

(1997) 09 AP CK 0089

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 17023 and 17909 of 1996

K. Venkata Syamappa and Another

APPELLANT

Vs

District Collector, Ananthapur and Others

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

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

Citation : (1998) 1 ALD 7

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : Mr. O. Manohar Reddy, for the Appellant; Government Pleader for Social Welfare and Labour, for the Respondent

Judgement

1. In a land acquisition case, the land outers (petitioners) of Ac.2-00 in Survey No.127/16A of Gollapuram village, Hindupur mandal, Anantapur district, are challenging the land acquisition proceedings mainly on the ground that the proceedings are vitiated on account of award not having been passed during the prescribed period of two years from the last date of publication of declaration u/s 6 of the Land Acquisition Act, 1894 (for short "the Act").

2. While furnishing particulars of the publication of notices as required by law, the learned Government Pleader for Social Welfare and Labour, brought to the attention of the Court that declaration u/s 6 of the Act was published in the Gazette on 8-5-1994 and in the concerned locality it was published on 9-6-1994. The Award was declared on 25-5-1996. Hence, there was no question of the proceedings having been vitiated because from 9-6-1994 which was the last date of publication, the passing of the award which took place of 25-5-1996 fell within the prescribed limit of two years.

3. However, Shri O. Manohar Reddy, learned Counsel for the petitioners, submitted that the last date of publication of the declaration had to be considered not from the date on which the declaration was published in the locality of the land sought to be acquired, but from the date of publication in the

Gazette which was done on 8-5-1994. The award passed on 25-5-1996, therefore, according to the learned Counsel for the petitioner, was beyond the time limit of two years prescribed by law. In support of his submissions Mr. Manohar Reddy, learned Counsel for the petitioners relied upon the decision of the Supreme Court in *Krishi Utpadan Mandi Samiti and Another Vs. Makrand Singh and Others*, , in which the Supreme Court made its observations in paragraph 5 as under :

"5. Clause (i) of the proviso to Section 6(1) mandates the publication of the declaration in the Official Gazette and it should be within three years from the date of the publication of the notification u/s 4(1) i.e., the last of the dates referred to in Section 4(1). The word "publish" emphasises the act accomplished i.e., declaration u/s 6(1) being published in the Official Gazette. The last date u/s 6(2) shall be the date for the purposes "hereinafter referred to" would be not for computing the period of three years prescribed in clause (i) of proviso to Section 6(1) of the Act as it was already done, but purposes to be followed hereinafter. Otherwise language would have been "hereinbefore done". Sub-section (2) as such did not prescribe any limitation within which the declaration u/s 6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award u/s 11 or in computation of the period prescribed in Section 11 A. The publication of the declaration in two daily newspapers having circulation in the locality one of which is in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is a procedural part. It appears that these publications are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose u/s 6(1) and also to provide limitation to make the award u/s 11 by the Collector. In other words, the limitation prescribed u/s 11A is for the purpose of making the award and if the Collector fails to do so, the entire procedure under Sections 4(1) and 6(1) shall stand lapsed. If this consistent policy of the Act is understood giving teeth to the operational efficacy to the scheme of the Act and public purpose the Act seeks to serve, we are of the considered view that publication in the Gazette already made under clause (i) of proviso to sub-section (1) of Section 6 is complete, as soon as the declaration u/s 6(1) was published in the Official Gazette. That will be the date for the purpose of computation of three years" period from the last of the dates of the publication of the notification u/s 4(1). The procedural ministerial acts prescribed under sub-section (2) are only for the purpose of the procedure to be followed "hereinafter", in other words, the steps to be taken subsequent to the publication of the declaration u/s 6(1) of the Act. We cannot agree with Shri Rana, the learned Senior Counsel, that the date of making the declaration by the Secretary to the Government or the authorised officer is the date for computing period of three years. Equally, we cannot agree with the learned Counsel for the respondents, Shri Upadhyay, that publication of the substance being the last date from which the period of three years needs to be computed. Acceptance of either contention would easily defeat the public policy under the Act by skilful manner

of management with the lower level officials. The High Court, therefore, was not right in its conclusion that since declaration was published in the newspapers on 4-6-1987, after the expiry of three years, the declaration u/s 6(1) and the notification u/s 4(1) stood lapsed. It is clearly illegal. The further contention of the learned Counsel for the respondent that other contention raised in the writ petitions needs to be dealt with and so the cases need to be remanded, has no force for the reason that though they were pleaded but the parties have chosen to argue only the above contention. So it is not a fit case for remand. The writ petitions would stand dismissed. The appeals are accordingly allowed but in the circumstances without costs."

4. Before we deal with the proposition whether on the basis of the above decision of the Supreme Court, the land acquisition proceedings had lapsed or not, let us have a look at the provision of Section 11A of the Act, which provides as under :

"11A, Period within which an award shall be made :--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.

We must also have a close look at sub-section (2) of Section 6 of the Act:

"(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.""

5. The Supreme Court in the above ruling cited before this Court was concerned not with the question whether the Award lapsed on account of the same having been published after the lapse of two years from the date of declaration u/s 6 of the Act, but with the question whether the limitation of three years prescribed in the proviso (i) of Section 6(1) had to be computed from the last of the date of publication of Notification u/s 4(1) to the date of publication of declaration u/s 6 in the Official Gazette and not in the newspapers. The ratio which the Supreme Court took into consideration was to the effect that the publication was required to be made so as to make it a conclusive evidence of the purpose u/s 6(1) and also to provide limitation to make the award u/s 11 by the Collector, and, therefore, the limitation prescribed u/s 11A of the Act was for the purpose of

making the award and if the Collector failed to do so, the entire proceedings u/s 4(1) and 6(1) of the Act would stand lapsed, which caused the Supreme Court to observe that if this consistent scheme and the public purpose which the Act sought to serve, the publication in the Official Gazette already made under clause (i) of proviso to sub-section (1) of Section 6 was complete as soon as the declaration u/s 6(1) was published in the Official Gazette and that would be the date for the purpose of computation of three years' period from the last date of the publication of the Notification u/s 4(1) of the Act.

6. In the case before us, we are concerned with the question whether the award passed on 25-5-1996 fell beyond the expiry of two years from the date of publication of the declaration u/s 6 of the Act. 8-5-1994 is the date on which the declaration was published in the Gazette and 9-6-1994 was the date on which the declaration was published in the locality. The term "last date of publication" has also been defined in subsection (2) of Section 6 of the Act which is already extracted above. This provision of law makes a clear distinction between the "publication" and giving of "public notice" for the purpose of referring the same as "the date of the publication of the declaration". The word "publication" is attributed to the declaration published in the Official Gazette under subsection (2) of Section 6, whereas the term "public notice" takes within its fold the requirement of the declaration to be given in two daily newspapers circulating in the locality in which the land is situated as well as public notice of the substance of such declaration to be given at convenient places in the said locality. Both the afore-said modes of publication are included within the meaning of the term "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration".

7. In that view of the matter, therefore, I am of the opinion that all the three modes of publication as explained above fell within the purview and scope of the afore-said expression "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration". If this proposition is accepted, there could be no doubt about the fact that the award passed on 25-5-1996 after the public notice of the substance of Section 6 declaration was given at convenient places in the locality on 9-6-1994, which could very well be taken for the purpose of determining whether the prescribed limit of two years for passing the award had been maintained or violated and in the light of the facts disclosed, 25-5-1996 on which date the award was passed falls within the period of two years from 9-6-1994 when the substance of the declaration was caused to be given by way of public notice at convenient places in the concerned locality.

8. In para 4 of the ruling of the Supreme Court cited by the learned Counsel for the petitioners Krishi Utpadan Mandi Samiti and Another Vs. Makrand Singh and Others, , it is observed that sub-section (1) of Section 4 gave power of eminent domain to the State to acquire the land whenever it appeared to it that the land was needed or likely to be needed for any public purpose or for any Company, by

a notification published in the Official Gazette and two daily newspapers circulating in that area and atleast one of them should be in the regional language and also the Collector was enjoined to cause public notice of the substance of notification to be given at convenient places in the said locality in which the land was situated. The Supreme Court thereafter interpreted the term "being hereinafter referred to" as the date of publication of the notification and observed that the purpose of notification u/s 4(1) is an intimation to the owner or person having an interest in the land that the Government exercised the power of eminent domain in relation to his land and for public purpose his land was needed or likely to be needed; puts an embargo on his freedom to deal with the land as an unencumbered land and also pegs the price of the land prevailing as on that date. The Supreme Court further observed that it is also a caveat to the Collector to make the award u/s 11 as well as to determine the market value prevailing as on the last of the dates to be the date and the award should be made within a period prescribed by Section 11A, lest the entire acquisition shall stand lapsed. The Supreme Court further observed that the word "hereinafter" was for such purposes as well as for the purpose of determination of the compensation under Chapter III of the Act as well and, therefore, the word "hereinafter" referred to as the last date of the publication of the notification is the date from which the prevailing prices of the land was to be computed.

9. It becomes abundantly clear from the views expressed by the Supreme Court as emerging from the contents of para 4 of the decision *Krishi Utpadan Mandi Samiti and Another Vs. Makrand Singh and Others*, that for the purpose of computing the period of limitation of two years, the Supreme Court does not preclude the meaning of the word "last date of the dates of such publication" to be excluded from the period of two years prescribed for the purposes of passing the award within two years from the date of publication of declaration u/s 6 by all the three modes, the last of which in the present case was 9-6-1994 on which the public notice was given by the Collector in the concerned locality. I am, therefore, of the firm opinion that the ruling of the Supreme Court *Krishi Utpadan mandi Samithi's case* (supra) does not exclude "public notice" which is the main bone of contention in the present writ petition, to be ignored for the purpose of considering the period of two years for the purpose of limitation.

10. In that view of the matter, therefore, I have no hesitation in dismissing the writ petition. Hence, the writ petition is dismissed as no cause is made out that the land acquisition proceedings had lapsed on the ground that the award was not passed within two years from the prescribed date. No costs.

W.P.No. 17909/1996

11. In this writ petition, the subject matter is almost the same as in the above writ petition, but the claimants are different. Since, the subject matter is the same, this writ petition also deserves to be dismissed and it is hereby dismissed. No costs.