

A YUSUFBHAI NOORMOHMED NENDOLIYA

v.

STATE OF GUJARAT AND ANR.

SEPTEMBER 17, 1991

B [M.H. KANIA, N.M. KASLIWAL AND M. FATHIMA BEEVI, JJ.]

Land Acquisition Act, 1894:

C *Section 11-A—Explanation—Interpretation of—Acquisition of land-proceedings—When lapse—Two-Year period for making of award—Computation of—Whether entire period during which any action or proceedings pursuant to declaration under Section 6 remained stayed to be excluded.*

D A notification under Section 6 of the Land Acquisition Act, 1894 was published in respect of lands under the appellant's occupation. The appellant challenged the notification before the High Court and prayed for an interim stay of operation and implementation of the notification. Pending admission of the appellant's Special Civil Application, the High Court granted limited interim relief by restraining the respondent from taking possession of the lands. Meanwhile Respondent No. 2, the Land Acquisition Officer, issued a notice under Section 9(1) of the Act and proceeded to determine the compensation. In the enquiry, he rejected the appellant's objection that as two years had elapsed after the publication of the notification and no award had been made within the said period, all the acquisition proceedings lapsed and were exhausted. The High Court also rejected the appellant's appeal, relying on the decision of a Division Bench of the High Court, that Section 11-A of the aforesaid Act enjoined exclusion of the entire period during which any action or proceeding to be taken pursuant to a declaration under Section 6 was stayed by an order of a competent court, and that the Explanation to the Section was not confined to the staying of the making of the award, pursuant to Section 6 of the notification, but it was widely worded and covered in its sweep the entire period during which any action or proceeding was stayed by a competent Court.

H In the appeal before this Court, on behalf of the appellant it was contended that by Explanation to Section 11-A the only period excluded in computing the period of two years was the period during which any action

or proceeding taken in pursuance of the declaration under Section 6 upto the making of the award under Section 11 was stayed and that the question of taking possession could arise after making the award and merely because the landholder obtained an injunction restraining land acquisition authorities from taking possession that could not serve to exclude any time from the period of two years within which the award must be made.

Dismissing the appeal, this Court,

HELD: The Explanation to Section 11-A of the Land Acquisition Act, 1894, which prescribes the period to be excluded while computing the period of two years within which the award has to be made, is in the widest possible terms and 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 Act. In the first place, where the case is covered by Section 17, the possession can be taken before an award is made and there is no reason why the expression "the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order by a Court", 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, the Explanation is intended to limit the benefit conferred by Section 11-A on a land-holder whose land is acquired after the declaration under Section 6. 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 operation of the beneficial provisions of Section 11-A is confined to 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. [163 E-H, 164 A]

The High Court was, therefore, right in rejecting the appellant's challenge to the continuance of the proceedings. [164-B]

Special Civil Application No. 4314 of 1990 decided by Gujarat High Court approved.

- A *S. Bavajan Sahib v. State of Kerala and Others*, AIR 1988 Kerala 280, disapproved.

CIVIL APPELLATE JURISDICTION. Civil Appeal No. 3659 of 1991.

- B From the Judgment and Order dated 5.11.1990 of the Gujarat High Court in Spl. Civil Application No. 7685 of 1990.

Dushyant Dave, Ms. Indu Malhotra and Ms. Shirin Jain for the Appellant.

- C The Judgment of the Court was delivered by

KANIA, J. Leave granted. Counsel heard.

- D This appeal raises an interesting question regarding the interpretation of 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.

- E The relevant facts lie within a very narrow compass. The appellant is the occupant of lands 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 No. 2 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 about that time. The learned Counsel for the appellant stated in the High Court that such publication took place
- F sometime 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
- G restraining respondent No. 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 8, 1988, still continues to be operative. In the meantime, respondent No. 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
- H the inquiry held by respondent No. 2 in respect of the objections the appel-

lant 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 the 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.

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 - 5A 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 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 (i) (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 Col-

A lector 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:

B 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."

C 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.

D 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.

F 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 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 upto the stage of Section 11, namely, upto 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.

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 and others*, AIR 1988 Kerala 280. In his judgment the learned Single 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 Sections 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 proceedings* to be taken in pursuance of the said declaration is stayed by an order by a Court."

(Emphasis supplied)

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

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. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment.

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

N.P.V.

Appeal dismissed.