

(2011) 07 KL CK 0191

In the High Court Of Kerala

Case No : W.A. No. 2046 of 2007 & Writ Petition (C) No's. 12874 of 2007 and 12587 of 2007

Anitha Jose and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 258
Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 17(1)

Citation : (2011) 3 ILR (Ker) 325

Hon'ble Judges : P.R. Ramachandra Menon, J;J. Chelameswar, J

Bench : Division Bench

Advocate : P.B. Krishnan and Sivan Madathil, for the Appellant; K.R. Ganesh, Sr. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

J. Chelameswar, C.J.—These two appeals arise out of a common judgment dated 3rd July 2007 rendered in two writ petitions namely W.P. (C) Nos. 12587 of 2007 and 12874 of 2007.

2. The facts leading to the litigation are as follows:

The Government of India decided to acquire certain parcels of land in the State of Kerala for the establishment of Inland Water Transport Terminals at three place called Thanneermukkom North, Mullackal and Thrikkunnappuzha. For the purpose of the fulfillment of the said project, the Government of India entrusted its functions to the Govt, of Kerala, by issuing notification invoking the power under Article 258 of the Constitution of India dated 19th January, 1985. Thereafter, the Govt, of Kerala issued a notification dated 16th December 1987 u/ s 4(1) of the Land Acquisition Act, 1894, indicating the various parcels of land proposed to be acquired in the three villages mentioned above.

3. In these two appeals, we are concerned with the acquisition, in so far as it

pertains to one of the above-mentioned three villages, i.e. Mullackal. The Appellant in W.A. No. 2076 of 2007 is the owner of a small extent of 20 cents of land in Sy. No. 26/14/Bl, whereas the Appellants in W.A. 2046 of 2007 are the legal representatives of the deceased original owner of small extent of 15.125 cents in the same survey number. While issuing notification u/s 4(1) of the Land Acquisition Act, the State of Kerala also invoked the power u/s 17(4) of the Act, thereby dispensing with the enquiry u/s 5A of the Land Acquisition Act.

4. It appears that some third parties, numbering 44, approached this Court by filing O.P. No. 4023 of 1998, challenging the above-mentioned acquisition of the land in so far as it pertains to the Mullackal Village. Initially, this Court, by an Order dated 6-4-1998 granted stay of acquisition. It appears that the said O.P. was eventually dismissed as withdrawn on 14-8-2002 and, therefore, the interim order lapsed. However, it may be mentioned that in the interregnum, for a brief period commencing from 1st July 1998 to 24th January, 1999, the above-mentioned interim order was not operational-- the details of which may not be necessary for the purpose of this judgment. It is during the said period, when the stay was not operational, a notification u/s 6 of the Land Acquisition Act was issued on 16-12-1998, in so far as it pertains to lands of Mullakkal Village, which include the lands of the Appellants herein.

5. By the same notification, the Government also directed the Collector to take possession of the land covered by the notification on the expiry of 15 days from the date of publication of the notice under Sub-section (1) of Section 9 of the Act. Such a direction was issued in exercise of the power u/s 17(1) of the Act.

6. Five persons claiming to be the owners of various extents of land covered by the above-mentioned declaration u/s 6 of the Act approached this Court by filing O.P. No. 7790 of 2003 praying that awards, determining compensation of their lands acquired, be passed expeditiously and payment of compensation be made. The said O.P. came to be disposed of by this Court on 5-8-2003, allowing the said O.P, directing the Respondents to pass final award determining compensation and to disburse the compensation within a period of three months from the date of receipt of a copy of the judgment.

7. Strangely, the State of Kerala carried the matter in appeal to the Supreme Court (Civil Appeal No. 2824 of 2005). During the pendency of the above-mentioned appeal, it appears that the Supreme Court stayed the operation of the order passed by the High Court in O.P. 7790 of 2003 by an interim order dated 3-12-2003. The above-mentioned appeal eventually came to be dismissed by the Supreme Court on 21-4-2005 with certain directions, the details of which will be referred to in the judgment later.

8. We must at this stage place on record, that it is not very clear from either the judgment or from the records made available to us as to what is exactly the legal grievance of the State of Kerala in carrying the matter to the Supreme Court. From the judgment of the Supreme Court, it appears that the State of Kerala

wanted to withdraw from the acquisition of land at "Mullackal" and wanted to acquire land at a different place called "Pallathuruthy". The relevant portion is extracted below:

In this appeal, the State Government of Kerala, seeks to withdraw from acquisition of land at Mullakkal in Alappuzha Town in order to acquire land at Pallathuruthy. The question is--can it do so.

9. Acquisition proceedings are initiated by the Government of India for the purpose connected with the affairs of the Union of India, as seen from the recitals of the Notification u/s 4(1) referred to earlier. We fail to understand how the State could take a decision to alter the proposal. If the State had any objection for the acquisition of the properties in question in these appeals, the State could have settled the matter by proper discussion with the Government of India or at least made the Government of India a party to the above-mentioned appeal before the Supreme Court. All that we can say at this stage is that the Government of India is not a party before the Supreme Court. However, that confusion may not detain us.

10. The Supreme Court while dismissing the said appeal directed as follows:

The High Court had directed that the award should be passed within a period of 3 months. By virtue of an order of stay obtained from this Court, the award has not yet been passed. We accordingly extend the time for passing the award by another period of 3 months from today. If any amount has already been deposited by the State Government pursuant to order of this Court, the same together with any accumulated interest thereon is permitted to be withdrawn by the State Government for the purpose of redepositing the same on account of the compensation to be paid to the landowners of the affected areas in Mullackal.

11. Subsequently, the awards came to be passed on 4-6-2005 and 19-7-2005 in W.A. Nos. 2076 and 2046 of 2007 respectively. In so far as the Appellant in W.A. No. 2076 of 2007 is concerned, the Appellant admittedly sought a reference u/s 18 of the Land Acquisition Act to the Civil Court, dissatisfied with the determination of the compensation made by the award mentioned above. In so far as W.A. No. 2046 of 2007 is concerned, the original owner of the property, one Jose Thomas, it appears, died on 26-6-1998 and the Appellants in the said appeal are wife and children (L. Rs.) of the said Jose Thomas.

12. The Appellants in each of these appeals approached this Court by filing two separate Writ Petitions, in substance, seeking a declaration that the awards mentioned above are illegal and in violation of the mandate contained u/s 11A of the Land Acquisition Act, 1894. By the judgment under appeals, both the writ petitions were dismissed and hence these appeals.

13. The Learned Counsel for the Appellant argued that Section 11A of the Land Acquisition Act was introduced by an amendment in the year 1984 for the benefit of the owners and "parties interested" of the land, whose land is sought to be

acquired under the provisions the Land Acquisition Act and therefore, the mandate of Section 11A must be strictly complied with and also the language of the section is to be strictly construed for the benefit of the owners of the land. It is further argued that the case of the State of Kerala that the period covered during the pendency of the litigation in the Supreme Court is required to be excluded while computing the period of "two years" mentioned in Section 11A is legally unsustainable, as on the proper construction of Section 11A, such a benefit cannot be extended to the State. Even otherwise, the State cannot take advantage of its own decision to litigate and stall the acquisition proceedings.

14. On the other hand, the learned Government Pleader appearing on behalf of the Respondents submitted that Section 11A has no application to those cases, where the appropriate Government invokes the power u/s 17(1) of the Land Acquisition Act. In the alternative, the learned Government Pleader submitted that, irrespective of the answer to the above-mentioned submission, the instant appeals and the writ petitions from which these appeals arise are required to be dismissed on the ground of laches; while in the case of W.A. No. 2076 of 2007 also on the ground of estoppel in view of the fact that the Appellant therein sought a reference u/s 18 of the Land Acquisition Act, dissatisfied with the determination of compensation by the award passed by the Collector.

15. Before we proceed to examine the rival submissions, we deem it appropriate to briefly examine the relevant provisions of the Land Acquisition Act. Section 11A of the Act, in so far as it is relevant for the purpose of these two appeals reads as follows:

11A. Period within which an award shall be made.--(1)The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

* * * *

Explanation.--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.

It mandates that an award contemplated u/s 11 of the Act shall be made within a period of two years from the date of publication of the declaration u/s 6 of the Act and if an award is not so made "the entire proceedings of the acquisition of the land shall lapse". The explanation provides that while computing the period of two years referred to above the period during which any action or proceeding, to be taken in pursuance of the declaration u/s 6 is stayed by an order of a Court, is required to be excluded.

16. Reckoned from the date of the declaration u/s 6 of the Act, the awards made in the cases of the Appellants herein (which are already noted earlier), are certainly made later two years. The question is whether any part of the said

period is required to be excluded in computing the period of two years by invoking the explanation u/s 11A. The other question is whether Section 11A is applicable at all to the cases of the Appellants, in view of the fact that admittedly, the procedure u/s 17(1) was invoked. We shall first deal with second of the above-mentioned two questions for the reason that if the answer to the second question is in the negative, the other question need not be considered.

17. The learned Government Pleader emphatically submitted that Section 11A has no application to the appeals, in view of judgment of the Supreme Court reported in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, It was also a case where the procedure u/s 17(1) was invoked. Dealing with question whether Section 11A applies to the said case, the Supreme Court at para 14 held as follows:

14. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of acquisition u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

18. The learned Government Pleader emphasised on the last sentence of the above extracted portion, which says that Section 11A can have no application to the cases of acquisition where the urgency Clause u/s 17 is invoked, because lands are already vested with the Government. On the other hand, the Learned Counsel for the Appellant pointed out to the immediate preceding sentence, which states that vesting contemplated u/s 17(1) takes place only after the possession of the property which is the subject-matter of acquisition, was taken. Section 17(1) reads as follows:

17. Special powers in cases of urgency.--(1) In cases of urgency, whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

19. It can be seen from the scheme of Sections 16 and 17(1) of the Act that u/s 16 the normal procedure, i.e., where the procedure u/s 17(1) is not invoked, is that the possession of the property can be taken only after an award u/s 11 is made, whereas u/s 17(1) possession of the property which is the subject-matter of acquisition can be taken i.e., following the procedure specified therein, i.e. on expiration of 15 days from the date of publication of notice mentioned in Section 9(1) of the Act.

16. Power to take possession.--When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

20. Section 17 is an exception to the principle contained u/s 16. Therefore, the Learned Counsel for the Appellant argued that it is not a mere invocation of the procedure u/s 17, which eliminates the application of Section 11A, but it is the taking of possession pursuant to invocation of the procedure u/s 17(1) which vests the property (which is the subject-matter of acquisition), in the State and it is in that context the Supreme Court held that there is no provision in the Act which enables the reversion of the land to the owner once it is vested in the State. The Learned Counsel therefore argued that since the possession of the land, which is the subject-matter of dispute in these appeals, was taken subsequent to the awards in these cases, the above-mentioned decision of the Supreme Court has no application.

21. The Learned Counsel emphasised on the language of Section 17(1) and more particularly the clause "Such land shall thereupon free from all encumbrances". We see substantial force in the submission made by the Learned Counsel for the Appellant. Viewed in the light of the decision of the Supreme Court in Government of Tamil Nadu and another Vs. Vasantha Bai, which is quoted for approval again in Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, where the Supreme Court explained the purpose behind introducing Section 11A by way of an amendment in the following words:

5. Parliament enacted Section 11A with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award. The price to be paid for the land acquired under compulsory acquisition is the prevailing price as on the date of publication of Section 4(1) notification. The delay in making the award deprives the owner of the enjoyment of his property or to deal with the land whose possession has already been taken, and delay in making the award, would subject the owner of the land to untold hardship. With a view to relieve hardship to the owner or person interested in the land and to remedy the lapses on the part of the Land Acquisition Officer in making the award, Section 11A was enacted which enjoins making of award expeditiously. So, outer limit of two years from the last of the dates of publications, envisaged in Section 6 of the Act was fixed. If he fails to do so, all the acquisition proceedings under the Act would stand lapsed and the owner of the land or person interested in the land is made

free to deal with the land as an unencumbered land. Cognizant to the fact that the acquisition proceedings are questioned in a court of law, Parliament enacted Explanation to Section 11A declaring that the period during which action or proceedings taken in pursuance of the declaration u/s 6 is stayed by an order of the court, the same "shall be excluded".

Therefore we are of the opinion that the application of Section 11A cannot be excluded in the case of the Appellants herein.

22. That takes us to the other question, i.e., the first question indicated earlier at paragraph 16 whether the time consumed during the pendency of the Civil Appeal No. 2824 of 2005 before the Supreme Court is required to be excluded while computing the period of two years to contemplated u/s 11A. The Learned Counsel for the Appellant in this regard submitted that it is only in those cases where the award could not be passed within two years computed from the date of the declaration u/s 6 of the Act, because of some interim order passed by a competent court at the instance of the owner of the land, the exclusion of the benefit contemplated u/s 11A is available but, not in the cases where the proceedings pursuant to Section 6 declaration are stalled at the instance of persons unconnected with the land under acquisition. In support of the said submission, the Learned Counsel relied upon the following decisions. The first case is *Norrmohamed v. State of Gujarat* 1992 (1) KLT 335. It was a case where the land acquisition proceedings were challenged before the High Court by the occupant of the land (a person interested as defined under the Act) and during the pendency of the matter in the High Court, there was a stay of only taking of the possession of the land, but not all further proceedings. Therefore, the authorities issued a notice u/s 9(1) of the Act, but did not pass the award within the period of two years from the date of the declaration u/s 6. The case of the Appellant before the Supreme Court was that as there was no stay of passing of an award by the High Court, the passing of an award beyond the period of two years from the date of Section 6 notification, is hit by Section 11A of the Act and the period during which the stay operated against the taking of the possession of the property cannot be excluded for the purpose of the Explanation u/s 11A of the Act. Repelling the said submission, the Supreme Court at paragraph 8 held as follows:

In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment.

23. We are of the opinion that this judgment is not an authority for the proposition that the benefit of Explanation to Section 11A is available only in those cases where the interim orders stalling the proceedings pursuant to the

declaration u/s 6 were obtained at the instance of the landholder or persons interested. The issue before the Supreme Court was to avail the benefit of the explanation to Section 11A whether the stay granted by the (High) Court should be with reference to all further proceedings pursuant to Section 6 or whether even an order restraining some of the proceedings pursuant to Section 6 also attracts the benefit. On the facts of that case the stay was confined only to the taking of the possession of the property. In spite of that the Supreme Court came to the conclusion that the benefit of Explanation is available to the State. The reference to the landholder in the above extracted portion is only a part of the narrative but not the ratio laid down that the benefit of Explanation is available only on those cases where interim order is obtained at the instance of the landholder.

24. The next case relied upon by the Learned Counsel for the Appellant is L.N. Venkatesan Vs. State of Tamil Nadu and others, . The issue raised in the said judgment and the decision of the said judgment is almost identical with the issue and the decision in the above-mentioned case i.e. 1992 (1) KLT 335 (supra).

25. However, a contrary view was taken in the judgment reported in Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, . At paragraph 14 the Supreme Court held as follows:

It is, therefore, not possible to accept the submission urged on behalf of the Appellants that Section 11A of the Act must be read in a narrow sense so as to apply only those cases where the landowner himself obtained an order of stay or injunction. We are not prepared to add words in the Explanation by reading into it a provision that gives to the Explanation a narrower operation than what was intended for it by the legislature, so as to apply only to cases where an order of injunction is obtained by the landowner and not by anyone else.

It must be said that this decision is also brought to the notice of this Court by the Learned Counsel for the Appellant. We admire the fairness.

26. The question insofar as the instant appeals are concerned is not whether the impediment for the Land Acquisition proceedings is at the instance of the owner of the land or some other interested party or the State. The question to our mind is whether there was an interim order precluding the passing of an award or taking of any other steps pursuant to Section 6 of the Act insofar as the property of the Appellants in these two appeals are concerned. Admittedly, neither of the Appellants was a party to anyone of the writ petition which came to be filed in this Court challenging Exts. P-1 and P-2 notifications. Various other persons approached this Court and when this Court granted stay of the further proceedings and in such cases, legally and logically it ought to be construed only as a stay operating insofar as the properties in which the Petitioners before this Court were interested.

27. Civil Appeal Nos. 2824 and 2833 of 2005 were preferred by the State of

Kerala aggrieved by a decision of this Court in O.P. No. 7790 of 2003. The Appellants herein were neither parties to the above-mentioned Original Petition nor parties to either of the above-mentioned Civil Appeals before the Supreme Court.

28. In the circumstances, in our opinion, any interim order passed in the above-mentioned proceedings would only be confined to the properties belonging to the parties in the litigation but not to the third parties to the above proceedings like the Appellants herein. However, we hastened to add that nothing restricts the jurisdiction of either this Court or the Supreme Court to stay the acquisition proceedings, not only on all the properties belonging to the parties before the Court but, in an appropriate case other properties also, such as the one covered by common notifications etc. However, it is not demonstrated before us that any such order was passed in the instant case. In the circumstances, in our opinion, the benefit of the Explanation u/s 11A, in so far as it pertains to the time consumed by the State in pursuing the above-mentioned two appeals before the Supreme Court, is not available to the State of Kerala.

29. That takes us to the submissions made on behalf of the State that in view of the operative portion of the judgment in the above-mentioned two Civil Appeals before the Supreme Court directing the Respondents herein to pass an award within a period of three months from the date of the judgment, irrespective of the fact whether the benefit of Explanation u/s 11A is available to the State against the Appellants herein on the construction of the said Section or not. The State is justified and permitted by the Supreme Court to pass an award within a period of three months from the date of the judgment, and the awards in so far the instant two appeals are concerned, were in fact passed within the period of three months reckoned from the date of said judgment. The relevant portion of the judgment reads as follows:

The High Court had directed that the award should be passed within a period of 3 months. By virtue of an order of stay obtained from this Court, the award has not yet been passed. We, accordingly extend the time for passing the award by another period of 3 months from today. If any amount has already been deposited by the State Government pursuant to order of this Court, the same together with any accumulated interest thereon is permitted to be withdrawn by the State Government for the purpose of re-depositing the same on account of the compensation to be paid to the landowners of the affected areas in Mullackal.

30. The Learned Counsel for the Appellants, in response, brought to our notice, a judgment of the Supreme Court reported in *Indian Bank v. ABS Marine Products Pvt. Ltd.* 2006 (2) KLT 538. At paragraph 23 of the judgment the Supreme Court held as follows:

23. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in

view of the peculiar facts or in view of the uncertainty of law till them, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may.

In our opinion, the principle stated therein is a complete answer to the submission made by the learned Government Pleader. Therefore the submission is rejected.

31. The next submission made by the learned Government Pleader is that this Court would not normally exercise the discretionary jurisdiction under Article 226 of the Constitution of India in favour of a party who belatedly approached this Court without offering any satisfactory explanation for the belated approach. The learned Government Pleader submitted that the Appellants who are aware of the fact that there is no interim order operating on the acquisition of their property and therefore the acquisition proceedings would lapse on the expiry of two years reckoned from the date of the Section 6 declaration, ought to have approached the Court within a reasonable period of time after the expiry of the above-mentioned two years. It is already noticed that the declaration u/s 6 of the Land Acquisition Act in so far as the Appellants herein are concerned, was issued on 16-12-1998. In the absence of any impediment for passing an award u/s 12, in so far as the Appellants herein are concerned, the proceedings for acquisition of their property would lapse on 15-12-2000. However, the Appellants not only kept quiet for a long time thereafter but also from the date of awards i.e. 4-6-2005 and 19-7-2005. Thus the Appellants kept quiet for a period of approximately two years. Both the writ petitions from out of which the instant appeals arise were filed on 10-4-2007. We see force in the submission made by the learned Government Pleader. Persons seeking the discretionary relief from this Court in exercise of the jurisdiction under Article 226 must approach this Court with reasonable expedition. On the facts stated above, it is obvious that the Appellants did not act with the requisite diligence in approaching this Court.

32. However, it must be stated herein that the Learned Counsel for the Appellant submitted that in so far as WA No. 2046 of 2007 is concerned, the original owner of the property died on 26-2-1998 and therefore the Appellants herein only came to know of the acquisition proceedings much later and therefore they may not be found guilty of laches. But from the averments made in W.P. (C) No. 12587 of

2007, from which the instant writ appeals arise, it can be seen that the Appellants/writ Petitioners did not clearly state as to the exact date on which they came to know of the Land Acquisition proceeding. On the other hand, at paragraph 5 of the writ petition, it is stated in this regard as follows:

....As a matter of fact, to the knowledge of the Petitioner, the amount is not deposited till the date. The Petitioner is one among the persons agitating against the acquisition and opposing the acquisition seriously. When notice of award was received, he was advised to file a petition stating that he is not accepting the award but seeking a reference. He bona fide thought that, notwithstanding his protest against the acquisition unless he files such application, he will be precluded for all time from claiming reasonable enhancement. It was not a submission of the award, but taken under the apprehension that if not done it will preclude him from claiming enhanced compensation. It was therefore stated that he is not accepting the award and it will not amount to waiver of his other rights available under law relating to acquisition.

There is no explanation as to the date on which and the above-mentioned facts came to the knowledge of the Appellants.

In the circumstances, it must be held that both the Appellants in both the appeals are barred by laches from seeking any relief from this Court. The appeals are therefore dismissed but in the circumstances without costs.

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