REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 318 OF 2011

STATE OF HARYANA & ANR. ……APPELLANTS

Versus

DEVANDER SAGAR & ORS. …..RESPONDENTS

WITH

C.A. Nos. 459-462 of 2011

HARYANA URBAN DEVELOPMENT AUTHOIRTY& ORS. ……APPELLANTS

Versus

P.K. DHAWAN & ORS. …..RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN, J.

CIVIL APPEAL No. 318 OF 2011

1 This Appeal questions the correctness of the Judgment dated 12.3.2008 delivered by the Division Bench of the High Court of Punjab and Haryana in C.W.P. No. 1123 of 2006, on the basis of which the High Court had also allowed C.W.P. No. 1465 of 2006, C.W.P. No. 2166 of 2007, C.W.P. No. 7066 of 2008 and C.W.P. No. 7353 of 2008. Civil Appeal No. 318 of 2011 and Civil Appeal Nos. 459-462 of 2011 respectively assail these Judgments. It merits to mention that the connected Civil Appeal No. 535 of 2011 was, on the unrefuted submission made by the learned counsel for the Respondents/Landowners in that Appeal, dismissed as infructuous by an Order dated 11.3.2015 of this Court; the submission was that the Public Notice dated 8.4.2010 had released the subject land from acquisition.

2 The State of Haryana had issued a Notification under Section 4 of the Land Acquisition Act, 1984 ('L.A. Act' for brevity) on 18.1.2001 to acquire 12.18 acres of land falling in Village Khera Markanda and 11.64 acres of land falling in Village Ratgal as mentioned in the Schedule thereto for the construction of a fell-storm sewer, a sewage-treatment plant and a crematorium (*Shamshan Ghat*) at Kurukshetra. Simultaneous with the issuance of this Notification, the Appellant State had also invoked the

urgency provisions contained in Sections 17(1) and 17(4), thereby denying to the landowners (some of whom are the Respondents before us) the opportunity to file Objections under Section 5A of the L.A. Act. A Declaration under Section 6 of the L.A. Act was issued the very next day, i.e. 19.1.2001. It was at this juncture that the Respondents/Landowners filed C.W.P. No. 2503 of 2002 and C.W.P. No. 8696 of 2002, (along with a third party namely Neelam Ram, the petitioner in C.W.P. No. 4887 of 2002) challenging the Section 4 Notification dated 18.1.2001 and the Section 6 Declaration dated 19.1.2001.

3 It will be pertinent to point out that by the time interim orders came to be passed in the Writ Petitions by the Division Bench on 7.2.2002, the one year period prescribed in the statute to advance from Notification to Declaration stage had already elapsed. It is also relevant to record that notwithstanding the interim order dated 7.2.2002, the Appellant State passed an Award on the next day, namely 8.2.2002, obviously oblivious of those interim orders. It also took possession of certain parts of the Scheduled lands. The one year prescription having been transgressed, the subject acquisition would have met its statutory death but for the feature that the urgency provisions had been invoked by the State in the event without legal propriety. The time table established under the L.A. Act requires to be

recalled. Upon the publication of a Notification, affected landowners are required to file Objections within thirty days. Although no period has been prescribed for disposal of Objections by the Collector, this exercise must reach its culmination within one year of the Notification's issuance. If these actions are so done, the Government must direct the Collector to "take order for the acquisition of the land" which is a statutory provision which smacks superficiality. The Collector must also mark and measure the land in question, cause public notice to be given of the Government's intention to take possession of the land and invite claims for compensation etc. After deciding any objection or representation received from the interested parties, an Award has to be made within two years of the Declaration, failing which the entire acquisition proceedings would lapse. Of course the period covered by stay orders granted by a Court would be excluded. Parliament was, as is manifestly evident, alive to the injury that would inexorably visit the landowners if acquisition proceedings were not circumscribed by time, as compensation is pegged to the date of the Notification. The entire exercise has to be completed within three years. This time prescription is thus obviously intended to ensure that the landowners whose lands have been expropriated on the State's continuing powers of eminent domain receive the market price for their property in close proximity of the time of

acquisition. These persons would thus be in a position to purchase alternate property, which indubitably would not be possible if the compensation award is implemented after delay. Courts must be ever vigilant and resolute in protecting these persons from unfair treatment by the State. Thankfully, Parliament has, in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, provided amelioration against Governmental apathy.

4 By a brief Order delivered on 12.1.2004, that is in the era of **Padma Sundara Rao** vs. State of Tamil Nadu (2002) 3 SCC 533, the Division Bench of the Punjab and Haryana High Court, noting the contentions that the Appellant State had not adhered to the mandatory requirement of payment of 80 per cent compensation to the landowners and that it did not qualify as a case of urgency since the Appellant State passed had failed to publish an Award within one year after the Section 6 Declaration, quashed the latter. However, for reasons recondite, the Division Bench simultaneously permitted the petitioners before it to file Section 5A Objections within thirty days and permitted the Appellant State to issue a fresh Section 6 Declaration in the event that it found no substance in those Objections. The directions could not have been given by the Division Bench. Instead, the Division Bench should have simply quashed the Section

6 Declaration, at which point the Section 4 Notification would have lapsed, due to the fact that the one year period for filing a Declaration had already elapsed. In Greater Noida Industrial Development Authority vs. Devendra Kumar (2011) 12 SCC 375 it has been clarified that it is impermissible for the Government to proceed with the acquisition from the stage of Section 4. Applying the ratio of **Kiran Singh** vs. Chaman Paswan (1955) 1 SCR 117 which has been followed in Dr. Jogmittar Sain Bhagat vs. Dir. Health Services, Haryana (2013) 10 SCC 136 to the effect that a decree without jurisdiction is a nullity and its invalidity could be a subject at any stage in any proceedings and even at the stage of execution, the said Order of the Division Bench can be ignored. We think it appropriate to reproduce the operative part of this Order for reasons that will become apparent later:-

> "In the facts and circumstances of the case, as mentioned above, in our view, interest of justice would be served, if we quash declaration under Section 6 of the Act dated 19.1.2001, and all subsequent proceedings that might have been taken thereafter with liberty **to the petitioners** to file objections under Section 5-A of the Act within 30 days from the date of receipt of a certified copy of the order, which, naturally shall be heard by the State or the authority constituted by the State for that purpose, in accordance with law and after giving an appropriate hearing to the petitioners if the objections are rejected, naturally, the Government will be in its power to issue declaration under Section 6 of the Act.
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> Petition is disposed of accordingly. However, parties are left to bear their own costs." (emphasis supplied)

5 We must highlight the lapses by the Appellant State in the manner in which it conducted the acquisition. Significantly, no compensation whatsoever, leave alone the 80 per cent postulated by the Statute under Section 17(3), was given at the time that the urgency provisions were invoked. This exercise ought to have been carried out by passing a provisional or ad hoc Award containing the Collector's estimation of the compensation to be paid to the landowners. The State seems to be oblivious of the law and impervious to the plight of the landowners whose livelihood is virtually deracinated. Section 6 requires particular perusal and we are extracting its relevant portions for convenience. Also, for facility of reference, Sections 17(3A) is reproduced in order to emphasize that those provisions could be correctly and properly resorted to only if the State Government, through its Collector, had tendered 80 per cent of the compensation estimated by him.

> **Section 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, it 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 5A, sub-section (2):

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

(i) xxx xxx xxx

(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:

17. Special powers in cases of urgency —

xxx xxx xxx

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3), —

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second provision thereto), shall apply as they apply to the payment of compensation under that section.

6 Even though the holding of property is no longer a fundamental right guaranteed under Part III of the Constitution of India, it has been given constitutional protection under Article 300A which came to be inserted into the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978

which omitted Article 19(1)(f), viz., "to acquire, hold and dispose of property". The Constitution now guarantees that no person shall be deprived of his property save by authority of law. We have mentioned this for the reason that if the Union or the State Government is desirous of depriving any person of his property it can only do so by authority of law. That authority, as is facially evident, inter alia, is the necessity to tend the payment of 80 per cent of the compensation estimated by the Collector in the event that Section 17 is to be pressed into service, with the objective of denying the landowners remonstration rights by filing Objections in consonance with Section 5A of the L.A. Act. Expropriatory legislation, such as the L.A. Act, must compulsorily be construed strictly. The Appellant State cannot be permitted to invoke one part of Section 17 while discarding another. Sections 17(3A) and 17(3B), which were inserted by the Act 68 of 1964 with effect from 24.9.1994, cannot be rendered nugatory. In this regard, we are reminded of the Judgment of this Court in Babu Verghese v. Bar Council of Kerala (1999) 3 SCC 422 which held that: "It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all." The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch D 426 which was followed by Lord Roche in Nazir

Ahmad v. King Emperor AIR 1936 PC 253, and has been upheld in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1954 SC 322, State of U.P. v. Singhara Singh AIR 1964 SC 358 and Hussein Ghadially v. State of Gujarat (2014) 8 SCC 425.

7 Prima facie, time for filing of 5A Objections would have to be computed to have commenced on the date of the Order, i.e. 12.1.2004, and further there seems to be no alternative but to deem the issuance of the Section 4 Notification for the same date. Hence the Section 6 Declaration would have to be made at the latest by 11.1.2005. However, we reiterate that the High Court ought to have simply quashed the Section 4 Declaration in personam, or if circumstances so commanded, in rem. By permitting nay enjoining the petitioners to file Objections, the High Court has caused a piquant position to come into place. But, as is trite, no party can be made to suffer any disadvantage due to an act of the Court. The Respondents filed Objections on 11.2.2004 which were dismissed in September 2004 paving the way for the passing of a fresh Section 6 Declaration on 30.12.2004. The Respondents thereupon challenged the Section 4 Notification dated 18.1.2002 and the Section 6 Declaration dated 30.12.2004 in terms of C.W.P. No. 1123 of 2006, C.W.P. No. 1465 of 2006 and C.W.P. No. 2166 of 2007.

8 In the second salvo of writ petitions, the Division Bench has found in the impugned Judgment dated 12.3.2008 that the second Section 6 Declaration had been made after the passing of the period prescribed in the L.A. Act, as the Section 4 Notification was issued on 18.1.2001. It noted that this Court had held in **Padma Sundara Rao** that the subject statutory period has to be imparted a strict construction; the period could be increased only in the circumstances postulated and provided for in the Act itself. The Division Bench also observed that even if the second Section 6 Declaration were to be accepted as valid by construing the one year period from the date of the Order of the previous Division Bench dated 12.1.2004, the Appellant State had failed to pass an Award within two years, thus falling foul of Section 11A of the L.A. Act. The Section 4 Notification, the Section 6 Declaration and all proceedings pursuant thereto were therefore quashed. We find it apposite to note the error in the latter observation. According to Section 11A of the L.A. Act, the award has to be made within two years of the date of the Declaration, which requirement was met in this case. There was no basis on which to calculate this period from the date of the previous Order, as the Division Bench has done.

9 It would be pertinent to clarify that the quashing of the entire acquisition proceeding has to be explicitly expressed. This Court has in

Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, Abhey Ram, Delhi Administration v. Gurdip Singh Uban (1999) 7 SCC 44, Delhi Administration v. Gurdip Singh Uban (2000) 7 SCC 296 and The Chairman and M.D., TNHB v. S. Saraswathy (Judgment delivered on 11.5.2015 in Civil Appeal Nos. 736-737 of 2008) reiterated and restated the established and consistent view that quashing of acquisition proceedings at the instance of one or two landowners does not have the effect of nullifying the entire acquisition. In A.P. Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao (2012) 12 SCC 797, this Court has reiterated the established proposition that landowners who are aggrieved by the acquisition proceedings would have to lay a challenge to them at least before an Award is pronounced and possession of the land is taken over by the Government. Numerous decisions of this Court have been discussed obviating the need to analyze all of them once again. However, generally speaking, Courts come to the succour of those who approach it. In some instances equities are equalized by allowing subsequent slothful petitioners, belatedly and conveniently jumping on the bandwagons, to receive, at the highest, compensation granted to others sans interest.

10 The Appellant State has filed this Appeal contending that the parties are bound by the Division Bench Order dated 12.1.2004, which allowed for

filing of a fresh Section 6 Declaration. This is a specious submission because the State ought to have assailed that Order since its conclusions were contrary to the ratio of the Constitution Bench of this Court in **Padma Sundara Rao**. It may be contended that the landowners could equally have challenged this Order. However, given the resources available virtually at the beck and call of the State, it cannot be excused for its neglect or jural folly and must be held responsible for its failures. This is especially so since the concerned citizens face the draconian consequences of expropriation of their land with its attendant loss of income. The Appellant State further contended that the initial Section 6 Declaration was within the statutory time period and upon the curing of technical defects, the original Section 6 Declaration continued. The Appellant State also argued that the possession of certain lands has already been taken by the Haryana Urban Development Authority (HUDA) and therefore those matters have acquired finality in accordance with the ratio of **Padma Sundara Rao**, which is available in these extracted paragraphs:

> **11.** 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 the 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* v. *Union of India* (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.

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14. 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.* v. *P.N.B. Capital Services Ltd.)* 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 *Narsimhaiah case.* In *Nanjudaiah case* the period was further stretched to have the time period run from date of service of the 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 clause (*i*) and/or clause (*ii)* of the proviso to Section 6(1), but

> also by a non-prescribed period. Same can never be the legislative intent.
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> **16.** The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in *K. Chinnathambi Gounder v. Government of Tamil Nadu* AIR 1980 Mad 251 : (1980) 2 MLJ 269 (FB)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 the 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 curiae neminem gravabit* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

11 The Division Bench has predicated its decision to set aside the Notification as well as the Declaration on **Padma Sundara Rao**, which ironically the previous Division Bench had failed to follow. The decision of the Constitutional Bench in **Padma Sundara Rao** held that the language in Section 6(1) is clear and unambiguous, and the time period cannot be stretched as this would not be in keeping with the legislative intent. The contention of the Appellant State that the Declaration dated 30.12.2004 is a continuation of the initial Declaration is thus clearly erroneous, as such a finding would be in the face of the strict interpretation of time prescribed by

Padma Sundara Rao and the unambiguous language of Section 6. Had the Legislature intended to allow for such a continuation, it would have done so by specifically providing for it, as it has done for periods covered by orders of stay and injunction. Furthermore, the Appellant State cannot place reliance on an erroneous Order which caused grave prejudice to the rights of the Respondents. It would be apt to mention the legal principle that no party should suffer for the mistake of the Court. Since compensation is calculated based on the value of the land on the date of the Section 4 Notification, the Order of the Division Bench dated 12.1.2004 resulted in the landowners getting compensation at 2001 rates even though the Award was finally passed in 2006 and the compensation is yet to be paid to the Respondents. Had the Division Bench Order struck down only the Declaration, which in turn would have resulted in the entire acquisition lapsing, the Appellant State would have had to reinitiate acquisition proceedings, resulting in the Respondents receiving compensation at the market rates current at the time of the fresh Notification. We therefore find that the Declaration dated 30.12.2004 cannot be upheld merely by virtue of the previous Division Bench's erroneous and prejudicial Order. We are in agreement with the decision of the High Court in the impugned Judgment and consequently dismiss the Appeal.

C.A. Nos. 459-460 of 2011

12 We are of the opinion that the substance of the issues in question in this batch of petitions are analogous to those in Civil Writ Petition No. 1123 of 2006 which has been assailed in Civil Appeal No. 318 of 2011, save for the difference that it is the Haryana Urban Development Authority which has filed the Appeal. In that light, the findings made in the preceding Appeal apply squarely to this batch of Appeals as well, and are decided in the same terms.

C.A. Nos. 461-462 of 2011

13 The factual scenario in these Appeals is different from Civil Appeal No. 318 of 2011, in that compensation has been paid to the Contesting Respondents, whose land is now in the possession of Haryana Urban Development Authority. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 makes it clear that the three requirements for an acquisition to attain finality are the passing of an award, payment of compensation and taking of possession, all of which are met here. Furthermore, the Contesting Respondents in these Appeals had not been parties before the Division

Bench in its Judgment dated 12.3.2008. As that Judgment did not explicitly state that it would apply to all the landowners affected by the impugned acquisition process, it was limited in scope to the parties before it, for reasons that we have already discussed herein. It would also be pertinent to note that the Contesting Respondents in these Appeals only filed writ petitions challenging the acquisition after the Judgment dated 12.3.2008 was passed. We find that till the date of the 12.3.2008 Judgment, these Respondents had acquiesced to the acquisition and had allowed it to become final, and therefore they could not seek to challenge it by placing reliance on a Judgment that did not enure to their benefit.

14 A number of Proforma Respondents were impleaded in Civil Appeal No. 462 vide order dated 12.4.2013, and we are not aware of whether the acquisitions with regard to their land has become final. However, these Proforma Respondents first challenged the acquisition by filing a writ petition in 2010, well after the Judgment dated 12.3.2008. It is thus clear that these Respondents, too, initially consented to the acquisition process and only challenged it belatedly by seeking to rely upon a favourable Judgment that did not relate or pertain to them. The impugned Orders dated 12.5.2008 in C.W.P. No 7066 of 2008 and 13.5.2008 in C.W.P. No. 7353 of

2008 as well as Order dated 19.1.2010 in C.W.P. No. 163 of 2010 are therefore set aside, and these Appeals are accordingly allowed.

.....J.
[VIKRAMAJIT SEN]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
September 7, 2015.