

(1987) 03 KL CK 0040
In the High Court Of Kerala
Case No : O.P. No. 9035 of 1985-K

S. Bavajan Sahib

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11A, 17, 6, 7

Citation : AIR 1988 Ker 280 : (1987) KLJ 870

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

Bench : Single Bench

Advocate : Pirappancode V. Sreedharan Nair, for the Appellant; Govt. Pleader and B.S. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, AIR 1991 SC 2153 : (1991) 2 SCALE 608 : (1991) 4 SCC 531 : (1991) 1 SCR 158 Supp : (1992) 1 UJ 21

T.L. Viswanatha Iyer, J.—The petitioner challenges certain proceedings under the Land Acquisition Act for acquisition of his properties for the purpose of construction of a new dairy plant at Trivandrum. Ext.P1 dt. 27-5-1981 is the notification issued u/s 3(1) of the Kerala Land Acquisition Act, 1961. From the counter-affidavit of respondent 1. it is seen that this was published in the Kerala Kaumudi and Malayala Manorama dailies dt. 2-6-1981. Petitioner objected to the acquisition of his land as per a statement of objection, a copy of which is Ext.P2. He followed it up with a further representation before the 4th respondent for whose purposes the land was being acquired, by a representation marked Ext. P3. However, these representations did not bear fruit and the declaration u/s 6 of the Land Acquisition Act was published in the Kerala Gazette dt. 29th May. 1984. A true copy of this declaration is Ext.P4. Petitioner had however been making representations in the meanwhile against the proposed acquisition, and a representation made by him to Government was rejected by the order Ext. P5 dt.

4-6-1984. Petitioner challenges Exts.P1, P4 and P5 in these proceedings.

2. The ground on which the petitioner challenged these proceedings in the original petition was that the notification Ext.P1 u/s 3(1) was dt: 27-5-1981 but the declaration u/s 6 of the Kerala Land Acquisition Act dt. 28-5-1984 was published in the Kerala Gazette dt. 29-5-1984. It was therefore stated that the declaration u/s 6 was beyond the period of three years prescribed by the proviso to Section 6(1) of the Kerala Land Acquisition Act and therefore the entire proceedings had ceased to be operative. This contention raised in the original petition has no substance, having regard to the fact that the notification u/s 3 was actually published in the dailies only on 2-6-1981. The proviso to Section 6(1) requires only that the declaration u/s 6 should not be made after the expiry of three years from the date of publication of the notification u/s 3(1). Since the notification u/s 3(1) was published on 2-6-1981, the declaration u/s 6 could be published on or before 2-6-1984. Therefore the declaration published in the Kerala Gazette dt. 29-5-1984 is within the time prescribed by the proviso to Section 6(1) of the Kerala Land Acquisition Act.

3. Though this point was not therefore available to the petitioner, he raised another new point at the time of hearing of the original petition. It was that no award has yet been passed in the matter and therefore the entire proceedings for the acquisition of the land have lapsed as u/s 11A of the Central Land Acquisition Act, 1994, which is now applicable to the State,

4. The Central Land Acquisition Act was extended to the State of Kerala by the Central Land Acquisition (Amendment) Act 68 of 1984 with effect from 26-9-1984. u/s 30 of the Amending Act, the provisions of the Central Act apply in relation to all proceedings for acquisition initiated earlier and pending as on 30-4-1982. Section 11A of the Central Act provides that if no award is made within a period of two years from the date of publication of the declaration, the entire proceedings for the acquisition of the land shall lapse. The proviso to the section states that where the said declaration had 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, namely, 26-9-1984. The award in this case should therefore have been passed on or before 26-9-1986. Counsel for the 4th respondent as well as the Government Pleader appearing for respondents 1 to 3 stated that no award has so far been passed in this case.

5. Normally, therefore the entire proceedings of the petitioner's land for acquisition should lapse.

6. However, counsel for the 4th respondent attempts an argument based on the explanation to Section 11A. He states that there was a petition C.M.P, No. 26885 of 1985 filed in this Court along with the original petition for stay of all proceedings to take possession of the petitioner's land pursuant to Exts. P1 and P4 pending disposal of this original petition and that an interim order of stay had

been passed on 27-9-1985. Counsel submits that in view of this stay, the explanation to Section 11A must operate to exclude the period subsequent to 27-9-1985 till date in the computation of the period of two years between 26-9-1984 and 26-9-1986.

7. The explanation states 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 the Court shall be excluded. The period of two years is prescribed for the passing of award u/s 11A. The action or proceeding contemplated by the explanation is therefore any action or proceeding to be taken after the making of the declaration u/s 6 and before the passing of the award u/s 11. Such actions are those contemplated by Sections 7 to 10. The question of taking possession of the land arises only when the award is passed, u/s 16 of the Act, except in cases of urgency covered by Section 17. This is not a case in respect of which Section 17 has been invoked. Therefore the position is that unless there was a stay of the proceedings contemplated by Sections 7 to 10 or of further proceedings pursuant to the declaration u/s 6, the explanation will not operate so as to extend the period of two years prescribed by Section 11A. The order from this Court was only against proceedings for taking possession of the petitioner's land, which is only a post-award operation. There was therefore nothing standing in the way of the Land Acquisition Officer from taking further proceedings pursuant to the declaration u/s 6 and passed the award u/s 11 within two years. The explanation to Section 11A cannot therefore avail the 4th respondent to get extension of the period of two years prescribed by Section 11A.

8. Counsel for the respondents could not point out any other reason to get over the failure to pass the award within the period of two years or the consequent applicability of Section 11A. In the absence of an award passed on or before 26-9-1986, the entire proceedings for acquisition of the petitioner's land have lapsed.

9. The Original Petition is therefore allowed for this reason with a declaration that all the proceedings initiated under the Notification Ext.P1 and the declaration Ext.P4 for acquisition of the petitioner's land have lapsed u/s 11A of the (Central) Land Acquisition Act, 1894.

10. Counsel for the 4th respondent pointed out that various development schemes initiated by them have been stalled because of not obtaining the petitioner's land. It is up to the 4th respondent to move the Government for fresh proceedings for acquisition if so desired. The petitioner had raised a point of discrimination as well. I am not however adjudicating thereon in the view I have taken, and leave that question open.

11. The parties will bear their respective costs.

12. Issue carbon copy of this judgment on usual terms.