

Yusufbhai Noormohmed Nendoliya

Vs

State of Gujarat and Another

Civil Appeal No. 3659 of 1991

(M. H. Kania, N. M. Kasliwal, Smt. M. S. Fathima Beevi JJ)

17.09.1991

JUDGMENT

KANIA, J. –

1. Leave granted. Counsel heard.
2. This appeal raises an interesting question regarding the interpretation Section 11-A of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). Section 11-A was inserted into the said Act by Section 9 of Act 68 of 1984.
3. The relevant facts lie within a very narrow compass. The appellant is the occupant of land comprising survey Nos. 864 and 687 respectively of village Samal Pati in Patan Taluka of Mehsana District in Gujarat. The said lands were sought to be acquired by the State of Gujarat, respondent 1 herein, for the purpose of the North Gujarat University. The Notification under Section 6 of the said Act in respect of the said lands was issued on May 12, 1988. The parties proceeded on the assumption that it was published in the locality around that time. The learned counsel for the appellant stated in the High Court that such publication took place some time in June 1988, and the parties as well as the Court proceeded on the footing that the said statement is correct. The appellant challenged the said notification by filing Special Civil Application No. 4342 of 1988 in the High Court of Gujarat. On the prayer for interim relief made by the appellant for the stay of the operation and implementation of the said notification, the Gujarat High Court granted only a limited interim relief by restraining respondent 1 from taking possession of the said lands of the appellant pending admission of the said special civil application. The said interim relief, which was granted on August 9, 1988, still continues to be operative. In the meantime, respondent 2, being the Land Acquisition Officer concerned, issued a notice under Section 9(1) of the said Act and proceeded to determine the compensation after hearing the objections. In the inquiry held by respondent 2 in respect of the objections the appellant took up the contention that, as two years had elapsed after the publication of the notification making the declaration under Section 6 of the said Act, and no award had been made within the said period, all acquisition proceedings in respect of the said lands lapsed and the acquisition proceedings were exhausted. The said contention of the appellant was rejected by the land acquisition authorities. The appellant challenged this decision of the land acquisition authorities by filing the Special Civil Application No. 7685 of 1990 in the High Court of Gujarat. The challenge made by the appellant to the continuance of the acquisition proceedings was repelled by the Gujarat High Court relying on the decision of an earlier Division Bench of that Court comprising of R.C. Mankad and K.J. Vaidya, JJ. in Special Civil Application No. 4314 of 1990. It was held by the Division Bench that Section 11-A of the said Act enjoins exclusion of the entire period during which any action or proceeding to be taken pursuant to a declaration under Section 6

is stayed by an order of a competent court. The Division Bench of the Gujarat High Court took the view that the Explanation to Section 11-A is not confined to the staying of the making of the award pursuant to Section 6 of the notification, but it is widely worded and covers in its sweep the entire period during which any action or proceeding to be taken in pursuance of the declaration under Section 6, is stayed by a competent court. It is the correctness of this decision, which is assailed before us.

4. In order to appreciate the submissions made before us, it will be useful to refer to the relevant provisions of the said Act. Section 4 of the said Act deals with the publication in the official Gazette of the preliminary notification that it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public purpose or for a company, where it so appears to the appropriate government. Section 5-A provides for the hearing of the objections to the proposed acquisition. Section 6 provides for the issuance of a declaration of intended acquisition, namely, that land is required for a public purpose after considering the report, if any, made under Section 5-A. Section 11 of the said Act deals with the enquiry into the matters set out therein and the making of the award of compensation by the Collector. The said section prescribes that the said award, inter alia, shall determine the compensation which in the opinion of the Collector should be allowed for the land and for apportionment of such compensation among all the persons interested in the said land as provided in Section 11-(1)(iii) of the said Act. Section 11-A which was inserted in 1984 into the said Act as stated earlier runs as follows :

"11-A. Period within which an award shall be made. - The Collector shall make an award under Section 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 :

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 a Court shall be excluded."

5. Section 12 deals with the question as to when the award of the Collector becomes final. Section 15 deals with the matters to be considered and matters to be neglected in the determination of the compensation. Section 16 deals with the power to take possession and provides that when the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the government free from encumbrances. Section 17 confers powers on the appropriate government to take possession of any land needed for a public purpose and intended to be acquired, although no award has been made, in cases of special urgency.

6. The submission of learned counsel for the appellant is that in the present case the notification under Section 6 of the said Act was published in June 1988 and, as the award under Section 11 was not made by the Collector within a period of two years from the date of the publication, the entire proceedings for the acquisition of the land lapsed. In connection with the Explanation to Section 11-A it was submitted by learned counsel that by the said Explanation the only period excluded in computing the aforesaid period of two years is the period during which any action or proceeding taken in pursuance of the said declaration under Section 6 up to the stage of Section 11, namely, up to the making of the award under Section 11 was stayed by the order of a competent court. It was

submitted by him that the question of taking possession would arise after making the award under Section 11 and merely because a landholder obtained an injunction restraining land acquisition authorities from taking possession that would not serve to exclude any time from the aforesaid period of two years within which the award must be made.

7. In support of his contention learned counsel for the appellant relied upon the judgment of a learned Single Judge of the Kerala High Court in *S. Bavajan Sahib v. State of Kerala* (AIR 1988 Ker 280 : (1987) 1 Ker LT 836 : 1987 Ker LJ 870). In his judgment the learned Singly Judge has taken the view that the action or proceeding contemplated by the Explanation to Section 11-A of the said Act is any action or proceeding to be taken after the making of the declaration under Section 6 and before the passing of the award under Section 11. Such actions are those contemplated by Sections 7 to 10. The question of taking possession of the land arises only when the award is passed under Section 16 of the said Act except in cases of emergency covered under Section 17. It was pointed out by the learned Judge that the case before him was not a case in respect of which Section 17 was applicable and hence, unless there was a stay of the proceedings contemplated by Section 7 to 10 or of further proceedings pursuant to the declaration under Section 6 the Explanation will not operate so as to extend the period of two years prescribed by Section 11-A. We find ourselves unable to agree with the view of the learned. Single Judge of the Kerala High Court in the aforesaid judgment. In the Explanation to Section 11-A of the said Act which prescribes the period which is to be excluded, the expression used is -

"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"

8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 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 not 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 the Explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made 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 landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration under Section 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.

9. In the result, there is no merit in the appeal and it is dismissed with costs.

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