
(2005) 03 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 1366 of 2003

Fr. Paul Chakiath

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 17(1)

Citation : (2005) 3 ILR (Ker) 170 : (2005) 3 KLT 182

Hon'ble Judges : K.S. Radhakrishnan, Acting C.J.;Thottathil B. Radhakrishnan, J

Bench : Division Bench

Advocate : M.C. Sen, M.P. Sreekrishnan and Shahna Karthikeyan, for the Appellant; K. Lakshmi Narayanan, Sr.Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, Ag. C.J.

1. This appeal arises out of the judgment in O.P. No. 8760 of 2003. Original Petition was filed seeking a declaration that the entire land acquisition proceedings in pursuance of Ext.P1 to P5 have lapsed u/s 11A of the Land Acquisition Act as the award has not yet been passed even after the expiry of 2 years after the declaration u/s 6. Alternatively a Writ of mandamus was also prayed for directing second respondent to pass the awards in respect of acquisition proceedings in pursuance of Ext.P1 notification and Exts.P4 and P5 notices u/s 9(3) of the Land Acquisition Act. Learned Single Judge did not grant the prayers. Aggrieved by the same this appeal has been preferred.

2. Senior counsel appearing for the appellant Sri.M.C. Sen submitted that the land acquisition proceedings in pursuance to Exts.P1 and P2 have lapsed u/s 11A of the Land Acquisition Act on the ground that award has not been passed even after the expiry of two years from the date of declaration u/s 6 of the L.A. Act. Counsel submitted, in any view of the matter the State is bound to adequately compensate the petitioner. Counsel submitted, the notification under Sections 4(1) and 17(4) of the L.A. Act was published on 8.2.2000 and simultaneously a declaration u/s 6 was also made. Possession of the property was handed over on

17.3.2001. However, payment of 80% of the compensation was not made as required u/s 17. Petitioner had sent two notices requesting for passing the award and the final award was passed only on 26.8.2003. Counsel submitted, the inaction on the part of the respondent has caused considerable prejudice and financial loss to the petitioners.

3. Learned Government Pleader on the other hand, contended that the award could not be passed within two years from the date of publication of declaration due to the delay in producing the documentary evidence by the claimants and due to the fact that category of the land had to be changed. It is stated that the funds were made available only on 31.3.2002 by the requisitioning authority and therefore there is no deliberate inaction on the part of the respondents in passing the award. We find it difficult to accept the contention of the respondent State. The delay was not due to the failure on the part of the petitioner to make available the title deeds. Petitioner had made available the title deeds along with Ext.P6 letter on 24.7.2001. Land was taken possession on 17.3.2001. Section 9 notice was sent only on 11.9.2002 after 2 years had elapsed after Section 4(1) notification. Counter affidavit also would indicate that funds were made available by the requisitioning authority only on 31.3.2003. In the counter affidavit filed by the additional third respondent it is stated that as requested by the 2nd respondent, Rs. 90 lakhs were placed at his disposal on 27.3.2001 for making 80% advance payment to the land owners including the petitioner. Counter affidavit filed by the second respondent and additional third respondent are contradictory. We are of the view delay is definitely on the part of the respondent in not paying compensation in time. The State is statutorily bound to pay 80% of the total compensation. We are therefore of the view respondents are bound to compensate the petitioner. We therefore direct the respondents to pay 12% interest for the belated payment of 80% of the compensation. Interest would accrue from 18.3.2001 till the date of payment of 80% compensation which would be paid within a period of two months from the date of receipt of a copy of this judgment.

4. We cannot accept the contention of the petitioner that the acquisition proceedings have been lapsed u/s 11A of the Land Acquisition Act on the ground that award has not been passed even after the expiry of two years from the date of declaration u/s 6 of the Land Acquisition Act. The above mentioned point has already been considered by the Apex Court in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, wherein the Apex Court interpreting Section 11A held as follows:

"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 11-A 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 11-A, 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 11-A can have no application to cases of acquisitions 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".

The above mentioned decision would indicate that Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80% of the estimated compensation for the land before the Government takes possession of it u/s 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80% of the estimated compensation.

5. We therefore hold that since land has already been taken possession it cannot be said that the land acquisition proceedings have been lapsed and the said contention of the counsel cannot stand. Under such circumstance we find no infirmity in the judgment of the learned Single Judge. All the same as we have held that petitioner will be entitled to get interest at the rate of 12% per annum for the delayed payment of 80% of the compensation as ordered by us.

Writ Appeal is disposed of as above.