

LAW COMMISSION OF INDIA

ONE HUNDRED EIGHTY SECOND REPORT

ON

Amendment of Section 6 of the Land
Acquisition Act, 1894

May, 2002

D.O.No.6(3)(78)/2002-LC(LS)

May 9, 2002

Dear Shri Jaitley ji,

I am sending herewith the 182nd Report on Amendment of Section 6 of the Land Acquisition Act, 1894.

2. The subject was taken up *suo motu* by the 16th Law Commission of India for removing the lacuna regarding issuing of a fresh notification for the acquisition of land for public purpose under section 4 of the Land Acquisition Act, 1894 which has arisen in view of the decision of the Supreme Court in Padamsundara Rao v. State of Tamil Nadu [JT 2002 (3)SC 1] delivered on 13.3.2002 overruling the view taken in N.Narasimhaiah v. State of Karnataka [1996 (3) SCC 88] case, on the ground that fixing of any further period for making a fresh declaration would amount to legislation by judicial fiat. In Narasimhaiah's case, it was held that where any declaration made under section 6(1) was set aside or quashed by a court, a fresh declaration could be made within one year from the date of the judgment of the court. It was this view that was not accepted in the recent case of Padamsundara Rao.

3. The Commission, therefore, considered it appropriate to examine the said lacuna and recommends amendment of section 6 of the Land Acquisition Act, 1894 with a view to subserve the public purpose, allow the land acquisition proceedings to be continued without a fresh notification under section 4(1) and render the judicial process meaningful and efficacious as also to enable the aggrieved owner to vindicate his grievances in the pending land acquisition proceedings itself.

4. We have, *inter alia*, recommended amendment in section 6 of the Act to enable authorities to make a fresh declaration within 180 days from the judgment of the court if any action or proceeding is taken in pursuance of section 4(1) notification or any declaration made under section 6(1) has been set aside or quashed by the court.

5. As the Supreme Court Judgment in Padamsundara's case overrules Narasimhaiah's case prospectively, separate provision is made to cover events after 13.3.2002.

6. A draft Bill on the amendment to section 6 of the Land Acquisition Act, 1894 is annexed herewith.

With regards,

Yours sincerely,

(Justice M.Jagannadha Rao)

Shri Arun Jaitley,
Hon'ble Minister for Law, Justice & Co. Affairs,
Shastri Bhavan,
New Delhi.

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Report on Amendment to Section 6 of the Land Acquisition Act, 1894

This Report is prepared for the purpose of removing the lacuna in sec. 6 of the Land Acquisition Act, 1894, which has come to light in view of the decision of the Constitution Bench of the Supreme Court of India in its recent judgment in Padmasundara Rao (dead) & Others vs. State of Tamil Nadu & Others: JT 2002(3) SC page 1 dated 13.3.2002. The controversy which has arisen in regard to sec. 6 of the Act has been set out in the judgment of the Supreme Court as follows:

“The controversy involved lies within a narrow compass, that is, whether, after quashing of notification under sec. 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 sec. 6.”

Prior to this judgment, the decision in N.Narasimhaiah and others v. State of Karnataka 1996 (3) SCC 88 (three Judges Bench), held the field and provided a further period of one year from the date of the judgment of the court qualify the declaration under section 6(1), received by the Land

Acquisition Officer. It was held in that case that such a construction would subserve the public purpose and would save the validity by the earlier notification issued under section 4(1) of the Act. Otherwise, if a fresh notification under section 4(1) was to be issued, it could amount to going back to square one. That would indeed defeat the main legislative purpose. The land acquisition proceedings, which were started, must be allowed to go on and the aggrieved parties be given the necessary opportunity to vindicate their grievances. There was no need to compel government to issue a fresh notification under section 4. This was what was held in Narasimhaiah case. However, in Padmasundara Rao's case supra, the Constitution Bench overruled Narasimhaiah judgment on the ground that fixing another period of one year from the date of judgment for making the section 6 declaration, would amount to legislation by judicial fiat. The Supreme Court observed that courts can only interpret the law and cannot legislate and that if a provision of law is misused or subjected to abuse of process of law, it would be for the legislature to amend, modify or repeal the law. The court further held that the aforesaid view in Narasimhaiah's case (supra) could not be reconciled with the language used by the Parliament in section 6(1).

In order to meet the said objectives as set out in Narasimhaiah case, it is essential to bring certain amendments in section 6(1) of the Act.

For the purpose of understanding this issue, it is necessary to briefly refer to the scheme of land acquisition under the Act and in particular to notification to be issued under section 4(1) of the Act and the declaration to be made under section 6 of the Act and to the history of time-limits mentioned in section 6 of the Act.

The Land acquisition Act, 1894 was enacted for the purpose of compulsorily acquiring of land required for public purpose or for purpose of companies and for determination of the amount of compensation to be paid on account of such acquisition. The Act contemplated that initially a notification would have to be issued under sec. 4(1) indicating the intention of the Government to acquire land or other property. The notification under sec. 4(1) has to be published in the official Gazette. The 1984 Amendments require the sec. 4(1) notification to be also published in two local newspapers of which one at least should be in a regional language, in addition to the public notice of the substance of such notification which has to be made by the Collector at convenient places in the locality where the land is situate. Thus, there are three types of publications of section 4(1) notification. The date of the last of these publications and of such public notice is deemed to be the date of the notification under sec. 4(1). Compensation has to be paid on the basis of the market value as on the date of the notification under sec. 4(1).

After sec. 4(1) notification is issued, section 5A contemplates an inquiry into objections to be filed by those interested in the land or property. That section refers to filing of objections before the Collector, and he has to give an oral hearing and thereafter he has to submit a report to the concerned Government which issued sec. 4(1) notification, for taking further action. The procedure regarding hearing of objections can be dispensed with in case of urgency under section 17(4). If the inquiry is not dispensed with and a report is given after the inquiry, the concerned Government has then to apply its mind independently and decide whether to confirm the acquisition and go

ahead. If it decides to go ahead, it has to make a declaration under sec. 6 of the Act. The said declaration will be conclusive proof of the public purpose. The declaration that is made under sec. 6 has to be published, as per a procedure which is similar to the procedure prescribed for publication of a notification under section 4(1).

Initially, under the Act of 1894, there were no time limits prescribed for the making of declaration under sec. 6 after the publication of the notification under sec. 4(1) of the Act. This led to unreasonable delays. In cases, where there was unreasonable delay in the making of the declaration under sec. 6 of the Act, the owner of the property was under a great disadvantage because the market value would have to be determined on the basis of the sec. 4(1) notification published several years earlier. Such unreasonable delays were criticized by the Supreme Court in State of MP vs. Vishnu Prasad AIR 1966 SC 1593.

For the purpose of expediting the making of declarations under sec. 6, the Land Acquisition (Amendment and Validation) Ordinance, 1967 was promulgated. The Ordinance provided that no declaration under section 6 should be made [in respect of any particular land covered by the notification under section 4(1), published after the commencement of the Ordinance,] after expiry of three years from the date of such publication and in cases where notification under section 4(1) has been published before the commencement of this Ordinance, the declaration should not be made after the expiry of two years from the commencement of the Ordinance. The Ordinance also provided that, if necessary, more than one declaration may be made from time to time in respect of different parcels of any land covered

by the same notification under section 4(1) of the Act. The provisions of the Ordinance were later on incorporated into the Amending Act, 1967

As stated above, the period of three years for making declaration under section 6 would apply to all notifications under section 4(1) to be issued after the Ordinance of 1967. The period of three years between sec. 4(1) notification and sec. 6 declaration was treated by Parliament as reasonable.

But, in 1984, Parliament felt that this period of three years between a notification under section 4(1) and the declaration under section 6 should be reduced to one year. Therefore, the 1984 Amendment provided that the sec. 6 declaration must be made within one year from the date of publication of the sec. 4(1) notification, where such notification under section 4(1) was published after the 1984 Amendment Act. In law, if sec. 6 declaration was not made within one year as provided by the 1984 Amendment, it would be invalid. Once there was no valid section 6 declaration made within one year as aforesaid, the sec. 4(1) notification issued earlier would also lapse and the State would have to come forward with a fresh sec. 4(1) notification. Maybe, if the market value had increased between the date of earlier sec. 4(1) notification that has lapsed and the new sec. 4(1) notification that was issued, then the State would have to pay increased price for the lethargy of its officers and for their not making the sec. 6 declaration within one year of the sec. 4(1) notification.

The 1984 Amendment, while fixing a period of one year for making of the declaration under sec. 6 from the date of publication of a sec. 4(1)

notification, however, took care to see that those who went to Court and obtained stay orders did not deprive the State of the benefit of the full one year for taking the various steps necessary to reach the stage of declaration under sec. 6 – namely the holding of an inquiry under sec. 5A etc. It, therefore, inserted an Explanation below sec. 6(1) to the effect that if stay of any action or proceeding taken in pursuance of sec. 4(1) notification was obtained, the period covered by the stay orders could be excluded while computing the period of one year.

The section 6, as amended in 1984, reads as follows, to the extent relevant for our purpose:

“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, 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.”

It will be noticed that under Explanation-I of 1984 Amendment Act introduced as above, the period covered by a stay order is liable to be excluded. But, this Explanation is applicable only to cases where the Court granted stay and vacated the stay order either by an interlocutory order or where the stay got vacated by the dismissal of writ petition. Whatever period is lost in taking the various steps between the sec. 4(1) notification

and the sec. 6 declaration, is again restored to the department by virtue of this Explanation.

But, the Explanation inserted in 1984 does not exclude the period covered by the litigation where the various proceedings after sec. 4(1) notification (such as the sec. 5A inquiry) or the consequential section 6 declaration are held to be bad by the Court. This can happen, for example, where the sec. 5A inquiry is held vitiated on account of breach of principles of natural justice and consequentially the sec. 6 declaration is also quashed. The Explanation –I, it will be noticed, only covers cases where sec. 6 declaration is not quashed. In that event, in the absence of a provision in sec. 6, the Court cannot exclude the period covered by the Court proceedings leading upto the date of quashing of the proceedings or of the section 6 declaration.

It is appropriate here to refer to some of the earlier decisions of the Supreme Court as regards Section 6. It was held by a Bench of three learned judges in A.S. Naidu & Others vs. State of Tamil Nadu (S.L.P. (C). No.11 353 – 11355 of 1988 that, if by the date of quashing of the sec. 6(1) declaration, the one year period had expired, the State would not be able to make a fresh declaration under sec. 6. If the State was still interested in acquisition, it would have to issue a fresh notification under sec. 4(1). The same view was taken by another Bench of two learned Judges in Oxford English School vs. Govt. of Tamil Nadu 1995(5) SCC 206. However, a contrary view was taken by another Bench of three learned Judges in N. Narasimhaiah vs. State of Karnataka 1996(3) SCC 88, wherein it was held that if by the date the sec. 6 declaration was quashed, the period of one year

had expired, the State could make a fresh sec. 6 declaration within one year from the date, of the judgment. In State of Karnataka vs. D.C. Nanjundiah 1996 (10) SCC 19, a similar view was taken and the Court went further to hold that the State would have a fresh period of one year from the date of “communication” of the copy of the judgment for the purpose of making a sec. 6 declaration again. Similarly, in Venkata Swamappa vs. Spl. Dy. Commissioner: AIR 1997 SC 503, the Court again held that the State could make a fresh sec. 6 declaration within one year of the judgment.

As there was a conflict between two judgments of the Court each rendered by the bench of three learned Judges, i.e., A.S. Naidu and N.Narasimhaiah the question came to be referred to a Constitution Bench of five learned Judges in Padmasundara Rao’s case. In that case, the learned Judges have recently held that once a sec. 6 declaration was quashed or set aside, if the period of one year had expired by the date of judgment of court, then the Court could not under its judicial power, provide a fresh period of one year from the date of the judgment, for the issuing of a fresh declaration under section 6. The effect of the judgment is that as there is no scope for making another declaration under sec. 6 within one year, the time having expired, the original notification under sec. 4(1) will also lapse. The State, if it is still interested in the acquisition of the land, has to issue a fresh notification under sec. 4(1). The Constitution Bench, thus, overruled the decision in N. Narasimhaiah case and approved A.S. Naidu’s case

The Supreme Court has, however, taken care to declare the law prospectively in Padmasundara Rao’s case,. The Court observed in para 18 as follows:

“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 compensation have been paid, shall not be re-opened by applying the ratio of the present judgment.”

The effect of the “prospective overruling” in the manner set out above is that where the State had initially issued a notification under sec. 4(1) followed by a sec. 6 declaration within one year, and the said sec. 6 declaration was quashed by a Court before 13.3.2002, i.e., the date of judgment in Padmasundara Rao’s case, and if a fresh sec. 6 declaration was made within one year of the judgment and an award had been passed and compensation had been paid before 13.3.2002,- that is where all these events happened before 13.3.2002,- then the owners or persons interested would not be able to fall back on the judgment in Padmasundara Rao’s case, and seek the issue of a fresh sec. 4(1) notification. They would not be allowed to rely on the above judgment and claim that the fresh sec. 6 declaration made within one year of the judgment as per Narasimhaiah’s case was invalid, and that the earlier sec. 4(1) notification must be taken to have lapsed and that a fresh sec. 4(1) notification has to be issued. Obviously, the Supreme Court felt that those who were satisfied with a fresh sec. 6 declaration made in one year as per Narasimhaiah’s case and who received compensation on the basis of the market value based on the earlier sec. 4(1) notification, - before 13.3.2002, should not be allowed to claim that they were entitled to a fresh sec. 4(1) notification and to a fresh award.

Having analysed the judgment in Padmasundara Rao's case and the effect of the prospective overruling, we shall now proceed to provide a legislative remedy for the lacuna pointed out by the Supreme Court in this case. The lacuna here is that there is no provision in section 6 to exclude the period covered by the court litigation in which sec. 6 declaration is quashed and where by the date of the quashing, the one year period has expired.

In the matter of filling up this lacuna in sec. 6, there are several options, viz., (i) the period between the date of the initiation of the court proceeding (e.g. filing of the writ petition) and the date of the judgment quashing the first sec. 6 declaration which was made within one year can be excluded; or (ii) the period from the date of grant of stay order up to the date of the judgment can be excluded; or (iii) a fresh period which is reasonable and which will enable the exercise of sec. 5A inquiry etc. to be repeated, can be provided.

After considering these alternatives, we are of the view that the third alternative set out above is the best one in the circumstances in as much as the department must have enough time (say) to issue fresh notices for sec. 5A inquiry, to give a hearing and to submit a fresh report. In fact, if it is a case of acquisition of land for a major irrigation project, hundreds of notices have to be issued under the sec. 5A inquiry and oral hearings have to be given. If the period taken by Court proceedings leading to the quashing of sec. 6 declaration is alone excluded, the balance of the period remaining may not be sufficient.

We are of the view that in all cases where the action or proceedings after section 4(1) notification or the first sec. 6 declaration made within one year is quashed on or after 13.3.2002 the department should have a further period of one hundred and eighty days from the date of the judgment unless, of course, the period remaining after the judgment quashing the first sec. 6 declaration is more than 180 days. However, where the first sec. 6 declaration has been quashed before 13.3.2002, and a fresh sec. 6 declaration was made before 13.3.2002, the fresh sec. 6 declaration so made would still remain protected by N. Narasimhaiah's case if the award was passed and compensation paid before 13.3.2002.

In other words, the proposed amendment will apply only to cases where any action or proceeding taken in pursuance of notification issued under section 4(1) or a declaration made under section 6 is quashed on or after 13.3.2002. So far as declarations under section 6 quashed before 13.3.2002 are concerned, the judgment in Padmasundara Rao saves them only if awards have been passed and compensation was paid before 13.3.2002. If that was not done before 13.3.2002, we do not propose to save them. In other words, where award was not passed before 13.3.2002 or compensation was not paid before 13.3.2002, the only method available for the State would be to issue fresh section 4(1) notification.

We, therefore, propose that a period of one hundred eighty days should be provided from the date of judgment to enable the concerned department/authorities for making another declaration under sec. 6 where the action or proceedings after the section 4(1) notification or initial sec. 6 declaration made within one year has been quashed by Court - unless of

course, the period left out after the quashing of the sec. 6 declaration, is more than 180 days, i.e., the period still available is more than the period of 180 days as proposed by us for making a fresh section 6 declaration.

One other aspect has to be taken care in this connection. So far as the declarations to be made on or after 13.3.2002 under section 6 are concerned, as stated above, we have already proposed to provide 180 days . However, the proposed amendment, as stated above, may take some time to come into force by way of a notification in the Gazette. Till then, no body would have become aware of the extra time proposed as above. Hence, to cover cases where any action or proceeding taken in pursuance of notification issued under section 4(1) or a section 6 declaration, are quashed on or after 13.3.2002 and before the date of notification of the present Amendment Act, we propose that notwithstanding any judgment, decree or order of any court, the above period of 180 days should be counted from the date of notification of the Amendment Act in the Gazette.

Further, we also propose that where any action or proceeding taken in pursuance of notification issued under section 4(1) or a declaration made under section 6 is set aside or quashed by judgment of a court on or after 13th March, 2002 and before the date of commencement of proposed Amendment Act and if any fresh notification is issued under section 4(1) on or after 13th March, 2002, it should be deemed to be ineffective if declaration under section 6 is made within one hundred and eighty days as proposed above. Obviously, if the fresh section 6 declaration is allowed to be made within 180 days and if it saves the original section 4(1) notification, there cannot be another section 4(1) notification on a later date.

In order to give shape to our recommendations in legislative form, we have annexed a draft Bill incorporating the recommendations made above.

We recommend accordingly.

(Justice M.Jagannadha Rao)
Chairman

(Dr. N.M. Ghatate)
Member

(T.K.Viswanathan)
Member-Secretary

Dated: 07.5.2002

THE LAND ACQUISITION (AMENDMENT) BILL 2002

A
BILL

further to amend the Land Acquisition Act, 1894

Be it enacted by Parliament in the Fifty-second year of the Republic of India as follows, namely:-

Short title

1. The Act shall be called the Land Acquisition (Amendment) Act, 2002.

Amendment of Section 6

2. In section 6 of the Land Acquisition Act, 1894 (hereinafter called the principal Act), after sub-section (1), the following sub-section shall be inserted, namely:-

“ (1A) Where any action or proceeding taken in pursuance of the notification issued under section 4, sub-section (1) or any declaration made under sub-section (1) within the period of one year referred to in clause (ii) of the first proviso to sub-section (1), is set aside or quashed by a court on or after the commencement of the Land

Acquisition (Amendment) Act, 2002, a declaration may be made under sub-section (1) within one hundred and eighty days from the date of the judgment of the court if the remaining period available under clause (ii) of the first proviso after the date of the judgment is less than one hundred and eighty days:

Provided that where the remaining period is more than one hundred and eighty days, then a declaration under sub-section (1) may be made within that period.

Transitory Provisions

3. Notwithstanding anything contained in any judgment, decree or order of any court, where any action or proceeding taken in pursuance of the notification issued under sub-section (1) of section 4 of the principal Act, or any declaration under sub-section (1) of section 6 of the principal Act, made within the period of one year referred to in clause (ii) of the first proviso to sub-section (1) of section 6 of the principal Act, is set aside or quashed by a court on or after 13th day of March 2002 but before the commencement of this Act ,

(a) a declaration may be made under sub-section (1) of section 6 of the principal Act within one hundred and eighty days from the date of the commencement of this Act; and

(b) any fresh notification issued on or after 13th March, 2002 under sub-section (1) of section 4 of the principal Act but before the

commencement of this Act, shall be deemed to be of no effect if a declaration under sub-section (1) of section 6 of the principal Act is made , in accordance with clause (a) of this section.