

(1987) 05 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 1536 of 1987-G

Kaliyappan and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-05-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 12, 12(1), 12(2)

Citation : AIR 1988 Ker 271

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : C.P. Damodaran Nayar and D. Krishna Prasad, for the Appellant;
Govt. Pleader, for the Respondent

Judgement

U.L. Bhat, J.—Land acquisition proceedings relating to 10 1/2 cents of land originally belonging to the second petitioner and now belonging to her husband, first petitioner, is challenged in these proceedings under Article 226 of the Constitution of India. The petition is opposed by the respondents, on whose behalf a counter-affidavit has been filed.

2. Section 3(1) notification in this case was issued on 24-2-1981 and published thereafter. Notice was served on the petitioners on 20-3-1981. Ext.P1 is a copy of the notification. It appears, second petitioner filed Ext.F2 objections against the acquisition on the ground that the land contains her residence and sole source of livelihood, viz, teashop. The Board of Revenue under Ext.P5 order approved the draft declaration u/s 6 of the Kerala Land Acquisition Act. That was on 19-1-1984. The declaration was published in the gazette and newspapers on 31-1-1984. The Collector signed the award and filed the same on 24-9-1986. It appears, notice of the award was served on the first petitioner on 30-9-1986, though this is disputed by the petitioners. It is not known if such notice was served on the second petitioner.

3. Learned counsel for the petitioners places reliance on Section 11A incorporated in the Land Acquisition Act, 1894 by the amending Act 68/84, which

reads thus :

"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 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."

It is unnecessary to extract the explanation to this section.

4. Since in this case declaration was published before the coming into force of the amending Act 68/84, the award is required to be made within a period of two years from the date of the commencement of the amending Act on 24-9-1984. There is no dispute that the award was signed and filed on 24-9-1986. If this date is to be reckoned then the award is made within the time. According to the petitioners, mere signing or filing of the award does not amount to making an award within the meaning of Section 11A and that the award can be said to have been made only when notice of the award u/s 12(2) is served on the persons interested in the land. If that be so, the award cannot be regarded as having been made within the time stipulated in Section 11A and consequently proceedings must be declared to have lapsed.

5. Learned counsel for the petitioners placed strong reliance on the decision of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . The question which arose for consideration in that case related to the starting point of the period of the limitation prescribed for application for reference u/s 18 of the Land Acquisition Act 1894, which corresponds to Section 20 of the Kerala Land Acquisition Act, 1961, Under this provision an application for reference has to be made if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award, and in other cases within six weeks of the receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. The Supreme Court construed the expression "the date of the Collector's award" in proviso (b) to mean the date of communication of award or the date on which the person concerned actually or constructively comes to know of the award. The decision rested on the scope of the award, on the construction of Section 18 and in particular proviso (b) to that section, with reference to the starting point of limitation. According to proviso (a) the period of limitation for reference application is six weeks from the date of the award, if the person making the application was present or represented before the Collector, "at the time when he made his award". Proviso (a) itself contemplates "making an award" as distinct from the date on which an interested party has notice or comes to know of the award. If the interested party is present or is represented when the Collector made the award, the time begins from that date. For the

purpose of proviso (a) date of the Collector's award can only be the date when he made the award, i.e., the date when he signed the award. The Supreme Court was considering proviso (b). That relates to a case where a person was not present or represented before the Collector at the time when the Collector made the award. Necessarily time cannot be said to run from that date. Legislature advisedly prescribed time to run from the date of notice of the award or in other cases a different period. The connotation given to expression "date of the Collector's award" in proviso (b) of the above section cannot have any impact in understanding the words "Collector shall make an award" occurring in Section 11A.

6. Let us now examine the process which culminates in the making of an award. Notification u/s 3(1) gives an opportunity to the person interested to raise objections to the acquisition or other particulars and details. Section 5 deals with the hearing of the objections by the Collector (includes the person to whom the power is delegated under the Act). After hearing and making enquiries as he thinks necessary the Collector has to make a report to the Government where the notification u/s 3(1) was published by the Board of Revenue or to the Board of Revenue where the notification under Sub-section (1) of Section 3 was published by the officer himself. Report is made on the objections and accompanies the record of proceedings. Declaration of the purpose of acquisition is to be made as laid down in Section 6 either by the Government or by the Board of Revenue as the case may be. Making of the declaration is to be followed by the publication of the same in the gazette or in two newspapers as stipulated in the provision. The declaration is to be followed by certain other steps such as Collector taking order for acquisition as prescribed in Section 7 and steps being taken to mark out, measure and plan the land as contemplated in Section 8. That is followed by enquiry by the Collector for which notices have to be issued to the persons interested as stated in Section 9 of the Act. Notices have to be issued not only to the persons interested but to all occupiers. Notice has to be published in the gazette or on two daily newspapers. Collector has to hold enquiry into the objections, if any, which any person interested prefers pursuant to a notice given u/s 9 to the measurements made or to the valuation given and the area of the land apportioned etc. Section 11 states that after conducting enquiry into the objection the Collector "shall make an award under his hand of (i) the true area of the land; (ii) the compensation which in his opinion shall be allowed for the land, and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims he has information, whether or not they have respectively appeared before him." This provision contemplates making an award by the Collector. It may be that the persons interested are present before the Collector or it may be that they are not present before him. Nevertheless he has to make an award. Section 12 requires the Collector to file the award in his office. Sub-section (2) requires him to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

7. We have to read Sections 11 and 12 together. Reading the same together it will be clear that the Collector makes the award, either in the presence of the persons interested or in the presence of their representatives or even in their absence. When he makes the award in their presence notice u/s 12(2) is not contemplated. It is only when they are not present or represented that the Collector is required to give notice of his award. For the purpose of Sections 11 and 12 it is clear that an award is made by the Collector when he signs it; and when it is made in the absence of persons interested he has to issue notice of the award. For the purpose of this provision, issuing notice is not part of the award. It is a post-award step which is contemplated under the statute. It is true that for the purpose of computing the starting point of limitation, as laid down by the Supreme Court, the words "the date of the award" must be taken to mean the date when the party had notice of the award or had knowledge, actually or constructively, of the award. Even if the knowledge is postponed and even if the notice is belated, it cannot be said that award has not been made. Award is made at the stage contemplated u/s 11 to be followed by filing as contemplated u/s 12(1) and notice in appropriate cases as contemplated in Section 12(2). When Section 11A directs the Collector to make an award u/s 11, it only refers to the act of making an award as contemplated in Section 11. It therefore follows that time limit of two years mentioned in Section 11A is a time limit prescribed for making of the award as such and not to the issue of notice of making the award to the interested persons. The fact that notice of the award to a person who was not present at the time of making the award is not issued or is issued after the period of two years as contemplated in Section 11A will not result in the proceedings to lapse. It is sufficient if the award is made, i.e., made within the meaning of Section 11A within the time contemplated. There is no dispute that if this be the meaning to be attached to Section 11A the award has been made within the time in this case.

8. Learned counsel for the petitioners placed reliance on the decisions in *Moideen v. Spl. Tahsildar, Land Acquisition*, 1981 Ker LT 59 and *Pokker Haji v. Union of India* ILR (1985) 2 Ker 122 to contend for the position that there has been unreasonable delay in the conclusion of the land acquisition proceedings and therefore this court must exercise its extraordinary jurisdiction in striking down the proceedings. It is, no doubt, true that in the above cases this court did strike down the proceedings on the ground of unreasonable delay. It appears to me that the principles laid down in those decisions have now received legislative sanction in the form of Section 11A introduced by Central Act 68/84. Therefore in the face of Section 11A referred to above, it is unnecessary to go back to those decisions. Even otherwise I am not satisfied that this is a case where unreasonable delay can be spelled out. The date of Section 3(1) notification in this case is 24-2-1981. Objections filed by all the interested persons had to be considered. Enquiry was conducted in that year and the next year. It appears that the District Collector forwarded the report on 29-12-1983 to the Board of Revenue, The Board of Revenue sought for clarification from the Land Acquisition

Officer as could be seen from Ext.P5 order and the order of the Board of Revenue was passed on 19-1-1984 and the declaration published on 31-4-1984. In considering the question of delay, we have to look at the matter in a realistic way and not an idealistic way. In the facts and circumstances referred to above I do not think this can be regarded as a case of gross or unreasonable delay so as to warrant interference.

9. Petitioners contended that for the building in the property Land Acquisition Officer has not awarded any compensation. It is said that in the event of their failure in these proceedings they will have to move for reference u/s 20 of the Kerala Land Acquisition Act, but by that time the building may be demolished and there will be no evidence to show the existence or the value of the building. Petitioners pray that their interest may be safeguarded. In my opinion interests of the petitioner and the State can be safeguarded by appropriate direction in that behalf.

10. The original petition is disposed of directing that the respondents shall cause the building or buildings in the acquired land to be valued and a mahazar for valuation prepared before demolishing those buildings. In these circumstances there will be no order as to costs.