

SUPREME COURT OF INDIA

R.Kolandaivelu(Dead) By Lrs.

Vs.

Govt.of T.Nadu

C.A.No.8235 of 2009

(Tarun Chatterjee and Surinder Singh Nijjar JJ.)

11.12.2009

JUDGEMENT

Tarun Chatterjee, J.

1. Leave granted.

2. The appellants are the owners of lands situated in Salem Taluk No. 151, Ayothiapatnam in the district of Salem, Tamil Nadu (hereinafter referred to as "the acquired lands"). A notification under Section 4(1) of the *Land Acquisition Act, 1894* (in short "the Act") was issued on 24th of December, 1986 for acquisition of the said lands. A declaration under Section 6 of the Act was issued on 23rd of December, 1987. Two writ petitions being W.P.Nos.835 and 836 of 1988 were filed questioning the validity and legality of the aforesaid notification and the declaration before the High Court of Madras. In the pending writ petitions, on 11th of February, 1988, the following interim order was passed:-

"Interim stay for four weeks. Notice returnable in four weeks."

The aforesaid two writ petitions finally came up for hearing before a learned Judge of the High Court who by an order dated 23rd of August, 2001 rejected the writ petitions and feeling aggrieved, the appeals were filed before the Division Bench which by the impugned order had dismissed the appeals of the appellants. The appellants, feeling aggrieved, had filed two special leave petitions which on grant of leave, were heard in the presence of the learned counsel for the parties.

Having heard the learned senior counsel for the parties and after careful examination of the relevant provisions of the Act, we are of the view that these appeals have no merit. The submission of Mr.Krishnamurthy, learned senior counsel appearing on behalf of the appellants, was that having regard to the fact that the interim order of stay was operative only for a period of four weeks from 11th of February, 1988 to 11th of March, 1988, the High Court had fallen into a grave error in dismissing the writ petitions filed by the appellants inasmuch as the award passed on 23rd of August,

1993 was clearly beyond the period of two years from the date of issuance of declaration under Section 6 of the Act on 23rd of December, 1987. Mr. Viduthalai, learned senior counsel appearing for the respondents contested the submissions advanced by Mr. Krishnamurthy, learned senior counsel appearing for the appellants. He submitted that the High Court was fully justified in dismissing the writ petitions having regard to the nature of the interim order of stay granted by the High Court in the pending writ petitions and, therefore, it must be held that the question of holding that entire proceedings had lapsed and that the acquired lands must be restored to the appellants could not arise at all. Before we proceed to consider the issue as posed before us, it would be necessary to deal with some of the provisions of the Act. First of such provisions is Section 6 of the Act which deals with intended acquisition. The explanation to Section 6 of the Act says that "In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4(1), is stayed by an order of a Court shall be excluded."

3. Section 11 of the Act deals with enquiry and award by Collector. It says that - "On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and at the date of the publication of the notification under Section 4, sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand....."

4. Next comes the most relevant provision of the Act for the purpose of this case i.e. Section 11A of the Act which deals with the period within which an award shall be made. It says that "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* (68 of 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 proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

5. As noted herein earlier, Mr. V. Krishnamurthy, learned senior counsel appearing on behalf of the appellants urged that in view of the admitted fact that the limited order of stay granted by the High Court in the two writ petitions was not extended by it, the award which was passed had lapsed after the expiry of period of two years from the date of publication of the declaration, therefore, it must be held that the entire proceedings for the acquisition of the acquired lands had lapsed and, accordingly, the acquired lands of the appellants must be restored to them. In this connection, Mr. Krishnamurthy had drawn our attention to the admitted fact that the notification under Section 6 of the Act was published in the official gazette on 23rd of December, 1987 and the limited interim order of stay was granted by the High Court on 11th of February, 1988 and on 3rd of July, 1991, an order of stay of

dispossession was passed in favour of the appellants and thereafter finally the award was passed on 23rd of August, 1993. From the above facts, according to Mr.Krishnamurthy, it would be clear that admittedly the period of 2 years from the date of publication of the declaration under Section 6 of the Act i.e. 23rd of December, 1987 had lapsed before the date of award i.e. 23rd of August, 1993 although a limited order of stay for four weeks was granted which was not extended by any order of extension. In support of this contention, Mr.Krishnamurthy placed strong reliance on a decision of this Court in the case of Ashok Kumar (3) SCC 470.

6. As noted herein earlier, Mr.Viduthalai, the learned senior counsel appearing for the respondents submitted that on a perusal of the orders passed by the High Court on the question of grant of order of stay, it would be evident that the parties had proceeded all along on the basis that the interim order of stay granted for a limited period had continued upto the stage when the interim order of stay was made absolute on the same terms and further in view of the findings of the High Court that both the parties proceeded on the basis that the interim order of stay was continuing all through, it must be held that the time during which the interim order of stay was continuing i.e. from 11th of February, 1988 to 3rd of July, 1991 must be excluded from the calculation of the period within the meaning of explanation to Section 11A of the Act and if this time is excluded, the award which was passed on 23rd of August, 1993 was well within time and, therefore, the High Court was fully justified in concluding that the question of holding that since the award was passed beyond the period of 2 years from the date of declaration, the entire acquisition proceedings must be held to have lapsed, does not arise at all. In support of this submission, the learned senior counsel appearing for the respondents has relied on two decisions of this Court namely *Bailamma (Smt.) Alias House Building Cooperative Society and others*¹ and *Yusufbhai Noormohamed* (4) SCC 531. Accordingly, Mr.Viduthalai, learned senior counsel for the respondents has submitted that there is no reason to interfere with the orders of the High Court holding that the respondents were entitled to exclude the period in terms of the explanation to Section 11A of the Act.

7. We have carefully examined the rival submissions of the learned senior counsel for the parties. We have also examined the impugned order of the High Court as well as the relevant provisions of the Act, namely, Sections 6 and 11A with its explanation, as noted herein earlier. From a perusal of the aforesaid provisions, it would be evident that the two years from the date of declaration must be computed after excluding the period when parties had approached the court and obtained interim stay of such acquisition notices. As noted herein earlier, at the time of admission of the writ petitions, the following interim order was passed on 11th of February 1988:- "Interim stay for four weeks. Notice returnable in four weeks"

8. Subsequent to the passing of this interim order, it is true that the interim order was not extended by any further order of the Court. However, the parties thought that the interim order was continuing.

Keeping that in mind, the State/respondents filed an application for vacating the interim order dated 11th of February, 1988 granted by the Court.

9. On 3rd of July, 1991, on the said application for vacating the interim order filed at the instance of the State/respondents, the High Court passed the following order:- "These petitions coming on for hearing upon perusing the petitions and the respective affidavits filed in support of W.P. Nos. 835 and 836/88 on the file of the High Court and the order of this Court dated 11.02.88 and made in W. M.P. Nos. 1248 and 1249 of 1988 and the counter affidavits filed herein and upon hearing the arguments of Mr. N. Chinnu, Advocate for the petitioners in W.M.P. Nos. 1248 and 1249/88 and for the respective respondents in W. M. P. Nos. 11986 and 11987/90 and Mrs. M. Gomathi, Govt. Advocate (Writs) on behalf of the respondents in W.M.P. Nos. 1248 and 1249/90 and for the petitioners in W.M.P. Nos. 11986 and 11987 of 1990, it is ordered; that the dispossession of the petitioners (in W.M.P. Nos. 1248 and 1249/90) of their lands alone in (1) Survey No. 99/3A, an extent of 1.34 acres of Ayothipatnam Village, Salem Taluk, Salem District (in W.M.P. Nos. 1248/88) and (2) 1-37 acres in Survey Nos. 98/3 and 98/4, Ayothipatnam Village, Salem District in W.M.P. No. 1249/88 respectively pursuant to the Section 4(1) Notification in G.O. Ms. No. 3320, Social Welfare, dated 24.12.1986, on the file of the first respondent in both the petitions, and published at page 21 of the Part-II Section - 2 Supplement to Tamil Nadu Govt. Gazette Issue No. 1C, dated 07.01.1987, and Section-6 Declaration in G.O. Ns. No.2532, Social Welfare, dated 08.12.1987, and published at pages 23 and 24 of part-II Section 2 Supplement to Tamil Nadu Govt. Gazette issue No. 49-C, dated 23.12.1987, in so far as they relate to the lands of the petitioners in each of the petitions be and hereby are stayed pending further orders on this petition." (Emphasis supplied)

10. As noted herein earlier, at the instance of the appellants, the notification issued under Section 4 of the Act and the declaration under Section 6 initially were stayed for four weeks on 11th of 11 February, 1988, but the Interlocutory Applications remained pending for final disposal and finally on the applications to vacate the stay order at the instance of the State/respondents, the applications to vacate the stay were disposed of, as noted herein earlier by an order which clearly shows that the order of stay granted initially for four weeks would continue pending further orders. From a perusal of the aforesaid interim order of the High Court passed on 3rd of July, 1991, it is, therefore, evident that there was an order of prohibition from dispossessing the appellants from the acquired lands pending further orders.

11. In view of our discussions made herein above and considering the nature of interim order of stay passed by the High Court finally on 3rd of July, 1991, it is abundantly clear that both the parties proceeded on the basis that the interim order of stay had been continuing and the respondents were prohibited from dispossessing the appellants from the acquired lands pending further orders. If that was not the case, the question of filing an application for vacating the order of stay granted in favour of the appellants could not arise at all and there was no occasion for the appellants to contest the application for vacating the stay order on the basis that the interim order of stay was continuing and should be allowed to continue. That apart, it may be stated that although initially the interim order was passed for four weeks, the same interim order which was granted initially was made final until further orders on 3rd of July, 1991. From the above narration of facts, it must be held that no steps could be

taken in view of the pending applications for grant of interim order and in view of the interim order granted pending further orders.

Therefore, it cannot be said that the acquisition proceedings had lapsed due to expiry of two years from the date of publication of the declaration under Section 6 of the Act relating to the acquired lands.

12. In Yusufbhai Noormohamed's case (supra) at para 8, this Court observed as under:-

"The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceeding 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 no 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 Section 11-A is intended to limit the benefit conferred on a land holder whose land is acquired after the declaration under Section 6 is made to 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 land-holder. In order to get the benefit of the said provision what is required, is that the land-holder 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 land-holders 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.

(emphasis supplied)

13. From the above observations of this Court, it is clear that the explanation to Section 11A of the Act is intended to confer a benefit on the land holder, whose land is acquired after the declaration under Section 6 is made. By the provision of Section 11A, the State authorities are required to pass a final award within two years from the date of publication of declaration under Section 6 of the Act failing which, the acquisition proceedings would lapse, and it would clearly show the intention of the legislature that the benefit of this provision would be in favour of the land owner if the award could not be passed within two years from the date of declaration when no order was obtained by the land owner from the Court staying the acquisition and the land would revert back to the land owner because of expiry of the period of two years from the date of declaration or notification within the meaning of Section 11A of the Act. As noted herein earlier, initially the interim order of stay was granted staying the notifications for four weeks, but from the record and the conduct of both the parties and after considering the fact that the State/respondents had to file an application for vacating the stay order thinking that stay order was continuing and the appellants having contested the said application for stay till the disposal of the same, there cannot be any doubt in our mind that

both the parties proceeded on the basis that the interim order of stay passed initially for four weeks continued till the final order of interim stay passed by the High Court on the application for vacating the interim order of stay.

14. Such being the stand taken by us, we are, therefore, of the view that the award was passed in accordance with Section 11A of the Act, that is to say, the award was passed within two years from the date of publication of declaration under Section 6 of the Act.

15. There is another aspect of the matter. The purpose for which the Land Acquisition Act was amended and Section 11A was enacted, was to prevent inordinate delay being caused by the Land Acquisition Officer in making an award which deprived the land owners of their enjoyment of their land or dealt with the land whose possession was already taken. The delay in making the award subjected the owner of the land to untold hardship.

The objects and reasons for introducing Section 11A into the Act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and "it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act". By the introduction of this explanation and Section 11A of the Act, the Legislature intended to emphasize that the Collector shall make his award under the Act within two years from the date of publication of declaration under Section 6 of the Act, failing which the acquisition proceeding itself shall lapse. In this connection, reliance can be made to a decision of this Court in *Bailamma* (supra) as noted herein earlier. In this decision, this Court had considered the effect of the amendment of the Act introducing Section 11A with explanation and observed in this connection as follows:

"This Court emphasized the fact that Section 11- A was enacted with a view to prevent inordinate delay being made by Land Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has already been taken Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11-A into the Act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and "it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act". The emphasis, therefore, was on the Collector making his award within the period prescribed. However, the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It, therefore, became imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made, an acquisition

proceeding could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter. Explanation to Section 11-A was meant to deal with situations of this kind. The explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a land-owner alone. One can conceive of cases where apart from land- owners others may be interested in stalling the land acquisition proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land acquired. But that will not lead us to the conclusion that the explanation applied only to cases where stay had been obtained by the owners of the land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration, they cannot be faulted for the delay, and therefore, the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame."

16. Following the principles laid down and the observations made by this Court in the aforesaid decision, with which we are in respectful agreement, we are, therefore, of the view that the State/respondent was entitled to exclude the period mentioned herein earlier and that it must also be held that if such period is excluded the period of two years from the date of declaration under Section 6 of the Act before the award is passed would not expire and accordingly, the question of holding that the entire acquisition proceeding shall lapse, cannot arise at all.

17. Before we part with this judgment, we may deal with the decision of this Court as relied on by the learned senior counsel for the appellants in Ashok Kumar's case (supra). In our view, this decision stands on a different footing. In that decision, it is true that the interim order of injunction was passed but not extended whereas in the present case admittedly the interim order which was granted by the court for a limited period was extended till further orders by an order dated 3rd of July, 1991 which was passed on the application for vacating the order of stay filed by the State/respondents.

Such being the position and in view of our discussions made herein above, therefore, the appellants having taken advantage of an order passed by the High Court during the pendency of the writ petition which was sought to be vacated by the State/respondents by filing an application for vacating the stay order, it must be concluded that the award was passed within two years from the date of publication of the declaration under Section 6 of the Act and the respondents were entitled to exclude the period from 11th of February, 1988 to 3rd of July, 1991 and, therefore, if this period is excluded as enshrined in the explanation to Section 11A of the Act, the

award was within time and, therefore, the question of holding that the acquisition proceeding must lapse because of expiry of the said period, cannot arise at all. No other submissions were advanced by the learned counsel for the parties.

18. For the reasons aforesaid, we do not find any reason to interfere with the impugned order passed by the High Court and accordingly the appeal is dismissed.

There will be no order as to costs.

¹2006 (2) SCC 416