

(2000) 09 MAD CK 0047
In the Madras High Court
Case No : W.A. No. 347 of 2000

The State of Tamil Nadu and Another

APPELLANT

Vs

K.K. Palanisamy

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

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

Citation : (2000) 09 MAD CK 0047

Hon'ble Judges : V.S. Sirpurkar, J;V. Kanagaraj, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; T. Murugamanickam and D. Sivakumar for Sole Respondent, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—Appellant herein, the State of Tamil Nadu, challenges the order of the learned single Judge whereby the writ petition filed by the original writ Petitioner and Respondent herein, came to be allowed and the notifications under Sections 4 and 6 as also the award passed in pursuance thereto came to be set aside.

2. The only ground which was raised before the learned single Judge in the writ petition was that the award was passed after the period of limitation envisaged in Section 11A of the Land Acquisition Act. It was pointed out in the petition that Section 6 notification was published in the Tamil Nadu Government Gazette on 23.6.1993 and its subsequent publication was in "Makkal Kural" and "Vetrimalai" on 7.7.1993 and, ultimately, it was publicized in the locality on 8.10.1993 whereas the award was passed on 5.10.1995. It was urged that the period of limitation u/s 11A would commence not from the date of publication in the locality or the date of publication in the two local newspapers, but, from the publication in the Government Gazette and that was on 26.3.1993. If that was so, then the award was clearly passed after two years of period as provided in Section 11A. The learned single Judge took the view that the award was

belatedly passed. For that purpose, the learned single Judge also accepted the contention that the period of limitation would start from the date when Section 6 notification was published in the Government Gazette in terms of Section 6(2) of the Act. The learned single Judge seems to have relied upon a judgment of the Apex Court reported in *Eugenio Misquita and Others Vs. State of Goa and Others*,) for holding that the period of limitation for the purposes of Section 11A would start from the date of Gazette publication of Section 6 notification and not from the subsequent publications as required by the amended provision of Section 6. We do not agree with the learned Judge.

According to us, the Apex Court has very specifically held that for the purposes of Section 11A and the limitation contemplated thereunder, the starting point would not be the publication of Section 6 notification in the Government Gazette but its subsequent publications.

3. In fact, before going to that decision it would be proper to note the language of Section 6 and the amendment to the main section. Section 6(2) is as under:

(Every declaration) shall be published in the Official Gazette (and in two daily newspapers circulating in the locality in which the land is situate 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 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.

The main bracketed portion has been added by way of an amendment. The amendment suggests that in addition to the publication in the Official Gazette, there would also be additional publication in two daily newspapers, as also in the locality at convenient places. The emphasised words would suggest that for the purposes of subsequent provisions, the last of the dates of such publication, meaning the publication in the newspaper, or, at convenient place in the locality would be deemed to be the date of publication of the declaration. Precisely, these words namely "date of publication of the declaration" are found to have been used in Section 11A which runs as under:

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 proceedings for the acquisition of the land shall lapse.

A plain reading of Section 11 is to the effect that the period of two years contemplated in Section 11A would start from the date of the publication of the declaration and Section 6(2) specifically suggests that such date of publication of the declaration would mean the last of the date of such publication and the giving of such public notice as contemplated in Section 6(2). Therefore, from a

plain reading of the provision, it is clear that the limitation would start not from the publication in the Official Gazette but subsequently when the notification is published in the two newspapers or the substance of which is published in the locality as the case may be.

4. Now, going back to the reported decision, paragraph 9 would be enough to allay any doubt: Para 9 is as under:

Let us examine whether the Learned Counsel is right in his submission. As seen from the above extracts of relevant provisions, which Section 4(1) commands publication of notification under that section, Section 6 speaks of the declaration being made to the effect that any particular land is needed for public purpose or for a company. There are judicial decisions that have interpreted the word "made" to mean "published" for the reasons stated in those decisions. Therefore, strictly speaking, but for those judicial decisions, the date of making of the declaration u/s 6(1) will be the relevant date for reckoning the period of limitation. However, in the interest of the general public, the Courts have taken the view that the declaration made will stand accomplished only when it is published. This publication has, therefore, nothing to do with the publication referred to in Section 6(2) of the Act which is for a different purpose, inter alia, for reckoning the limitation prescribed u/s 11-A of the Act. This construction is supported by the language employed in Section 6(2) of the Act. In particular, the word "hereinafter" used in Section 6(2) will amply prove that the last of the series of the publication referred to u/s 6(2) is relevant for the purposes coming thereafter, namely, for making award u/s 11-A. The language employed in second proviso to Section 6(1) also supports this construction. Therefore, the contention of Learned Counsel cannot be accepted.

5. In the similar manner, the Apex Court has further held in para 11, sub para 3, in the following words:

The last date u/s 6(2) shall be the date for the purposes hereinafter referred to would be not for computing the period of three years prescribed in Clause (i) of the proviso to Section 6(1) of the Act as it was already done, but purposes to be followed hereinafter. Otherwise language would have been hereinbefore done. Sub-section (2) as such did not prescribe any limitation within which the declaration u/s 6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award u/s 11 or in computation of the period prescribed in Section 11-A. The publication of the declaration in two daily newspapers having circulation in the locality one of which is in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is a procedural part. It appears that these publications are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose u/s 6(1) and also to provide limitation to make award Section 11 by the Collector. In other words, the limitation prescribed u/s 11A is for the purpose of making the award and if the Collector fails to do so, the entire proceeds under Sections 4(1) and 6(1) shall stand

lapsed. If this consistent policy of the Act is understood giving teeth to the operational efficacy to the scheme of the Act and public purpose the Act seeks to serve, we are of the considered view that publication in the Official Gazette already made under Clause (i) of proviso to Sub-section (1) of Section 6 is complete, as soon as the declaration u/s 6(1) was published in the Official Gazette. That will be the date for the purpose of computation of three years" period from the last of the dates of the publication of the notification u/s (1).

6. From a plain reading of the portions, it will be clear that the Apex Court had specifically observed that the limitation for the purposes of Section 11A would start not from the date of publication of Section 6 notification in the Official Gazette, but, as indicated in Section 6(2) i.e. from the last date of the publication either in the newspapers or in the locality. We are unable to agree with the view expressed by the learned single Judge in view of this specific language in Section 6(2) as also the above quoted observation in the Supreme Court judgment. No other question was argued before us or raised before the learned Single Judge. The writ appeal thus stands allowed. The order of the learned single judge is set aside and the writ petition is directed to be dismissed but without any orders as to costs.