
(2013) 06 CHH CK 0031
In the Chhattisgarh High Court
Case No : Writ Appeal No. 282 of 2012

Hetram and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

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

Citation : AIR 2013 Chh 138 : (2013) 2 BLJ 404 : (2013) 4 MPHT 1

Hon'ble Judges : Yatindra Singh, C.J.;Pritinker Diwaker, J

Bench : Full Bench

Advocate : Deepali Pandey, for the Appellant; Sanjay K. Agrawal, Advocate General for State/Respondents, for the Respondent

Final Decision : Dismissed

Judgement

1. The main point involved in this writ appeal is,

Whether the award u/s 11 of the Land Acquisition Act (the Act) was not made within two years from the date of the publication of the declaration and as such the acquisition has lapsed.

It arises in this appeal against the order of the single judge dated 17.02.2012, dismissing the Writ Petition (C)-2530 of 2010, filed by the Appellants challenging acquisition of their land.

THE FACTS

It was proposed to acquire 12.851 hectares of land in village Barmuda, district Raigarh for the purpose of constructing canal for Kelo dam project. In this respect, a notification u/s 4(1) of the Act was published in the locality by affixation and Munadi on 27.02.2007. It was also published in daily newspaper on 03.03.2007 and in the official gazette on 09.03.2007.

2. In respect of the aforesaid land, a declaration u/s 6 of the Act was made on 24.08.2007. It was published in the newspaper on 04.09.2007 and in the official

gazette on 14.09.2007. In this case, public notice of the substance of such declaration at the convenient place was given by affixation and Munadi. There is some dispute about the date on which it was done,

? According to the State, it was on 30.09.2007;

? Whereas, according to the Appellants, it was on 11.09.2007.

3. The Land Acquisition Officer (the LAO) passed an award on 29.09.2009. According to the State, thereafter possession was taken on 27.04.2010. However, this fact is also disputed by the Appellants.

4. The Appellants filed Writ Petition (C)-2530 of 2010 challenging the acquisition proceedings. The single judge held that:

(i) For calculating limitation, it is the first date that is relevant;

(ii) The award was made after expiry of two years from the first date of publication;

(iii) The acquisition has not lapsed, as the possession was already taken and section 11-A of the Act was inapplicable.

5. The first two findings were in favour of the Appellants but on the third finding the writ petition was dismissed on 17.02.2012. Hence, the present writ appeal.

POINTS FOR DETERMINATION

6. We have heard counsel for the parties. The following points arise for determination in the case:

(i) Whether the award was made within two years of the date of the declaration u/s 6 of the Act;

(ii) In case answer to the aforesaid question is in negative, then whether the acquisition has lapsed.

1st POINT: AWARD WAS MADE WITHIN TWO YEARS

7. The counsel for the State submits that:

? The first two findings recorded by the single judge are not correct;

? There is difference between date of publication of declaration and date of making declaration. For calculating limitation u/s 11A of the Act, the date of publication of the declaration is relevant and not the date of making declaration;

? Sub-section (2) of section 6 {6(2)} of the Act envisages three modes of publication. The last date is relevant for deciding the date of publication of the declaration and the first date is relevant for deciding as to when the declaration is made;

? In the present case, it was the last date that was relevant.

Relevant Date--Last Date

8. Section 11A of the Act mandates that the Collector shall make an award u/s 11 within a two years from the date of the publication of the declaration. This section does not define the words "the date of publication of the declaration". It is defined u/s 6(2) of the Act.

9. Section 6(2) of the Act provides the following three modes of publication of declaration:

(i) In official gazette;

(ii) In two daily newspaper circulating in the locality;

(iii) Giving public notice of substance of such declaration at convenient places of locality.

Thereafter, section 6(2) states in parenthesis:

the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration.

10. Section 6(2) of the Act is clear. It shows that it is the last date and not the first date of publication that is relevant for interpreting words "the date of publication of the declaration". This was also so held by the Supreme Court in Dahyabhai Ranchhoddas Dhobi and Another Vs. State of Gujarat and Others,

11. In the Dahyabhai case, the Supreme Court relied upon Department of The General Manager, Department of Telecommunications, Thiruvananthapuram Vs. Jacob Kalliath (Dead) by Lrs. and Others, Bihar State Housing Board Vs. State of Bihar and Others, ; Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, and held:

In the case on hand, it is clearly indicated in the reply-affidavit filed by the Special Land Acquisition Officer that the notification u/s 6 was last published on 19-4-1990, by affixing a copy of the notification on the notice board of the Office of City Mamlatdar, Surat and also by affixing the same in Ward No. 4 of Surat City. Hence the period of two years stipulated in Section 11-A would begin to run from 19-4-1990 and, therefore, the publication of the award u/s 11 of the Act on 18-4-1992 was within the stipulated time-limit of two years. In such circumstances, this contention also is liable to be rejected as devoid of any merit.

(emphasis supplied by us)

12. The cases reported in Eugenio Misquita and Others Vs. State of Goa and Others, and Krishi Utpadan Mandi Samiti and Another Vs. Makrand Singh and Others, were concerned with making of declaration u/s 6(1) of the Act and are not relevant in interpreting the words "the date of the publication of the declaration" in section 6(2) or section 11A of the Act.

13. In view of above, let us consider, as to what was the last date of the

publication.

Last Date of Publication--30.09.2007

14. The counsel for the Appellants pointed out the order sheet dated 22.11.2007, where it is mentioned that the affixation as well as Munadi was done on 11.09.2007 and submits that:

? The public notice of substance of declaration u/s 6 of the Act was done by affixation and Munadi. It was given on 11.09.2007 and not on 30.09.2007;

? The State has manipulated its records for the purpose of this case;

? The last date of publication is 14.09.2007--the date when declaration was published in the official gazette--and not 30.09.2007; and

? The award u/s 11 of the Act was made on 29.09.2009. It is after expiry of two years from the date of publication of the declaration.

15. In the later order dated 21.09.2009, it is mentioned that the affixation and Munadi was done on 30.09.2007. This is also so mentioned in the award passed by the LAO. It is also so reported by server on the back of declaration u/s 6(2). There is no assertion in the writ petition that the date is wrongly mentioned in the later order sheet or the award.

16. At the time of arguments, some arguments were raised regarding mala fides. Neither anyone has been impleaded in the personal capacity nor any mala fides have been alleged in the writ petition. In absence of any assertion it cannot be assumed that the State manipulated its records. It is just possible that the date mentioned in the earlier order dated 22.11.2007 might be because of mistake.

17. In our opinion,

? For calculating the limitation u/s 11A of the Act, the last of the three dates mentioned u/s 6(2) of the Act is relevant and not the first one;

? In the present case, the last date of publication of the declaration was 30.09.2007. This is the date of publication of the declaration;

? The award was made on 29.09.2007. It was within two years of the same;

? The acquisition has not lapsed.

2nd POINT: NO DECISION IS NECESSARY

18. The counsel for the Appellants submits that:

? The award was made after expiry of two years from the date of declaration u/s 6 of the Act;

? Section 11A of the Act is a statutory provision. In case, it is not applicable then what was purpose in enacting the same. The courts should not read a statute in such a way, to make a provision redundant;

? Section 11A of the Act was applicable and the entire acquisition has lapsed;

19. There is some substance in the submissions of counsel for the Appellants. But, it is not necessary to go into the submissions as we have already held that the award was made within two years from the date of publication of the declaration.

CONCLUSIONS

20. Our conclusions are as follows:

(a) The last of the three dates mentioned u/s 6(2) of the Act is the date of publication of the declaration and is relevant for calculating limitation u/s 11A of the Land Acquisition Act;

(b) In this case, the last of the three dates was public notice of the substance of the declaration at convenient place in locality by affixation and Munadi. It was done on 30.09.2000. This is the date of the publication of the declaration;

(c) The award was made within two years from the date of the publication of the declaration and is valid.

In view of our conclusions, the writ appeal has no merit. It is dismissed on the grounds other than the one, mentioned by the single

HEADLINES

Last date of publication is relevant for limitation u/s 11A of Land Acquisition Act.