
(2009) 04 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No. 16642 of 2001

Jambu Raghavan and Co. Pvt. Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 11A, 23, 4

Citation : (2009) 04 MAD CK 0225

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Vijay Narayan, SC for R. Parthiban, for the Appellant; A. Arumugam, Spl. G.P. (R1 and 2) and A. Vijayakumar, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides and perused the records.

2. This is a second round of litigation by the petitioner Company. In the first round of litigation, the petitioner challenged the Section 4(1)

notification issued under G.O.Ms. No. 820, Housing and Urban Development Department dated 17.8.1982 and the Section 6 declaration made

under G.O.Ms. No. 843, Housing and Urban Development Department, dated 23.8.1985.

3. The writ petition filed by them in W.P. No. 13414 of 1989 came to be allowed by a judgment dated 08.12.1988. In that order, the entire

proceedings including the Section 4(1) notification was quashed. Subsequently, the respondent State filed an appeal being W.A. No. 299 of 2000.

The said writ appeal was partly allowed by a Division Bench of this Court vide judgment dated 07.9.2000. In para 4 of the order, it was observed

as follows:-

4. We have already clarified that what was found fault was the procedure, in not supplying the copy of the replies by the acquiring body on the

objectors as also passing of the Award without issuing the notices under Sections 9 and 10 of the Act. Therefore, it is clear that the whole

proceedings could not be said to have been quashed and what could be quashed is only the declaration u/s 6 of the Act and all further proceedings

including the Award passed. We hold accordingly, the order shall be modified to the extent that the declaration u/s 6 of the Act and all further

proceedings shall be treated to be quashed, saving the Notification u/s 4(1) of the Act.

4. After the order of the Division Bench, a notice u/s 5A was issued to the petitioner Company fixing the date of enquiry as 16.5.2001. Thereafter,

the petitioner started sending several requests for adjournment. Since the requests for adjournment were not bona fide, the extension of time sought

for was rejected and a declaration u/s 6 was published in the Government Gazette dated 04.9.2001; in the local newspapers on 05.9.2001 and

06.9.2001. The locality publication was made on 06.9.2001. Subsequently, the petitioner filed once again the present writ petition challenging the

Section 4(1) notification. The following grounds found in para 12(B) and (c) were raised, which are as follows:

(B). It is further submitted that the Proviso to Section 6(1) states that a Declaration in respect of a Notification issued u/s 4 cannot be made after

the expiry of 3 years from the date of publication of the notification in the case of a Notification which was issued before the commencement of the

Land Acquisition (Amendment) Act, 1984. In the instant case, the Notification u/s 4(1) was issued on 17.8.1982 and was published in the

Government Gazette on 01.9.1982. Thus, the Declaration u/s 6(1) of the Act should have been made on or before 01.9.1985 and in the instant

case, the Declaration was actually made on 23.6.1985 just 7 days prior to the period of limitation. Thereafter, this Declaration was struck down by

the Court on 08.12.1988 along with Section 4(1) Notification, but the Notification u/s 4(1) was revalidated on 07.9.2000. Hence, the limitation for

making the Declaration was for a further period of 7 days only till 14.9.2000. Inasmuch as the Declaration has not been made within the

prescribed date of 14.9.2000, the land acquisition proceedings abate and are liable to be quashed on that ground.

(C) It is further submitted that the explanation (1) to Section 6(1) states that in computing the period of 3 years, the period during which any action or proceedings to be taken in pursuance of a Notification issued u/s 4(1) is stayed by an order of the Court, shall be excluded. During the period from 01.9.1982 to 23.8.1985 there was no stay. The period of limitation expired on 01.9.1985 and therefore when the declaration was actually made, there was only 7 days left for the period of limitation to expire. Thereafter when the Notification u/s 4(1) was revalidated, the Declaration ought to have been made within that period of 7 days and inasmuch as it has not been made within that period, the entire proceedings are illegal and are liable to be quashed.

5. In response to these objections, the respondents in their counter affidavit dated 07.11.2001 have made the following averments in page 4, which are as follows:- ""The contention of the writ petitioner is not correct. The writ petitioner in para (B) under Grounds has stated that this declaration was struck down by the Court on 08.12.88 (in W.P. No. 13414/89) along with Section 4(1) Notification but the notification u/s 4(1) was revalidated on 07.9.2000 (W.A. No. 299/2000). As by this order the 4(1) notification was revalidated, the limitation for making the Declaration u/s 6 will be one year and in this case the due date for the Declaration u/s .6 is 6.9.2001 and all the process u/s 6 was completed by 6.9.2001 as follows:

Tamil Nadu Government Gazette ..04.9.2001 Newspaper publication ..05.9.2001 &^ 06.9.2001 Locality publication ..06.9.2001

It is also submitted that according to Land Acquisition (Amendment) Act, 1984 the proviso to Section 6(1) states that a Declaration in respect of a notification u/s 4 cannot be made after the expiry of 1 (one) year. In this case, the declaration is made before 7.9.2001 and hence it is a valid one.

6. Mr. Vijay Narayan, learned Senior Counsel for the petitioners placed reliance upon the judgment of the Supreme Court in Oxford English

School Vs. Government of T.N. and Others, . He also submitted that the said decision came to be approved by a Constitution Bench of the

Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . Reliance was placed upon paragraph 11 of the said

judgment, which may be usefully extracted below:- ""Para 11: It may be pointed

out that the stipulation regarding the urgency in terms of Section 5-

A of the Act has no role to play when the period of limitation u/s 6 is reckoned. The purpose for providing the period of limitation seems to be the

avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification u/s 4(1).

Section 11 provides that the valuation of the land has to be done on the date of publication of notification u/s 4(1). Section 23 deals with matters to

be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication

of the notification u/s 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature. In Ram Chand and

Others Vs. Union of India (UOI) and Others, , it was held by this Court that though no period was prescribed, action within a reasonable time was

warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same

became non est and was effaced. It is fairly conceded by learned Counsel for the respondents that there is no bar on issuing a fresh declaration

after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined

on the basis of the fresh notification u/s 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose

land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is

done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

7. Therefore, the learned Senior Counsel placed emphasis on Explanation 1 to Section 6 and stated that the publication of the Declaration was

beyond the period stipulated. It must be relevant to note that the Explanation 1 to Section 6 is almost similar to Explanation to Section 11A of the

Land Acquisition Act, 1894.

8. In this context, it is necessary to refer to the decision of the Supreme Court which had dealt with the scope of Section 11-A of the Act in the

case relating to Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, . The

following passages found in paragraphs 13, 14 and 16 of the said decision may

be usefully extracted:

Para 13. : The submission that the stay order was obtained by the Society itself is of no consequence, having regard to the language of Explanation

to Section 11-A of the Act. The exclusion of the period during which the order of stay operated is not dependant upon the party obtaining such an

order. An order passed by the court must be obeyed by all concerned. In the instant case the Society moved the High Court and obtained an

order of stay. In effect, the order operated in such a manner that the Government was prevented from granting approval to the award even if it so

desired, nor could it refuse approval during the period the order of stay operated. Therefore, Explanation to Section 11-A came into operation and

in accordance therewith the period during which the order of stay operated must be excluded from the total time taken to make the award.

Para 14. Reliance was placed by the appellants on the observations made by this Court in Yusufbhai Noormohmed Nendoliya Vs. State of

Gujarat and another, . In our view the aforesaid decision in fact supports the case of the respondents. In the aforesaid judgment it was held: (SCC

p.535, para 8)

8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in

the Explanation to actions or proceedings preceding the making of the award u/s 11 of the said Act.

That was no doubt a case where an order of injunction was obtained by the landholder restraining land acquisition authorities from taking

possession of the land. It was, in that context, that this Court observed that to get the benefit of the said provision the landholder who seeks the

benefit must not have obtained any order from court restraining any action or proceedings in pursuance of declaration u/s 6 of the Act. It is,

therefore, not possible to accept the submission urged on behalf of the appellants that Section 11-A of the Act must be read in a narrow sense so

as to apply to only those cases where the landowner himself obtained an order of stay or injunction. We are not prepared to add words in the

Explanation by reading into it a provision that gives to the Explanation a narrower operation than what was intended for it by the legislature, so as

to apply only to cases where an order of injunction is obtained by the landowner

and not by anyone else.

.. ...

Para 16. This Court emphasised the fact that Section 11-A was enacted with a view to prevent inordinate delay being made by the Land

Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has

already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing

Section 11-A into the Act were that ""the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and

renders unrealistic the scale of compensation offered to them"" and ""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"". The emphasis, therefore, was on the Collector

making his award within the period prescribed. However, the legislature was also aware of the reality of the situation and was not oblivious of the

fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It, therefore, became

imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from

taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made, an acquisition proceeding

could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter. Explanation to Section 11-A was meant to deal with

situations of this kind. The Explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained

by a landowner alone. One can conceive of cases where apart from landowners others may be interested in stalling the land acquisition

proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land

acquired. But that will not lead us to the conclusion that the Explanation applied only to cases where stay had been obtained by the owners of the

land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on

account of development of that area some persons in the vicinity may be

adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration, they cannot be faulted for the delay, and therefore, the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame.

9. Therefore, in the present case, it is not the exclusion of the period during which any stay order is obtained by the parties. When the learned

Judge who dealt with W.P. No. 13414 of 1989. The entire proceedings including Section 4(1) notification was quashed by a judgment dated

08.12.1998 and there was nothing further for the State to do in that matter. It was only after the State's Writ Appeal in W.A. No. 299 of 2000

was allowed by a Division Bench vide judgment dated 07.9.2000, the Section 4(1) notification got revalidated. Therefore, it was not a question of

calculating any period during which any interim stay was obtained by the parties. But the Section 4(1) notification was brought to life by the order

of the Division Bench on 07.9.2000.

10. The State had published the Section 6 Declaration on 06.9.2001 despite the attempt by the petitioner to repeatedly seek adjournments and

avoiding Section 5A enquiry. The purpose of fixing limitation is to prevent the State from procrastinating in completing the acquisition proceedings.

But the petitioners themselves cannot take advantage of their own wrong and seek to invalidate the acquisition proceedings on a technical plea, that

too, by having a second round of litigation.

11. The writ petition is misconceived and accordingly will stand dismissed. However, there will be no order as to costs.