

(2011) 12 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15885 of 2011 (O and M)

Rakesh Kumar Bansal and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 11A, 4, 6

Citation : (2012) 166 PLR 213

Hon'ble Judges : Rajiv Narain Raina, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition under Article 226 of the Constitution prays for quashing Award No. 2 of 2011-12, dated 24.5.2011 (P-8), on the primary ground that it has been passed after the expiry of statutory period of two years from the date of publication of declaration u/s 6 of the Land Acquisition Act, 1894 (for brevity, "the Act"). It is appropriate to mention that notification u/s 4 of the Act was issued on 3.10.2006 (P-1) and declaration u/s 6 of the Act was made on 1.10.2007 (P-2). The award was announced on 24.5.2011. In the absence of any interim order the award could have been announced on or before 1.10.2009. It has come on record that stay order granting status quo with regard to possession was issued on 29.5.2009 (P-6) in CWP No. 8543 of 2009, which was eventually dismissed on 22.11.2010. In another set of petitions, namely, CWP No.4186 of 2009 and connected petitions, stay of announcement of award was also issued on 26.3.2009 (P-7).

2. The case set up by the petitioners is that the award ought to have been announced within two years from the date of issuance of declaration u/s 6 of the Act, which in fact was issued on 1.10.2007, and the award having been announced on 24.5.2011 would be beyond the statutory period of two years after excluding the period of stay on the announcement of award i.e. from 29.5.2009

to 22.11.2010. According to them after excluding the period of stay the award should have been announced on or before 24.3.2011.

3. In response to the notice of motion having been issued, the respondent State has pointed out that the award is within the period of two years. It has been highlighted that Petitioner No. 9 had filed CWP No. 2648 of 2008, titled as Shiv Shankar Rice and General Mills v. State of Haryana and others. The aforesaid petition came up for hearing on 25.2.2008 and this Court has passed order of status quo with regard to possession and it has also made a reference to another petition, namely, CWP No. 1490 of 2007. It has been maintained that both the said petitions are still pending final disposal of this Court. The respondents have alleged that petitioner No. 9 has suppressed a material fact which was in his personal knowledge that the earlier petition has been tiled.

4. According to the averments made, stay order was first granted in CWP No. 2648 of 2008 on 25.2.2008, which is still pending. On subsequent occasion various writ petitions were filed including CWP No. 8543 of 2009 and stay order was extended in all those petitions. Eventually, a bunch of petitions including CWP No. 8543 of 2009, were dismissed on 22.11.2010. The respondents have claimed that the period from 25.2.2008 to 22.11.2010 has to be excluded in terms of the provisions made in Explanation appended to Section 11A of the Act. After excluding the aforesaid period, the award is well within the period of limitation, which was announced on 24.5.2011 (P-8). It is asserted that the petitioners have not excluded the period commencing from 25.2,2008 to 22.11.2010 and as a result an error has crept in the case set up by the petitioners resulting in turn an erroneous submission that the award is not within the period of limitation. Their case is that if the period of 2 years 8 months for which the stay order has been operating i.e. from 25.2.2008 to 22.11.2010 then the award dated 24.5.2011 is within two years.

5. We have heard learned counsel for the parties at a considerable length and are of the view that if the period from 25.2.2008 to 22.11.2010 is excluded, the award dated 24.5.2011 (P-8) is still within the period of two years. The period of two years is statutory and award could be announced on or before 1.10.2009. If we add the period of stay of 2 years 8 months (25.2.2008 to 22.11.2010) then the award has been announced within two years.

6. Even otherwise it is conceded fact on record that CWP Nos.1490 of 2007 and 2648 of 2008 are still pending and stay order dated 25.2.2008 is in operation. In para 1 of the preliminary objections of the written statement filed by respondent Nos. 2 and 4 through the Land Acquisition Collector, the aforesaid factual position has been asserted and there is no denial of the fact that the interim order of status quo with regard to possession was passed in CWP No. 2648 of 2008 on 25.2.2008, which is still pending. It is well settled that if interim order is operating in respect of a part of land, even then the period of limitation has to be excluded.

7. It is no argument that stay order must be granted in the individual petition filed by the petitioner himself or themselves. It would be apposite to read Section 11A of the Act along with its Explanation:-

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

(1) 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.

8. Section 11-A prescribes the period of two years within which the award requires to be announced and the period commences from the date of publication of declaration made u/s 6 of the Act. The Explanation postulates that in computing the period of two years, that period has to be excluded during which action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court. The matter is no longer res Integra. In the case of Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, , the issue has been discussed in detail holding that the Explanation is in widest possible terms, which did not limit its operation to cases where an order of stay is obtained by a landowner alone. The relevant observation in para 16 of the judgment read thus:

16.....The Explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a land-owner alone. One can conceive of cases where apart from land- owners others may be interested in stalling the land acquisition proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land acquired. But that will not lead us to the conclusion that the Explanation applied only to cases where stay had been obtained by the owners of the land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration, they cannot be faulted for the delay, and therefore, the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking

further steps in the acquisition proceeding for which the authorities are not to blame.

9. For the same view we also draw support from another judgment of Hon''ble the Supreme Court rendered in the case of R. Kolandaivelu and Others Vs. The Govt. of Tamil Nadu and Another, and a Division Bench judgment of this Court rendered in the case of Devinder Kumar and others v. U.T. Chandigarh and others,³ ILR (1999)2 P&H 284 (see para 7). In the present case, there was stay on the announcement of the award, which was ordered on 26.3.2009 (P-7) in CWP No. 4186 of 2009 and connected petitions. The said bunch of petitions were dismissed on 22.11.2010. However, stay orders with regard to dis-possession have been passed in CWP Nos.1490 of 2007 and 2648 of 2008, which are still continuing. It is not possible for us to persuade ourselves to accept that in these peculiar facts and circumstances the period of two years has lapsed and the award has been announced after the statutory period.

There is, thus, no merit in the instant petition. Dismissed.