
(2008) 08 MAD CK 0017
In the Madras High Court
Case No : Writ Appeal No.4093 of 2004

State of Tamil Nadu	Vs	APPELLANT
Pramila Rajaram and Others		RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11A, 55(1), 6

Citation : (2008) 08 MAD CK 0017

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Full Bench

Advocate : K. Balasubramanian, Special Government Pleader, for the Appellant; Ratna Sabapathy (R4 to 6) and Mr. K. Chelladurai (R7-TNHB), for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appeal is filed by the Government of Tamilnadu represented by its Secretary to Government, Housing and

Urban Development Department and the Special Tahsildar, Land Acquisition, Neighbourhood Scheme, Ayyan Thirumaligam Road, Salem,

questioning the order of this Court dated 29.01.2004 made in writ petition No.19284 of 1996 wherein and whereby the entire land acquisition

proceedings initiated in G.O. Ms. No.987 Housing and Urban Development Department dated 01.11.1982 has been set aside on the ground that

the award passed on 10.12.1996 was beyond the period prescribed u/s 11A of the Land Acquisition Act.

2. The facts are : The proceedings for acquisition of land for Housing scheme was initiated by the Government in G.O. Ms. No.987 Housing and

Urban Development Department dated 01.11.1982, and published in the Government Gazette on 24.11.1982, followed by declaration u/s 6 of

the Act in G.O. Ms. No.148 dated 02.02.1985 published in the Government Gazette on 20.02.1985. Aggrieved by the proceedings, the respondent herein filed writ petition No.3646 of 1987 and obtained an interim order of stay of all further proceedings. The writ petition was finally allowed on 24.10.1991 and the appeal filed by the appellant herein in writ appeal No.406 of 1994 came to be allowed by the Division Bench of this Court by its order dated 29.08.1996. Subsequently, the award came to be passed on 10.12.1996. Thereafter, the petitioner filed the present writ petition on 24.12.1996 seeking for issuance of writ of certiorari to call for the records relating to the 4(1) notification in G.O. Ms. No.987 Housing and Urban Development Department dated 01.11.1982, and the declaration u/s 6 of the Act in G.O. Ms. No.148 dated 02.02.1985 and quash the same as lapsed in so far as it related to the land belonging to the respondent.

3. It was contended before the writ Court that the local publication of the declaration u/s 6 of the Land Acquisition Act was made on 22.05.1985 and therefore, in terms of section 11A of the Land Acquisition Act, the award should have been passed within a period of two years from the said date and if no award is made within that period, the entire proceedings for the acquisition of land shall lapse. In the present case, because of the pendency of the writ petition and writ appeal, the period between 08.04.1987 the date on which the stay was granted in the writ petition, and 29.08.1996, the date on which the writ appeal was allowed is to be excluded in calculating the period of limitation. As on the date when the order of stay was passed, the appellant was only left with only 43 days to pass an award. The award ought to have been passed on or before 12.10.1996. However, the award has been passed on 10.12.1996 and hence is hit by section 11A of the Act.

4. The said contention has been countered by the appellant herein that the period of limitation has to be calculated only from 01.11.1996, the date of receipt of the copy of the order made in the writ appeal, and if so calculated, the award passed on 10.12.1996 is well within the period of limitation. The writ Court took the view that the date of receipt of the order cannot be taken and it is only the date on which the order came to be passed in the writ appeal to be taken for reckoning the period of limitation. On that ground the writ Court has come to the conclusion that u/s 11A

of the Act the entire proceedings is lapsed because the award has been passed after the period of limitation prescribed u/s 11A of the Act. The correctness of the same is canvassed before this Court.

5. Learned counsel for the appellant contended that the award has been passed on 10.12.1996. As per the judgment of the Supreme Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , the award is saved. Further, the Supreme Court, in several number of cases held that after passing of the award, the land owner cannot challenge the award proceedings. On that ground and having regard to the public interest involved in this case, he argued that the order of the learned single Judge has to be set aside. Learned counsel for the respondent argued for sustaining the order of the learned single Judge as the period of limitation prescribed u/s 11A of the Act stares on the award.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The issue as to which of the dates # the date of passing of the order or the date of receipt of a copy of the order # has to be taken into consideration, has been decided by the Supreme Court in the case of N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, , wherein it was held that running of limitation should be counted from the date of the order of the Court received by the Land Acquisition Officer. The said judgment was rendered by the apex Court on 17.01.1996. The ratio as laid down by the Supreme Court was the law of the land when the award was passed on 10.12.1996. Hence, the reasoning stated by the Writ Court is not in accordance with the ratio laid down by the Supreme Court. Of-course, it is true that the said decision has been over-ruled by the Constitution Bench of the Supreme Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . The said judgment was rendered on 13.03.2002. Even in the judgment accepting the contention of the State, the Supreme Court has held that the said judgment shall operate prospectively to the extent that the cases where award has been passed and the compensation had been paid shall not be reopened by applying the ratio of the said judgment. In this case, the award has been passed on 10.02.1996 and the amount has been deposited in civil deposit well prior to the rendering of the

judgment.

8. We are of the view that the acquisition proceedings is totally saved in view of the observations made in the judgment in the case of

Padmasundara Rao cited supra and the prospectivity of the said judgment.

9. The apex Court, in the case of State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250 , has held as follows :

45. There remains the last ground assigned by the High Court in support of its decision. The High Court has held that the non-compliance with

sub-rules (b) and (c) of Rule 3 of the Rules made by the Government of Tamil Nadu pursuant to Section 55(1) of the Land Acquisition Act vitiates

the report made u/s 5-A and consequently the declarations made u/s 6. The said sub-rules provide that on receipt of objections u/s 5-A, the

Collector shall fix a date of hearing to the objections, and give notice of the same to the objector as well as to the department. It is open to the

department to file a statement by way of answer to the objections filed by the land-owners. The submission of the writ petitioners was that in a

given case it may well happen that in the light of the objections submitted by the land-owners, the department concerned may decide to drop the

acquisition. Since no such opportunity was given to the department concerned herein, it could not file its statement by way of answer to their

objections. This is said to be the prejudice. We do not think it necessary to go into the merits of this submission on account of the laches on the

part of the writ petitioners. As stated above, the declaration u/s 6 was made sometime in the year 1978 and the writ petitioners chose to approach

the Court only in the years 1982-83. Had they raised this objection at the proper time and if it were found to be true and acceptable, opportunity

could have been given to the Government to comply with the said requirement. Having kept quiet for a number of years, the petitioners cannot

raise this contention in writ petitions filed at a stage when the awards were about to be passed.

10. In the case of Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR"s and

others, the above proposition of law has been reiterated in paragraph 5 of the judgment:

5. Obviously, after consideration of all the objections and rejection thereof,

declaration u/s 6 was published. As stated earlier, the award was made and symbolic possession was taken on 17-12-1988. Under the circumstances, the land stood vested in the State free from all encumbrances. After the proceedings had become final, the writ petition came to be filed on 19-5-1989. The mere fact that due to lapse of time no action was taken after the filing of the writ petition, does not give ground for interference. The further fact that public purpose must have been served by constructing the quarters for the officers elsewhere, is without any substance. The mere fact that on account of the pending litigation, no construction was made, is no ground to say that notification u/s 4(1) was vitiated by any error of law; equally, increase in the prices of the lands is no ground.

11. In the case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , the apex

Court has held in

29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings

have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of

the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic

consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is

a material factor to be taken into consideration before exercising the power under Article 226.

12. The apex Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , has held as follows :

In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder.....

13. Similar is the view in an earlier decision of this Court in the case of Municipal Corpn. of Greater Bombay v. Industrial Development Investment

(P) Ltd., (referred to supra).

14. In the case of Tej Kaur and Others, etc. Vs. State of Punjab and Others, , the Supreme Court observed as under:

Moreover, Section 6 declaration was made on 18-3-1992 and the award was passed on 15-3-1994. The appellants filed the writ petition only on

12-4-1994. In spite of the Section 6 declaration having been made on 18-3-1992, the appellants allowed the acquisition proceedings to go on

until the award was passed. This fact clearly indicates that the appellants did not have a genuine grievance against Section 5-A inquiry held by the

Collector. Therefore, we are not inclined to interfere with the judgment on the grounds now advanced by the appellants.

15. Further a Division bench of this Court in the case of Ramalingam and Others Vs. The State of Tamil Nadu and Others, , wherein the writ

petition has been filed on 28.11.1996 against the acquisition proceedings after passing of the award on 07.11.1996 and questioning the same, as in

the present case, on the ground of limitation u/s 11A of the Act, has held as follows :

It has been repeatedly held by the Supreme Court that no writ petition should be entertained after the award under the Land Acquisition Act has

been passed vide Tej Kaur and Others, etc. Vs. State of Punjab and Others, ; The Municipal Council, Ahmednagar and Another Vs. Shah Hyder

Beig and Others, , Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR"s and

others, ; State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250 .

15. Yet another judgment is in the case of S.Harshavardhan v. State of Tamilnadu, 2005 (3) CTC 691, in which the Division bench, has held as

follows :

It has been repeatedly held by the Supreme Court vide Tej Kaur and Others, etc. Vs. State of Punjab and Others, that writ petition challenging the

land acquisition proceedings should not be entertained after the award has been passed. In that case, the award was passed on 15.03.1994

whereas the writ petition was filed on 12.04.1994, i.e., after the award was given. Hence, the writ petition was dismissed as belated. Similarly in

The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , the Supreme Court observed vide paragraph 17 :

In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder.

The Supreme Court also observed in that decision that this has been the consistent view of the Court, e.g., in C. Padma and Others Vs. Dy.

Secretary to the Govt. of T.N. and Others, , Municipal Corporation of Greater

Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.,

and others, , etc. Hence, without going into the merits of the case, we are of the opinion that the writ petition was rightly dismissed on the ground of

laches.

16. For the foregoing discussion, and in the light of the judgment of the Supreme Court referred to above, we are of the considered view that the

order impugned in the writ appeal cannot be sustained and the same is set aside. The writ appeal is allowed and the writ petition is dismissed. No

costs.