

(1987) 10 KL CK 0007
In the High Court Of Kerala
Case No : O. P. No. 3634 of 1982

Lilly

APPELLANT

Vs

The Board of Revenue Trivandrum and another

RESPONDENT

Date of Decision : 07-10-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 11A
Limitation Act, 1963 — Section 15

Citation : (1988) 2 KLJ 168

Hon'ble Judges : T. L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : Elizabeth Mathai Idicula, for the Appellant;

Final Decision : Allowed

Judgement

T. L. Viswanatha Iyer J.

1. By this Original Petition, the petitioner challenges the proceedings for acquisition of about 40 cents of land belonging to her, for purpose of the 4th respondent-Panchayat. The notification u/s 3 was published in the newspapers on February 6, 1981. The decision on the objections raised by the petitioner was rendered by the Board of Revenue by Ext. P-3 proceedings dated March 6, 1982. The declaration u/s 6 was thereafter published in the Kerala Gazette dated March 28, 1982. The notification and the declaration were made under the provisions of the Kerala Land Acquisition Act, 21 of 1962 (Kerala Act, for brevity), which was in force at that time. It was on receipt of Ext. P-3 that the petitioner filed the Original petition challenging the proceedings for acquisition, including Ext. P-3. Various grounds have been raised in support of this challenge, but it is not necessary to refer to them in view of subsequent events, (referred to in paragraphs 4 and 5 below) and the effect thereof on the proceedings in question.

2. Along with the Original petition, the petitioner had moved all application for stay of further proceedings for acquisition "of any portion" of her lands, pursuant

to the proceedings Ext. P-3. On this application, namely C.M.P. No. 10374 of 1982 this court issued notice in the first instance and subsequently, after hearing counsel on both sides, passed an order as follows on July 6, 1982:

There will be a stay of dispossession until, further orders". This order continues to be in force.

3. Pending the Original, Petition the (Central) Land Acquisition Act (I of 1894) (Central Act, for short) was extended to the State of Kerala, with effect from September 26, 1934, by the Land Acquisition (Amendment) Act. 68 of 1984 (Amending Act, for reference). Section 11A of Central Act which was inserted by the Amending Act, introduced a time limit within which an award had to be made under the Act. It required the Collector to make the award within a period of two years from the date of publication of the declaration u/s 6, and provided that if no award was made within that period, the entire proceedings for acquisition of the land shall lapse. The proviso to the section takes care of those proceedings in which the declaration had been made before the commencement of the Amending Act, by providing that in such cases, the award shall be made within a period of two years from such commencement. The Explanation to the section, which is also relevant for purposes of this case, specifies that in computing the period of two years aforesaid, the period during which any action, or proceeding, to be taken in pursuance of the declaration is stayed by an order of court, shall be excluded.

4. When this Original Petition came on for hearing, counsel for the petitioner, Smt. Elizabeth Mathai Idicula submitted that the proceedings for acquisition have lapsed by virtue of Section 11A of the Central Act. The contention was that the declaration u/s 6 had been made prior to the commencement of the Amending Act, and therefore the award had to be made within two years of such commencement i.e. before September 26, 1986. But no award has so far been made in the proceedings. The entire proceedings have therefore lapsed. Reliance is placed on the decision in *Bavajan Sahib v. State of Kerala* 1987 K.L.J. 870.

5. It is admitted by the Government Pleader for respondents 1 to 3 that no award has so far been made. As a matter of fact, when this point was raised at the hearing of the Original Petition on September 23, 1987, the matter was adjourned to enable the Government Pleader to get instructions. It is thereafter, and at the next hearing today, that it is agreed that no award has been made in the proceedings.

6. The learned Government Pleader however submits that the proceedings have not lapsed as contended by the petitioner, in view of the order of stay from this court, which according to him attracts the operation of the Explanation to Section 11A to the facts of this case. The Explanation reads:

In computing the period of two years, referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court shall be excluded."

The Government Pleader submits based on the Explanation, that the period from July 6, 1982 when this Court stayed dispossession is liable to be excluded in the computation of the period of two years for making the award, and therefore the Collector had still time to make the award in the proceedings.

7. The proceedings in this case commenced in February, 1981 and the declaration u/s 6 was published on March 28, 1982. As per the proviso to Section 11A, an extended period of time is granted for making awards in such cases where declarations had been published before the commencement of the Amending Act, enabling such awards to be made within a period of two years from the commencement of the Amending Act. Since the Amending Act came into force on September 26, 1984 the award in this case had in the normal course to be made before September 26, 1986. The question is whether the stay of dispossession ordered by this Court on July 6, 1982 had the effect of excluding the entire period thereafter in the computation of the period of two years prescribed for making the award.

8. In Bavajan Sahib's case (1987 K. L. J. 870), I have held that the stay contemplated by the Explanation is a stay of the proceedings to be taken subsequent to the declaration u/s 6, and before the making of the award u/s 11. The question of taking possession of the land arises ordinarily only when the award is made u/s 11. The period of two years contemplated by the section relates to the stage prior to the making of the award, and therefore no exclusion of the period of operation of the stay was permissible, in cases where the stay was only of dispossession.

9. The learned Government Pleader however submits that decision requires reconsideration. He points out that the Explanation envisages the exclusion of the period during which any action or proceeding to be taken in pursuance of the declaration stood stayed. Any action or proceeding comprehends each and every step to be taken in the course of the land acquisition proceedings to lead it to culmination, whether before or after the award. Stay of any such action or proceeding is sufficient to attract the exclusion under the Explanation.

10. I am not persuaded to accept this argument. What is contemplated by the explanation is any action or proceeding to be taken in pursuance of the declaration u/s 6. When the limit of time prescribed is in relation to the making of the award, the stay contemplated can only be one inhibiting the progress of the proceedings pursuant to the declaration u/s 6 and hindering the making of the award in any manner. Apart from a stay of the very proceedings contemplated by Section 11, it is only a stay of those actions or proceedings to be taken in pursuance of the declaration u/s 6 that can attract the operation of the Explanation. The steps envisaged by Sections 7, 8, 9 or 10 are the actions or proceedings so contemplated. An action in pursuance of the declaration. In the context of the Explanation, should be one necessary to the making of the award. It cannot refer to an action which merely becomes permissible by virtue of the declaration. Taking of possession is ordinarily a post award operation (Vide

Section 16), except in cases of urgency falling u/s 17. Even u/s 17, it is not an action in pursuance of the declaration, but one which is enabled or permitted to be done by virtue of the declaration. A stay of taking possession whether u/s 16 or Section 17 does not preclude the Collector from making the award u/s 11, if so desired. The proceedings for making the award could go on, despite the stay, and the only effect of the stay is to prevent dispossession, whether before or after the award. Taking of possession is not an action or proceeding in pursuance of the declaration. Stay of dispossession simpliciter does not therefore attract the operation of the Explanation.

11. An analogous situation arose in *Gokak Patel Volka(sic)t Ltd. v Collector of Central Excise* A. I. R. 1987 S. C. 1161. The High Court of Karnataka passed an interim order of stay of collection of excise duty as "fabric", on a writ petition filed by the appellant before the Supreme Court. The writ petition was eventually dismissed. Thereafter, the Revenue purported to issue notice demanding payment of excise duty during the period the stay was in operation. Service of this notice was beyond the period of six months prescribed by Section, 11A of the Central Excises and Salt Act I of 1944, but it was sought to be salvaged with reference to the order of stay passed by the High Court of. Karnataka, read with the Explanation to Section 11A which is pari material with the Explanations to Section 11A of the Land Acquisition Act. The Supreme Court negated the contention of the Revenue, drawing on the analogy of section 15 of the Limitation Act. It was held that the order of stay from court was only regarding collection of duty, and not regarding service of notice, and therefore the order of stay could not be relied on to get over the bar of time prescribed by section HA. The assessee's appeal was allowed.

12. It has therefore to be held that the order of stay of dispossession, by itself does not extend the period of two years for making the award. The decision in *Bavajan Sahib's* case does not require reconsideration.

13. In the absence of any award in this case before September 26, 1986 the entire proceedings have lapsed u/s HA. In this view of the matter, it is not necessary to consider the various contentions raised by the petitioner in challenge of the acquisition proceedings. I leave those questions open. The proceedings for acquisition are, therefore, declared to have lapsed. This will not however preclude the respondents from initiating fresh proceedings for acquisition, if so desired, in accordance with law.

The Original petition is allowed as indicated above. No costs.