

**(2007) 09 BOM CK 0037**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 211 of 1994**

Ramrao Deshmukh (Dead) through LRs. Godavari Deshmukh and Others APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

**Date of Decision :** 27-09-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 11, 11A, 4, 4(1), 5A

**Citation :** (2008) 1 ALLMR 234 : (2008) 2 MhLj 534

**Hon'ble Judges :** R.M. Borde, J;Naresh H. Patil, J

**Bench :** Division Bench

**Advocate :** S.V. Kurundkar, for the Appellant; U.K. Patel, Asstt. Govt. Pleader for Respondent Nos. 1 and 2 and A.V. Patil, holding for V.D. Gunale, for the Respondent

**Final Decision :** Allowed

## Judgement

R.M. Borde, J.—Heard the learned Counsel appearing for the parties.

2. The petitioner in this petition is raising challenge to the acquisition proceedings initiated by respondent-State for the purpose of acquisition of land belonging to the petitioner, situate at village Kahala (Bk), Tq. Naigaon, Dist. Nanded. The purpose for the acquisition of land is stated to be extension of Gaothan. The acquisition proceedings are culminated in passing an award u/s 11 of the Land Acquisition Act, 1894 (for short "the Act"), on 26-11-1993.

3. Certain dates which are material for considering the objections raised in this petition by the petitioner are required to be recorded as below:

4. A notification u/s 4(1) of the Act was published in the Government Gazette on 12-7-1990. So far as the declaration u/s 6 of the Act is concerned, the same was made on 12-11-1990. The same was published in the Government Gazette on 1-8-1991. It further transpires from the record that it was published in

accordance with Sub-section (2) of Section 6 of the Act in the local newspapers on 6-4-1991 and 23-6-1991, respectively. The last of the publications i.e. the local publication at Chawadi of the village, as prescribed u/s 6(2) of the Act, was issued on 28-11-1991. After completing the required formalities as prescribed by the Land Acquisition Act, the award came to be passed on 26-11-1993.

5. The petitioner has challenged the acquisition proceedings mainly on the ground of breach of mandate of law as laid down in Section 6(1) proviso (ii) of the Act, that is to say, according to the petitioner, the declaration u/s 6 issued by the State authorities is beyond the period of one year after publication of notification u/s 4(1) of the Act. The second limb of argument is that the proceedings of the acquisition of land are vitiated on account of nonobservance of mandatory provisions contained in Section 11A of the Act. The petitioner contends that the award, which came to be passed on 26-11-1993, is beyond the period of two years from the date of publication of declaration (under Section 6 of the Act).

6. In the course of argument, the learned Counsel for petitioner has submitted that the date of declaration u/s 6 of the Land Acquisition Act shall have to be taken as one and the same for the purposes of computing the period while considering the challenge based on non-observance of mandate laid down by the Land Acquisition Act u/s 6(1) proviso (ii) and Section 11A of the Act. It would be appropriate to quote the relevant provisions of the Land Acquisition Act.

4. (1) Whenever it appears to the appropriate Government, the Commissioner, or Land Acquisition Officer that land in any locality is needed or is likely to be needed for any public purpose, or for a Company, a notification to that effect, shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government, the Commissioner, or, as the case may be, by the Land Acquisition Officer in this behalf and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches;

and

whether otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so.

6. (1) Subject to the provisions of Part VII of this Act, when the appropriate Government or, as the case may be, the Commissioner is satisfied, after considering the report, if any, made u/s 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its order or, as the case may be, made from time to time in respect of different parcels of any land, covered by the same notification u/s 4, Sub-Section (1), irrespective of whether one report or different reports has or have been made (whether required) u/s 5-A, Sub-section (2).

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Explanation 1. -....

Explanation 2. -....

(1-A) Where... of such land:

Provided that Court.

(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being, hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area and, where a plan shall have been made of the land, the place

where such plan may be inspected.

(3) The said declaration...appearing.

11 A. 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 proceeding 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.

7. On bare perusal of the provisions it would transpire that for considering the dates in respect of various stages of publication of notification u/s 4 and making of declaration u/s 6 and publication thereof are required to be considered in the context of phraseology mentioned in the Sections.

8. So far as the first challenge raised by the petitioner is concerned, it would be seen that Section 4 mandates publication of notification u/s 4(1) of the Act and the notification is mandated to be published in the Official Gazette. As such, while considering the date of publication of notification u/s 4(1), the date of such publication in the Official Gazette shall have to be taken into account and which would in the instant case be 12-7-1990.

9. Whereas for the purposes of construing the proviso (ii) to Section 6(1), it is laid down that no declaration in respect of any particular land covered by a notification u/s 4(1) shall be made after expiry of one year from the date of publication of notification. While construing the proviso, it shall have to be taken into consideration that the period between the date of publication of notification u/s 4(1) and the date of making of declaration (under Section 6) shall not be more than one year. If we consider the provisions of Section 6, it would be evident that Section 6(1) prescribes that a declaration shall be made under the signature of Secretary to such Government or of some officer duly authorized to certify its order. Whereas Sub-section (2) of Section 6 prescribes that, every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land situates. So also the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality. It would, therefore, mean that Section 6 prescribes making of a declaration under Sub-section (1). Whereas the modes of publication of such a declaration are prescribed in Sub-section (2) which are by three different methods i.e. (i) publication in the Official Gazette, (ii) publication in newspapers and (iii) local publication. Section 6(1) proviso (ii) mandates that making of a declaration u/s 6 shall not be beyond the period of one year from the date of publication of preliminary notification as provided u/s 4(1) of the Act.

A reference made to the publication of notification in proviso (ii) to Sub-Section (1) of Section 6 is in relation to a notification u/s 4 of the Act.

10. In view of this interpretation, in the instant case, a declaration which has been made u/s 6 of the Act, on 23-6-1991, shall have to be considered within the prescribed time from the date of publication of notification u/s 4(1) of the Act which was published in the Official Gazette on 12-7-1990. The argument advanced by the learned Counsel for petitioner that the acquisition proceedings are vitiated on account of non-observance of provisions of Section 6(1) proviso (ii) of the Act is, therefore, not sustainable.

11. The second limb of argument advanced by the learned Counsel for the petitioner is based on interpretation of provisions of Section 11A of the Act. The learned Counsel contends that the passing of the award is beyond the period of two years from the date of publication of a notification u/s 6 of the Act.

12. On perusal of provisions of Section 11A of the Act, it would be clear that the time frame between the date of publication of a declaration u/s 6 and the passing of award shall have to be taken into consideration. As stated above, Section 6(1) prescribes making of a declaration; whereas Section 6(2) prescribes modes of publication of such declaration. It is well settled that while construing the provisions of Section 11A, the date of last of such publications of a declaration u/s 6(2) of the Act, shall have to be taken into consideration.

13. It would be appropriate to refer to the pronouncement made by the Apex Court while construing the provisions of Section 6(1) proviso and Section 11A of the Act. It is observed by the Apex Court in a matter between AIR 2002 187 (SC) , as below:

Thus u/s 4 a notification has to be published in the manner laid down therein. As against this, u/s 6 a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6(2) of the Land Acquisition Act. Also the first proviso for Section 6(1) lays down a time limit within which declaration has to be made. Very significantly it does not lay down a time limit within which publication of the declaration is to be made. Significantly the first proviso does not lay down that publication cannot take after the period prescribed therein. As the first proviso to Section 6(1) only provides a time limit for a declaration and not for publication, it has been incorporated in Sub-section (1) of Section 6. It is for this reason that the legislature has not put this proviso after Sub-section (2) of Section 6.

In our view the wording of Sections 4, 6 and 11-A leave no room for doubt that the Land Acquisition Act made a distinction between a "declaration" and "publication". To be noted that u/s 4 the notification has to be published. Again u/s 11-A the period of two years has to be commuted from the date of "publication of declaration". As distinct from this under the first proviso to Section 6(1) a "declaration" cannot be made after the expiry of one year from the date of "publication of the notification u/s 4". The words "published" in Clauses (i) and

(ii) of the first proviso to Section 6 shows that a distinction is made between a "declaration" and a "publication". Viewed from this angle the wordings of the first proviso to Section 6(1) become important. The proviso lays down that "no declaration [under Section 6(1) shall be made after expiry of three years under Clause (i)] where the notification u/s 4 is published before the commencement of the Land Acquisition Act, 1984 and after expiry of one year [under Clause (ii)] where notification u/s 4 was published after commencement of Land Acquisition Act, 1984. Thus the proviso clearly talks of "Publication" in respect of notification u/s 4 and then provide a time for "making of declaration" u/s 6. The legislature is purposely omitting to use the words "Publication of declaration" in the proviso to Section 6.

14. It is further laid down by the Apex Court in the matter of Kunwar Lal v. State of U.P. reported in 2007 (5) Mh.L.J. 389 as below:

The provisions of Section 11A of the Land Acquisition Act are intended to benefit the land-owner and ensure that the Award is made within a period of two years from the date of the declaration u/s 6. In ordinary course, therefore, when the Government fails to make an Award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings will lapse. The period of two years referred to in Section 11A shall be computed by counting from the last of the publication dates, as per the prescribed modes of publication.

15. In the instant case, therefore, we have to consider what are the various dates in respect of publication of a declaration u/s 6 of the Act. It is stated by the counsel that Section 6 notification was published in the Government Gazette on 1-8-1991; whereas the same was published in the local newspapers on 6-4-1991 and 23-6-1991, respectively. According to the counsel, local publication in the form of causing public notice of substance of a declaration at the convenient place in the locality i.e. pasting of a declaration at Chawadi, was done on 28-11-1991. If we consider the argument advanced by the learned Assistant Government Pleader for the respondents/State that 28-11-1991 is the date of last of such mode of publications as prescribed u/s 6(2) of the Act, it would naturally lead to an inference that the award, which has been published on 26-11-1993, is within stipulated period and will not be hit by provisions of Section 11A of the Act.

16. With the assistance of the learned Assistant Government Pleader for the respondents, we have gone through the record.

17. On perusal of the original record it has come to our notice that the last of the publications of declaration u/s 6, at Chawadi of village, is stated to be 28-11-1991. The learned Assistant Government Pleader appearing for the State has pointed out a panchanama drawn in that regard and contended that a declaration was published at Chawadi of village on 28-11-1991 by pasting the same as well as it was published by way of beat of drums in the village. On

perusal of the original record, we find that there are two other panchanamas in respect of pasting of declaration at Chawadi as well as in respect of publication of said declaration by beat of drums in village and those panchanamas bear the date as 4-9-1989 and 28-11-1991. If we consider the various panchanamas which are drawn by authorities and which is a part of the record, we find that the mode of publication of a declaration prescribed in Section 6(2) i.e. a local publication at village is not liable to be relied upon in the instant case. It is obvious that the panchanamas on different dates are drawn with a view to bring the proceedings within the limitation. An endeavour appears to have been made while creating the record to see that the proceedings are not vitiated on account of non-observance of time frame as provided by Section 11A of the Act. In these circumstances, the various panchanamas drawn by the acquiring authorities, cannot be relied upon for various reasons. The last of the dates of such publication which is a prescribed mode u/s 6(2) of the Act is stated by authorities to be 28-11-1991. However, the contention cannot be accepted for the reason that in any circumstance any of the declaration as prescribed by Section 6(2) cannot be beyond the various dates prescribed for taking further steps in accordance with the Land Acquisition Act.

18. On perusal of the record, we find that by issuing a notice purported to be a notice u/s 9(1) of the Act, the petitioner was directed to appear before the Land Acquisition Officer, Degloor on 15-5-1991. A notice u/s 9(1), which is annexed at page No. 89 of the petition, does not bear the date. However, it appears that the notice has been transmitted in the month of April, 1989. The notice, which is required to be served personally on the petitioner, does not appear to have been served. Whereas there appears to be an endorsement on the office copy maintained in the record to the effect that the said notice is pasted at the door of residential premises of the petitioner. In any eventuality, a notice u/s 9(1) of the Act cannot precede the publication of a declaration u/s 6 of the Act. From the perusal of the dates given in respect of various stages of publication of declaration u/s 6, it transpires that on 12-11-1990 the declaration was made and it was published in Official Gazette on 1-8-1991; whereas the same was published in the local newspapers on 6-4-1991 and 23-6-1991, respectively, and the last of the modes of publication of declaration u/s 6 as provided under Sub-section (2) at the conspicuous place in the village is stated to be 28-11-1991. Whereas in the instant case, if we peruse the original record, it appears that a notice u/s 9(1) calling upon the claimant to lodge his claim in respect of valuation of the property is issued in the month of April, 1991. In this view of the matter, we find that the record, which has been maintained by the office of Land Acquisition Officer, is not worthy to be relied upon.

19. On consideration of the scheme of the Land Acquisition Act, it would be seen that in the matters concerning compulsory acquisition of the property, after completing the preliminary survey, the State authorities are expected to publish a preliminary notification for acquisition of the land u/s 4(1) of the Act. Publication of the notification u/s 4(1) is an expression of intention of the State

to acquire the property. A further stage is provided in view of Section 5A of the Act, whereby a person interested in the land can raise objections in respect of proposed acquisition which are required to be considered by the Collector. On consideration of such of the objections, a stage in respect of a declaration of intended acquisition is prescribed u/s 6 of the Act. A declaration is required to be made to that effect by the State Government by issuing a necessary order and which declaration is required to be published in view of Sub-section (2) of Section 6 of the Act. Section 7 of the Act provides that after publication of a declaration as contemplated u/s 6, the appropriate Government, or some officer authorized by the appropriate Government, in this behalf or, as the case may be, the Commissioner shall direct the Collector to take order for acquisition of the land. The Collector then proceeds to cause the land to be marked out and measured and if no plan has been made thereof, a plan is to be made of the same in view of provisions of Section 8 of the Land Acquisition Act. Then comes the stage of calling upon the persons interested in land to lodge the claim in respect of the compensation with the Collector. Whereas Section 11 of the Act lays down the procedure in respect of the inquiry and award by the Collector. The stages enumerated by various provisions of the Act are required to be followed chronologically.

20. In the instant case, we find that the publication of a declaration under Sub-section (2) of Section 6 is stated to be according to the Government, on a date which follows after a notice issued to the claimant calling upon him to submit his claim in respect of valuation of the land. Considering the state of affairs of the record that has been maintained by the office of the Land Acquisition Officer, we find that the mode of the publication of a notification u/s 6(2) of the Act at village Chawadi is not worthy to be accepted and cannot be relied upon. As observed above, the panchanamas which are drawn in respect of publication of a notification at Chawadi u/s 6(2) of the Act, being not worthy of acceptance, we find that whole proceedings of acquisition are vitiated as the award does not seem to have been published within the time frame prescribed u/s 11A of the Act.

21. The learned Counsel for the petitioner during the course of argument has vehemently contended that the land is sought to be acquired with an oblique motive. The petitioner attributes mala fides in the act of acquisition of the land belonging to the petitioner.

22. We have heard the arguments of learned Counsel for petitioner on the point as well as the reply tendered by the learned Counsel for the respondents and the contentions raised on behalf of the intervenor. In view of the fact that the proceedings in respect of the acquisitions are plated on account of non-observance of mandatory provisions of law, we need not go into the questions raised in respect of the mala fides attributed in respect of acquisition of the land. Moreover, the issues raised in this regard are the questions predominantly relating to the appreciation of facts. This Court in writ jurisdiction under Article 226 of Constitution of India would be very slow to consider such matters which

involve disputed question of facts. For the foregoing reasons, we find that the proceedings in respect of acquisition of petitioner's land are vitiated on account of non-observance of mandatory provisions of Section 11A of the Act. The Writ Petition is, therefore, allowed. The proceedings in respect of acquisition of land are set aside. Rule is made absolute in the above terms. No costs.