
(2012) 12 MP CK 0108
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3101 of 2006

Smt. Geeta Bai and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 11(1), 11A, 17, 4

Citation : (2013) 2 MPHT 43 : (2013) 2 MPLJ 557

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Raveesh Agrawal and Mr. K.S. Jha, for the Appellant; Vivek Agrawal, Govt. Advocate for the Respondent Nos. 1, 2 and 3, Mr. Sanjay Agrawal, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—Besides assailing the proposed award dated 31-12-2005, by Collector (Land Acquisition), Bhopal, in Regular Land Acquisition Case No. 1/A/82/95-96, petitioners also call in question the entire land acquisition proceedings initiated vide Notification u/s 4(1) of the Land Acquisition Act, 1894, published in the MP, Rajpatra, dated 24-11-95. Notification u/s 6 of the Act was published in M.P. Rajpatra on 15-5-1998 (as per order passed in W.P. No. 4176/1998 deemed to have been published on 31-3-1998). It is not in dispute that-

- (i) The petitioners are members of Sarvodaya Housing Co-operative Society.
- (ii) Krishi Upaj Mandi Samiti, Bhopal vide its resolution dated 22-7-1987 sought 126.27 acres of land situated at Berasia Road and Karod Kalan, of which 103.96 acres was acquired on 30-11-1994.
- (iii) Vide resolution dated 5-10-1995 acquired 28.71 acres of land which included the land belonging to society of which the petitioners are member.
- (iv) Notification u/s 4(1) of Act, 1894 issued on 3-11-1995 was challenged by

some of the members of Society, viz., Vijay Kumar and others Vs. State of M.P. and others, W.P. No. 3195/1994; Ranjit Singh Thakur, vide Writ Petition No. 416/1996 and by M.S. Lodhi Commercial Company, vide Writ Petition No. 487/1996.

(v) That W.P. No. 416/1996 and W.P. No. 487/1996 was decided on 24-4-1997, in the following terms :-

13. However, no challenge has been made before us regarding the notification u/s 4(1) of the Act. Therefore, we do not want to touch that part. The challenge to the notification is with regard to invoking of urgency clause and dispensing with the objection u/s 5-A of the Act and that has been succeeded as mentioned above. We, therefore, quash the notification dated 3-11-95 to limited extent of invoking urgency clause dispensing with Section 5-A of the Act and direct that objection u/s 5-A of the Act shall be heard by the Land Acquisition Officer and then he shall pass appropriate order in accordance with law. The Government shall then proceed further in accordance with the provision of the Act.

14. Consequently, we allow both these petitions in part as indicated above. The Land Acquisition Officer shall hear the objections of all concerned and decide the matter as far as possible within three months from receipt of copy of the order. Objections may be filed before the Land Acquisition Officer by petitioners and notices shall also be issued to the affected persons for filing objections and thereafter, the Land Acquisition Officer shall decide the matter as far as possible within three months. A copy of this order may be sent directly to the Land Acquisition Officer.

(vi) After rejecting the objection u/s 5-A of the Act by the Land Acquisition Officer vide his order dated 6-1-1998, order u/s 6 was passed by Collector on 31-3-1998, which was published in the Gazette on 15-5-1998 (as per order in W.P. No. 4176/1998 deemed to have been published on 31-3-1998).

(vii) Some of the petitioners in this petition challenged the notification under Sections 5 and 6 vide W.P. No. 4176/1998 on the ground that notification u/s 6 was published beyond one year in contravention to the provisions contained in first proviso to sub-section (1) of Section 6 of the Act. That the acquisition is not for the avowed public purpose. Choice of land is not appropriate. That the Minister concern had ordered for location of Mandi at different place. That the acquisition is colourable exercise of power and suffers from malafide.

(viii) That W.P. No. 4176/1998 was dismissed on 10-4-2003. Observing in Paragraph 9 therein that "...The precise question is whether the date of the order is material or the date of publication in Official Gazette u/s 6 is determinative of the period of limitation under Second Part of the first proviso of sub-section (1) of Section 6 of the Act. In other words, whether the other steps under sub-section (2) of Section 6 required to be taken within a period of 1 year in addition to the order being passed to issue the declaration as provided under sub-section (1) of Section 6 of the Act". It was accordingly held :-

10. Sub-section (1) of Section 6 of the Act does not deal with the publication. The word "published" which is mentioned in second part of first proviso to sub-section (1) of Section 6 of the Act is with respect to publication of notification u/s 4. The publication of declaration u/s 6 is dealt with under sub-section (2) of Section 6 of the Act, in my opinion. What is necessary is that appropriate Govt. to pass an order within a period of one year. The Apex Court has held that where the Courts has interdicted and has quashed the declaration u/s 5 and has directed enquiry u/s 5-A the period of one year has to be computed from the date of the order passed by the Court. When this Court on 24-4-97 as per order, Rule 4 has quashed the part of the notification u/s 4 dispensing with the enquiry u/s 5-A by the necessary implication it follows that declaration u/s 6 was set at naught as declaration u/s 6 of the Act is required to be issued only after completion of the enquiry u/s 5-A of the Act....

12. It is clear from above that passing of the order to issue declaration u/s 6 (1) is relevant for determination of the period of limitation. Thus, the first submission raised by learned Counsel for petitioner for computing the period of limitation with reference to the date of publication of declaration u/s 6 in the Official Gazette is liable to be rejected.

13. The other submission raised by learned Sr. Counsel appearing for the petitioner is that acquisition is colourable exercise and is not for the avowed public purpose and is malafide. The submission is not acceptable for various reasons. Firstly, not only the land in question is being acquired but in addition some more land has already been acquired finally and with respect to that award has also been passed. Compensation was deposited long back and necessity of establishing new market yard is obviously a public purpose. The mentioning in P-12 to the effect that land abutting road be acquired so that Market Committee is able to obtain better land which are available to the other private traders cannot make the acquisition malafide one; that is only way of expression by the Incharge Officer of the Mandi, On facts, in my opinion, acquisition cannot become malafide by the mentioning of said words in P-12 which is to ensure that Mandi obtains appropriate better and proper place. The suggestion of the Revenue Minister P-20 was not accepted by the appropriate Govt. part of land has been acquired and it is not open to the petitioner once the acquisition is for the public purpose to point out some other piece of land ought to have been acquired the land is shown to be suitable for the purpose it has been acquired and I find that acquisition is not colourable or malafide and the submission raised in that regard is rejected.

14. No other submission were raised.

15. Resultantly, I find no merit in the petition. Writ petition is dismissed. No order as to costs.

(ix) Appeal (LPA No. 267/2003) preferred against the order passed in W.P. No. 4176/1998 was dismissed on 1-9-2005. Thus, order in writ petition attained

finality.

2. Again the petitioners besides seeking quashment of notification under Sections 4(1) and 6 of Act also seeks quashment of proposed award dated 31-12-2005.

3. So far as challenge to the notification under Sections 4(1) and 6 of the Act, the same having been upheld cannot be reagitated again. [Please see : S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc., and Indian Council for Enviro-Legal Action Vs. Union of India (UOI) and Others,

4. Challenge to the award dated 31-12-2000 is also on the ground that it is merely a proposed award and is not a final award since it required approval of the Commissioner which has to be a prior approval as per first proviso to Section 11(1) of the Act. It is urged that no such approval has been accorded to the impugned proposed award, in absence thereof, there is no award capable of being acted upon and the entire acquisition proceedings stands lapsed in view of the provision contained in Section 11-A of 1894 Act.

5. Section 11-A of the Act provides for--

11-A. 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 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 (68 of 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. In State of U.P. and Others Vs. Rajiv Gupta and Another, it is held in respect of the scope of Section 11-A that:-

5. Its bare reading indicates and emphasises the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration. It is common knowledge that after declaration was published, years used to roll by to make the award and the owners of the lands were put to great hardship. Parliament intended to relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of Section 4(1) notification. It is, therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation u/s 11-A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from the date of the publication of the declaration unless the proviso

is attracted, if no award is made in the meantime, in the eye of law the proceedings initiated u/s 4 (1) of the Act culminated in the declaration made u/s 6 shall stand lapsed and no proceedings, in the eye of law, thereafter, do exist, to take further action.

7. In Lok Sewa Shikshan Mandal Vs. A.R. Mundhada Charitable Trust and Others, , placing reliance in M. Ramalinga Thevar Vs. State of Tamil Nadu and Others, , it is observed that :-

18....as per Explanation to Section 11-A of the Act, the period of exclusion from time is the period during which any action or proceedings" to be taken in pursuance of the said declaration is stayed. Undoubtedly, one of the actions contemplated pursuant to the declaration u/s 6 is taking possession of the land though, such action is a post award step in normal circumstances. Nonetheless, it is one of the actions to be adopted as a follow-up measure pursuant to the declaration envisaged by Section 6 of the Act. Observing that the consequence mentioned in Section 11-A is a self-operating statutory process, the Court held that it can operate only when the conditions specified therein conjoin together. The consequences would step in only when there is fusion of all the conditions stipulated therein. If there is any stay regarding any of the actions being taken pursuant to the declaration then the consequence of lapse would not happen.

8. In the case at hand as apparent from the facts on record that after the publication of notification u/s 6 on 15-5-1998 (to be treated as 31-3-1998) there was a stay in two spells; from 18-9-1998 to 10-4-2003 (In W.P. No. 4176/1998), i.e., 4 years 6 months 23 days, and, from 7-7-2003 to 1-9-2005 (In LPA No. 267/2003), i.e., 2 years 1 month and 24 days. Thus, there was a stay of 6 years 8 months and 16 days. The award was due on 31-3-2000. With the period of stay being excluded the award ought to have been passed on or before 18-1-2007 Collector passed award on 31-12-2005.

9. What would be the consequence of the stay ?

10. In Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, it has been held :-

8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceeding referred to in the Explanation to actions 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, the 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 Section 11-A is intended to limit the benefit conferred on a land holder whose land is acquired after the declaration u/s 6 is made to 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 land-holder. In order to get the benefit of the said provision what is required, is that the land-holder 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. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment.

11. In Government of Tamil Nadu and another Vs. Vasantha Bai,

6. Question is whether stay of dispossession is a stay of proceedings under the Act so as to disable the Land Acquisition Officer to make the award ? In Y.N Nendoliya Vs. State of Gujarat, the facts were that declaration u/s 6 was questioned by filing a writ petition under Article 226. Pending its disposal stay of dispossession from the land was granted. In the meanwhile, when award proceedings were being taken, objection was raised that since award was not made within two years, the officer had no jurisdiction to pass the award. When it was overruled and an award was made, another writ petition was filed questioning the award. The Gujarat High Court held that Explanation to Section 11-A was not confined to staying of the award to be made; and since the language was widely worded it covered within its sweep, the entire period during which any action or proceeding taken in pursuance of the declaration u/s 6 or dispossession is stayed by a Competent Court. When the correctness thereof was challenged, this Court held that "in order to get the benefit of the said provision what is required is that the land-holder 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 land-holders 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". This Court upheld the view of the High Court as correct.

12. In Municipal Corporation of Delhi Vs. Lichho Devi and others, Supreme Court observed :-

3. The attention of the High Court had been drawn to the stay order dated 25-4-1985, whereby during the pendency of the writ petition, the dispossession of the petitioners had been stayed by the High Court to urge that the period during which the stay order was in operation had to be excluded for computing the prescribed period u/s 11-A of the Act. According to the High Court, however, the order dated 25-4-1985 concerned only the stay of dispossession of the writ petitioners and it could not, in any way be interpreted to imply stay of acquisition proceedings. The approach of the High Court is erroneous. This question is no longer res integra. In Government of Tamil Nadu and another Vs. Vasantha Bai, a Bench of this Court has held that the stay order of the type that was granted in the instant case, tantamounts to stay of further proceedings being taken and, therefore, the entire period during which the stay order was in operation was to

be excluded while computing the period of two years prescribed for making an award u/s 11-A of the Act. The view taken by the High Court, is, therefore, not sustainable.

13. The record of acquisition produced at the time of hearing reveals that since the award was for more than Twenty five lacs, the same as per Government of Madhya Pradesh, Department of Revenue's Notification No. F-84-90/ -9, dated 15th February, 1999 was forwarded to the Commissioner, Bhopal on 3-1-2006. Commissioner, Bhopal Division, Bhopal in exercise of the powers conferred on him vide Government of Madhya Pradesh Department of Revenue's Notification No. F-12-84-90- -9, dated 26-3-2000 accorded his approval on 17-1 -2006, in the following terms:-

14. As apparent, the award and the approval thereof by the Competent Authority, i.e., the Commissioner, Bhopal Division, Bhopal being before 18-1-2007, i.e., much before the period within which the award was to be made and approval sought (after excluding the period of stay), cannot therefore, be held that the statutory provisions contained u/s 11 and Section 11-A of the Act of 1894 have been violated.

15. For these reasons, no interference is caused. In the result petition fails and is hereby dismissed.

No costs.