CASE NO.:
Appeal (civil) 2226 of 1997

PETITIONER:
PADMAUSUNDARA RAO (DEAD) &ORS.

Vs.

RESPONDENT:
STATE OF T.N. & ORS.

DATE OF JUDGMENT: 13/03/2002

BENCH:
CJI, R.C. Lahoti, N. Santosh Hegde, Ruma Pal & Arijit Pasayat

JUDGMENT:

WITH
CIVIL APPEAL No. 2058/2002
(Arising out of S.L.P. No.12806 of 2000]

J U D G M E N T

ARIJIT PASAYAT, J.

Noticing cleavage in views expressed in several decisions rendered by Benches of three learned Judges, two learned Judges referred the matter to a Bench of three Judges, and by order dated 30.10.2001 the matter was directed to be placed before a Constitution Bench, and that is how the matter is before us in C.A. No. 2226/1997. Special Leave petition No. 12806/2000 was directed to be heard along with Civil Appeal.

Leave granted in SLP No. 12806/2000.

The controversy involved lies within a very narrow compass, that is whether after quashing of Notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') fresh period of one year is available to the State Government to issue another Notification under Section 6. In the case at hand such a Notification issued under Section 6 was questioned before the Madras High Court which relied on the decision of a three-Judge Bench in N. Narasimhaiah and Ors. Vs. State of Karnataka and Ors etc. (1996 (3) SCC 88) and held that the same was validly issued.

Learned counsel for the appellants placed reliance on an un-reported decision of this Court in A.S. Naidu and Ors. etc. vs. State of Tamil Nadu and Ors. etc. (SLP (C) Nos. 11353-11355/1988), wherein a Bench of three Judges held that once a declaration under Section 6 of the Act has been quashed, fresh declaration under Section 6 cannot be issued beyond the prescribed period of the Notification under Sub-section (1) of Section 4 of the Act. It has to be noted that there is another judgment of two learned Judges in Oxford English School vs. Government of Tamil Nadu and Ors. (1995 (5) SCC 206) which takes a view similar to that expressed in A.S. Naidu's case (supra). However, in State of Karnataka and Ors. Vs. D.C. Nanjudaiah and Ors. (1996 (10) SCC 619), view in Narasimhaiah's case (supra) was followed and it was held that the limitation of 3 years for publication of declaration would start running from the date of receipt of the order of the High Court and not from the date on which the original publication under Section 4(1) came to be made.

Learned counsel for the appellant submitted that a bare reading of Section 6 of the Act as amended by Act 68 of 1984, leaves no manner of doubt that the declaration under Section 6 has to be issued within the specified time and merely because the Court has quashed the concerned declaration an extended time period is not to be provided. Explanation 1 (appended to the Section) specifically deals with exclusion of periods in certain specified cases. If the view expressed in Narasimhaiah's case (supra) is accepted, it would mean reading something into the statute which is not there, and in effect would mean legislation by the Court whereas it is within the absolute domain of the legislature. Per contra, learned counsel appearing for the State of Tamil Nadu submitted that the logic indicated in Narasimhaiah's case (supra) is in line with the statutory intent. Placing reliance on the decision in Director of Inspection of Income Tax (Investigation) New Delhi and Anr. Vs. Pooran Mal and Sons and Anr. (1975 (2) SCR 104), it was submitted that extension of the time limit is permissible. Apart from Pooranmal's case (supra), reliance was placed on two decisions rendered in relation to proceedings under the Income Tax Act, 1961 (in short the 'IT Act'), to contend that there is scope for extension of time though there was fixed statutory time prescription. The decisions relied on are Commissioner of Income Tax, Central Calcutta vs. National Taj Traders (1980 (1) SCC 370) and Grindlays Bank Ltd. vs. Income Tax Officer, Calcutta and Ors. (1980(2) SCC 191). It was, however, frankly conceded that in Grindlays's case (supra), question of limitation was not necessary to be gone into as the impugned action was taken within the prescribed time limit. It was contended that at the most, this can be considered to be a case of casus omissus, and the deficiency, if any, can be filled up by purposive interpretation, by reading the statute as a whole, and finding out the true legislative intent. Strong reliance was placed on a Full Bench decision of Madras High Court in K. Chinnathambi Gounder and Anr. vs. Government of Tamil Nadu and Anr. (AIR 1980 Madras 251) to contend that the view in the said case has held the field since long and the principles of stare decisis are applicable. Residually, it was submitted that many acquisitions have become final and if the matters are directed to be re-opened, in case a different view is taken, it would cause hardship.

Section 6(1) of the Act so far as relevant reads as follows:

"Declaration that land is required for a public purpose:- 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 authorized 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.

[Explanation 1.- 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, sub-section (1), is stayed by an order of a Court shall be excluded."

As the factual scenario shows, in the case at hand the Notification under Section 4(1) of the Act was issued and the declaration was made prior to the substitution of the existing proviso to Section 6(1) by Act 68 of 1984 with effect from 24.8.1984. In other words, the Notification under Section 4(1) was issued before the commencement of Land Acquisition (Amendment) Act 1984, but after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (replaced by Land Acquisition (Amendment and Validation) Act 1967 (Act 13 of 1967). But the substituted proviso was in operation on the date of the impugned judgment. In terms of the proviso, the declaration cannot be made under Section 6 in respect of any land covered by the Notification under Section 4(1) of the Act after the expiry of three years or one year from the date of its publication, as the case may be. The proviso deals with two types of situations. It provides for different periods of limitation depending upon the question whether (i) the notification under Section 4(1) was published prior to commencement of Land Acquisition (Amendment and Validation) Ordinance, 1967, but before commencement of Land Acquisition (Amendment) Act, 1984, or (ii) such notification was issued after Land Acquisition (Amendment) Act, 1984. In the former case, the period is three years whereas in the latter case it is one year. Undoubtedly, the Notification under Section 6(1) was made and published in the official gazette within the period of three years prescribed under the proviso thereto, and undisputedly, the same had been quashed by the High Court in an earlier proceeding. It has to be noted that Explanation 1 appended to Section 6(1) provides that in computing the period of three years, the period during which any action or proceeding to be taken in pursuance of the Notification under Section 4(1), is stayed by an order of the Court, shall be excluded. Under Tamil Nadu Act 41 of 1980, w.e.f. 20.1.1967, the expression used is "action or proceeding..is held up on account of stay or injunction", which is contextually similar.

Learned counsel for the respondents referred to some observations in Pooranmal's case (supra), which form the foundation for decisions relied upon by him. It has to be noted that Pooranmal's case (supra) was decided on entirely different factual and legal background. The Court noticed that assessee who wanted the Court to strike down the action of the Revenue Authorities on the ground of limitation had himself conceded to the passing of an order by the authorities. The Court, therefore, held that the assessee cannot take undue advantage of his own action. Additionally, it was noticed that the time limit was to be reckoned with reference to the period prescribed in respect of Section 132(5) of the IT Act. It was noticed that once the order has been made under Section 132(5) within ninety days, the aggrieved person has got the right to approach the notified authority under Section 132(11) within thirty days and that authority can direct the Income-Tax Officer to pass a fresh order. That is the distinctive feature vis--vis Section 6 of the Act. The Court applied the principle of waiver and inter alia held that the period of limitation prescribed therein was one intended for the

benefit of the person whose property has been seized and it was open to that person to waive that benefit. It was further observed that if the specified period is held to be mandatory, it would cause more injury to the citizens than to the Revenue. A distinction was made with statutes providing periods of limitation for assessment. It was noticed that Section 132 does not deal with taxation of income. Considered in that background, ratio of the decision in Pooranmal's case (supra) has no application to the case at hand.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537.Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

What appears to have weighed with the three-Judge Bench in Narasimhaiah's case (supra) is set out in paragraph 12 of the judgment, which reads as under:

"Having considered the respective contentions, we are of the considered view that if the construction as put up by the learned counsel for the appellants is given acceptance i.e., it should be within one year from the last of the dates of publication under Section 4(1), the public purpose would always be frustrated. It may be illustrated thus: In a given case where the notification under Section 4(1) was published, dispensing with the enquiry under Section 5-A and declaration was published within one month and as the urgency in the opinion of the Government was such that it did not brook the delay of 30 days and immediate possession was necessary, but possession was not taken due to dilatory tactics of the interested person and the court ultimately finds after two years that the exercise of urgency power was not warranted and so it was neither valid nor proper and directed the Government to give an opportunity to the interested person and the State to conduct an enquiry under Section 5-A, then the exercise of the power pursuant to the direction of the court will be fruitless as it would take time to conduct the enquiry. If the enquiry is dragged for obvious reasons, declaration under Section 6(1) cannot be published within the limitation from the original date of the publication of the notification under Section 4(1). A valid notification under Section 4(1) become invalid. On the other hand, after conducting enquiry as per court order and, if the declaration under Section 6 is published within one year from the date of the receipt of the order passed by the High Court, the notification under Section 4(1) becomes valid since the action was done pursuant to the orders of the court and compliance with the limitation prescribed in clauses (i) and (ii) of the first proviso to sub-section (1) of the Act would be made."

It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing the period of limitation seems to be avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of Notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of Notification under Section

4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the Notification under Section 4(1) of the Act. The prescription of time limit in that background is, therefore, peremptory in nature. In Ram Chand and Ors. Vs. Union of India and Ors. (1994 (1) SCC 44), it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non-est and was effaced. It is fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh Notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

In Dr. R Venkatchalam and Ors. etc. vs. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842) it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd. (2000 (5) SCC 515)]. 'The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjudaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which

could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".]

The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K Chinnathambi Gounder (supra) was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim 'actus curia neminem gravibit' highlghted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

The view expressed in Narasimhaiah's case (supra) and Nanjudaiah's case (supra), is not correct and is over-ruled while that expressed in A.S. Naidu's case (supra) and Oxford's case (supra) is affirmed.

There is, however, substance in the plea that those matters which have obtained finality should not be re-opened. The present judgment shall operate prospectively to the extent that cases where awards have been made and the compensations have been paid, shall not be reopened, by applying the ratio of the present judgment. The appeals are accordingly disposed of and the subsequent Notifications containing declaration under Section 6 of the Act are quashed.

. CJI.

....J.
(R.C. LAHOTI)

....J.
(N. SANTOSH HEGDE)

....J.
(RUMA PAL)

.J.
(ARIJIT PASAYAT)

March 13, 2002