.

8. Accordingly, let the papers be placed before Hon'ble the Chief Justice of India for appropriate directions."

6. Ms. Pandey, learned counsel, has argued before us that as a matter of law, such a huge delay in filing a writ petition against Section 4 notification cannot possibly be countenanced. She has also argued that in *Kulsum R. Nadiadwala*'s case (supra), really speaking, the delay is only of one year, as the Award in this case was issued only in the year 1986, and the writ petition filed in that case was of 1987. In the present case, the writ petition, as has been stated earlier, was filed only in 2002. Another important point of difference, according to the learned counsel is that notice was personally served on the respondents in this case, which is not the case in *Kulsum R. Nadiadwala*'s case (supra). She also raised the point that was raised in the special leave petition filed by

A the Union of India which is that *Kulsum R. Nadiadwala*'s case (supra) is "per incuriam" inasmuch as it decided a point which arose out of the Amendment Act of 1984, when the Section 4 notification was only of 1975, the 1984 Amendment Act not being retrospective. She further went on to state that, in any case, the Constitution Bench is taking up, as one of the pleas before it in *Indore Development Authority* v. *Manohar* B *Lal and Others Etc.* (SLP (C) Nos. 9036-9038 of 2016) whether delay would apply as a good ground for dismissing a writ petition on the ground of laches insofar as challenges to land acquisition proceedings are concerned, and that we should await the judgment of the Constitution Bench before proceeding with the judgment in this case. She kept harping C upon the fact that the acquisition in this case is for important defence purposes and possession of this land has been with the Union Government since 1942. She also stated that *Kulsum R. Nadiadwala*'s judgment, if properly read, did not amount to quashing of the entire section 4 notification, particularly in view of the last paragraph of the judgment, where the claim of the appellant was restricted only to 50 per cent of the D land in question, the direction being that the respondents shall hand over 50 per cent of the vacant possession of the said land to the appellant forthwith.

7. As against these submissions, Shri Shyam Divan, learned senior counsel appearing on behalf of the respondents, argued that that the E section 4 notification in both these cases being the same, and *Kulsum R. Nadiadwala*'s case being a final judgment of this Court in which a review petition and a curative petition have been dismissed, the said judgment would apply on all fours to the facts of this case. He pointed out that the question of delay, though raised by the learned counsel who appeared on F behalf of the State, was not directly answered in *Kulsum R. Nadiadwala*'s case inasmuch as, according to the Division Bench of this Court in *Kulsum R. Nadiadwala*'s case, a mandatory condition of a section 4 notification not being adhered to, would amount to there being no acquisition at all in the eye of law. On this ground, he defended the impugned judgment passed by the Bombay High Court.

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8. Though this Court has, by its order dated 27.03.2018, referred this case to a larger Bench in view of the decision in *Kulsum R. Nadiadwala*'s casethat delay and laches have to be ignored, we are of the view that on the facts of this case, we need not answer this question. This is for the reason that the section 4 notification that was struck

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down in *Kulsum R. Nadiadwala*'s case is the very notification in the facts of this case. We may also note that in paragraph 13 of the *Kulsum R. Nadiadwala*'s case set out hereinabove, this Court quashed the entire acquisition proceedings stating that they be declared as null and void. We are unable to agree with Ms.Pandey's contention that the Section 4 notification not only deals with various other lands in Village Malad but also deals with a land in a different village altogether viz., Village Wadhawan, and that this Court's judgment did not go to the extent of declaring the acquisition bad so far as village Wadhawan is concerned. So far as village Malad is concerned, where the land in *Kulsum R. Nadiadwala*'s case was land that was adjacent to the present land, the very section 4 notification has been struck down and declared null and void, and this being the case, it would not be in the interest of justice to allow the present appeal in favour of the Union of India, as this would amount to a discrimination between two persons who are otherwise similarly placed.

9. Adverting to some of the other submissions made by Ms. Pandey, first and foremost, in *Kulsum R. Nadiadwala*'s case, the High Court dismissed the writ petition filed therein on the ground of there being a 12 years delay in filing the writ petition, and not on the ground that there was a one year delay as the Award in this case was passed only in 1986. Secondly, the factum of notices actually being served in this case, as opposed to notices not being individually served in *Kulsum R. Nadiadwala*'scase, apart from making no difference to mandatory conditions that have to be followed, as held in *Kulsum R. Nadiadwala*, has been repelled by the judgment under appeal as follows:

> "11. Nevertheless, we are dealing with the contentions raised by the First Respondent. Perusal of the Writ Petition and in particular Clause (h) of Paragraph 4 thereof shows that a specific contention has been raised by the Petitioners that neither the Petitioners nor their predecessors were served with any notice and were not offered any opportunity of raising objections to the Notification under Sub-section (1) of Section 4 of the said Act.
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> Affidavit of Shri Manoj Shankarrao Gohad, the Special Land Acquisition Officer (4) is completely silent as far as this factual

A and legal challenge in this Petition is concerned.

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10. Insofar as the "*per incuriam"* point is concerned, this can be B disposed of by stating that even though newspaper publication of the section 4 notification came in by amendment for the first time in 1984, the requirement of public notice where the land is situate in addition to publication in the Official Gazette, was always there from the inception. *Kulsum R. Nadiadwala*'s case did not deal with newspaper publication at all. It only dealt with the requirement of publication in the Official C Gazette and public notices of the substance of the notification being given in the locality in which the lands are acquired, both of which were held to be cumulative and mandatory requirements of section 4.

11. So far as the *Indore Development Authority*'s case (supra) is concerned, the Constitution Bench is seized of several questions, all of D which pertain to the construction of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. This being the case, and regard being had to what we have stated hereinabove, it is wholly unnecessary for us to adjourn this case E in order to await the judgment of the Constitution Bench in this case.

13. Given the fact that this is a Defence project in which possession has been with the Union since 1942, the same facts would obtain as in *Kulsum R. Nadiadwala*'s case in which relief has been granted to *Kulsum R. Nadiadwala*. This case, therefore, cannot lead to a different F conclusion on similar facts.

14. As to the argument that no declaration that the entire section 4 notification is quashed inasmuch as the claim of the appellants in *Kulsum R. Nadiadwala*'s case was restricted only to 50 per cent of the lands in question, it is important to make a distinction between a declaration of G law which would bind other future cases under Article 141 of the Constitution of India and an order made in the facts of the case which may equally be made to do substantial justice on the facts of a given case, sometimes under Article 142.

15. On a reading of paragraph 16 of *Kulsum R. Nadiadwala*'s H judgment, it is important to note that though the appellant's claim was

restricted to only 50 per cent of the land in question, so far as the other 50 per cent is concerned, the judgment itself makes a reference to the fact that the appellants are legal heirs of one deceased Ismail Nadiadwala and that there was another claimant whose name was Ibrahim Nadiadwala to whom, presumably, 50 per cent of the property went. Since only Ismail Nadiadwala's heirs were prosecuting the appeal, this direction appears to have been made. A B

16. This being the case, we dismiss the appeal of the Union.

Divya Pandey Appeal dismissed.