
(1989) 12 MAD CK 0028
In the Madras High Court

C. Sargunam

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 11A

Citation : (1990) 1 LW 259 : (1990) 1 MLJ 199

Hon'ble Judges : Sathiadev, J

Bench : Division Bench

Judgement

Sathiadev, J.—Petitioner in W.P. No. 9325 of 1982 is the appellant. The three respondents therein are the three respondents herein.

2. The appellant owns lands of an extent of 3.22 acres in S. No. 22/1B in Viswanathan Village. First respondent issued a section 4 (1) notification

for acquisition of the said land in G.O. Ms. No. 58, Transport, dated 12.1.1982. This was done pursuant to a requisition made by Pandian

Roadways Corporation by letter dated 7.2.1981 stating that it proposed to construct a depot for maintenance of buses, and therefore, acquisition

proceedings will have to be initiated by invoking urgency provisions as there are no structures on the land. Hence the enquiry u/s 5-A had been

dispensed with by invoking section 17 (4). Section 6 declaration was published in the gazette on 10.2.1982. Notices under sections 9 (1) and 10

were issued on 11.2.1982, and possession came to be taken on 26.2.1982. When the award enquiry stood adjourned to 25.11.1982, W.P. No.

9325 of 1982 was filed and interim stay was obtained on 23.11.1982. The writ petition was dismissed on 20.8.1983. The writ appeal was filed on

25.8.1983 and interim stay was obtained on 7.9.1983. This order of interim stay granted in C.M.P. No. 11815 of 1983 in this appeal was

vacated on 3.12.1984. So far no award had been passed.

3. Though different contentions were put forth before the learned Judge pending disposal of this appeal, C.M.P. No. 15038 of 1988 was filed

raising an additional ground to the following effect:

The impugned acquisition proceedings shall lapse due to the fact that no award is passed u/s 11 within the stipulated period even though there is no

order of stay after 3.12.1984 preventing the authorities from passing orders within the stipulated time.

4. Mr. K. Govindarajan, learned counsel for the appellant, submits that as per section 11-A of the Land Acquisition Act, in any event, within two

years from 3.12.1984 the Collector having not passed the award, the entire proceedings for the acquisition of appellant's lands have lapsed.

Section 11-A as inserted by Central Act 68 of 1984 reads as follows:

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.

5. Mr. R. Krishnamurthy, learned counsel for the second respondent, submits that section 11-A is subject to section 17 (1) because when special

powers"" in cases of urgency"" are exercised and possession is taken, ""such land shall thereupon vest absolutely in the Government free from all

encumbrances"", and hence, when appellant had lost title to the lands on and from 26.2.1982, there is no scope for revesting of the lands to the

appellant by relying upon section 11-A. It is further contended that when urgent provisions are invoked for achieving a public purpose without loss

of time which occasions by holding a section 5-A enquiry, such a public purpose cannot be thwarted by invoking section 11-A which, had come

into existence by the Amendment Act of 1984, and therefore, it has to be read as

subject to section 17 (1) which had formed part of the enactment when framed in 1984. Being fully conscious of the concept of vesting that would take place u/s 17 (1), the amendment having been brought about later by incorporating section 11-A, it has to be read as an exception, thereby excluding from its purview the acquisition made under the urgency provision.

6. For such an approach to be made, he placed reliance on *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, in which it was stated that in construing a social welfare legislation, the Court has to adopt a beneficial rule of construction i.e. if a section is capable of two constructions, then the construction which would fulfil the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed, will have to be adopted. Land Acquisition Act in its implementation results in deprivation of right to property by the concept of eminent domain being exercised by State, and therefore, in interpreting it, a construction now put by him would not be beneficial to the person who is deprived of his property. Later on, the purposes for which the Amending Act had been passed would be referred to, and which would show that it is to prevent the authorities from delaying acquisition proceedings indefinitely, time - limit came to be fixed, so that citizens whose properties are acquired for public purpose, are not deprived of just compensation being paid within a reasonable time. Swift conclusion of proceedings is the main intendment behind the Amending Act.

7. The other decision relied upon is *Mrs Winifred Ross and Another Vs. Mrs Ivy Fonseca and Others*, in which while dealing with section 13-A1 of Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1987), it was held that since the liberal interpretation of it is likely to expose it to a successful challenge on the basis of Article 14, it has to be read down.

8. As far as section 11-A is concerned, it being specific, and when its intendment is to fix a time-limit within which an award will have to be passed, there is very little scope for reading down the effect of section 11-A.

9. If really it had been intended by Parliament that section 11-A would have no application to acquisitions by invoking section 17 of the Act; then suitable exception would have been made in section 11-A itself, and which could have provided that it would have no application in such of those

cases where urgency provisions are invoked.

10. Statement of Objects and Reasons to Act 68 of 1984 is to the following effect:

It is proposed to provide for a period of two years from the date of publication of the declaration u/s 6 of the Act within which the Collector

should make his award under the Act. If no award is made within that period the entire proceedings for the acquisition of the land would lapse. He

has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.

11. In section 11-A, there is no dichotomy made relating to acquisition under urgency provisions and non-urgency provisions. It is obligatory on

the part of the Collector to pass an award within a period of two years from the date of publication of section 6 declaration, irrespective of the

nature of acquisition proceeding initiated by Government. Whether it is one under Part II or Part VII or one initiated by invoking urgency

provisions, a definite time-limit had come to be fixed. Taking note of what had happened in the past, in that, acquisition proceedings were kept

pending for j eight or ten years without passing awards, the Parliament having it is wisdom chosen to fix a firm time-limit; if it is to be read down as

claimed by learned counsel Mr. R. Krishnamurthy, it would defeat the object sought to be achieved by the insertion of section 11-A. In respect of

acquisition which is initiated for subserving an urgent public purpose, no public authority could thereafter lethargically deal with the matter. Having

acted swiftly to take possession of the land even before an award is passed; by the Amending Act, the Acquisition Officer is compelled to maintain

the same tempo and complete the passing of the award within two years from the date of publication of Section 6 declaration. When deprivation of

possession of property could be done swiftly, it is not unreasonable to expect from the concerned authority to act swiftly in passing the award.

12. Further, for non-urgency acquisition of property, if a period of two years for passing of award could be followed, nothing is made out to hold

that in respect of urgent acquisitions, an indefinite period should be available to the Collector for passing the award.

13. Therefore, section 11-A would be applicable irrespective of the kinds of acquisition proceedings initiated under the Land Acquisition Act.

14. One other contention put forth is that, when vesting had taken place u/s 17

(1), there could be no reversion of property. Here again, Mr.

Govindarajan, learned counsel for the appellant, quite justifiably points out that there could be no legal impediment in reversion, because in such of

those instances wherein the acquisition proceedings are declared illegal by Courts, it would result in the title to the property reverting to the

erstwhile owner. By operation of law, vesting takes place under S.17 (1). Hence equally, u/s 11-A, when there is a failure to adhere to the time-

limit fixed therein, the entire acquisition proceedings shall lapse. The resultant effect will be, the reversion takes place by operation of law.

15. The last submission made by Mr. Krishnamurthi appearing for the second respondent was that since u/s 34 of the Land Acquisition Act

interest is payable on the failure to pay or deposit the compensation, the delay in the making of the award, particularly when urgency provisions are

invoked, is enough to compensate the land owner and therefore the non-making of the award within the prescribed period of two years u/s 11-A

of the Act, would not render the proceedings bad in urgency/acquisition matters. For what follows, this contention cannot be accepted.

16. Section 34 of the Land Acquisition Act, 1984 reads as follows:

Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector

shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of so taking possession until it shall have

been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within the period of one year from the date on which possession is

taken, interest at the rate of fifteen per cent per annum shall be payable from the date of expiry of the said period of one year on the amount of

compensation or part thereof which has not been paid or deposited before the date of such expiry.

This provision is general in its application and is not confined to urgent acquisitions. The legislature provided for payment of interest with a view to

compensate the party for being deprived of his profit of usufruct of the land from the date he loses possession thereof, unless payment has been

made by the Collector before taking possession. The payment of interest, therefore, cannot, in any way, whittle down the requirements of section

11-A of the Act (supra). The section talks of the interest becoming payable from the date of taking over possession at the specified rate on the

award amount when the compensation is not paid or deposited on or before taking possession of the land. The failure to adhere to the time limit

prescribed u/s 11-A of the Act would render the entire acquisition proceedings bad.

17. Therefore, the writ appeal is allowed with costs resulting in section 4 (1) notification being quashed, counsel fee is fixed at Rs. 1,000 payable

by second respondent. This would not preclude the Government by initiating acquisition proceedings afresh, since the purpose for which it had

been acquired is indisputably a public purpose.