
(2006) 06 KL CK 0080

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10875 of 2006 (T)

Annie Varghese and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4(1), 6(1)

Citation : (2007) 3 KLJ 431

Hon'ble Judges : K. Hema, J

Bench : Single Bench

**Advocate : Joseph Kodianthara and Mathew K. Uthuppachan, for the Appellant;
Aloysius Thomas (GP), for the Respondent**

Final Decision : Allowed

Judgement

K. Hema, J.—Petitioners jointly own a rubber plantation, having an extent of 36.60 acres equivalent to 14.82 hectares in Kunnamthanam Village. For the purpose of Industries Growth Centre, the Special Tahsildar issued a notification u/s 4(1) of the Land Acquisition Act ("the Act", for short) on 18-06-1994. The said notification was published on 14-06-1994 and on 18-6-1994 in two malayalam dailies. Public notice was also issued in the locality on 15-06-1995. Declaration u/s 6 of the Act was published in the Gazette dated 15-5-1996 and in two dailies dated 9-6-1996 and 14-6-1996. The date of publication of declaration is thus 14-6-1996, being the last of dates of such publication, as per Section 6(2) of the Act. On publication of the declaration, petitioners challenged the declaration in OP. No. 6143 of 1998 on the ground that it was issued after one year from the date of publication of notification u/s 4(1) of the Act and hence it is violative of proviso to Section 6(1) of the Act. Copy of the Original Petition is Exhibit P1. This Court passed an order of interim stay of all proceedings pursuant to Section 4(1) notification as per order dated 27-3-1998. The interim stay order is Exhibit P2. The Original Petition was dismissed on 12-6-2006 and the judgment is Exhibit P3. The stay continued for a period of five years, two months and 16 days.

2. A Writ Appeal was filed as W.A. No. 1219 of 2003 and stay was granted on 24-7-2003 for one month. On 3-11-2003, the stay granted was extended until further orders and the Writ Appeal was dismissed on 20-06-2005 and the copy of the judgment is Exhibit P4. The stay was in force for one years, ten months and twenty seven days during the pendency of the Writ Appeal. The SLP filed against the judgment in the Writ Appeal was dismissed by the Supreme Court on 2-9-2005. Review Petition also was dismissed on 6-12-2005.

3. Petitioners received notice of award dated 14-2-2006. They made applications before the fourth respondent for certified copies of the awards and those were received on 29-3-2006. The three awards passed are Exhibit P5 series. The notices of awards are Exhibits P6 and P7. Petitioners were also served with notices to vacate and deliver possession of the land covered by the acquisition before the evening on 6-3-2006 proposing to take further action. Copy of the said notices are Exhibits P8 and P9 (Exhibit P9 is dated 1-3-2006).

4. Petitioners herein seek to quash the awards, Exhibits P5 series and also the notices, Exhibits P6 to P9, which are notices of awards and also notices to surrender and deliver possession. According to the petitioners, the awards were passed after a period of 9 years and 8 months of publication of declaration under the Act. The declaration was on 14-6-1996. Even if the period of stay is excluded, the awards were not passed within two years from the date of declaration, it is contended. Hence according to petitioners, awards have lapsed and all further proceedings are illegal and they seek for a direction not to proceed with acquisition of land or to enforce surrender of property, pursuant to Exhibits P8 and P9 notices.

5. The learned Government Pleader submitted that possession of the land is taken on 6-3-2006, after passing of the awards, as per Exhibit P5 series. But, it is admitted that the declaration was made on 14-6-1996. The Government, having taken possession of the property on 6-3-2006, it is contended that the petitioners cannot challenge the awards, since the property is vested in Government. There is no provision in the Act by which the property will revert back to the petitioners or the land owners, it is strongly argued. It is also vehemently contended that the petition is not maintainable, since title of the acquired land completely passes on to the State and the High Court has no jurisdiction to intervene, in the exercise of writ jurisdiction. It was also argued that in any event, after the award is passed, no Writ Petition can be filed challenging the acquisition proceedings.

6. But, learned counsel for petitioner argued that the entire proceedings have lapsed by virtue of Section 11 A. to appreciate the contentions, it is relevant to quote Section 11A of the Act. Section 11A of the Land Acquisition Act reads as follows;

Section 11 A. Period within which an award shall be made. - 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:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, (68 of 1984), the award shall be made within a period of two years from such commencement.

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.

7. Section 11A of the Act provides that the Collector shall make an award u/s 11 of the Act within a period of two years from the date of the publication of declaration and if no award is made within that period, the entire proceedings for acquisition of the land "shall" lapse. As per explanation to Section 11A of the Act, in computing the period of two years referred to in the 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 is evident from records that the award is passed after two years of publication of the declaration u/s 6 of the Act. So, going by Section 11A of the Act, the entire proceedings for acquisition of petitioners' land have lapsed.

8. It is clear from the above provision that if the award is not passed within the stipulated period of two years from the date of publication of declaration, the entire proceedings for acquisition of the land "shall" lapse. The word "lapse" as per the Concise Oxford Dictionary means, "a right or privilege etc. become invalid because it is not used or claimed or renewed". It means in law, "the termination of a right or privilege through disuse or failure to follow appropriate procedures". Therefore, if an award is passed after the period stipulated in Section 11A of the Act, the entire proceedings shall lapse and the Government loses the right or privilege to continue the proceedings because the proceedings have become invalid.

9. In this context, it is to be looked into whether taking of possession of the land pursuant to the awards (Exhibits P5 series) is legal or not or whether on such taking of possession, the property vests in the Government. The learned Government Pleader placed reliance upon Section 16 of the Act to argue that once the Collector passes an award u/s 11, the Collector will be entitled to take possession of the land and if such possession is taken, the land shall, thereupon, vest absolutely in the Government free from encumbrances. It was argued that in the light of Section 16 of the Act, the property is to be deemed to have been vested absolutely in the Government.

10. Admittedly, the notification was issued on 18-6-1994 and the declaration u/s 6 of the Act was passed on 14-6-1996. The award, Exhibits P5 series are seen passed only on 14-2-2006, after expiry of more than nine years of publication of declaration. So, the entire proceedings shall lapse as per Section 11 A. Even on excluding the period of stay, the awards passed are after expiry of the period.

There Was stay during the pendency of P.P. No. 6143 of 1998 and W.A. No. 1219 of 2003 for a total period of seven years, one month and ten days and even if such period is excluded, the awards were passed only after two years and six-and-a-half months of publishing of declaration u/s 6 of the Act.

11. It is relevant to quote Section 16 of the Act. Section 16 of the Land Acquisition Act reads as follows:

Section 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.

12. Section 16 of the Act provides that when the Collector has made an award u/s 11, he is entitled to take possession of the land in which event, it shall absolutely vest in the Government free from all encumbrances. According to the learned Government Pleader, possession of the land is also taken by the Government on 6-3-2006 and hence the property vests in Government absolutely. But, learned counsel for the petitioners would vehemently contend that possession of the land was not actually taken by the respondents even as on today. It is strongly contended that he has not received any communication regarding taking of possession of land. It is also submitted that the petitioners are even now tapping the tree which stand in the relevant properties.

13. Even if it is assumed for arguments' sake that the property was actually taken possession of by the Government, what will be the effect of such taking of possession? I have already held that if an award is passed after the time stipulated in Section 11 A, the entire land acquisition proceedings shall lapse. Consequent to such lapse of proceedings, the Government loses all the right and privileges to proceed under the provisions of the Land Acquisition Act by virtue of Section 11A of the Act. Therefore, whatever action is taken by the Government once the proceedings have lapsed as per Section 11 A, such action is invalid. Taking of possession, after lapse of the proceedings is illegal. The Collector will not be empowered to take possession of the land pursuant to the awards passed after expiry of the period contemplated u/s 11A of the Act and such taking of possession is without jurisdiction because the entire proceedings have lapsed. If at all any possession is taken, after expiry of the period stated in Section 11 A, such possession is only illegal and no right over the property passed into the Government.

14. No law contemplates or justifies or regularises anything done illegally, in the absence of any specific provisions which would save such situations. There is nothing in the Act to show that if possession is taken illegally, in the absence of any specific provision which would save such situations. There is nothing in the Act to show that if possession is taken illegally, such possession may become legal under any circumstances. Since the proceedings have lapsed, the Collector does not have the jurisdiction to proceed against the property and take possession of the land.

15. The possession which is referred to in Section 16 can only constitute possession taken legally from the land owners, pursuant to an award which is passed, legally, strictly in accordance with Section 11 A. Any steps or proceedings taken for delivery of possession, after the acquisition proceedings have lapsed u/s 11 A, cannot be upheld as legal. Therefore, taking of possession of land in this case, if any, is not legal and consequent to taking of such possession, the property cannot be said to have vested in the Government. The title has to be deemed to be continuing with the land owner himself.

16. Therefore, any paper possession of the petitioner's land, taken by the Government will not entitle the Government to keep the land in its possession, adverse to the interest on the title-holder. Legal possession continues with the owner of the property, irrespective of any alleged delivery of property in favour of the Government. The owner delivery of property in favour of the Government. The owner will not lose any right over the property and if at all the Collector has taken possession of land, he will not be entitled to continue in possession of the property. If at all, the Government has taken possession, it has no right to retain such possession of the property taken illegally from the land owner, after the lapse of the acquisition proceedings.

17. The learned Government Pleader placed reliance upon a decision reported in Ranbir Kaur Bindra and Another Vs. Sital Parkash Jain and Others, in support of his arguments. On going through the dictum laid down in the above decision, it is clear that the effect of Section 11A of the Act was not considered by the Full Bench in the said decision. Whatever has been stated in the said decision relate only to an award passed legally and within the time stipulated u/s 11A of the Act. The said decision is not applicable to the facts of this case.

18. Learned counsel for the petitioner, however, cited a decision reported in Satendra Prasad Jai & Ors. v. State of U.P. & Ors. (UJT 1993(5) SC 385) wherein it is held as follows:

...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 11-A, lapse...

19. In the above circumstances, I hold that the awards passed as Exhibits P5 series are not in accordance with the provisions of the Act and hence the possession of the property, if any, taken from the petitioners will also be not in accordance with law. If possession of property is taken by the fourth respondent, such possession shall be handed over back to the petitioners forthwith. It is declared that Exhibit P5 series awards and Exhibits P6 to P9 notices are illegal and hence quashed.

20. Learned Government Pleader submitted that even if the acquisition proceedings lapsed, there will be no bar for taking up further acquisition proceedings. There is no doubt that even if the acquisition proceedings have

lapsed by virtue of Section 11A of the Act, there can be no bar for the authorities to acquire any property or the very same property by virtue of the provisions contained in the Act in accordance with law. But if an award is passed after the statutorily prescribed time, the entire land acquisition proceedings will lapse and hence taking of possession of property etc. pursuant to such awards will be invalid and illegal. A particular period is prescribed, as per the statute taking into consideration the delay in passing awards and the probable difficulties which the land owners may have to face because of delay in passing of awards. It is needless to say that there will be escalation in the land value of the property and owner of property may not get adequate compensation. Once the proceedings have been initiated, owners may not be in a position to put the property to proper use and they will be the losers. The Legislature has taken into account, the probable difficulties and loss which the land owners may face because of the delayed passing of the award. That must be the reason why, though no time was prescribed for passing of the award Section 11A of the Act was introduced into the Act by an amendment (vide the Land Acquisition Amendment Act, 1984). The reason and objects attached to the bill state, "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and render unrealistic the scale of compensation offered to them". With this object in mind that the legislature has brought in Section 11A into the Act, and accordingly the award is to be passed within a period of two years from the date of publication of the declaration u/s 6 of the Act, failing which, the entire proceedings shall lapse, (vide Kaliyappan Vs. State of Kerala and Others, cited by learned counsel for petitioners).

In the above circumstances, I make it clear that though the awards are illegal and the taking possession of the property pursuant to such awards is also illegal, this will not bar the Government to take appropriate steps and initiate proceedings under the Land Acquisition Act for acquisition of the same property in accordance with law.

This Writ Petition is allowed.