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GOVERNMENT OF TAMIL NADU AND ANR.

v.

VASANTHA BAI

APRIL 7, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Land Acquisition Act, 1894: Sections 4, 6, 11 and 11A—Explanation.*

C

*Land Acquisition—Award—Prescribed period of two years for making—Computation of—Exclusion of period during which proceedings are stayed by Court—Held stay of dispossession amounts to stay of further proceedings under the Act—Period of stay of dispossession has to be excluded from the prescribed period.*

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In land acquisition proceedings, a Notification under Section 4(1) of the Land Acquisition Act, 1894 was published on April 12, 1988 while the declaration under Section 6 was published on April 29, 1980. The respondent's petition challenging the acquisition proceedings was dismissed by a Single Judge of the High Court on June 18, 1992 against which a writ appeal was preferred. However, pending the writ petition, the

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respondent obtained stay of dispossession by order dated October 19, 1990 and the same was continuing pending the appeal. The Division Bench allowed the respondent's appeal and quashed the notification issued under Section 4(1) and the declaration under Section 6. It held that the order restraining dispossession did not amount to stay of further proceedings nor it prevented the land acquisition officer to take further action in

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pursuance of the declaration under section 6. As under Section 11-A, award has to be made within a period of two years from the date of publication of the declaration and since the award was not made within that period the notification issued under section 4(1) and the declaration stood lapsed.

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Allowing State's appeal, this Court

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**HELD :** 1. Section 11-A of the Land Acquisition Act, 1894 as brought on statute by Land Acquisition (Amendment ) Act 68/84 adumbrates 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 proceeding for acquisition of the land shall lapse. The Explanation amplified that in computing the period of two years referred to in the section, the period during which any action or proceeding to be taken, in pursuance of the said declaration, is stayed by an order of the court, shall be excluded. The stay of dispossession tantamounts to stay of further proceedings being taken under section 11 and Explanation to Section 11-A covers such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by Section 11-A. The Division Bench of the High Court was clearly in error in taking the contrary view. [260-C, E, 262-H, 263-A, 262-G]

*Y.N. Nendolia v. State of Gujarat*, [1991] 4 SCC 531 and *Sangappa G. Sajjan v. State of Karnataka*, [1994] 4 SCC 145, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4608 of 1995.

From the Judgment and Order dated 6.4.93 of the Madras High Court in W.A. No. 1079 of 1992.

Niranjana Singh, (Ms. A. Subhashini,) for Arputham, Aruna and Co. for the Appellants.

R. Mohan, V.G. Pragasam and R. Nedumaran for the Respondent.

The following Order of the Court was delivered :

Leave granted.

Notification under s.4(1) of the Land Acquisition Act, 1894, (for short, 'the Act'), as amended by Central Act 68 of 1984 was published in the gazette on April 12, 1988 acquiring an extent of 0.87.0 hectare of the land bearing Survey Nos. 84/1-B1 and 85/1-B of Madivilagam village, Sriperumpudur Taluk, Chengai Anna District in Tamil Nadu State, for public purpose. After conducting enquiry under s.5-A, declaration under s.6 was published in the gazette on April 29, 1989 and the local publication was made on May 2, 1989.

Calling in question the validity of the notification and the declaration, the respondent filed Writ Petition No. 12888/90. On June 18, 1992, the single Judge of the High Court dismissed the writ petition. Writ Appeal

A No. 1079/92 was filed. Pending writ petition, the respondent had obtained stay of dispossession by order dated October 19, 1990 and the same was continuing pending appeal. when the writ appeal had come up for final hearing, one of the contentions raised, which persuaded the Division Bench for acceptance, was that under s.11-A, the award should be made within a period of two years from the date of the publication of the declaration, and since the award was not made within that period, notifications under s.4(1) and 6 stood lapsed. On that finding by order dated April 6, 1993, the appeal was allowed and the notification under s.4(1) and declaration under s.6 were quashed. Thus this appeal by special leave.

C Section 11-A of the Act, as brought on statute by Land Acquisition (Amendment) Act 68/84 adumbrates that the Collector shall make an award under s.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 proceeding for 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. The explanation amplified that in computing the period of two years referred to in the section, the period during which any action or proceeding to be taken, in pursuance of the said declaration, is stayed by an order of the court, shall be excluded. The Division Bench held that the order restraining dispossession made by the High Court does not amount to stay of further proceedings nor it prevented the land acquisition officer to take further action in pursuance of the declaration under s.6. Since no award was made within a period of two years from the date on which local publication has been made, the proceedings stood lapsed.

The Parliament enacted s.11-A with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award. The price to be paid for the land acquired under compulsory acquisition is the prevailing price as on the date of publication of s.4(1) notification. G The delay in making the award deprives the owner of the enjoyment of his property or to deal with the land whose possession has already been taken, and delay in making the award, would subject the owner of the land to untold hardship. With a view to relieve hardship to the owner or person interested in the land and to remedy the lapses on the part of the Land H Acquisition Officer in making the award, s.11A was enacted which enjoins

making of award expeditiously. So, outer limit of two years from the last of the dates of publications, envisaged in s.6 of the Act was fixed. If he fails to do so, all the acquisition proceedings under the Act would stand lapsed and the owner of the land or person interested in the land is made free to deal with the land as an unencumbered land. Cognizant to the fact that the acquisition proceedings are questioned in a court of law, the Parliament enacted Explanation to s.11-A declaring that the period during which action or proceedings taken in pursuance of the declaration under s.6 is stayed by an order of the court, the same "shall be excluded".

Question is whether stay of dispossession is a stay of proceedings under the Act so as to disable the Land Acquisition Officer to make the award? In *Y.N. Nendoliya v. State of Gujarat*, [1991] 4 SCC 531, the facts were that declaration under s.6 was questioned by filing a writ petition under Article 226. Pending its disposal stay of dispossession from the land was granted. In the meanwhile, when award proceedings were being taken, objection was raised that since award was not made within two years, the officer had no jurisdiction to pass the award. When it was overruled and an award was made, another writ petition was filed questioning the award. The Gujarat High Court held that Explanation to s.11-A was not confined to staying of the award to be made; and since the language was widely worded it covered within its sweep, the entire period during which any action or proceeding taken in pursuance of the declaration under s.6 or dispossession is stayed by a competent court. When the correctness thereof was challenged, this Court held that "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 s.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". This court upheld the view of the High Court as correct.

In *Sangappa G. Sajjan v. State of Karnataka*, [1994] 4 SCC 145, the same question in relation to the period of delay under Explanation 1 to s.6 and Explanation 1 to 1st proviso to s.4(1) came up for consideration. When the proceedings under s.4(1) was stayed and the declaration under s.6 also was stayed, whether the period during which the stay operated has to be excluded was considered and it was held that:

A "In other words, under the pre-Amendment Act the declaration  
under Section 6(1) shall not be published after the expiry of three  
years from the date of Section 4(1) publication and after the  
commencement of the Amendment Act, the State has no power  
to proceed with the matter and publish the declaration under  
B Section 6(1) after the expiry of one year from the date of publica-  
tion of the notification. Explanation 1 thereto provides the method  
or mode of computation of the period refereed to in the first  
proviso, namely, the period during which "any action or proceed-  
ing" be taken in pursuance of the notification issued under sub-  
C section(1) of Section 4 being "stayed by an order of a court shall  
be excluded". In other words, the period occupied by the order of  
stay made by a court shall be excluded. Admittedly, pending writ  
petition on both the occasions the High Court granted "stay of  
dispossession". Admittedly, the validity or tenability of the notifica-  
D tion issued and published under Section 4(1) is subject of adjudica-  
tion before the High Court. Till the writ petitions are disposed of  
or the appeals following its heels, the stay of dispossession was in  
operation. Though there is no specific direction prohibiting the  
publication of the declaration under Section 6, no useful purpose  
would be served by publishing Section 6(1) declaration pending  
E adjudication of the legality of Section 4(1) notification. If any  
action is taken to pre-empt the proceedings, it would be stig-  
matised either as "undue haste" or action to "overreach the court's  
judicial process". Therefore, the period during which the order of  
dispossession granted by the High Court operated, should be  
excluded in computation of the period of three years covered by  
F clause (1) of the first proviso to the Land Acquisition Act. When  
it is so computed, the declaration published on the second occasion  
is perfectly valid. Under these circumstances, we do not find any  
justification to quash the notification published under Section 6  
dated May 17, 1984. The review petitions are accordingly dis-  
G missed. No costs."

The ratio in the above cases would squarely apply to the facts in this  
case. The Division Bench of the High Court was clearly in error in taking  
the contrary view. We, therefore, hold that the stay of dispossession would  
tantamount to stay of further proceedings being taken under s.11 and  
H Explanation to s.11-A covers such an order and the entire period of stay

has to be excluded in computing the period of two years prescribed by s.11A. A

It is next contended by Shri R. Mohan, learned senior counsel, that other points have been raised in the writ appeal and that they need to be decided by the Division Bench as noted by it. From the record, it would appear that the only point argued before the single Judge and negatived was whether Madras Metropolitan Water Supply and Sewage Board is not a local authority? That question was also canvassed before the Division Bench. Therefore, since the High Court had not decided that point, it requires to be decided according to law. B

The appeal is accordingly allowed. The matter is remitted to the High Court for decision of the aforesaid point in accordance with law. No costs. C

T.N.A.

Appeal allowed.