* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09.03.2010
% Date of decision: 26.03.2010

\+ **WP (C) No.23297 of 2005**

MR. RAJINDER KUMAR AGGARWAL …PETITIONER
Through: Mr. V.P. Singh, Sr. Advocate with Mr. S.K. Gupta & Mr. M. Chaudhary, Advocates.

Versus

LIEUTENANT GOVERNOR OF DELHI & ORS. ...RESPONDENTS
Through: Mr. Sanjay Poddar, Adv. for R-1 & 3.

Mr. Ajay Verma, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

SANJAY KISHAN KAUL, J.

1. The petitioner is the owner of land measuring 12 bighas and 10 biswas situated in khasra Nos.137 min (4-10), 138 min (4-3), 136 min (3-17) situated in the Revenue Estate of Village Mehrauli, New Delhi. The petitioner claims to have constructed a farmhouse on the said land after obtaining permission from the Municipal Corporation of Delhi on 19.4.1990 and the completion certificate was issued on 28.9.1993.

2. A notification was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) notifying the intention of the State to acquire the land of the petitioner along with land of others. The avowed public purpose for the land was stated to be building of Vasant Kunj Residential Scheme. The said notification also specified that the Lieutenant Governor of Delhi was satisfied that a case was made out to invoke the emergency provisions and thus the provisions of sub-section (1) of Section 17 of the said Act were applicable to the land and the Lieutenant Governor was pleased to direct that the provision of Section 5A of the said Act would not apply. The total land notified as per the notification was 71 bighas and 13 biswas giving different khasra numbers and the areas as under:

SPECIFICATION

Village	Total Area (Bigha-Biswa)	Khasra No.	Area (Bigha-Biswa)
Mehrauli	71.13	125	5-08
		128	1-04
		129	4-14
		130	7-09
		131	7-06
		132	3-09
		133	2-08
		134	4-00
		135 min	8-13
		136	5-17
		137	5-10
		138	8-13
		139	5-08
		140	1-14

3. The petitioner filed WP (C) No.244/2000 on 14.1.2000 aggrieved by the said notification. It is during the pendency of that petition a declaration was issued under Section 6 of the said Act on 29.9.2000. A status quo order was passed on the interim application of the petitioner on 4.9.2002

by this Court though the interim application had been filed along with the writ petition.

4. The said writ petition along with other connected matters was disposed of by a common judgement on 3.2.2005 granting partial relief to the petitioner to the extent that notification under Section 4 of the said Act dated 11.11.1999 was quashed to the extent that it related to invoking provisions of Section 17 (4) of the said Act giving liberty to the petitioners to file their objections under Section 5A of the said Act before the competent authority within 30 days of the pronouncement of the judgement. The declaration under Section 6 of the said Act dated 29.9.2000, thus, naturally stood quashed.

5. The petitioner thereafter filed objections under Section 5A of the said Act on 4.3.2005. Objections were filed by other affected parties and opportunity of hearing was given by the LAC whereafter the records were placed before the Lieutenant Governor who on examination of the record issued a fresh declaration under Section 6 of the said Act on 9.11.2005. The present writ petition was thereafter filed on 6.12.2005 seeking quashing of the declaration under Section 6 and notification issued under Section 4 of the said Act. We may note that during the pendency of this writ petition the award dated 28.11.2007 bearing No.1/2007-2008 in respect of the complete land under acquisition including the land of the petitioner has been published.

6. The first plea urged by learned senior counsel for the petitioner was that the correct facts had not been brought to the notice of the Lieutenant Governor prior to the issuance of the declaration under Section 6 of the said Act. This plea is predicated on the fact that while the land of the petitioner had a farmhouse constructed after obtaining requisite

permission from the MCD for which the completion certificate had been issued, the Secretary (Land) Government of NCT of Delhi had placed a note dated 25.5.1999 to the Lieutenant Governor stating that all built up structures are unauthorized including the farmhouses. Learned counsel, however, could not seriously urge this plea because this noting is prior to the declaration made earlier on 29.9.2000 after invocation of the emergency powers and since invocation of the emergency powers was quashed and the declaration dated 29.9.2000 consequently set aside, the matter rested so far as the grievance is concerned at that stage. Thereafter objections were filed by the petitioner and other affected parties under Section 5A of the said Act which had been examined by the LAC, report submitted by the LAC, note prepared on that basis and it is thereafter that the declaration under Section 6 of the said Act was issued by the Lieutenant Governor. Thus, *ex facie* this plea has no substance.

7. The real question and if, one may say so, the only question urged by learned senior counsel for the petitioner relates to the plea that the declaration under Section 6 of the said Act was beyond time and thus no such declaration could have been issued in respect of the notification under Section 4 of the said Act dated 11.11.1999. Insofar as the computation of the period is concerned the same has to be governed by the first proviso to Section 6 of the said Act read with the explanation 1, which reads as under:

> "6. Declaration that land is required for a public purpose. - ….
>
> [Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-
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> (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but

before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 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 (68 of 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."

8. In view of the aforesaid position it is not in doubt that since notification under Section 4 of the said Act was issued after the Land Acquisition (Amendment) Act 1984 the declaration under Section 6 of the said Act has to be made within a period of one year from the date of publication of the notification under Section 4 of the said Act. In terms of explanation 1 the period during which any action or proceeding to be taken in pursuance of notification issued under Section 4 (1) is stayed by an order of the Court has to be excluded. It appears that interim orders in favour of other parties were granted at the initial stage of filing of the writ petitions, however, in the case of the petitioner though the petition was filed on 14.1.2000 interim orders were passed only on 4.9.2002 after two years and ten months of the notification under Section 4 of the said Act. The earlier declaration under Section 6 of the said Act dated 29.9.2000 though issued within the period of one year was quashed and the subsequent declaration under Section 6 of the said Act was published on 9.11.2005. If the period of stay is excluded in the

individual case of the petitioner then undisputedly the declaration under Section 6 of the said Act under challenge is beyond the period of one year. This is so since a status quo order in the case of the petitioner was granted after two years and 10 months in the earlier petition after notification under Section 4 of the said Act was issued in the earlier petition.

9. The respondents, however, seek to take benefit of the interim order granted in the connected matters challenging the same notification. If that date is taken into account, it is not in dispute that the declaration under Section 6 under challenge is within one year from the date of notification under Section 4 of the said Act. In fact, the other petitions have been dismissed and it is the case of the petitioner that his case is the single case in which this issue has been raised as unlike other cases there was no stay order operating in the case of the petitioner.

10. The moot point, thus, is whether the stay granted in respect of the same notification under Section 4 of the said Act in respect of other parties would entitle the respondents to exclude that period of stay in the case of the petitioner.

11. In order to support his plea learned senior counsel for the petitioner sought to rely upon the judgement of the Supreme Court in Oxford English School Vs. Government of Tamil Nadu & Ors. (1995) 5 SCC 206 where this very question is stated to have been examined. The Supreme Court observed as under:

> "10. The respondents further drew our attention to an order of stay dated 27-10-1987 granted by the Minister for Local Administration on a petition which was filed by the adjoining landowner before the Government. Such a stay, however, cannot be taken into account for the purposes of Explanation 1 since Explanation 1 requires that the order of stay should be passed by a court. In any event a stay in respect of proceedings pertaining

to an adjacent land cannot be availed of by the respondents in calculating the period of three years within which the declaration under Section 6 is required to be made in respect of the appellant's land."

(emphasis supplied)

12. Learned counsel submitted that no doubt in the facts of that case the stay order was granted by the Minister for Local Administration which was held to be not a stay order for purposes of explanation 1 which requires stay order to be passed by a court. However, learned counsel sought to draw strength from the subsequent sentence in the aforesaid para beginning with "In any event" to contend that the Supreme Court has also observed that a stay in respect of proceedings pertaining to an adjacent land could not be availed of by the respondents in calculating the period of three (3) years (which is now one year) within which declaration under Section 6 of the said Act is required to be made in respect of the land in question. Learned counsel submitted that there remains no doubt over this matter as the judgement in Oxford English School case (supra) was examined by the Constitution Bench of the Supreme Court in Padma Sundara Rao (Dead) & Ors. Vs. State of Tamil Nadu & Ors. (2002) 3 SCC 533 where the interpretation of the provisions of Section 6 of the said Act was the matter in issue. The Supreme Court came to the conclusion that where a declaration under Section 6 of the said Act is quashed by a court, a fresh declaration must be issued within the limitation period provided under the said Act and while expressing this view affirmed the views already expressed in Oxford English School case (supra). Learned counsel, thus, submitted that this aspect has escaped the attention of the subsequent judgements of the Supreme Court that the observations in Oxford English School

case (supra) has received the imprimatur of the Supreme Court in Padma Sundara Rao (Dead) & Ors. case (supra).

13. In Suleman Vs. Union of India & Ors. 123 (2005) DLT 206 (DB) it was held that explanation 1 in Section 6 of the said Act makes no distinction between first or subsequent declaration under Section 6 of the said Act and thus if the earlier declaration was quashed, a subsequent declaration had to be within a period of one year from the date of preliminary notification issued under Section 4 of the said Act. The same view has been followed in Shanti India (P) Ltd. Vs. Lt. Governor & Ors. 138 (2007) DLT 511 (DB).

14. The controversy involved before the Constitution Bench arose out of a reference made on account of cleavages being found in the views expressed in several decisions rendered by Benches of three learned Judges of the Supreme Court. The controversy involved lay in a narrow compass as to whether on quashing of notification under Section 6 of the said Act, a fresh period of one year is available to the State Government to issue another notification under Section 6 of the said Act. The Supreme Court found that if the legislature intended to give a new lease of life in those cases where the declaration under Section 6 of the said Act has quashed there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for period covered by orders of stay or injunctions granted by court clearly show that no other period was intended to be excluded and that there was no scope for providing any other period of limitation. Before coming to this conclusion, while considering the conflict of view, the Constitution Bench took note of an unreported decision of the Supreme Court in SLP (C) No.11353-55/1988 titled A.S. Naidu Vs.

State of Tamil Nadu where it was held that once a declaration under Section 6 of the said Act had been quashed, fresh declaration under Section 6 of the said Act could not be issued beyond the period of notification under sub-section (1) of Section 4 of the said Act. The Bench went on to observe that there was another judgement of two learned Judges in Oxford English School case (supra) which took a similar view to that expressed in A.S. Naidu case (supra). In conclusion it was held that the views expressed in A.S. Naidu case (supra) and Oxford English School case (supra) were affirmed.

15. Learned counsel, thus, submitted that the reliance placed by the respondents on the Full Bench judgement of this Court in Balak Ram Gupta Vs. Union of India AIR 1987 Delhi 239 and Abhey Ram (Dead) through LRs & Ors. Vs. Union of India (1997) 5 SCC 421 is misplaced to the extent that they seek to lay down the proposition that the stay granted in other cases will apply to a case of a person in whose case there is no stay for purposes of calculating limitation under Section 6 of the said Act. Learned counsel further pleaded that even in Om Parkash Vs. Union of India & Ors. 2010 (2) SCALE 153 the Constitution Bench in Padma Sundara Rao (Dead) & Ors. case (supra) had not been examined and the law laid down in Padma Sundara Rao (Dead) & Ors. case (supra) must prevail especially since both in Balak Ram Gupta case (supra) and Abhey Ram (Dead) through LRs & Ors. case (supra) the question did not arise on account of any notification under Section 17 (4) of the said Act.

16. The respondents, however, sought to urge to the contrary by contending that there was a stay in operation in respect of land in khasra Nos.136, 137 & 138 in petitions filed by parties who had land adjoining to that of

the petitioner located in the same khasra numbers in WP (C) No.2654/2005 and the Government was entitled to exclude the period of limitation. In this behalf learned counsel relied upon the observations in Balak Ram Gupta case (supra) to the following effect:

> "26. Learned Counsel for the petitioners is to some extent right in his contention that broad as the above observations are, these cases are slightly different in that they all dealt with the effect of the operation of stay order only vis-a-vis one of the parties to the litigation in which the stay order is passed. But we are of opinion that these decisions are of guidance as to the proper approach to such a question. In the first place, they show that a stay of execution of a decree can be pleaded as ground for conclusion of the period of stay even by a judgment-debtor who did not seek the stay. To that extent, the insistence by the petitioners that the exclusion can operate only against the party who obtained the stay order would not be correct. Secondly, these decisions show that the prohibition on action need not be the direct effect of stay order of a Court. Thus, in the present cases, even if in terms the Court be held not to have stayed a declarations in other cases, such was the indirect effect of the stay order in these cases. Thirdly, they lay down that we should not interpret a provision of this type rigidly but should give it an interpretation that gives effect to the object of the Legislature.
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> 27. We, therefore, think that, in proceeding to interpret the scope of the Explanation, we should keep in mind the nature of the proceedings under the Land Acquisition Act and the nature of the proceedings in which stay orders are obtained. So far as the first of these aspects is concerned, while it is possible for the Government to issue notification under Section 4 in respect of each plot of land sought to be acquired, it is not feasible or practicable to do so, particularly in the context of the purpose of many of the acquisitions at the present day. It is common knowledge that in Delhi, as well as many other capital cities, vast extents are being acquired for 'planned development' or public projects. The acquisition is generally part of an integrated scheme or plan and, though, technically speaking, there can be no objection to individual plots being processed under Sections 5A, 6, 9, 12, etc., particularly after the amendment of 1967, the purpose of acquisition demands that at least substantial blocks of land should be dealt with together at least up to the stage of the declaration under Section 6. To give an example, if a large extent of land is to be acquired for the excavation of a canal, the scheme itself cannot be put into operations unless the whole land can be eventually made available. If even one of the land owners anywhere along the line applies to Court and gets a stay of the operation of the notification under Section 4, in practical terms, the whole scheme of acquisition will fall through. It is of no consolation to say that there was no stay regarding other

lands covered by the scheme. To compel, the Government to proceed against the other lands (by refusing the benefit of the Explanation in such a case on the ground that there is no stay order in respect thereof) would only result in waste of public expenditure and energy. If, ultimately, the single owner succeeds in establishing a vitiating element in the Section 4 notification and in getting it quashed by the Supreme Court, the whole proceeding of acquisition will fail and the Government will have to retrace the steps they may have taken in respect of other lands (see Sheonoy v. Commercial Tax Officer [1985]155ITR178(SC) and Gauraya v. Thakur 1986CriLJ1074 . Assuming that where such final order is by a High Court the position is not free from difficulty, the debate as to whether, in law, the quashing of the order ensures only to the benefit of the party who filed the writ petition and obtained the order is futile, for the moment the Government seeks to enforce the acquisition against the other, they would come up with similar petitions which cannot but be allowed. In other words, in many of the present day notifications, the acquisition scheme is an integral one and the stay or quashing of any part thereof is a stay or quashing of the whole. This aspect should not be lost sight of.

28. It is true that the object of having contiguity of all plots sought to be acquired may fail for various reasons. For instance, there may be items of properties exempt from acquisition in between. Again, it may happen that a particular person may have been able to stave off acquisition of his land for one reason or other, particularly since dates of declarations under Section 6, awards and taking of possession may vary from plot to plot. Moreover, it is not in all cases that the object of acquisition needs a number of contiguous plots and may be workable even without some of the intervening lands. However, in considering a question of interpretation, one should not go only by one particular situation but must consider all eventualities to the extent possible. It is only on a broad perspective of the scheme of present-day acquisitions in large measure that we say that any hurdle in regard to any one plot of land can hold up an entire acquisition, all promptness and expedition on the part of the Government notwithstanding.

29. It was sought to be urged that the interpretation sought to be placed by the respondent would result in equating an interim order with a final judgment and the final judgment in a land acquisition case to a judgment in rem and in this context reference was made to Section 41, Evidence Act and to a Passage in Woodroffe on Evidence (14th Edition, Vol. 2) at page 1225. We do not think this analogy is correct. If the final order can operate to the benefit of all the parties, there is no reason why the interim order cannot also affect them. Moreover, we are considering the nature and effect of an injunction passed by the Court against one of the parties thereto who has to act in the same capacity not only in the acquisition of the plot of land the owner of which has obtained a stay order but in all

proceedings consequent on or in pursuance of same notification that is challenged in that petition.

30. Secondly, the nature of proceedings in which stay orders are obtained are also very different from the old pattern of suits confined to parties in their scope and effect. Section 4 notifications are challenged in writ petitions and it is now settled law that in this type of proceedings, the principle of locus standi stands considerably diluted. Any public spirited person can challenge the validity of proceedings of acquisition on general grounds and when he does this the litigation is not inter parties simplicity : it is a public interest litigation which be nothing personal to the particular landholder but are, more often than not, grounds common to all or substantial blocks of the land owners. In fact this group of petitions now listed before us raise practically the same contentions just as the previous batch of writ petitions challenging the notifications under Section 4 raised certain common contentions. To accept the contention that the challenges and interim orders in such petitions should be confined to the particular petitioners and their lands would virtually provide persons with common interests with a second innings. If the initial challenge succeeds, all of them benefit; and, if for some reason that fails and the second challenge succeeds on a ground like the one presently raised, the first batch of petitioners also get indirectly benefited because of the impossibility of partial implementation of the scheme for which the acquisition is intended.

31. We have, therefore, to give full effect to the language of the section and the stay orders in question, in the above context and background. The use of the word "any" in the Explanation considerably amplifies its scope and shows clearly that the Explanation can be invoked in any case if some action or proceedings is stayed. It may be a complete stay of the operation of the entire notification or may even be a partial stay - partial in degree or in regard to persons or lands in respect of whom it will operate. The words used in the Explanation are of the widest amplitude and there is no justification whatever to confine its terms and operation only to the cases in which the stay order is actually obtained."

17. In Abhey Ram (Dead) through LRs case (supra) it was observed as under:

"9. Therefore, the reasons given in B.R. Gupta v. Union of India are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-à-vis the writ petitioners therein. The question that arises for consideration is whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on the premise that the appellants had

not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters were disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendoliya v. State of Gujarat, Hansraj H. Jain v. State of Maharashtra, Sangappa Gurulingappa Sajjan v. State of Karnataka, Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan, G. Narayanaswamy Reddy v. Govt. of Karnataka and Roshnara Begum v. Union of India. The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt."

18. Learned counsel emphasized that the judgements are not to be read as statutes and what has to be examined is the ratio of the judgement. The question raised before the Court and the answer to that alone would be law on the point. In this context it has been contended that in Padma Sundara Rao (Dead) & Ors. case (supra) the only issue was whether after quashing of a notification under Section 6 of the said Act a fresh period of one year was available for issuance of a fresh notification under Section 6 of the said Act. The question whether stay obtained through court in respect of adjoining land could or could not be taken into account for purposes of calculation of period of limitation was not before the Court in Padma Sundara Rao (Dead) & Ors. case (supra). Thus, the approval of the Supreme Court of the judgement in Oxford

English School case (supra) was only to that extent as it confirmed to the ratio of A.S. Naidu case (supra). It does not mean that every sentence in Oxford English School case (supra) stood approved by the Constitution Bench of the Supreme Court.

19. Learned counsel also emphasized that a reading of Padma Sundara Rao (Dead) & Ors. case (supra) would show that it did not even have a mention of explanation 1 of proviso to Section 6 nor was this aspect discussed. The ratio in Balak Ram Gupta case (supra) & Abhey Ram case (supra) has again received the imprimatur of the Supreme Court in a latest decision in Om Parkash case (supra) where it was observed as under:

> "76. Explanation 1 appended to first proviso of Section 6 of the Act, as reproduced hereinabove, makes it crystal clear that where any order of stay has been granted in favour of land owner, while computing the period of limitation of three years for issuance of Section 6 notification, the actual period covered by such order of stay should be excluded. In other words, the period of three years would automatically get extended by that much of period during which stay was in operation. The question which, therefore, arises for our consideration is whether even in those cases where there has been no stay order granted or passed in favour of the land owners, the period of limitation would be three years from the date of issuance of notification under Section 4 of the Act or it would be more on account of stay order granted in other matter in which such appellants were not parties.
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> 77. On account of difference of opinion between two Benches of High Court of Delhi matter was referred to a Full Bench, referred to as B.R. Gupta-I the only question posed before it for opinion was with regard to effect of grant of stay, where challenge is to the issuance of notification under Section 4 of the Act vis-à-vis other land owners who had not challenged it. After considering the ambit, scope and nature of stay granted especially in land acquisition matters, Full Bench has expressed its opinion in paragraphs 26 to 31 reproduced hereinbelow:
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> 26….
> 27….
> 28….
> 29….
> 30….
> 31…."

20. In Om Parkash case (supra) the observations made in Abhey Ram case (supra) in the following terms were duly approved:

> "82. This Court after considering previous judgements on the controversy involved in the matter held as under in paras 10,11 and 12 reproduced hereinbelow:
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> "10. The question then arises is whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also. Though, prima facie, the argument of the learned counsel is attractive, on deeper consideration, it is difficult to give acceptance to the contention of Mr Sachar. When the Division Bench expressly limited the controversy to the quashing of the declaration qua the writ petitioners before the Bench, necessary consequences would be that the declaration published under Section 6 should stand upheld.
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> 11. It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this Court. If it were a case entirely relating to Section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under Sections 16 and 17(2) of the Act free from all encumbrances. But it is seen that the Division Bench confined the controversy to the quashing of the declaration under Section 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under Section 6 by the Division Bench does not enure to the appellants.
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> 12. It is true that a Bench of this Court has considered the effect of such a quashing in Delhi Development Authority v. Sudan Singh. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in Yusufbhai Noormohmed Nendoliya case this Court had also observed that it would enure the benefit to those petitioners. In view of the fact that the notification under Section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued under Section 5-A."

21. Learned counsels for the respondents also contended that the petitioner had raised this plea in the writ petition filed in the year 2000 and did not

succeed on that account. Not only that the issue is no more *res integra* as the petitioner as well as Shanti India (P) Ltd. had filed a review petition arising from the order dated 3.2.2005 which was dismissed on 21.7.2006. Learned counsel in this behalf also referred to the findings in Shanti India (P) Ltd. case (supra) which are as under:

> "5. The learned senior counsel for the petitioner relied upon the position of law laid down by the Hon'ble Supreme Court in the case of Padmasundara Rao(supra) to submit that after a declaration under Section 6 of the Act is quashed by the court, a fresh period of limitation of one year is not available in order to issue a second declaration under Section 6 and that the second declaration has to be issued within the specified time and merely because the court has quashed the declaration concerned, an extended time period is not to be provided from the date of quashing of the first declaration. Thus, according to the learned senior counsel for the petitioner, the second declaration dated 9th November 2005 issued by the respondent No. 4 is not valid as it was issued beyond the limitation period of one year prescribed by Section 6 of the Act. But we are of the view that in the Padmasundara Rao's case (supra) even though the court held that after the declaration under Section 6 has been quashed by the court, the fresh declaration has to be issued within the limitation period of one year provided by Section 6 of the Act, yet that judgment did not deal with the question of the effect of an interim order where the land acquisition proceedings were stayed by the orders of the court. This issue of the period covered by stay orders was dealt with by the Supreme Court in the case of Ramalinga Thevar v. State of Tamil Nadu and Ors. and Usufbhai Noor Mohmed Nendolia v. State of Gujarat (supra) wherein the Hon'ble Supreme Court while dealing with the Explanation to Section 11A of the Act which provides for the exclusion of limitation period of two years in making the award under Sec 11 pursuant to the order of the court which stays any action or proceeding to be taken after the declaration under Section 6 of the Act, held that where a court of law stays the dispossession, the time period during which the stay operates would be excluded from passing the award. The Explanation to Section 11A and Explanation 1 to Section 6 read as follows:
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> Explanation to Section 11A - In computing the period of two years referred to in this section the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.
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> Explanation 1 to Section 6 - 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.

The Explanation to Section 11A of the Act is pari materia with the Explanation 1 to Section 6 which states that in computing any of the periods referred to in the first provisio, the period during which any action or proceedings to be taken in pursuance of the notification issued under Section 4(1) is stayed by the order of this Court shall be excluded. Thus, the above principle of excluding periods covered by the interim orders granted by Courts would also apply equally to notifications under Section 4 and 6 which fell within such periods which by excluding the period of the operation of the stay order fell within the period of one year."

(emphasis supplied)

22. It is submitted that a Co-ordinate Bench of this Court has, thus, rejected the same plea in that case.

23. Learned counsel emphasized that such an exclusion of stay period in cases of land other than the land owners had been approved in Bailamma (Smt.) Alias Doddabailamma (Dead) And Others Vs. Poornaprajna House Building Cooperative Society And Others (2006) 2 SCC 416 and in a latest judgement of the Supreme Court in Civil Appeal No.8235/2009 titled R. Kolandndaivelu & Ors. Vs. The Government of Tamil Nadu & Anr. decided on 11.12.2009.

24. On examination of the aforesaid pleas there is no doubt that there are a plethora of judgements including Balak Ram Gupta case (supra), Abhey Ram case (supra), Om Parkash case (supra), Shanti India (P) Ltd. case (supra), Bailamma (Smt.) Alias Doddabailamma (Dead) And Others case (supra), R. Kolandndaivelu & Ors. case (supra) for the proposition that if in case of such large scale acquisition of land where development of land in isolation is not possible and there is stay of concerned notification under Section 4 of the said Act in respect of adjacent land owners, then the respondents are entitled to exclude the period of stay

even in other cases. The case of the petitioner is similar as his land formed part of khasra numbers along with land of others which were under the same notification under Section 4 of the said Act and interim orders were operating on account of writ petitions filed by such other land owners owning land in the same khasra numbers.

25. The only plea, thus, is to be examined is whether these plethora of judgements of the Supreme Court and of this Court are liable to be ignored in view of the plea of the petitioner that the observations in Oxford English School case (supra) have received approval of the Supreme Court in Padma Sundara Rao (Dead) & Ors. case (supra). As to how a ratio of a judgement has to be culled out and in what manner it is to be treated as a precedent and as binding observations has been dealt with in Union of India & Ors. Vs. Dhanwanti Devi & Ors. (1996) 6 SCC 44 relied upon by the respondents. It was observed in paras 9 & 10 as under:

> "9. Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishan Khosla case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not

intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents….."

(emphasis supplied)

26. The respondents had also referred the observations of the Supreme Court in M/s. A-One Granites Vs. State of U.P. & Ors. AIR 2001 SC 1203, which are as under:

"11. This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corpn. of Delhi v. Gurnam Kaur3 observed thus: (SCC p. 111, para 12)

" In Gerard v. Worth of Paris Ltd. the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was

argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed."

In State of U.P. v. Synthetics and Chemicals Ltd. reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus: (SCC p. 163, para 41)

"A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141."

In the case of Arnit Das v. State of Bihar, while examining the binding effect of such a decision, this Court observed thus: (SCC p. 498, para 20)

" A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined."

27. A judgement of the Court is never treated like a statute. It is necessary to analyze and isolate the ratio decidendi and the decision is only an authority of what it actually decides. Every stray observation in the judgement cannot be picked up as the ratio decidendi. It has, thus, been held that the enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The prelude to this is a hearing of arguments of questions which arise in the case. If the judgement in Padma Sundara Rao (Dead) & Ors. case

(supra) is examined in its context taking into consideration the Oxford English School case (supra) we are unable to persuade ourselves to agree with the submissions of the learned senior counsel for the petitioner. The question involved in Oxford English School case (supra) related to the issue of a stay order passed in respect of an adjacent land by a Minister and not by a court and it was held that such a stay could not be taken into account for purposes of explanation 1 which required the order of stay to be passed by a court. The observation thereafter beginning with "In any event" has to be categorized as a stray observation in that context, that not being a controversy to be decided.

28. Similarly in Padma Sundara Rao (Dead) & Ors. case (supra) the controversy has been set out by the Constitution Bench in para 3 itself which lay in a narrow compass whether after quashing of notification under Section 6 of the said Act a fresh period of one year was available to the State Government to issue notification under Section 6 of the said Act. This was answered in the negative. It is in that context that the view in A.S. Naidu case (supra) and Oxford English School case (supra) were affirmed. Nothing more can be read in the judgement of the Constitution Bench. In Oxford English School case (supra) it was observed in para 8 as under:

> "8.….Since the prohibition on issuance of a declaration under Section 6 after the expiry of three years from the date of the publication of the notification under Section 4(1) is absolute, the High Court could not have given any direction permitting issuance of the declaration under Section 6 within six months from the date of its judgment."

It is the aforesaid aspect which has been approved by the Constitution Bench in Padma Sundara Rao (Dead) & Ors. case (supra).

29. The subsequent paragraphs 9 & 10 arise from an additional aspect urged by the respondents who were seeking to take advantage of a stay granted. The order of stay discussed in para 10 was of the Minister for Local Administration and it was observed that the same could not be taken into account.

30. We are, thus, unequivocally of the view that the approval of the Padma Sundara Rao (Dead) & Ors. case (supra) in respect of the observations in Oxford English School case (supra) are restricted to the error committed by the High Court in granting of further time for declaration under Section 6 of the said Act which would not be in conformity with explanation 1 as the only period which can be excluded is the period of stay from court. The Constitution Bench had no occasion to consider the question of the effect of a stay in respect of an adjacent land nor are there any observations or discussion in that behalf in the Constitution Bench judgement. It is in that context in Padma Sundara Rao (Dead) & Ors. case (supra) it was observed in para 16 as under:

> "16.…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."

31. We are, thus, of the considered view that the legal point in respect of the plea of the petitioner is well settled and in view of the facts of the case the respondents are entitled to exclude the period of stay in respect of the adjacent land forming part of the same khasra numbers where the land of the petitioners is situated.

32. The writ petition is dismissed leaving the parties to bear their own costs.

33. We, however, make it clear that this judgement would not in any manner prejudice the examination of the case of the petitioner under Section 48 of the said Act arising from our order dated 8.3.2010 in WP (C) No.542/2008 of the petitioner wherein he had challenged the award and had withdrawn the same with liberty to file such an application under Section 48 of the said Act for release of the land.

SANJAY KISHAN KAUL, J.

MARCH 26, 2010 VEENA BIRBAL, J.
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