**SUPREME COURT OF INDIA**

The General Manager, Department of Telecommunications, Thiruvananthapuram
Vs.

Jacob S/o Kochuvarkey Kalliath (Dead) by Lrs.

C.A.No.6238 of 1998

(Doraiswamy Raju and D.M. Dharmadhikari JJ.)

01.04.2003

**JUDGMENT**

**Doraiswamy Raju, J.**

1. This appeal has been filed against the judgment of a Division Bench of the Kerala High Court dated 23.7.1998 in W.A. No. 166 of 1994B, whereunder while allowing the appeal and setting aside judgment of the learned single Judge, the Court held that the acquisition proceedings initiated to acquire the land in question by publishing a Notification dated 31.7.1984 have lapsed due to delay in passing the award and set aside the proceedings leaving liberty with the authorities to take fresh acquisition proceedings, if it is so desired, in accordance with law.

2. On the initiation of acquisition proceedings, O.P. No. 7812-N came to be filed in the High Court and interim orders were obtained preventing the authorities from proceeding with the acquisition and taking possession. The same came to be disposed of finally by a Division Bench on 16.7.1987 with certain directions permitting the landowners to file their objections within a period of 30 days which the District Collector was obliged to dispose of in accordance with the provisions of the Kerala Land Acquisition Act. It was also directed that if the objections were overruled and Notification is issued to acquire the land, further steps for passing the award should be taken expeditiously and the landowners would be entitled to stake their claims for compensation and vindicate them in accordance with law. The order of the High Court also recited that as the authorities were precluded from taking further action under the Act by interim orders of stay granted by the High Court it was agreed that the period during which the O.P. was pending shall be excluded for the purpose of issuing Notification under Section 6 of the Act. As the finalisation of the proceedings after conducting a due enquiry was under progress, O.P. No. 4885 of 1988 appears to have been filed by the landowners. Though in the meantime the declaration under Section 6 was approved by the Government on 14.3.1990 and came to be published in the Government Gazette on 17.3.1990, it came to be published, as envisaged in the Act, in the local Newspapers on 21.5.1992, apparently after the O.P. No. 4885 of 1988 was disposed on 3.3.1992 with directions to complete acquisition proceedings and pass an award within a period of six months. Thereafter, the High Court by an order dated 19.9.1992 seems to have granted further time of 3 months from 3.9.1992 to complete the land acquisition proceedings.

The award enquiry was being conducted from time to time and as the proceedings were in progress, O.P. No. 1534 of 1993 was said to have been filed in January, 1993 and initially interim orders of stay seem to have been granted and extended from time to time thereafter till almost the final disposal of O.P. No. 1534 of 1993 on 20.1.1994. In the meantime, on 27.8.1993 Final Award came to be passed.

3. The learned Single Judge, while dismissing O.P. No. 1534 of 1993, was of the view that since the landowners have ventured to institute series of litigations questioning the acquisition proceedings at one stage or another, there is no merit in the challenge made to the acquisition proceedings having lapsed under Section 11-A of the Act. The learned Single Judge further observed that the petitioners before the Court even then had no objection for the acquisition of 43 cents of land and that their objection for the acquisition in excess of the said extent was not tenable. Not satisfied, they pursued the matter further on appeal which the Division Bench allowed as noticed supra, driving the department to approach this Court with the above appeal.

4. The learned Additional Solicitor General contended on behalf of the appellant that the acquisition proceedings culminating in the award made on 27.8.1993 could not be held to have lapsed by the mandate of Section 11-A of the Act and that having regard to the intervening court proceedings and interim orders passed therein and need to calculate the two years period for purposes of Section 11-A only from the date of publication of the declaration under Section 6 in the daily Newspapers on 21.5.1992, which is the last of the series of publications envisaged under the Act. It was also urged for the appellants that the Division Bench went wrong in overlooking the need to construe Section 11-A only in the light of the legislative mandate engrafted in Section 6, and that the same is also contrary to the law declared by this Court in the decision reported in *Collector of Central Excise, Patna v. Usha Martin Industries*[1].

5. *Per contra,* the learned senior counsel for the respondents, supported by the other learned counsel, contended that the judgment of the Division Bench does not call for any interference, particularly when the award in this case came to be passed beyond the time judicially granted by the Kerala High Court in the earlier proceedings and inasmuch as the decision/orders earlier made in such proceedings are binding inter-parties and, therefore, no umbrage could be taken under the statutory provisions in derogation of the orders of Court which gave time to pass the award within a stipulated time. Reliance in this regard was made by the learned counsel on the decisions reported in *N. Narasimhaiah & ors. v. State of Karnataka & ors, etc.*[2] and *Authorised Officer (Land Reforms) v. M.M. Krishnamurthy Chetty*[3].

6. We have carefully considered the submissions of the learned counsel on either side. The Division Bench seems to have committed a patent error, despite the decision of this Court reported in *Eugenio Misquita & ors. v. State of Goa & ors.*[4] (which does not appear to have been brought to its notice) on a literal construction of Section 11-A of the Act, by proceeding on an hypothesis that if the Collector who was obligated to make an Award under Section 11 within a period of two years from the date of the publication of the declaration, the entire

proceedings for the acquisition of the land shall lapse, completely overlooking the mandate contained in sub-section (2) of Section 6 that of the various modes of publication envisaged therein, the last of any of the three modes in the series that should be taken to be the date of publication and consequently taken into account for purposes of making the Award as laid down in Section 11-A. While applying the ratio in *Krishi Utpadan Mandi Samiti & anr. v. Markand Singh & ors.*[5] this Court in Evgenio Misquita (supra) observed at Para 9 as hereunder:" ..... 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*, of reckoning the limitation prescribed under Section 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 under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11-A. The language employed in second proviso to Section 6(1) also supports this construction". That apart, the words "the last of the dates of such publication and the giving of such public notice, being hereinafter, referred to as the date of the publication of the declaration" leave no room for any assumptions to the contrary. Thus, the view taken by the High Court in this case not only runs counter to the mandate of law enacted by the Parliament, but opposed to the dicta of this Court and consequently does not merit our acceptance.

7. As for the plea raised on behalf of the respondents that since the Court directed the passing of the Award by 3.9.1992 which time was subsequently extended upto 3.12.1992, irrespective of the provisions contained in the Act or for that matter even if what was said by the Court was right or wrong, the order passed by the Courts was very much binding *inter parties* and the appellant could not have legitimately passed an Award at any time beyond 3.12.1992. Strong reliance has been placed upon the decision reported in N. Narasimhalah (supra). This was a case wherein the excise of power under Section 17(4) dispensing with enquiry under Section 5-A was quashed by the High Court and liberty was given to the State to proceed further in accordance with law, i.e., to conduct the enquiry under Section 5-A and if the Government forms an opinion that the land is required for a public purpose, issue a fresh declaration under Section 6. The question, which loomed large for consideration, was as to whether the limitation prescribed under clause (ii) of the first proviso to sub-section (1) woudl still remain operative and be capable of being complied with. This Court observed that running of the limitation should be counted from the date of the order of the Court received by the Land Acquisition Officer and declaration is to be published within one year from that date. This was for the reason that the Court having quashed the earlier declaration under Section 6 when directed an enquiry under Section 5-A to be conducted and to proceed afresh from that stage, the limitation prescribed for issuing Section 6 declaration would apply to the publication of declaration under Section 6(1) afresh and to be complied with from the date of receipt of a copy of the order of the Court. This decision is of no assistance whatsoever to the respondents in the present case. Notwithstanding the statutory period fixed, further time came to be granted due to intervention of Court proceedings in which a direction came to be issued to proceed in the matter afresh, as directed by the Court, apparently applying the well-settled legal maxim - *Actus curiae neminem gravabit* : an act of the Court shall prejudice no man. In substance what was done therein was to necessitate afresh calculation of the

statutory period from the date of receipt of the copy of the order of the Court. Granting of further time than the one stipulated in law in a given case as a sequel to the decision to carry out the dictates of the Court afresh is not the same as curtailing the statutory period of time to stultify an action otherwise permissible or allowed in law. Consequently, no inspiration can be drawn by the respondents in this case on the analogy of the said decision.

8. Reliance placed on the decision reported in M.M. Krishnamurthy Chetty (supra) is equally inappropriate and ill conceived. That was a case wherein a learned Judge of the High Court, while setting aside the order passed by the Statutory Authorities under the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961, remanded the case for fresh consideration specifically in the light of an earlier judgment of the High Court in the case of *Naganatha Ayyar v. Authorised Officer (reported in*[6]. While the remand proceedings were pending before the Authorised Officer, this Court reversed the aforesaid judgment in *Authorised Officer v. S. Negantha Ayyar reported in*[7] and the Authorised Officer decided the ceiling limit in the remit proceedings in terms of the decision of this Court and not as per the directions of the High Court to determine the same in the light of the earlier High Court judgment. It was held in that case that the order of the High Court directing the Authorised Officer to examine the dispute in the light of the earlier High Court decision reported in 89 Madras Law Weekly 69 having become final in the absence of any challenge thereto, despite the reversal of the earlier High Court judgment by this Court, this Court observed that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior Courts. This Court, while rendering the said decision, was concerned with a direction of the High Court to do a particular thing in a particular manner and unless the binding judgment between parties was set at naught to enable the Authority to do it in any other way, it had to be done in the particular manner so directed by the Court or no, at all. So far as the case on hand is concerned, since the Court in the earlier proceedings had intervened at the instance of the respondents the Court was directing the authorities concerned to complete the process within a particular time to avoid further delay and ensure expeditious conclusion of the proceedings. There is noting to indicate in the order of the High Court stipulating or extending the time for passing the Award, that beyond the time so permitted, it cannot be done at all and the authorities are disabled once and for all even to proceed in the matter in accordance with law, if it is so permissible for the authorities under the law governing the matter in issue. The Court cannot be imputed with such an intention to stifle the authorities from exercising powers vested with it under statute or to have rendered an otherwise enforceable statutory provision, a mere dead letter. Neither from the nature and purport of the earlier orders passed nor from their contents, there is any scope for inferring the imposition of a total embargo upon the competent authorities, to exercise the statutory powers indisputably vested with and available to such authority under the statute, at the time of such exercise.

9. For all the reasons stated above, the judgment of the Division Bench of the Kerala High Court cannot be sustained. The appeal stands allowed and the Writ Petition filed before the High Court shall stand dismissed. No costs. Appeal allowed.

*[1](1997)7 SCC 47* *[2](1996)3 SCC 88* *[3](1998)9 SCC 138* *[4](1997)8 SCC 47*
*[5](1995)2 SCC 497* *[6]Vol. 84 Madras Law Weekly page 69)* *[7](1979)3 SCC 466*