
(1995) 04 SC CK 0032

In the Supreme Court Of India

Case No : Civil Appeal No. 4608 of 1995

Government of Tamil Nadu and another

APPELLANT

Vs

Vasanthai Bai

RESPONDENT

Date of Decision : 07-04-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4(1), 5A, 6

Citation : AIR 1995 SC 1778 : (1997) 10 JT 511 : (1995) 2 SCALE 849 : (1995) 2 SCALE 401 : (1995) 2 SCC 423 Supp : (1995) 3 SCR 258 : (1995) 2 UJ 438

Hon'ble Judges : K. Ramaswamy, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : Niranjan Singh for Arputham, Aruna and Co, for the Appellant; R. Mohan, V.G. Pragasam and R. Nedumaran, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. Notification u/s 4(1) of the Land Acquisition Act, 1894, (for short, 'the Act'), as amended by Central Act 68 of 1984 was published in the gazette on April 12, 1988 acquiring an extent of 0.87.0 hectare of the land bearing Survey Nos. 84/1-B1 and 85/1-B of Madivilagam village, Sriperumpudur Taluk, Chengai Anna District in Tamil Nadu State, for public purpose. After conducting enquiry u/s 5A, declaration u/s 6 was published in the gazette on April 29, 1989 and the local publication was made on May 2, 1989.

3. Calling in question the validity of the notification and the declaration, the respondent filed Writ Petition No. 12888/90. On June 18, 1992, the single Judge of the High Court dismissed the writ petition. Writ Appeal No. 1079/92 was filed. Pending writ petition, the respondent had obtained stay of dispossession by order dated October 19, 1990 and the same was continuing pending appeal. When the writ appeal had come up for final hearing, one of the contentions raised, which persuaded the Division Bench for acceptance, was that u/s 11A, the award

should be made within a period of two years from the date of the publication of the declaration, and since the award was not made within that period, notifications u/s 4(1) and 6 stood lapsed. On that finding by order dated April 6, 1993, the appeal was allowed and the notification u/s 4(1) and declaration u/s 6 were quashed. Thus this appeal by special leave.

4. Section 11A of the Act, as brought on statute by Land Acquisition (Amendment) Act 68/84 adumbrates that 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 proceeding for 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. The explanation amplified that 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 the court, shall be excluded. The Division Bench held that the order restraining dispossession made by the High Court does not amount to stay of further proceedings nor it prevented the land acquisition officer to take further action in pursuance of the declaration u/s 6. Since no award was made within a period of two years from the date on which local publication has been made, the proceedings stood lapsed.

5. The Parliament enacted Section 11A with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award. The price to be paid for the land acquired under compulsory acquisition is the prevailing price as on the date of publication of Section 4(1) notification. The delay in making the award deprives the owner of the enjoyment of his property or to deal with the land whose possession has already been taken, and delay in making the award, would subject the owner of the land to untold hardship. With a view to relieve hardship to the owner or person interested in the land and to remedy the lapses on the part of the Land Acquisition Officer in making the award, Section 11A was enacted which enjoins making of award expeditiously. So, outer limit of two years from the last of the dates of publications, envisaged in Section 6 of the Act was fixed. If he fails to do so, all the acquisition proceedings under the Act would stand lapsed and the owner of the land or person interested in the land is made free to deal with the land as an unencumbered land. Cognizant to the fact that the acquisition proceedings are questioned in a court of law, the Parliament enacted Explanation to Section 11-A declaring that the period during which action or proceedings taken in pursuance of the declaration u/s 6 is stayed by an order of the court, the same "shall be excluded".

6. Question is whether stay of dispossession is a stay of proceedings under the Act so as to disable the Land Acquisition Officer to make the award? In Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, , the facts were that declaration u/s 6 was questioned by filing a writ petition under Article 226.

Pending its disposal stay of dispossession from the land was granted. In the meanwhile, when award proceedings were being taken, objection was raised that since award was not made within two years, the officer had no jurisdiction to pass the award. When it was overruled and an award was made, another writ petition was filed questioning the award. The Gujarat High Court held that Explanation to Section 11A was not confined to staying of the award to be made; and since the language was widely worded it covered within its sweep, the entire period during which any action or proceeding taken in pursuance of the declaration u/s 6 or dispossession is stayed by a competent court. When the correctness thereof was challenged, this Court held that "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". This court upheld the view of the High Court as correct.

7. In *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, , the same question in relation to the period of delay under Explanation 1 to Section 6 and Explanation 1 to 1st proviso to Section 4(1) came up for consideration. When the proceedings u/s 4(1) was stayed and the declaration u/s 6 also was stayed, whether the period during which the stay operated has to be excluded was considered and it was held that:

In other words, under the pre-Amendment Act the declaration u/s 6(1) shall not be published after the expiry of three years from the date of Section 4(1) publication and after the commencement of the Amendment Act, the State has no power to proceed with the matter and publish the declaration u/s 6(1) after the expiry of one year from the date of publication of the notification. 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 stigmatised 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.

8. The ratio in the above cases would squarely apply to the facts in this case. The Division Bench of the High Court was clearly in error in taking the contrary view. We, therefore, hold that the stay of dispossession would tantamount to stay of further proceedings being taken u/s 11 and Explanation to Section 11A covers such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by Section 11A.

9. It is next contended by Shri R. Mohan, learned senior counsel, that other points have been raised in the writ appeal and that they need to be decided by the Division Bench as noted by it. From the record, it would appear that the only point argued before the single Judge and negatived was whether Madras Metropolitan Water Supply and Sewage Board is not a local authority? That question was also canvassed before the Division Bench. Therefore, since the High Court had not decided that point, it requires to be decided according to law.

10. The appeal is accordingly allowed. The matter is remitted to the High Court for decision of the aforesaid point in accordance with law. No costs.