
(1987) 12 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 933 of 1987

Kalyappan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-12-1987

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 11, 12, 12(1), 12(2), 18

Citation : (1987) 12 KL CK 0011

Hon'ble Judges : V.S. Malimath, C.J.; Bhaskaran Nambiar, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

V.S. Malimath, C.J.—This appeal is against the judgment of the learned Single Judge dismissing O.P. No. 1536/87. 10? cents of land originally belonging to the 2nd Appellant and now belonging to the 1st Appellant was the subject-matter of acquisition under the Kerala Land Acquisition Act. Preliminary notification u/s 3(1) was issued on 24th February 1981. After considering the objections of the Appellants the final notification u/s 6 of the Act was issued on 19th January 1984. The Collector signed and made the award on 23rd September 1986 and filed the same in the Collector's office on 24th September 1986. It appears that the notice of the said Award was served on the first Appellant on 30th September 1986. The Appellants challenged the acquisition proceedings firstly on the ground that the award not having been made within a period of two years from the date of publication of the declaration, the acquisition of the land has lapsed u/s 11A of the Land Acquisition Act and secondly because of inordinate delay in making the award. The learned Single Judge has repelled both these contentions and dismissed the original petition. Hence this appeal. There is however a direction to the authorities not to demolish the building on the acquired land until it is got valued and the same is incorporated in a mahazar.

2. Section 11A of the Land Acquisition Act (Central Act) was added by Act 68 of 1984 and the same came into force on 24th September 1984 and it reads as follows:

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.

The declaration was made in this case on 19th January 1984 and published in the gazette on 31st January 1984 before commencement of the Land Acquisition (Amendment) Act, 1984. The acquisition proceedings would lapse only if the award was not made u/s 11 within a period of two years from the date of commencement of the Amendment Act i.e. before 24th September 1986. The contention of the Appellant is that the award must be regarded as having been made not on 23rd September 1986 when it was finalised and signed by the Collector but on the date on which the award came to be served on 30th September 1986. As the award was required to be made within a period of two years from the date of the coming into force of the Amendment Act, it was contended that the entire acquisition proceedings lapsed as the award was made beyond a period of two years. Hence the principal question for consideration is as to what is the date on which it can be said that the award was made u/s 11 of the Act in this case.

3. Shri Krishna Prasad, the learned Counsel for the Appellants, contended that the Supreme Court has laid down in the decision reported in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, that the award can be regarded as having been made only when it is served as required u/s 12(2) of the Act. Though that decision was in the context of Section 18 with regard to making of an application for reference under that section, the learned Counsel for the Appellants contended that we cannot have two different dates of making of the award, one for the purpose of Section 18(2) of the Act and another for the purpose of Section 11A of the Act. He therefore contended that we must apply the principle laid down in that decision and hold that for the purpose of Section 11A of the Act, the award must be deemed to have been made only on the date on which it is served on the person concerned. The learned Single Judge has not accepted this contention on the ground that the decision of the Supreme Court bears on the interpretation of Section 18(2) of the Act and not on Section 11A of the Act. We are inclined to agree with the view taken by the learned Single Judge for the reasons to be stated presently.

4. The provision considered by the Supreme Court namely, Section 18(2) of the Act was in regard to the making of an application for seeking reference to the Civil Court and it is in that context that the Supreme Court pointed out that the

period of limitation would begin to run from the date of the actual serving of the award. For the purpose of Section 18(2) it was held that the date of service must be regarded as the date of making of the award. The object of Section 11A is different, namely, it is to prevent delay on the part of the authorities functioning under the Land Acquisition Act in completing the acquisition proceedings. It declares that if no award is made within a period of two years from the date of declaration u/s 11, the entire acquisition proceedings shall lapse. Having regard to the serious consequences that may ensue if an award is not made within a period of two years from the date of declaration it is obvious that the authorities are required to make the award diligently and within the prescribed period. As Section 11A is not in pari materia with Section 18(2) of the Land Acquisition Act, the question of applying the principle laid down in the Supreme Court decision in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, does not arise. Section 18(2) which speaks of making of an award does not in express terms speak of making of the award u/s 11 of the Act. But Section 11A in terms speaks of the making of the award u/s 11 of the Act. When we examine Section 11 of the Act, it becomes clear that it provides for enquiry to be made by the Collector and the making of the award by him. If the procedure prescribed u/s 11 is followed and all formalities thereunder are complied with and the award is finalised the award gets made u/s 11 of the Act. As Section 11A speaks of making of an award u/s 11 and not making of an award in general terms what we are required to examine in this case is as to whether the award has been made u/s 11 of the Act. If the procedure and the formalities prescribed by Section 11 are followed, the award stands made. It is an award that is made u/s 11 that is required to be filed u/s 12 in the office of the Collector. It presupposes that an award will have been made before it is filed under Sub-section (1) of Section 12. Making of such an award has obviously reference to making of an award as provided in Section 11 Sub-section (2) of Section 12 requires the Collector to give immediate notice of the award to such of the persons who are not personally present or their representatives when the award is made. This provision again requires the giving of a notice of an award already made. If the contention of the Appellant is correct, namely, that the award stands made only when it is served it would lead to absurd situation viz., that it will be impossible to serve a copy of the award to all the persons concerned if the award gets made, only when it is served. We have therefore no hesitation in taking the view that the principle laid down by the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, rendered in the context of Section 18(2) of the Act does not govern the interpretation of Section 11A of the Act. In this case the award was made on 23rd September 1986. As the Amendment Act came into force on 24th September 1984, the award was made within the period of two years from that date. The learned Single Judge was therefore right in taking the view that the acquisition proceedings impugned in this case did not lapse.

5. It was next contended that even if the acquisition did not lapse by the

operation of Section 11A, we must quash the proceedings on the ground of inordinate delay. When the Legislature has stepped in and has incorporated Section 11A of the Act, it clearly amounts to declaring that the awards made within the prescribed period of two years shall not lapse. As the award was made within two years, the question of delay does not arise in this case. Hence this contention of the Appellant also fails.

6. There was a feeble contention of the learned Counsel for the Appellant in regard to the date of service of the award. It was sought to be contended that the award was not actually served on the Appellant on 30th September 1986. There is no material produced in support of this contention of the Appellant. Even otherwise, having regard to the interpretation of Section 11A of the Act, this does not assume any importance so far as the challenge to the acquisition proceedings on the ground that the award was made beyond the period prescribed by Section 11A of the Act is concerned.

7. In the view which we have taken we consider it unnecessary to examine as to whether Section 11A of the Central Act as introduced by Act 68 of 1984 governs the acquisition proceedings initiated under the provisions of the Kerala Land Acquisition Act. We express no opinion on the question one way or the other.

For the reasons stated above, this appeal fails and is dismissed.