
(2010) 12 MAD CK 0315
In the Madras High Court
Case No : Writ Appeal No. 1109 of 2009

B. Gurubackiam

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 11A, 11A(1), 17, 28A
Limitation Act, 1963 — Section 12

Citation : (2010) 12 MAD CK 0315

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : N. Jothi, for S. Jayakumar, Charles Premkumar, G. Sridhar and K. Ravichandran, for the Appellant; P. Wilson, A.A.G., Assisted by, A. Vijayakumar, (TNHB), Raja Kalifulla, Government Pleader Assisted by, M. Sneha, Government Advocate, for the Respondent

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—These appeals arise out of a common judgment dated 10th December, 2008 passed in a batch of writ petitions whereby the learned single Judge dismissed all the writ petitions holding that the impugned award challenged in the writ petitions are not hit by the proviso to Section 11A of the Land Acquisition Act, 1894.

2. Since, common questions of law and facts are involved in these appeals they have been heard together and are disposed of by this common order.

3. The Appellants-writ Petitioners filed the writ petitions under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records on the file of the third Respondent relating to Award No. 1/97, dated 31.10.1997 and quash the said award relating to the respective Appellants' lands in Survey Nos. 395 part and 398 part (in all 0.95 acres) (W.P. No. 5033 of 1998); S. Nos. 388 Part and 389 part (33 cents) (W.P. No. 5020 of 1998; S. Nos. 390 part and 400 part (96 cents) (W.P. No. 5021 of 1998); S. No. 400 part (24

cents) (W.P. No. 5029 of 1998); S. No. 389 part (33 cents) (W.P. No. 5030 of 1998); S. No. 401 part (49 cents) (W.P. No. 5031 of 1998); S. No. 395 part (10 cents) W.P. No. 5032 of 1998); S. No. 399 part (49 cents) W.P. No. 5035 of 1998); S. No. 391 part (49 cents) W.P. No. 5037 of 1998; S. No. 394 part (49 cents) (W.P. No. 5038 of 1998); S. Nos. 389 part and 394 part measuring an extent of cents and 49 cents respectively (W.P. No. 5022 of 1998); S. Nos. 388 part, 392 part and 401 part (in all 1.44 acres) (W.P. No. 5024 of 1998); S. Nos. 391 part and 400 part (98 cents) (W.P. No. 5027 of 1998); S. Nos. 389 part, 394 part, 399 part (1 acre 43 cents) (W.P. No. 5028 of 1998) & S. No. 390 part (49 cents) (W.P. No. 5034 of 1998).

4. It appears that these batch of writ petitions were filed by the subsequent purchasers in respect of the lands in various survey numbers challenging the said award No. 1/97 claiming to be in possession of the lands said to be acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). It reveals from the record that those writ petitions were admitted on 17.4.1998, and interim orders were passed. However, those writ petitions were dismissed for non-prosecution on 24.01.2002. Thereafter, on applications being filed by the Petitioners Appellants for restoration of the writ petitions, the same were restored to file by order dated 24.3.2007 and thereafter were heard on merits.

5. The brief facts of the case, which are relevant, are that the Petitioners-Appellants purchased the lands from the original owners namely, P.M. Sundaram and four others some time in the year 1995. It further reveals that before the Appellants purchased the lands in the year 1995, Section 4(1) notification was published on 11.6.1975 and enquiry u/s 5A of the Act was held. In the said enquiry, the vendors of the Appellants filed objections, which were ultimately rejected and Draft Declaration u/s 6 of the Act was published on 9.6.1978, as also in the year 1980.

6. The writ Petitioners-Appellants mainly challenged the award before the learned single Judge on the ground of delay in passing the award. It was contended that since the award was not made within two years from the date of declaration, the acquisition proceedings lapsed, and therefore, the award is non-est in law.

7. The learned single Judge in paragraph-9 of the judgment has mentioned the relevant dates and chronology of events, which is reproduced herein below:

Sl.No.

Date

Particulars

1.

11.06.1975

Section 4(1) notification in Gazette (G.R.Rt.No.124, Housing, dated 08.05.1975)

2.

19.08.1975 27.08.1975

Section 5A Enquiry

3.

06.09.1975

Objections by the land owners communicated to the requisitioning body (TNHB)

4.

31.03.1977

TNHB requests to overrule the objections.

Sl.No.

Date

Particulars

5.

24.,05.1977

Remarks communicated to the land owners.

6.

07.06.1978

Draft declaration u/s 6 approved by the Government (G.O.Ms.No.993, Housing)

7.

09.06.1978

Published in the Tamil Nadu Government Gazette.

8.

25.09.1978

Draft Rates approved by the Government (Lr.No.43637/A2/78-1 (H & UD)

9.

25.10.1978

Tamil Nadu Government Gazette Publication.

10.

11.06.1980

Draft amendment to draft declaration u/s 6 approved by Government Letter

No.18621/A2/80.

11.

11.06.1980

Published in T.N.Government Gazette.

12.

03.04.1981

Interim stay of dispossession alone in WMP No.2557 of 1981 in W.P.No.1807 of 1981 obtained by the original land owners.

13.

15.02.1983

Government issues directions to proceed and complete the acquisition (G.O.No.294, H & UD Dept).

14.

19.02.1991

W.P.No.1807 of 1981 dismissed for want of prosecution.

15.

25.08.1981

WMP No.15140 of 1991 restoration petition dismissed.

16.

17.09.1991

Revision Application No.21 of 1991 allowed. WP No.1807 of 1991 restored to file.

17.

29.10.1991

W.P.No.1807 of 1981 allowed by Division Bench. Section 4(1) notification quashed.

18.

10.11.1995

Civil Appeal No.10190 of 1995 allowed by Supreme Court. Section 4(1) Notification stood restored.

Sl.No.

Date

Particulars

19.

1995

Petitioners purchase their lands from one Soundarajan. Power Agent of original land owners.

20.

Notice u/s 9(3) and 10 to subsequent purchasers. They didn't attend the Award Enquiry.

21.

16.04.1997 17.04.1997 21.04.1997

Award Enquiry

22.

31.10.1997

Award passed (impugned in this batch)

8. After taking into consideration, the interim order passed in the earlier writ petitions and also the final order passed by the Supreme Court, the learned single Judge held that the impugned award is not hit by the proviso to Section 11A of the Act. Consequently, all the writ petitions were dismissed. Hence, these appeals.

9. Mr. N. Jothi, learned Counsel appearing for the Appellant in all the appeals assailed the impugned judgment as being illegal, contrary to law applicable and is wholly without jurisdiction. The main contention of the learned Counsel appearing for the Appellant rests on Section 11A of the Act. Learned Counsel has drawn our attention to the relevant dates and submitted that in any view of the matter, the award was not passed within the statutory period of limitation of two years from the date of declaration. Learned Counsel submitted that even assuming that the interim stay of dispossession was passed in the earlier writ petitions, the said interim order ceased to have any effect after dismissal of the writ petitions for nonprosecution. The writ petitions were restored to file after about 9 months and 20 days, which period cannot be excluded while computing the period of two years by taking benefit of the proviso to Section 11A of the Act. Learned Counsel further submitted that Section 4(1) notification was ultimately quashed by a Division Bench of this Court, and the appeal filed by the Respondents was finally allowed on 10.11.1995 and the notification u/s 4(1) stood restored. Admittedly, nothing was done by the Respondents in furtherance of the preparation of the award, which was passed only on 31.10.1997 i.e., much after the expiry of two years from the date of publication of the declaration. Learned Counsel placed heavy reliance on the ratio decided by the Supreme

Court in the case of Ravi Khullar and Another Vs. Union of India (UOI) and Others, , Lok Sewa Shikshan Mandal Vs. A.R. Mundhada Charitable Trust and Others, , Ashok Kumar and Others Vs. State of Haryana and Another, and Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

10. On the other hand, Mr. P. Wilson, learned Additional Advocate General firstly submitted that by interim order dated 3.4.1981 passed in earlier W.P. No. 1807/1981, dispossession alone was not stayed, but the entire proceedings has been stayed, and therefore, there was no question of proceeding in preparation of the award. Learned Additional Advocate General submitted that the writ petitions were filed after one year from the date of the award by the Appellants. Learned Additional Advocate General further submitted that right from the date of the interim order passed by the writ court till the civil appeal was finally allowed by the Supreme Court, the Respondents were restrained from proceeding with the preparation of the award and therefore, this period cannot be counted, in view of the proviso and explanation to Section 11A of the Act. Learned Counsel placed reliance on the decision of the Supreme Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, and Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, . Learned Additional Advocate General lastly contended that the period from the date when the interim order was passed and the date when the civil appeal was allowed was the eclipse period, when the Respondents were prevented from taking any further steps in the preparation of the award. After the civil appeal was allowed, the Respondents proceeded with the preparation of the award and the same was passed well within two years from the date of declaration u/s 6 of the Act. Hence, the award is not hit by the proviso to Section 11A of the Act.

11. Before considering the submissions made by the learned Counsel appearing on either side, we would like to discuss the relevant provisions of the Land Acquisition Act, 1894.

12. Section 4 of the Act confers power to the appropriate Government to acquire the land, which is needed or likely to be needed for any public purpose. For that, the appropriate Government shall publish a notification to that effect in the official gazette and shall also publish in two daily newspapers circulating in that locality. Sub-section (2) of Section 4 further confers power to the Government and its officers to enter upon and survey any lands in such locality and to do such act, which is permissible under the said proviso.

13. Section 5A of the Act lays down the procedure with regard to hearing of objections that may be filed by the person interested in the said land notified u/s 4 of the Act. Such objection shall be given to the Collector in writing and the Collector shall, after giving an opportunity of hearing to those interested persons, and after making such further enquiry, make a report in respect of the land, which has been notified under Sub-section (1) of Section 4 of the Act. It is only after compliance of Section 5A of the Act, the declaration shall be made u/s 6 of

the Act to that effect, which shall be published in the official gazette. Section 7 of the Act contemplates about the order of acquisition, according to which the appropriate Government after publishing declaration u/s 6 direct the Collector to take order for the acquisition of the land.

14. Section 11A of the Act was inserted in the Land Acquisition Act by Land Acquisition Amendment Act, 1984 (Act 68 of 1984). Section 11A reads as under:

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 case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 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.

15. As stated above, the provision of Section 11A has been inserted by Land Acquisition (Amendment) Act (Act 68 of 1984). By this provision, the time limit of two years has been fixed from the date of Declaration u/s 6 of the Act for passing the award. If no award is made within that period, the entire proceeding for the acquisition of the land shall lapse. The proviso to this section clarify that in case where Declaration has been published before the commencement of this Amendment Act, in such circumstances, the award shall be made within a period of two years from such commencement. The explanation to this Section is relevant for the instant case, which provides that in computing the period of two years referred to u/s 11A, the period during which any action or proceeding to be taken in pursuance to the said Declaration is stayed by an order of a Court, then that period shall be excluded while computing the period of two years for the purpose of passing an award.

16. In the instant case, we find that notification u/s 4(1) of the Act was published on 11.6.1975 and after enquiry u/s 5A, draft Declaration u/s 6 was published on 11.6.1980. In the year 1981, the original owners filed writ petition, being W.P. No. 1807/1981 challenging the entire acquisition proceeding and the notification for the acquisition of land of Nerkundram Village. In the said writ petition, the original owners obtained interim order of stay on 3.4.1981. The interim order was passed in the following terms:

Order: This petition coming on for orders on perusing the petition and the affidavit filed in support of W.P. No. 1807 of 1981 on the file of the High Court and upon hearing the arguments of Mr. C.S. Prakasa, the Advocate for the Petitioner it is ordered as follows:

1. That notice do issue to the Respondents herein to show cause why this

petition should not be complied with; and

2. That all further proceedings by the Respondents herein pursuant to the Notification u/s 4(1) of the Land Acquisition Act in respect of the Petitioner's lands bearing survey Nos. 375/2, 378, 379, 380, 381/1, 381/2, 382 to 408 of a total extent of about 34 acres, situate in Nerkundram Village, Saidapet Taluk, Chinglepet District, and published in the Tamil Nadu Government Gazette, dated 11.6.1975, be and are hereby stayed pending further orders on this petition.

17. The aforesaid W.P. No. 1807/1981 filed by the original owners was dismissed for non-prosecution on 19.2.1991. However, ultimately, in a review application No. 2/91, this Court, by order dated 17.9.91, the order of dismissal was set aside and W.P. No. 1807/1981 was restored to its original file. Finally, the writ petition was heard and allowed by this Court on 29.10.1991 and Notification u/s 4(1) of the Act was quashed. Against the aforesaid judgment and order dated 29.10.1991, the Respondents filed Special Leave Petition, which was numbered as SLP No. 18316/92 before the Supreme Court, which was converted as Civil Appeal No. 10190/1995. The civil appeal was heard by the Supreme Court and was finally allowed on 10.11.1995 by setting aside the judgment passed in the writ petition. Consequently, the notification u/s 4(1) was restored. The Respondents, after the Civil Appeal was allowed by the Supreme Court on 10.11.1995, proceeded with the acquisition proceeding and finally passed the award on 31.10.1997. Apparently, therefore, the award was passed by the Respondents within two years from the date, i.e., 10.11.1995, when the Supreme Court finally allowed the appeal and restored back the notification issued u/s 4(1) of the Act.

18. The original owners, after having failed in their attempt to get the notification quashed, sold the lands to the present Appellants. The Appellants, after purchasing the lands, filed the present writ petitions challenging the award on the ground that the award having not been passed within two years from the date of Declaration, the entire proceeding lapsed by virtue of the provisions of Section 11A of the Act.

19. As discussed above, the main contention of the learned Counsel appearing for the Appellant is that the Respondents will not get the benefit of the proviso and the explanation appended to Section 11A of the Act. According to the learned Counsel, in the writ petition filed by the original owners, although interim order of status quo was passed on 3.4.1981, but the said writ petition was dismissed for non-prosecution on 19.2.1991. After the dismissal of the writ petition, the interim order of status quo ceased to have any force till the writ petition was finally restored on 17.9.1991. This period from 19.2.1991 to 17.9.1991 shall not be excluded while computing the period of two years for passing the award. Further contention of the learned Counsel is that after the writ petition, being W.P. No. 1807/1981 was finally heard and allowed on merits and Section 4(1) notification was quashed by judgment and order dated 29.10.1991, the Respondent preferred SLP against the said judgment, but the

delay was condoned only on 10.11.1995 and in between, admittedly, there was no stay. This period also, therefore, shall not be excluded while computing the period of two years for passing the award. Hence, if these two periods are included, then the award was passed after the expiry of two years.

We do not find any force in the submission made by the learned Counsel, which is devoid of any substance. Learned Counsel placed heavy reliance on the decisions of the Supreme Court in the case of Ravi Khullar and Another Vs. Union of India (UOI) and Others, and Lok Sewa Shikshan Mandal Vs. A.R. Mundhada Charitable Trust and Others, .

20. In the case of Ravi Khullar and Another Vs. Union of India (UOI) and Others, , the ratio laid down by the Supreme Court is not at all applicable in the present case. In that case before the Supreme Court, the notification u/s 4(1) of the Act was issued on 23.1.1965 and a Declaration u/s 6 was published on 26.12.1968, i.e., before the commencement of the Amendment Act, 1984. Thus the proviso to Sub-section (1) of Section 11A was applied and the award was required to be made within a period of two years from the date of commencement of the amended Act. But the award was not passed within two years from the date of the commencement of the amended Act. However, the Appellant filed writ petition before the High Court in which an order for maintenance of status quo was made on 18.9.1986, which prevented the land acquisition officer from passing the award. The order of stay operated till 13.2.2003 when the High Court finally dismissed the writ petition. On 14.2.2003, an application was made for certified copy of the judgment, which was ready on 27.2.2003. It was found that even if the period when the status quo was in force is excluded, even then the award was passed beyond the period of two years. It was then argued before the Supreme Court that the time taken for obtaining certified copy of the judgment shall have to be excluded as provided u/s 12 of the Limitation Act for computing the period of two years. In that context, the Supreme Court held that time taken for obtaining certified copy of the judgment or order of the Court shall not be excluded. Their Lordships held as under:

54. In the matter of computing the period of limitation three situations may be visualised, namely, (a) where the Limitation Act applies by its own force; (b) where the provisions of the Limitation Act with or without modifications are made applicable to a special statute; and (c) where the special statute itself prescribes the period of limitation and provides for extension of time and/or condonation of delay. The instant case is not one which is governed by the provisions of the Limitation Act. The Land Acquisition Collector in making an award does not act as a court within the meaning of the Limitation Act. It is also clear from the provisions of the Land Acquisition Act that the provisions of the Limitation Act have not been made applicable to proceedings under the Land Acquisition Act in the matter of making an award u/s 11A of the Act. However, Section 11A of the Act does provide a period of limitation within which the Collector shall make his award. The Explanation thereto also provides for exclusion of the period during

which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a court. Such being the provision, there is no scope for importing into Section 11A of the Land Acquisition Act the provisions of Section 12 of the Limitation Act. The application of Section 12 of the Limitation Act is also confined to matters enumerated therein. The time taken for obtaining a certified copy of the judgment is excluded because a certified copy is required to be filed while preferring an appeal/revision/ review, etc. challenging the impugned order. Thus a court is not permitted to read into Section 11A of the Act a provision for exclusion of time taken to obtain a certified copy of the judgment and order. The Court has, therefore, no option but to compute the period of limitation for making an award in accordance with the provisions of Section 11A of the Act after excluding such period as can be excluded under the Explanation to Section 11A of the Act.

56. It will thus be seen that the legislature wherever it considered necessary incorporated by express words the rule incorporated in Section 12 of the Limitation Act. It has done so expressly in Section 28A of the Act while it has consciously not incorporated this rule in Section 11A even while providing for exclusion of time under the Explanation. The intendment of the legislature is therefore unambiguous and does not permit the court to read words into Section 11A of the Act so as to enable it to read Section 12 of the Limitation Act into Section 11A of the Land Acquisition Act.

62. In the result civil appeals arising out of SL Ps (C) Nos. 6093, 6384 and 8574 of 2003 are dismissed. Civil appeal arising out of SLP (C) No. 6095 of 2003 is allowed and it is declared that the award made by the Collector on 1-3-2003 was barred by limitation prescribed by Section 11A of the Act and as such the acquisition proceeding in relation thereto lapsed on 18-2-2003, which was the last date for making the award. Parties shall bear their own costs.

21. Learned Counsel also placed heavy reliance on the decision of the Supreme Court in Lok Sewa Shikshan Mandal Vs. A.R. Mundhada Charitable Trust and Others, . In the said case, the award passed under the Land Acquisition Act was challenged on the ground that the entire land acquisition proceeding lapsed in accordance with the provisions of Section 11A of the Act. The said contention was upheld by the High Court. When the matter went to the Supreme Court, it was argued that since the interim relief was granted while admitting the appeal, the case was covered by explanation to Section 11A of the Act. The Supreme Court considered the nature of the order passed by the High Court when the acquisition proceeding was challenged by the Respondents. The High Court, instead of granting any stay, simply passed order for issuance of rule. In that context, the Supreme Court held as under:

27. In our considered opinion, Dr. Dhavan is also not right in contending that as interim relief was granted, the case was covered by Explanation to Section 11A and not by the main provision of Section 11A. It is, therefore, necessary to consider the nature of order passed by the High Court when the acquisition

proceedings were challenged by the first Respondent. Now from the record, it is clear that the first Respondent filed Writ Petition No. 810 of 1986 in the High Court on 2-4-1986. On 30-4-1986, the Court admitted the petition by issuing rule and the following order was passed:

Rule. To be put up with connected matter. Rule on stay. Liberty to move Vacation Judge.

(emphasis supplied)

28. It is, thus, clear that the petition was admitted by issuing rule nisi. Rule was also issued on stay. In our opinion, however, the learned Counsel for the first Respondent is right in contending that the Court had not granted stay against "any proceeding". Merely rule was issued on the prayer of stay made by the Petitioner in the petition.

22. On the other hand, there are catena of decisions of the Supreme Court where Their Lordships discussed the application of Section 11A of the Act.

23. In the case of *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*, a question arose as to whether the award passed and published after two years from the date of declaration held to be barred u/s 11A of the Land Acquisition Act. A Division Bench of this Court took a view that the time during which proceedings for taking possession of the land were stayed, that period shall be excluded from the time fixed for passing the award. In that case, a notification was published in the gazette on 27.02.1991 and the same was challenged by the landowner in a writ petition. On the same day order was passed staying the dispossession of the Appellant from the property involved. Despite the pendency of the writ petition, the government published declaration u/s 6 of the Act on 10.04.1992 but the award was passed after the expiry of 2 years i.e., only on 16.09.1994. A question, therefore, arose whether the award having been passed after the expiry of 2 years from the declaration is barred u/s 11A of the Act. The Supreme Court considered the explanation to Section 11A of the Act and held that even in cases where dispossession alone is stayed by the Court the period during which such stay operates shall be excluded from the time fixed for passing the award.

24. In the case of *Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another*, the Supreme Court after considering the explanation to Section 11A of the Act held as under: (para - 8 at page - 535)

8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award u/s 11 of the said Act. In the first place, as held by the learned single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and "we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon where the case is covered by

Section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration u/s 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. 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.

25. In *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, the facts of the case was that after a declaration u/s 6(1) was published in the gazette the Appellant filed writ petition in the High Court of Karnataka challenging the declaration on the ground that notice u/s 5A was not served on him. The High Court while setting aside the declaration u/s 6(1) directed the Appellant to be present before the Land Acquisition Officer for inquiry. Subsequently, the Appellant appeared and his objections were considered and after overruling the objections, declaration u/s 6(1) was again published. Thereafter, an award was passed and possession of the land was also taken. The Appellant filed another writ petition challenging the declaration u/s 6(1). He also sought for stay of dispossession, which was granted. Ultimately, the said writ petition and the other connected matters were dismissed. Challenging the same the Appellant moved Supreme Court.

On these facts, it was contended that Declaration u/s 6 was not published within three years from the date of notification, and therefore, the same has lapsed.

Rejecting the said contention the Supreme Court held:

Explanation 1 thereto provides the method or mode of computation of the period referred to in the first proviso, namely, the period during which "any action or proceeding" be taken in pursuance of the notification issued under Sub-section (1) of Section 4 being "stayed by an order of a court shall be excluded". In other words, the period occupied by the order of stay made by a court shall be excluded. Admittedly, pending writ petition on both the occasions the High Court granted "stay of dispossession". Admittedly, the validity or tenability of the notification issued and published u/s 4(1) is subject of adjudication before the High Court. Till the "writ petitions are disposed of or the appeals following its heels, the stay of dispossession was in operation. Though there is no specific direction prohibiting the publication of the declaration u/s 6, no useful purpose "would be served by publishing Section 6(1) declaration pending adjudication of the legality of Section 4(1) notification. If any action is taken to pre-empt the proceedings, it "would be stigmatized either as "undue haste" or action to

"overreach the court's judicial process". Therefore, the period during which the order of dispossession granted by the High Court operated should be excluded in computation of the period of three years covered by Clause (1) of the first proviso to the Land Acquisition Act. When it is so computed, the declaration published on the second occasion is perfectly valid. Under these circumstances, we do not find any justification to quash the notification published u/s 6 dated May 17, 1984. The review petitions are accordingly dismissed. No costs.

26. In the case of L.N. Venkatesan Vs. State of Tamil Nadu and others, the validity of the award was challenged on the ground that it was not published within 2 years from the date of declaration as contemplated u/s 11A of the Act. In that case notification u/s 4(1) of the Act was published on 11.06.1975 and Declaration u/s 6 was published on 03.03.1978. The Petitioner filed writ petition and obtained stay of dispossession. Since, the award was not made within 2 years, the Petitioner filed another writ petition. The High Court of Madras held that the bar of proviso does not attract the operation of the stay obtained by the Petitioner in the earlier writ petition. Therefore, the acquisition does not stand lapsed. The said order was challenged before the Supreme Court. Their Lordships following the ratio decided in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, held as under:

4. It is not in dispute in this case that the Petitioner filed W.P. No. 10351 of 1982, seeking quashing of the acquisition proceedings in question, in respect of the remaining area of 6 acres comprised in S. No. 232/1 C in Kottivakkam Village, Saidapet Taluk and obtained an interim order which disabled the Land Acquisition Officer, even though it related to a portion of the survey number in question, to proceed in the matter, much less to pass an award. The said writ petition was allowed in 08.01.1988. Acquisition, insofar as it related to the extent of 6 acres, comprised in the survey number referred to above, was quashed. Even during the pendency of WP. No. 10351 of 1982, Petitioner had filed another writ petition viz., W.P. No. 7645 of 1986 and obtained an interim order WP. No. 7645 of 1986 related to the remaining portion of 4.33 acres and that writ petition is heard along with this writ petition. However, we pass a separate order in that writ petition. The interim order obtained in W.P. No. 7645 of 1986 disabling the Land Acquisition Officer to obtain possession of the land in question, is still in operation. Therefore, from the year 1982 till today, there has been an interim order passed in one of the writ petitions referred to above, operating against the Land Acquisition Officer, disabling him to take possession of the land.

27. Learned Counsel for the Appellants tried to impress the Court that in any event at least the period from the date of dismissal of the writ petition till it was restored, there was no interim order of stay, and therefore, this period which is about 7 months has to be taken into account while computing the period of 2 years. According to the learned Counsel, the force of the interim order came to an end on the date of dismissal of the writ petition and after the restoration of the writ petition no further interim order was passed. We are unable to accept

the submission made by the learned Counsel for the Appellants.

28. It is a well settled proposition of law that orders of stay pending disposal of the suit or proceeding are ancillary orders and they are all meant to supplement the ultimate decision arrived at in the main suit or proceeding. Hence, the suit or proceeding dismissed for default and subsequently restored by the order of the Court, all ancillary orders passed in the said suit or proceeding shall stand revived unless there is any other factor on record or in the order of dismissal to show to the contrary.

29. The aforesaid view was taken by the Madras High Court as far back as in the year 1934 in the case of *Saranatha Ayyangar v. Muthiah Moopanar* reported in AIR 1934 Mad. 49 where it has been held that on restoration of a suit dismissed for default all interlocutory matters shall stand restored, unless the order of restoration says to the contrary.

30. In the case of *Nandipati Rami Reddi and Others Vs. Nandipati Padma Reddy and Others*, it has been held by a Division Bench of the Andhra Pradesh High Court that "when the suit is restored all interlocutory orders and their operation during the period between dismissal of the suit for default and restoration shall stand revived. That once the dismissal is set aside, the Plaintiff must be restored to position in which he was situated, when the Court dismissed the suit for default. Therefore, it follows that interlocutory orders which have been passed before the dismissal would stand revived along with the suit when the dismissal is set aside and the suit is restored unless the Court expressly or by implication excludes the operation of interlocutory orders passed during the period between dismissal of the suit and the restoration."

31. Similar view has been taken by a Division Bench of this Court in *Annapurna Patrani and Others Vs. Lakshmana Kara and Another*, wherein it has been held that "where in execution of decree property is attached 34 but the petition for execution is dismissed for default is set aside, the effect of the appellate order is to restore the order attaching property and the trial Court would have to proceed with the execution application from the stage at which it had interrupted it by dismissing it for default. The appellate order restoring attachment would relate back to the date when the attachment was first made and would render invalid any alienation in the interim period".

32. In the case of *Nancy John Lyndon Vs. Prabhati Lal Chowdhury and Others*, a similar question was considered by the Supreme Court and it was held as follows: (Para - 10 Page - 2063)

10. In the present case both, the sale by the judgment-debtor to *Bharat Shamshere Jung Bahadur Rana* and the sale by *Bharat Shamshere Jung Bahadur Rana* to the Respondent, were effected during the subsistence of the attachment and before the Title Execution Case was dismissed for default. In our view, even if a doubt were to be entertained as to whether an order for restoration of the suit or execution application would have the effect of restoring the attachment

retrospectively so as to affect alienations made during the period between dismissal of the suit or execution application and the order directing restoration it is clear that an order of restoration would certainly restore or revive the attachment for the period during which it was in subsistence, namely, prior to the dismissal of the suit or execution application.

33. Recently, in the case of Vareed Jacob Vs. Sosamma Geevarghese and Others, the Supreme Court has taken a similar view and held that order of stay pending disposal of a suit or proceeding are ancillary orders and in cases where such suit or proceeding, dismissed for default, is restored by the order of the Court then all ancillary orders stand revived, unless there is any other factor on the record or in the order of dismissal to show to the contrary.

34. After having given our anxious consideration on the facts of the case and the law discussed herein above, we have no hesitation in holding that the impugned Award is not in any way hit by Section 11A of the Act. Having regard to the interim orders passed in the writ petitions and the notification u/s 4 of the Act was ultimately upheld by the Supreme Court, the Award has been passed within two years as provided u/s 11A of the Act.

35. For the reasons above stated, we do not find any merits in these appeals, which are accordingly dismissed. Consequently, all the writ petitions taking similar stand are also stand dismissed. However, there will be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.