

**(2010) 10 KAR CK 0095**  
**In the Karnataka High Court**  
**Case No : Writ Appeal No. 3783 of 2009**

Smt. B. Sharadamma

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision :** 18-10-2010

**Acts Referred:**

Land Acquisition Act, 1894 — Section 11 A, 4 (1), 48 (1), 6 (1)

**Citation :** (2011) 1 KCCR 77

**Hon'ble Judges :** V.G. Sabhahit, J;A.S. Bopanna, J

**Bench :** Division Bench

**Advocate :** Udaya Holla for B. Srinivas, for the Appellant; Prof. Ravivarma Kumar for Shetty and Hegde, Associates, for Caveator Respondent 4 and Basavaraj Kareddy, Preliminary Government Advocate for Respondents 1 to 3, for the Respondent

**Final Decision :** Dismissed

## Judgement

V.G. Sabhahit, J.—This writ appeal is filed by the unsuccessful Petitioner in W.P. No. 6530/2008, being aggrieved by the order dated 14.07.2009, wherein the learned Single Judge of this Court has declined to quash the preliminary and final notifications issued Under Sections 4(1) and 6(1) of the Land Acquisition Act (hereinafter referred to as "the Act") dated 20.03.1986 and 04.05.1987 vide Annexures "A" and "B" to the writ petition respectively by rejecting the contention of the writ Petitioner that the award is passed after a lapse of two years and contrary to the provisions of Section 11A of the Act and accordingly, dismissed the writ petition as devoid of merit.

2. The material facts of the case leading up to this appeal are as follows:

2.1 It is averred in the writ petition that the Petitioner is the owner of 3 Acres of land comprised in Sy. No. 19/2 of Kadirenahalli Village, Uttarahalli Hobli, Bangalore South Taluk, (hereinafter called "the schedule property"). The schedule property was subject-matter of preliminary notification u/s 4(1) of the Act dated 20.03.1986 published in the Official Gazette on 24.04.1986 followed by

final notification u/s 6(1) of the Act dated 04.05.1987 published in the Official Gazette on 05.05.1987. It is averred that out of 3 Acres of land held by the Petitioner in the schedule property, during 1983 itself, a portion of the same had been alienated and the Petitioner had retained the remaining land and was running a nursery and there are grown up fruit yielding coconut trees in the said land and the Petitioner is depending upon the income from the nursery and income from selling coconut trees. It is further averred that the notifications issued Under Sections 4(1) and 6(1) of the Act were challenged in W.P. No. 8958/1987 and interim prayer was sought for staying the operation of the notifications issued Under Sections 4(1) and 6(1) of the Act challenging the writ petition. However, by order dated 19.06.1987, this Court stayed dispossession of the Petitioner from the land in question, which tantamounts to stay of further proceedings and no consequent action could be initiated for passing of the award during the period when the interim order was in force, in view of the decision of the Hon'ble Supreme Court in *Government of Tamil Nadu v. Vasantha Bai* (1955 Supp (2) SCC 423) and *Municipal Corporation of Delhi Vs. Lichho Devi and others*, ). It is further averred that a notification was issued u/s 48(1) of the Act dated 15.07.1989, withdrawing the schedule property from acquisition. The Petitioner has developed the land and has put up structures between 27.07.1989 and 03.10.1989 i.e., during the period, when notification u/s 48(1) was in operation and when there was no acquisition in the eye of law.

2.2 The said notification u/s 48(1) of the Act was challenged by the fourth Respondent -- M/s. Kanaka Gruha Nirmana Sahakara Sangha Niyamitha (hereinafter referred to as "the Society") in W.A. No. 17588/1989 before this Court. In the meanwhile, the writ petition filed by the Petitioner challenging the acquisition proceedings in W.P. No. 8958/1987 was dismissed by this Court on 14.11.1995. The said order of dismissal of the writ petition was challenged by the Petitioner in W.A. No. 4596/1995 before the Division Bench of this Court. During pendency of the writ appeal, interim order of stay of dispossession of the Petitioner from the land in Sy. No. 19/2 was granted on 19.01.1996. After the dismissal of W.P. No. 17558/ 1989, W.A. No. 4596/1995 was also dismissed as having become infructuous. However, the said order was recalled by the Division Bench of this Court by order dated 25.06.1997. Thereafter, the Division Bench of this Court by order dated 22.07.1997, allowed the writ appeal No. 4596/ 1995 filed by the Petitioner by setting aside the order of the learned Single Judge dismissing the writ petition in W.P. No. 8958/1987 and quashing the notifications issued Under Sections 4(1) and 6(1) of the Act. In view of allowing of the writ appeal, the Division Bench of this Court by order dated 28.07.1997, dismissed the writ petition filed by Respondent No. 4 in W.P. No. 17558/1989 challenging the de-notification of the land, as having become infructuous holding that the notification u/s 48(1) of the Act had become infructuous as acquisition proceedings had been quashed. The Petitioner had developed the land between 23.07.1997 to 14.12.1997 by improving nursery and putting up additional construction and was doing poultry and dairy farming activity.

2.3 Respondent No. 4 - Society, being aggrieved by the dismissal of W.P. No. 17558/1989 and allowing of W.A. No. 4596/1995, filed Civil Appeal. No. 5708/1998 in respect of acquisition proceedings and Civil Appeal No. 5707/1998 in respect of de-notification of the land, before the Hon"ble Supreme Court. The Apex Court, by order dated 03.10.2002, allowed the appeals and remitted back W.P. No. 17558/1989 for fresh consideration to the Division Bench of this Court. The Division Bench of this Court, after remand, on 01.12.2003, held that since the beneficiary of the acquisition was not heard before de-notification of the land u/s 48(1) of the Act withdrawing the schedule property from acquisition and the notification u/s 48(1) of the Act was set aside with liberty to the State to take appropriate action in accordance with law. It was also observed that it was open to the Petitioner to bring all subsequent events and other relevant factors to the notice of the State Government for taking appropriate decision in the matter. Thereafter, the State by order dated 05.02.2004, declined to delete the land in question from the purview of the acquisition. Being aggrieved by the same, the Petitioner and others filed W.P. No. 6073/ 2004 and connected petitions. The learned Single Judge, by order dated 15.07.2005, allowed the writ petitions and remitted the matter back to the State Government for fresh consideration. Being aggrieved by the said order dated 15.07.2005, W.A. No. 3667/2005 and connected appeals were filed by Respondent No. 4 -- Society and the same were allowed by the Division Bench. The SLP filed by the Petitioner against the judgment passed in W.A. No. 3667/2005 was dismissed by the Apex Court by order dated 05.10.2007 confirming the order passed by the Division Bench in W.A. No. 3667/2005.

2.4 It is further averred that in view of the provisions of Sections 4(1) and 6(1) of the Act, award has to be passed within two years from the date of final notification and in computing the said period of two years, time during which, acquisition was stayed by any Court has to be taken into account. In the present case, according to the averments made in the petition, no award has yet been passed and time during which the operation of the acquisition was stayed was 5767 days and wherefore, the entire acquisition proceedings are vitiated being contrary to the provisions of Section 11A of the Act and the law declared by the Hon"ble Supreme Court in Government of Tamil Nadu and another Vs. Vasantha Bai, and Municipal Corporation of Delhi Vs. Lichho Devi and others, . It is further averred that even if the award passed is valid, in view of the stay of dispossession of the Petitioner from the land in question, which has to be construed as stay of further acquisition proceedings, no award could have been passed by the Respondents. Therefore, award, if any, passed is void and unenforceable. The Division Bench of this Court in W.A. No. 3667/2005, while reversing the order of the learned Single Judge, has observed that it is open to the Petitioner to agitate the allegation of fraud before the State Government. The present writ petition was filed contending that the award has not been passed within two years from the date of notification u/s 6(1) of the Act as required u/s 11A of the Act and wherefore, the acquisition proceedings are vitiated and in

view of stay of dispossession of the Petitioner from the land in question, which tantamounts to stay of further acquisition proceedings, no action could be taken by the Respondents including passing of the award and wherefore, sought for the following reliefs:

1. To quash the entire acquisition proceedings initiated u/s 4(1) and 6(1) notification of the Land Acquisition Act, bearing No. LAQ(1)SR17/85-86 dated 20.03.1986 and No. RD159 AQB82 dated 04.05.1987, in view of the acquisition proceedings being lapsed on account of there being no award u/s 11A of the Land Acquisition Act within a period of 2 years.

2. Consequently, to declare the proceedings that have taken place in pursuance of the notification issued u/s 6(1) of the Land Acquisition Act as illegal, null and void and not valid, as there is no award as required in law and under the Land Acquisition Act.

3. To further declare that the acquisition proceedings pertaining to land in Sy. No. 19/2 of Kadirenahalli, Uttarahalli Hobli, Bangalore South Taluk, to an extent of 3-00 Acres as having become lapse, illegal and null and void, as there is no award as required u/s 11A of the Land Acquisition Act.

4. To pass such other orders as deemed fit to by this Hon"ble Court under the circumstances of the case, in the interest of justice and equity.

2.5. The writ petition was resisted by the Respondents. Respondent No. 3 - Special Land Acquisition Officer, Bangalore District, filed the statement of objections contending that the prayers sought for in the writ petition cannot be granted as acquisition proceedings have become final. The averments made in the petition that no award has been passed and no award can now be passed since two years have elapsed from the date of final notification even after excluding the period for which acquisition was stayed and award is contrary to the provisions of Section 11A of the Act and is vitiated are false. It is averred that the award u/s 11 of the Act in respect of the land in question has been passed by the Special Land Acquisition Officer on 28.08.1988 and the same was approved by the Divisional Commissioner on 20.02.1989 as per the provisions of the Act. It is also averred that the award has been passed well within two years from the date of final notification and the acquisition proceedings have been upheld and the notification issued u/s 48(1) of the Act withdrawing the schedule property from the acquisition proceedings has been set aside by this Court and the Government has subsequently, declined to issue notification u/s 48(1) of the Act, which has been confirmed by this Court and wherefore, the petition is misconceived and is liable to be dismissed.

2.6 Respondent No. 4 - Society filed statement of objections denying the averments made in the petition that no award has been passed and acquisition proceedings have been lapsed in view of Section 11A of the Act since period of two years is over. It is further averred that the acquisition proceedings have become final. No contention as urged in the present writ petition was taken in

the earlier writ petitions, which had been filed by the Petitioner herself or in the proceedings to which the Petitioner was a party and wherefore, the Petitioner is estopped from taking the said contentions in the present writ petition regarding the validity of the acquisition proceedings as acquisition proceedings have been upheld and the notification issued u/s 48(1) of the Act, withdrawing the schedule property from the acquisition proceedings was set aside and the State Government has declined to pass fresh orders, which has also become final by the order of this Court. It is further averred that the award u/s 11 of the Act in respect of the land in question has been passed by the Special Land Acquisition Officer on 28.08.1988 and the same was approved by the Divisional Commissioner on 20.02.1989 and the Petitioner, after service of notice of award u/s 9 of the Act, had filed a claim statement on 01.06.1987 seeking for enhancement of compensation as per Annexure "R2" to the objections" statement and she has participated in the said proceedings for determination for compensation before the Special Land Acquisition Officer. The Petitioner, having participated in the acquisition proceeding subsequent to passing of the interim order, cannot contend that stay of dispossession of the Petitioner from the land would amount to stay of further acquisition proceedings. The award has been passed within two years from the date of final notification as final notification is dated 04.05.1987 and award has been passed by the Special Land Acquisition Officer on 28.08.1988 and the same has been approved by the Divisional Commissioner on 20.02.1989 well within two years even without excluding the time spent in the litigation, wherein acquisition proceedings were stayed. Therefore, there is no merit in the contentions urged in the writ petition and the grounds urged in the writ petition are perverse. The Petitioner is not entitled to any relief as sought for in the writ petition and the same is liable to be dismissed.

2.7 Rejoinder was filed by the Petitioner after filing of the objections statement by Respondent No. 4 - Society contending that the averments made in the objections statement are false and the alleged award even if passed, is, invalid in the eye of law as according to the Hon"ble Supreme Court, stay of dispossession of the Petitioner from the land in question means and tantamounts to stay of all further acquisition proceedings. There was no occasion for the Petitioner to put forth the contentions urged in the present writ petition in the earlier proceedings, wherein acquisition was challenged and notification u/s 48(1) of the Act was also challenged. Therefore, the Petitioner is entitled to the relief sought for in the writ petition.

2.8 The learned Single Judge, after considering the contentions of the learned Counsel for the parties and scrutinizing the material on record; by order dated 14.07.2009, held that in view of the earlier proceedings referred to in the writ petition itself, acquisition of the schedule property by issuing notifications Under Sections 4(1) and 6(1) of the Act have become final and the main contention in the writ petition is that the award is passed in violation of Section 11A of the Act, whereas, the material on record shows that the award has been passed by the Special Land Acquisition Officer on 28.08.1988 and the same has been approved

by the Divisional Commissioner on 20.02.1989 within two years from the date of the final notification even without considering the period for which the acquisition proceedings were stayed. Therefore, the award is passed well within time. The Petitioner has participated in the acquisition proceedings and after she was served with notice of the award, she has made a claim statement seeking for enhancement of compensation and the ratio of the Apex Court in the judgments relied upon by the learned Counsel for the Petitioner are not helpful to the Petitioner as the Apex Court in the said cases has laid down that even where there is stay of dispossession, the said period should also be included for reckoning the period of two years from the date of final notification for the purpose of Section 11A of the Act. The Petitioner, after service of notice of the award, having participated in the further proceedings by filing a claim statement, could not now contend that stay of dispossession would mean that no further proceeding could be taken and wherefore, the award passed is without jurisdiction. Accordingly", the learned single Judge held that the writ petition is devoid of merit and dismissed the same. Being aggrieved by the said order of the learned Single Judge dismissing the writ petition dated 14.07.2009, the writ Petitioner has preferred this appeal.

3. We have heard the learned Senior Counsel appearing for the Appellant and the learned Senior Counsel appearing for Respondent No. 4 and the learned Principal Government Advocate appearing for Respondents 1 to 3.

4. The learned Senior Counsel appearing for the Appellant submitted that the acquisition proceedings pertaining to the schedule property are liable to be set aside as no further proceedings could be taken in the acquisition case in view of the stay of dispossession of the Petitioner -Appellant herein from the land in question granted by this Court as per the decisions of the Hon'ble Supreme Court cited in the writ petition itself viz., Government of Tamil Nadu and another Vs. Vasantha Bai, and Municipal Corporation of Delhi Vs. Lichho Devi and others, as stay of dispossession should be interpreted as stay of further proceedings in the case. The learned senior Counsel further submitted that the acquisition proceedings are also vitiated on the ground that under the provisions of Section 7 of the Act, the Collector is required to obtain orders from the State Government for proceeding further with the acquisition subsequent to the final notification, which is mandatory and subsequent ratification by the State will not cure the defect of noncompliance of Section 7 of the Act, as held by the High Court of Bombay in 2009(111) Born. L.R. 16 (Harakchand Misirimal Sonlanki v. The Collector, Land Acquisition, Pune and Ors. 2009(111) Born. L.R. 16 ). Therefore, the acquisition proceedings are liable to be set aside and the said contention could not be urged in the earlier writ petitions as there was no occasion for contending the said ground in view of de-notification of the land in question issued u/s 48(1) of the Act. The learned Senior Counsel further submitted that even though the acquisition proceedings have become final, in view of the above said facts and the question of law that is raised in this appeal, the acquisition proceedings are liable to be set aside as sought for in the writ

petition and the learned Single Judge was not justified in dismissing the writ petition.

5. The learned Counsel appearing for Respondent No. 4 - Society submitted that no contention was taken about the invalidity of the acquisition proceedings for want of sanction by the Collector u/s 7 of the Act and in the earlier writ petitions / appeals filed by the Petitioner/ Appellant herein, where acquisition proceedings had been challenged, there is no averment to that effect as it is a question of fact and the said contention was also not urged before the learned Single Judge. The only contention that was urged before the learned Single Judge was that the award is contrary to the provisions of Section 11A of the Act as it is not passed within two years from the date of the final notification in view of the order of stay of dispossession of the Petitioner Appellant from the land in question, no further proceeding including passing of the award could have been undertaken by the Respondents. Therefore, the Appellant is estopped from raising the said contention in this writ petition as he had failed to raise the same in the earlier proceedings, where acquisition proceedings had been challenged by the Appellant herself. The acquisition proceedings have become final and the award has been passed and after award has been passed, the same was served upon the Appellant and she has participated in the further proceedings by filing claim statement seeking for enhancement of compensation. The stay of dispossession of the Appellant from the land in question would not imply that there is stay of further proceedings as the decisions relied upon by the learned senior Counsel for the Appellant as cited in the writ petition itself would show that in the said decisions, it is held that when stay of dispossession is granted as an interim order, the period during which stay was in operation can also be taken into account while computing the period of two years from the date of the final notification for passing of the award for the purpose of Section 11A of the Act. The learned senior Counsel further submitted that there is no merit in the writ petition and the learned single Judge has rightly dismissed the writ petition and the writ appeal is devoid of merit and the same may be dismissed with costs.

6. The learned Principal Government Advocate argued in support of the order passed by the learned Single Judge and submitted that necessary sanction had been obtained" from the Government and the contention about the invalidity of the acquisition proceedings for want of sanction by the Collector u/s 7 of the Act cannot be raised at this stage as there is no averment in the present writ petition to that effect and the said contention has also not been raised by the Appellant in the earlier proceedings. The learned Single Judge has rightly dismissed the writ petition and the writ appeal is devoid of merit.

7. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinized the material on record.

8. The material on record would clearly show that the schedule property was proposed to be acquired by the notification issued u/s 4(1) of the Act dated 20.03.1986, which was published in the Official Gazette on 24.04.1986 and the

final notification issued u/s 6(1) of the Act dated 04.05.1987, which was published in the Official Gazette on 05.05.1987. The acquisition proceedings were challenged by the Petitioner-Appellant herein herself in the earlier proceedings and acquisition has been upheld by this Court and the Apex Court. Thereafter, notification has been issued u/s 48(1) of the Act exempting the schedule property from the acquisition proceedings. The said notification issued u/s 48(1) of the Act has been set aside by this Court in the writ petition filed by Respondent No. 4 - Society, with liberty to the Appellant to bring all subsequent events to the notice of the State Government for taking an appropriate decision. Thereafter, the Government declined to issue notification u/s 48(1) of the Act exempting the schedule property from the acquisition proceedings and the order declining to denotify the land u/s 48(1) of the Act has also become final. As could be seen from the averments made in the writ petition in W.P. No. 6530/2008, apart from the contention that no award was passed within two years from the date of the final notification (04.05.1987) and even if the award has been passed, the same could not have been passed in view of the stay of dispossession of the Appellant from the land in question, which would tantamount to stay of further proceedings in the acquisition pertaining to the schedule property, no other contention was urged in the writ petition nor argued before the learned Single Judge. The only contention that was urged by the Appellant in the writ petition was with regard to the violation of the provisions of Section 11A of the Act and even if an award has been passed, the same is not passed in accordance with law as it is contrary to the stay of dispossession granted and therefore, unenforceable. The material on record would further show that in view of the averments made in the statement of objections filed by Respondents 3 and 4, it cannot be disputed that award has been passed by the Special Land Acquisition Officer on 28.08.1988 and the same has been approved by the Divisional Commissioner on 20.02.1989 i.e., within two years from the date of final notification (04.05.1987). The Appellant was served with the award as she has appeared and filed claim statement before the Special Land Acquisition Officer on 01.06.1987 as per Annexure "R2" to the objections statement claiming enhancement of compensation and the fact of service of notice of award is admitted in the claim statement, wherein higher compensation is claimed. Though it is submitted that the said claim petition was filed under protest, the fact remains that award has been passed and the same was served upon the Appellant and she has filed claim statement before the Spl. Land Acquisition Officer, seeking for enhancement of compensation. Therefore, the contention of the Appellant - Petitioner that award has not been passed within two years from the date of the final notification (04.05.1987) is liable to be rejected. There is also no merit in the contention of the Appellant - Petitioner that stay of dispossession should be construed as stay of further acquisition proceedings pertaining to the schedule property, in view of the decisions cited by the learned Senior Counsel appearing for the Appellant in the writ petition itself, as it is clear from the said judgments of the Hon"ble Supreme Court that in the said cases, the Apex Court has considered only the question as to whether the

order staying dispossession can be considered as an order staying the acquisition proceedings for the purpose of reckoning the period of two years for passing the award from the date of final notification and has not laid down that stay of dispossession would disable the Respondents from continuing the acquisition proceedings. The interim order granted staying the dispossession of the Appellant from the land in question in the instant case would clearly show that the Respondents were permitted to proceed with the acquisition proceedings and only dispossession of the Appellant r- Petitioner was stayed. The Appellant was served with notice of award as required Under Sections 9 and 12 of the Act and she has appeared and filed claim statement before the Spl. Land Acquisition Officer and has participated in the proceedings and wherefore, it is not open to the Appellant to contend that the Respondents could not have proceeded with the acquisition. In any view of the matter, stay of dispossession of the Appellant from the land in question would not disable the Respondents from passing the award. Admittedly, in the present case, award has been passed within two years from the date of final notification (04.05.1987), even if the period spent during which the acquisition proceedings were stayed is included. There is no merit in the contention of the learned Senior Counsel appearing for the Appellant that the acquisition proceedings are in violation of Sections 7 and 9 of the Act as permission has been obtained from the Government subsequent to the final notification as it is clear from the material on record that this is not the first time the Appellant - Petitioner has approached this Court in W.P. No. 6530/2008 seeking quashing of preliminary and final notifications and at the earliest point in time, she had filed W.P. No. 8958/1987 challenging the notifications issued Under Sections 4(1) and 6(1) of the Act and thereafter, several proceedings have taken place as narrated while stating the facts of the case and in the earlier proceedings, no such contention was taken. There is no averment in the writ petition about the violation of the provisions of Section 7 of the Act and that it is necessary to obtain sanction by the Deputy Commissioner after passing of the final notification for further acquisition proceedings. The question as to whether such permission has been obtained is a pure question of fact and cannot be argued in the absence of any pleading to that effect. Even otherwise, the said contention could have been raised in the earlier proceedings, wherein the acquisition proceedings had been challenged, but, the same has not been raised and wherefore, the Petitioner is estopped from taking such contention for the first time in this writ appeal as the said contention is a mixed question of fact and law and not mere question of law that could be considered, without there being any pleading in that behalf in the writ petition. Even otherwise, it is clear from the material on record that the acquisition proceedings have been upheld in the earlier proceedings of this Court. De-notification of the schedule property u/s 48(1) of the Act has also been set aside, which has also become final and wherefore, the said contention of the learned Senior Counsel appearing for the Appellant that the entire acquisition proceedings are vitiated cannot be accepted. The learned Single Judge, after detailed consideration of the material on record, has held that the writ petition is devoid of merit and has rightly dismissed the

writ petition. Having regard to the above said reasoning, we find that the order passed by the learned Single Judge is justified and does not suffer from any error or illegality as to call for interference in this intra Court appeal.

Accordingly, the Writ Appeal is dismissed.