
(2009) 09 AP CK 0023

In the Andhra Pradesh High Court

Case No : W.A. No's. 1796 and 1947 of 1998

Visakhapatnam Urban Development Authority and Another

APPELLANT

Vs

Smt. Rani Kamala Devi and Another

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Estates Abolition Act — Section 80

Land Acquisition Act, 1894 — Section 10, 11, 11A, 16, 17

Citation : (2010) 1 ALT 168

Hon'ble Judges : T. Meena Kumari, J;P.V. Sanjay Kumar, J

Bench : Division Bench

Advocate : V. Preeti Reddy, in W.A. No. 1796 of 98 and P. Sri Raghuram, for Aka Venkata Ramana, in W.A. No. 1947 of 98, for the Appellant; V. Preeti Reddy in W.A. No. 1947 of 98 and P. Sri Raghuram, for Aka Venkata Ramana in W.A. No. 1796 of 98, for the Respondent

Final Decision : Dismissed

Judgement

T. Meena Kumari, J.—Heard both the counsel.

2. Since both the appeals arise out of the same judgment passed by the learned single Judge in W.P. No. 2151 of 1988 dated 26.08.1998, they are being disposed of by this common judgment.

3. By the impugned order, the learned single Judge quashed the award passed by the Land Acquisition Officer u/s 11 of The Land Acquisition Act, 1894, (for short "the Act") on the ground that it was not passed within two years from the date of publication of the declaration or at least within two years from the date of commencement of the Land Acquisition (Amendment) Act, 1984, u/s 11-A of the Act and directed for issuance of the fresh Section 4(1) notification and further directed that the date of notification shall be taken as 24.9.1986, since on the said date, the earlier acquisition proceedings stood lapsed by operation of law.

4. Aggrieved by the quashing of the award, the respondents in the writ petition -

the Visakhapatnam Urban Development Authority, Visakhapatnam (for short "the VUDA") and the Special Deputy Collector, Land Acquisition Authority, Urban Development Authority, Visakhapatnam, filed writ appeal in W.A. No. 1796 of 1998. The writ petitioners also aggrieved by the order of the learned single Judge in directing that the date of issuance of the fresh notification u/s 4(1) shall be taken as 24.9.1986, filed the other writ appeal in W.A.No.1947 of 1998.

5. The learned Counsel appearing for the appellants contended that the learned single Judge is not justified in quashing the award on the ground that it was not passed within two years from the date of declaration or within two years from the commencement of the Land Acquisition (Amendment) Act, 1984 u/s 11-A of the Act. He contended that Section 4(1) notification was published on 24.10.1968 and draft declaration u/s 6 of the Act was published on 10.9.1970 and the notices under Sections 9(3) and 10 were issued on 12.5.1980 and on 11.2.1988 the writ petitioners were served with notices of the award and subsequently the writ petitioners themselves instituted writ petition in W.P. No. 2454 of 1980 and there was stay and it was finally disposed of on 3.3.1987, However, he submitted that though the said writ petition pertains to proceedings pending before the Commissioner, Survey, Settlement and Land Records, Hyderabad, by mistake, the stay was construed as the stay in the land acquisition proceedings. Therefore, the delay cannot be taken as intentional. If the period of stay and the pendency of the writ proceedings, is excluded the award is perfectly within limitation. He submitted that in the present case, the possession of the land was surrendered voluntarily and it was taken on 31.3.1969 and hence it is vested in the Government. He submitted that the urgency Clause was not invoked in view of the judgment in W.P. No. 778/1996, as the property involved is house sites. He contended that the learned single Judge has not considered these factors. Therefore, he contended that the order of the learned single Judge is not sustainable. Relying on the judgments reported in Satendra Prasad Jain and Others Vs. State of U.P. and Others, , Awadh Bihari and Other Vs. State of Bihar and others, Govt. of A.P. and another Vs. Mohd. Moinuddin Hussan and others, and Jaladi Sita Rama Koteswara Rao v. Govt. of A.P. 1998 (3) An.W.R. 511 he contended that even if the award is passed after two years, the same will not lapse. With these contentions, he sought to set aside the impugned order.

6. On the other hand, the learned Counsel appearing for the writ petitions/appellants in W.A. No. 1947/1998 supporting the impugned judgment to the extent of quashing the award, contended that the learned single Judge is not justified in fixing the date of Section 4(1) notification, as 24.9.1986 and as there was delay, it ought to have fixed as the date of judgment delivered in writ petition i.e., 26.8.1998. He also contended that there was no stay of the land acquisition proceedings. With these averments, he sought to dispose of the writ appeal.

7. Before appreciating the rival contentions, it is first necessary to note few

admitted facts. There is no dispute that the writ petitioners claimed to be the owners of the land to an extent of 20,364 sq. yards of land in Block No. 33 of Waltair Ward, Visakhapatnam and the notification u/s 4(1) of the Act, for acquisition of said land for public purpose, was published on 24.10.1968 and the possession was voluntarily surrendered on 31.3.1969 and the draft declaration u/s 6 of the Act was published on 10.9.1970 and after issuing notices under Sections 9(3) and 10 of the Act, the award notices were served on 11.2.1988 and the awards were passed on 12.1.1988 and 16.1.1988.

8. At this juncture it is necessary to note Section 11-A of the Act for better appreciation. The said Section is inserted by way of Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) and it came into force on 24.9.1984. The said provision is extracted as under:

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 publication of the declaration and if no award is made within that period, the entire proceedings 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, 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 proceedings to be taken in pursuance of the said declaration is stayed by an order of the court, shall be excluded.

9. From a reading of the above provision it is clear that the award u/s 11 of the Act shall be passed within a period of two years from the date of publication of the declaration and if no award is passed within the time stipulated, the entire acquisition proceedings would lapse. The above provision was inserted by way of Amendment Act 68 of 1984 and it has come into force on 24.9.1984. Therefore, as per the proviso to the above section, it is made clear that if the declaration is made prior to the commencement of Amendment Act 68 of 1984, the award shall be made within a period of two years from such commencement. Hence, as per the proviso to Section 11-A, in the present case as the declaration was made prior to amendment, the award shall be passed on or before 24.9.1986 i.e., within two years from 24.9.1984. But in the present case the award was passed in January, 1988. Therefore, as per the said section, the award stood lapsed.

10. The contention of the Counsel for the appellants - VUDA is that the writ petitioners filed a writ petition and there was stay and after disposal of the writ proceedings, in the year 1987 the acquisition proceedings continued further. It is to be noticed that the writ petition filed by the writ petitioners in W.P. No. 2454/1980 is relating to the inquiry u/s 80 of the Estates Abolition Act and it does not pertain to land acquisition proceedings. As per the Explanation to Section 11-A, only the period during which stay has been granted pertaining to land acquisition proceedings alone, is to be excluded from computing the period

of two years prescribed under the said provision. Therefore, the VUDA is not justified in seeking this court to take into consideration the period during which the writ proceedings were pending. However, the learned Counsel for the appellants - VUDA submitted that it was under mistaken impression that the stay was construed as stay in the land acquisition proceedings.

11. The next contention of the appellants - VUDA relying on the judgments referred to above and particularly referring to the judgment of the learned single Judge in *Jaladi Sita Rama Koteswara Rao v. Government of A.P.* (4 supra) is that the land was taken possession and therefore, urgency Clause was not invoked and, further as per the directions in W.P. No. 778/1966 as the land pertains to house sites, the urgency Clause could not be invoked. Therefore, if the award is not passed within the period prescribed u/s 11-A of the Act, the award shall not lapse.

12. From a perusal of the facts in the judgments relied on by the Counsel for the appellants, except the judgment cited 4 supra, it could be seen that in all those cases, the urgency Clause u/s 17 of the Act was invoked and possession was taken. In those circumstances, it was held that Section 11-A has no application to a case where action u/s 17(1) is taken and hence the proceedings would not lapse.

13. In the present case, the urgency Clause was not invoked and, therefore, the above judgments are distinguishable to the facts of the present case and cannot be made applicable. A three judge bench of the Apex Court in *Satendra Prasad Jain v. State of U.P.* (1 supra) while holding that if the acquisition of land is made by invoking urgency Clause u/s 17, lands vest in the Government and the provisions u/s 11-A, regarding passing of the award within two years, is not applicable. However, the Apex Court has distinguished the factual position with regard to taking possession by invoking urgency Clause u/s 17 and the cases where the possession was taken without invoking the said provision. The relevant observation of the Apex Court at paragraph No. 14 of the judgment is extracted as under for better appreciation:

Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the tide to it. That is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owners and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the tide to the land which is vested in the

Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutory vested in the Government can revert to the owner.

(Emphasis added)

14. From the above judgment it is clear that the Apex Court has held in unequivocal terms that in the usual course if the land is not acquired by invoking the urgency Clause u/s 17 of the Act and if the Government fails to pass award within two years of the publication of the declaration, the land has still not vested in the Government and its title remains with the owner and the acquisition proceedings are still pending and by virtue of the provisions of Section 11-A, they shall lapse.

15. At the cost of repetition, it is to be noticed that the land was not acquired by invoking the urgency Clause u/s 17. Therefore, by necessary implication, the acquisition proceedings would lapse.

16. Coming to the judgment of the learned single Judge in *Jaladi Sita Ram Koteswara Rao v. Govt. of A.P.* (4 supra), the question that fell for consideration was "Whether the notifications issued u/s 4(1) of the Act lapse in view of the provisions of Section 11-A of the Act". The learned single Judge held in the negative. The facts further reveal that the land therein was taken possession by the Board expressly stating that it would take some time for initiating acquisition proceedings and there was urgency in the construction of the sub-station. The land owners also consented for the same. These facts reveal that there was in fact an urgency. The learned single Judge also noting these facts, held at paragraph No. 13 that "Having regard to the facts of the present case, taking over the possession by the Board prior to the notification should be held as possession taken by the Government u/s 17(1) of the Act, thus divesting the ownership of the petitioners and vesting the ownership of the land in the State, It therefore follows that Section 11A of the Act has no application to the facts of this case...." Therefore, it is clear that the learned single Judge had in fact proceeded on the assumption that the land was acquired by invoking the urgency Clause u/s 17-A of the Act.

17. Hence, the law laid down in the said judgment by the learned single Judge will not enure to the benefit of the appellants - VUDA and in the light of proposition of law laid down by the Apex Court in the above judgment, the contention of the appellants - VUDA that Section 11-A is not applicable to the facts of the present case, is not tenable and merits for rejection.

18. In the light of the above discussion, we are of the view that the learned single Judge has rightly set aside the award.

19. The next issue is with regard to the fixing of the date for publication of notification u/s 4(1) of the Act. The learned single Judge held that "Having

regard to all the circumstances of the Case, I think that an appropriate order would be that it should be deemed that Section 4 notification of the Act was issued on 24.9.1986, which was the date on which the acquisition proceedings had lapsed. Respondent No. 2 shall make afresh enquiry and pass afresh award on the basis that the notification u/s 4(1) of the Act was issued on 24.9.1986" For taking the date of Section 4(1) of the Act as 24.9.1986, there is no basis and the statute also does not provide any such provision for fixation of any notional date. In these circumstances, and in the interest of justice, we direct the Government to issue fresh notification u/s 4(1) of the Act and the date of such notification shall be taken as the date for fixation of compensation. It is also made clear that the respondents in W.A. No. 1947 of 1998, shall take action to publish Section 4(1) notification within a period of three months from the date of receipt of a copy of this order and also shall take action to pass the award in accordance with law. Except this modification, the rest of the order of the learned single Judge is confirmed. However, it is needless to observe that the writ petitioners are entitled to all the statutory benefits in accordance with the provisions of the Act from the date of taking possession i.e., 31.3.1969. As the appellants in W.A. No. 1947/1998 are aggrieved by the date of fixation of Section 4(1) of the Act as 26.8.1998 i.e., date on which the impugned order is passed by the learned single Judge and as we are directing to take into consideration the date of issuance of Section 4(1) notification, the prayer of the writ petitioners stands allowed to the said extent. Any amount already paid, shall be adjusted in the compensation to be paid.

20. Therefore, for the foregoing reasons, the writ appeal filed by the VUDA in W.A. No. 1796 of 1998 is dismissed and the writ appeal filed by the land owners in W.A. No. 1947 of 1998 is allowed with the above observations. In the circumstances of the case, there shall be no order as to costs.