

(2003) 01 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17076 of 2000 and Batch

C. Munikrishnaiah and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

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

Citation : (2003) 2 ALD 184

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M.P. Chandramouli, for the Appellant; Govt. Pleader for Land Acquisition for Respondent Nos. 1 and 2 and K. Bathi Reddy, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—It is expedient to dispose of all the six writ petitions by a common order as common questions of fact and law arise for consideration.

2. The petitioners in all the matters seek a declaration that the award being Award No. 1 of 1998, dated 12-3-1998 passed by the Special Deputy Collector/ Land Acquisition Officer (L.A.O.), Tirupati Urban Development Authority (hereinafter called "TUDA") is arbitrary, illegal and violative of Section 11-A of the Land Acquisition Act, 1894 ("the Act" for brevity) insofar as the same deals with the lands owned by the respective petitioners.

3. All the petitioners are residents of Tirupati town. They own agricultural land in various survey numbers of Vedanthapuram village totalling an extent of the details of which are as under.

Sl. No. WPNo. Sy.Nos. Extent (Acs. cts.)

1. 17076 of 2000 196I2A, 196I2B and 196/20 1.47

2. 17077 of 2000 204/7 0.67

3. 17078 of 2000 202/3C 2.S2

4. 17108 of 2000 196/2A 0.30

5. 17109 of 2000 196/2A, 196/2C, 196/2E and 202/1 A 3.00

6. 17110 of 2000 203/3N to 203I3R 2.78

4. The first respondent issued a notification u/s 4(1) of the Act proposing to acquire the land for TUDA for sites and service programmes. The said notification was published in the Gazette on 10-11-1992 and was published in local newspapers as required under law on 18-11-1992. Declaration u/s 6(1) of the Act was made and was published in the Gazette and local newspapers, last such publication being 26-4-1993. The petitioners, at that stage, challenged the validity of acquisition by filing various writ petitions.

5. This Court, by orders dated 23-4-1993, ordered status quo obtaining as on that date. However, the petitioners in W.P. No. 17110 of 2000, the petitioners filed the writ petition being W.P. No. 6653 of 1993 a little while later and this Court by an order dated 13-5-1993 passed similar order of status quo obtaining as on that date. This Court, by a common order in all the writ petitions, except W.P. No. 6653 of 1993, dismissed the writ petitions by an order dated 30-6-1994. The petitioners therein, except the petitioners in W.P. No. 6653 of 1993 filed Writ Appeals in August/September, 1994. A Division Bench of this Court, by an order dated 20-9-1994, while admitting the writ appeals ordered status quo obtaining as on that date, with regard to the land of the respective petitioners pursuant to the notification u/s 4(1) of the Act. The writ appeals were dismissed by this Court on 29-2-1996 for default. But, W.P. No. 6653 of 1993 filed by the petitioners in W.P. No. 17110 of 2000 was heard along with Writ Appeal No. 171 of 1994 and was dismissed on 25-3-1996. There was some delay in communicating the orders passed by the learned single Judge in writ petitions as well as the Division Bench in writ appeals. The following table will disclose various dates in relation to the writ petitions.

SI.	No.	WPNo.	Corresponding WP No.	in earlier litigation	Date of order in WP	MP ordering status quo	Date of order in WP	Date of Service of order on LAO	Date of Interim order in WA	MP in in Writ Appeal	Date of dismissal of W.A.	Date of service of order on LAO in Writ Appeal
-----	-----	-------	----------------------	-----------------------	---------------------	------------------------	---------------------	---------------------------------	-----------------------------	----------------------	---------------------------	--

1.	17076	of 2000	5282	of 1993	23-4-1993	30-6-1994	2-9-1994	20-9-1994	29-2-1996	6-5-1996		
----	-------	---------	------	---------	-----------	-----------	----------	-----------	-----------	----------	--	--

2.	17077	of 2000	55390	of 1993	28-4-1993	-do-	-do-	-do-	-do-	24-4-1996		
----	-------	---------	-------	---------	-----------	------	------	------	------	-----------	--	--

3.	17078	of 2000	5327	of 1993	26-4-1993	-do-	-do-	-do-	-do-	11-6-1996		
----	-------	---------	------	---------	-----------	------	------	------	------	-----------	--	--

4.	17108	of 2000	5569	of 1993	28-4-1993	-do-	-do-	-do-	-do-	2-5-1996		
----	-------	---------	------	---------	-----------	------	------	------	------	----------	--	--

5.	17109	of 2000	5540	of 1993	28-4-1993	-do-	-do-	-do-	-do-	21-5-1996		
----	-------	---------	------	---------	-----------	------	------	------	------	-----------	--	--

6.	17110	of 2000	6653	of 1993	19-5-1993	25-3-1996	22-5-1998	-	-	-		
----	-------	---------	------	---------	-----------	-----------	-----------	---	---	---	--	--

6. The second respondent passed an award being Award No. 1 of 1998 on 12-3-1998 after this Court finally adjudicated the dispute raised by the petitioners in relation to the acquisition proceedings. The present writ petitions are filed mainly on the ground that it is not competent for the second respondent to pass an award after expiry of a period of two years from the date of publication of declaration. It is also contended that as two years elapsed from the date of publication of declaration excluding the period of status quo/stay by this Court, the entire proceedings for acquisition of their land is lapsed.

7. TUDA has filed a counter affidavit. It is stated that the draft declaration u/s 6 was published in A.P. Gazette No. 270 dated 20-4-1993 showing C. Munikrishnaiah as pattedar in relation to the land ad measuring Ac. 1.41 cents in Sy.No. 196/2A. In the meanwhile, the said Munikrishnaiah filed W.P.No. 5282 of 1993 along with others and obtained stay in respect of part of the acquired land. Therefore, though notification u/s 4(1) was issued for acquisition of Acs.25.22 cents, an award was passed to an extent of Acs. 13.26 cents vide Award No. 1 of 1993 dated 16-6-1993. Possession of the said land was taken and handed over to the requisitioning department on 21-6-1993. It is further stated that the copy of the order in writ petition was received by the L.A.O. on 2-9-1994 and even before any action could be taken the petitioners filed writ appeals and obtained orders of status quo, The writ appeals were dismissed and the copy of the judgment in writ appeals was received by the L.A.O. on 6-5-1996. Thereafter, an award enquiry was conducted after issuing notices under Sections 9 and 10 of the Act and award being Award No. 1 of 1998 was passed on 12-3-1998. Therefore, excluding the period during which there was stay by this Court, the award passed within two years as required u/s 11-A of the Act is valid and not rendered illegal.

8. The petitioners have not filed any reply affidavit denying the counter averments. It is also not denied that in respect of an extent of Acs. 13.26 cents out of the land ad measuring Acs.25.22 cents which was proposed for acquisition, an award was passed on 16-6-1993.

9. Sri M.P. Chandramouli, learned Counsel for the petitioners, submits that the respondents are required to pass an award within a period of two years from the date of publication of the declaration. As per Section 6(2) of the Act, publication of declaration in the newspapers in regional language shall be the date for reckoning the period of two years which is 26-4-1993. In usual course, the respondents ought to have passed award before 26-4-1995. However, as there was a status quo order passed by the learned single Judge from 23-4-1993 till 30-6-1994, and again during the period from 20-9-1994 till 29-2-1996 passed by the Division Bench, the said period amounting to 411 days for the first period (23-4-1993 to 30-6-1994) and 534 days for the period from 20-9-1994 to 29-2-1996 alone can be excluded as per the explanation to Section 11-A of the Act Even if 945 days is excluded, the award passed on 12-3-1998 is beyond the period of two years and, therefore, the award is illegal in terms of Section 11-A

of the Act.

10. Learned Standing Counsel for TUDA, Sri K. Bathi Reddy, however, refutes the contention of the learned Counsel for the petitioners. He submits that the copy of the order passed by the learned single Judge on 30-6-1994 was received by the second respondent on 2-9-1994. Likewise, the order passed by the Division Bench on 29-2-1996 was received by the second respondent in the months of April to June 1996 and, therefore, the said period taken for service of copy of the order passed by this Court is to be excluded. Thus, he would contend that the time during the first period which comes to 498 days and second period of 595 days totalling 1093 days has to be excluded, in which event the award passed on 12-3-1998 is within time. He would also contend that the notification on 10-11-1992 u/s 4(1) was issued proposing to acquire Acs.25.22 cents. In view of the fact that an extent of about Acs. 12.00 was in dispute before this Court where land acquisition proceedings were challenged, the L.A.O. passed Award No. 1 of 1993 on 16-6-1993. He has also produced the file relating to Award No. 1 of 1993 to show that the L.A.O. passed an award for an extent of Acs.13.26 cents. He also contends that the writ petition being W.P.No. 6653 of 1993 filed by the petitioners in W.P.No. 17110 of 2000 was dismissed on 25-3-1996 and after receiving the communication from the lawyer that writ petition was dismissed the L.A.O. passed award on 12-3-1998 in relation to the land owned by the petitioners therein. Therefore, from the date of dismissal i.e., 25-3-1996, the award passed on 12-3-1998 is within the time of two years.

11. The short question that falls for consideration is whether in the facts and circumstances of the case, the award was passed in accordance with the mandatory provisions of Section 11-A of the Act?

Section 11-A of the Act reads as under.

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, 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.

12. There cannot be any dispute that the period from which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of the Court shall be excluded. Does it include the period taken for serving the copy of the order on the L.A.O.? The question is no more res integra. In Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , a

Constitution Bench of the Supreme Court considered the scope of explanation I of Sub-section (1) of Section 6 of the Act which is in pan materia with explanation to Section 11-A. After Land Acquisition (Amendment) Act, 1984, a declaration u/s 6(1) shall have to be made within a period of one year from the date of publication of notification u/s 4(1) of the Act. Nonetheless, in computing the period of one year, the period during which the proceedings u/s 4(1) are stayed by an order of the Court shall be excluded. Likewise, in computing the period of two years within which an award has to be passed u/s 11-A of the Act, the period during which proceedings are stayed by the Court shall have to be excluded.

13. In *Padmasundara Rao v. State of T.N.* (supra), the matter came to be considered by a Constitution Bench having regard to the cleavage in the views expressed by the earlier decisions of the Supreme Court especially in *State of Karnataka and Others Vs. D.C. Nanjudaiah and Others*, and *N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others*, . In the two decisions referred to just now, it was held that the time of one year for publication of declaration u/s 6(1) would run from the date of service of High Court's order. The Constitution Bench, by unanimous opinion, did not agree with this. It was held that when the Legislature specified the period which needs to be excluded while reckoning the period of one year for publication of declaration u/s 6(1), it would be impermissible for the Court to add the non-prescribed or non-specified period and enlarge the exclusion period. It was held:

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary (See *M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.*, . The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *Narasimhaiah's* case (supra). In *Nanjudaiah's* case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

14. In view of the dicta in *Padmasundara Rao v. State of T.N.* (supra), the submission of Sri Bathi Reddy that the time taken for service of High Court's order on the L.A.O. is to be excluded, is devoid of merits and cannot be sustained. His submission that *Padmasundara Rao's* case deals with a situation arising u/s 6(1) of the Act and, therefore, has no application in a case arising u/s 11-A, is stated for the purpose of rejecting the same. As noticed hereinabove, the two provisions namely, explanation I to Section 6(1) and explanation u/s 11-A of the Act are ipsissima verba and the principle of interpretation namely, the

legislative casus omissus cannot be supplied by the Court into the same.

15. The next question is whether the period from 23-4-1993, when the learned single Judge granted an order of status quo, to 29-2-1996 when the Division Bench ultimately dismissed the writ appeals continuously gets excluded without any break?

16. Learned Counsel for the petitioners would like this Court to allow the period from 23-4-1993 - when the interim order was passed - to 30-6-1994 when the writ petitions were dismissed and the period from 20-9-1994 - when the Division Bench passed orders of status quo - to 6-5-1996 when the writ appeals were dismissed. For the purpose of explanation to Section 11-A of the Act, he would urge that as there was no stay or status quo for the period from 30-6-1994 - when the writ petitions were dismissed till 20-9-1994 when the Division Bench granted status quo, the said period cannot be excluded. I see force in the submission of the learned Counsel for the petitioners. It is no doubt true that as there was delay on the part of the petitioners in approaching the Letters Patent Bench challenging the orders of the learned single Judge, it does not mean that the L.A.O. can sit over the matter assuming that a writ appeal would be filed. From 30-6-1994 till 20-9-1994, there was no stay or status quo operating restraining the land acquisition proceedings and, therefore, the said period cannot be excluded having regard to the language employed in explanation to Section 11-A of the Act.

17. Learned Standing Counsel for TUDA submits that W.P. No. 6653 of 1993 filed by the petitioners in W.P. No. 17110 of 2000 was dismissed on 25-3-1996 and, therefore, the award passed on 12-3-1998 is valid. He would like this Court to appreciate that from 19-5-1993 till 25-3-1996, there was status quo in the said writ petition and, therefore, that period has to be excluded. He would also submit that as an award being Award No. 1 of 1993 was already passed on 16-6-1993 in relation to major extent of land covered by the same notification and the said award being in the earliest point of time, the information of passing of the award in relation to another land within a period of two years does not lapse the land acquisition proceedings. Both these submissions commend themselves to this Court and need to be countenanced for reasons as under.

18. It is no doubt true that the lands belonging to all the petitioners herein were proposed for acquisition under the same notification and the same declaration was given. The petitioners individually challenged the proceedings in various writ petitions as noticed hereinabove. E. Pulla Reddy and others, the petitioners in W.P. No. 17110 of 2000 filed W.P. No. 6653 of 1993 and obtained interim order on 19-5-1993. The interim order was in force till 26-3-1996 and, therefore, no award should have been passed in respect of the lands of those persons. Similar is the case in respect of other writ petitioners. The award passed on 12-3-1998 insofar as the same extent is concerned, cannot be said to be beyond two years. Further, as rightly contended, in relation to Acs. 13.26 cents, an award being Award No. 1 of 1993 was already passed on 16-6-1993 and the same, in my

considered opinion, does not render the award dated 12-3-1998 passed in relation to other lands illegal. A reference may be made to *State of Tamil Nadu v. Mahalakshmi Ammal*, AIR 1996 SC 886, wherein it was held:

It is well settled law that publication of the declaration u/s 6 gives conclusiveness to public purpose. Award was made on September 26, 1986 and for Survey No. 2/11 award was made on August 31, 1990. Possession having already been undertaken on November 24, 1986, it stands vested in the State u/s 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years u/s 11 of the Act, the fact that subsequent award was made on 31st August, 1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in to proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made u/s 11 does not become invalid..... (emphasis mine)

19. When the Government proposes to acquire the land and initiates proceedings therefor, it is possible that some persons challenge the acquisition by way of a writ petition. If an award is passed in relation to the land in respect of which no litigation is pending before the High Court and where there is no challenge in respect of those lands, even if the award is passed in respect of the lands subsequently, the same does not render the award invalid in terms of Section 11-A of the Act. That is the ratio of the decision in *State of Tamil Nadu v. Mahalakshmi Ammal* (supra). In my opinion, the said ratio squarely applies to the facts of the case. The writ petitions, therefore, fail and are accordingly dismissed. There shall be no order as to costs.