

(1993) 09 KAR CK 0015
In the Karnataka High Court
Case No : Writ Appeal No. 2291 of 1993

Mahalakshmi Keshava Rao

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11 A

Citation : (1993) ILR (Kar) 2885 : (1994) 206 ITR 463 : (1994) 1 KarLJ 230

Hon'ble Judges : S.A. Hakeem, J; S. Venkataraman, J

Bench : Division Bench

Advocate : T.S. Ramachandra, for the Appellant; H.L. Dattu, for the Respondent

Judgement

S. Venkataraman, J.—The appellant is aggrieved by the order of the learned single judge who has dismissed the writ petition filed by the appellant for a declaration that the acquisition proceedings started with the issue of preliminary notification dated May, 16/19, 1984, and ending with the declaration dated April 29, 1987, published in the Karnataka Gazette dated September 10, 1987, have lapsed and for issue of a mandamus to respondents Nos. 1 to 3 to desist from taking further steps in the acquisition proceedings.

2. It is undisputed that the declaration u/s 6 of the Land Acquisition Act, 1894 (hereinafter called "the Act"), was published on September 10, 1987; that the petitioner/appellant had filed Writ Petition No. 1553 of 1987, challenging the acquisition proceedings; that a stay of further proceedings in pursuance of the final notification has been granted by the High Court in that writ petition and that the stay was in operation from October 7, 1987, to July 24, 1990. It is also not disputed that, in the meanwhile, the first respondent for certain reasons, thought of dropping the acquisition proceedings. The fourth respondent, Union of India, represented by the Chief Commissioner of Income Tax for whom the land was proposed to be acquired, on coming to know about the proposal to drop the acquisition proceedings filed a writ petition in Writ Petition No. 5624 of 1992 seeking a direction to the first respondent to proceed with the acquisition

proceedings and to pass an award. In that writ petition, on the application of the fourth respondent, the High Court has issued an order on March 4, 1992, staying the further proceedings in pursuance of the declaration of the notification u/s 6(1) of the Act. It is under these circumstances that the Land Acquisition Officer has not been able to pass the award within two years from July 24, 1990, on which date the stay obtained by the appellant in his writ petition came to an end.

3. The learned single judge has held that because the High Court has stayed further proceedings in pursuance of the final notification in Writ Petition No. 5624 of 1992, the Land Acquisition Officer has not been able to pass the award within two years from date the stay obtained by the appellant in Writ Petition No. 1553 of 1987, came to an end and that the Explanation to section 11A of the Act is attracted and that the declaration sought for by the appellant cannot be granted. In this view of the matter, the learned single judge has dismissed the writ petition.

4. Learned counsel for the appellant has contended before us that it is only where the landholder obtains a stay from a court, thereby preventing the finalisation of the acquisition proceedings that the Explanation to section 11A of the Act would be applicable; that, in computing the period of two years referred to in section 11A, the period during which some other party might have obtained stay cannot be excluded.

5. In order to appreciate the above contention raised by learned counsel, it would be better to refer to section 11A of the Act, which reads as hereunder :

"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.

Explanation. - 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."

6. It is well-settled that the object of the above provision is to speed up acquisition proceedings. Though a period of two years is prescribed for making the award from the date of publication of the declaration, the Explanation clearly provides that, in computing that period of two years, the period during which any action or proceeding to be taken in pursuance of the aid declaration is stayed by an order of court, should be excluded. To attract this Explanation, all that is necessary is that any action or proceeding to be taken in pursuance of the declaration should have been stayed by a court. There is nothing in the Explanation to indicate that the stay referred to therein should have been

obtained only by the landholder to attract its application. The reason for not imposing any such restriction for the applicability of Explanation is obvious. The object of this section is to see that the Land Acquisition Officer does not delay the proceedings beyond two years. If the Land Acquisition Officer is prevented by an order of the court from taking further steps in pursuance of the declaration, whosoever it may be who has secured that order of the court, then, necessarily, the Land Acquisition Officer cannot be held responsible for delaying the proceedings and the proceedings cannot lapse in such a case only because the period of two years from the date of publication of the declaration has lapsed. There is no warrant to restrict the application of the Explanation only to a case where the order of stay has been obtained by the landholder. If, in a case like this where a stay has been granted by the High Court at the instance of a party other than the landholder, it would not be logical or reasonable to hold that, in spite of that stay, the Land Acquisition Officer should have proceeded with acquisition proceedings and passed the award within the period of two years as, in such an event, the officer concerned will have to expose himself to action for disobeying the order of the court. Such could never have been the intendment of the provision.

7. Learned counsel for the appellant did not try to contend that the Explanation as it stands give an indication that it is restricted in its applicability only to a case in which the landholder has obtained the order of stay. He has mainly relied on the following underlined observations of the Supreme Court in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, to contend that the Supreme Court has held that the Explanation is applicable only when the landholder has obtained the stay (at page 2155) :

"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 action or proceedings preceding the making of the award u/s 11 of the said Act. In the first place, as held by the learned single judge himself where the case is covered by section 17, possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration u/s 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired....."

8. It is better to refer to the facts of that case to appreciate the context in which the above observations have been made. The lands of the appellant were sought to be acquired and a notification u/s 6 was issued on May 12, 1988. The appellant challenged the said notification before the High Court and, on his prayer, the High court granted a limited interim relief by restraining the State of Gujarat from taking possession of the said lands pending admission of the special civil application. The interim relief was operative from August, 1988. The Land Acquisition Officer proceeded to determine the compensation after hearing objections and, in the enquiry, the appellant took up the contention that, as two years had elapsed from the publication of the notification u/s 6 of the Act and as no award had been made within that period, the acquisition proceedings had lapsed. When that contention was rejected, the appellant challenged that decision before the High Court. The High Court also rejected that contention relying on an earlier Division Bench judgment of that court wherein it had been held that section 11A of the Act enjoins exclusion of the entire period during which "any action or proceeding" to be taken pursuant to a declaration u/s 6 of the Act is stayed by an order of a competent court and that that Explanation is not confined to the staying of the making of the award pursuant to section 6 of the Act. Before the Supreme Court, it was contended that, under the Explanation, the only period, that could be excluded in computing the period of two years is the period during which any action or proceeding taken in pursuance of the said declaration u/s 6 up to the stage of section 11, namely, up to the making of the award u/s 11 was stayed by the order of a competent court and that, as in that case, the court had only stayed the taking of possession, which would arise subsequent to the passing of the award u/s 11, that would not serve to exclude any time from the period of two years. Dealing with this contention, the Supreme Court has held as above. It may be noted that the Supreme Court has also emphasised that the Explanation is in the widest possible terms and that there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings proceeding the making of the award u/s 11 of the Act. It is with reference to the facts of that case that the Supreme Court has held that, in order to get the benefit of section 11A, the landholder must not have obtained any order from court restraining any action or proceeding in pursuance of the declaration u/s 6 of the Act. We are unable to agree with the submission of learned counsel for the appellant that the observation "that the Explanation covers only cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired" means that the Explanation would not be applicable in a case where a party other than the landholder has obtained stay of any action or proceedings in pursuance of the declaration. The question whether the Explanation would be applicable even to a case where the stay has been obtained by a party other than the landholder had not at all arisen for consideration before the Supreme Court. When the Supreme Court itself has held in the earlier portion that the Explanation is in the widest possible terms and that its application should not be limited, it could not have intended to restrict the

applicability of the Explanation by the above observation, only to a case where the stay has been obtained by the landholder and not by someone else. We are unable to agree with the contention of learned counsel for the appellant that, in the above case, the Supreme Court has laid down that, under the Explanation to section 11A, only the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by a court at the instance of the landholder should be excluded and that, if a stay has been obtained by some other party, such period cannot be excluded.

9. On the facts of this case, the learned single judge is right in holding that section 11A of the Act cannot be applied as there was a stay of further proceedings in pursuance of the declaration u/s 6 of the Act passed by the High Court in Writ Petition No. 5624 of 1992. We do not find any good ground to interfere with the order of the learned single judge.

10. For the above reasons, this appeal is rejected.