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EXECUTIVE ENGINEER, JAL NIGAM
CENTRAL STORES DIVISION, U.P.

v.

SURESHA NAND JUYAL @ MUSA RAM
(DECEASED) BY L.RS. AND ORS.

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MARCH 14, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Land Acquisition Act, 1894 :

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Ss. 4(1), 5-A and 6(1)—Acquisition of land—Notice u/s. 4(1) published in May 1986—After hearing objections and publication of declaration u/s. 6(1), award passed in December 1988 and possession taken over—Writ petition filed on 19.8.1989 allowed by High Court on 31.8.1995—Held, the mere fact that on account of pending litigation no construction was made, is no ground to say that the Notification u/s. 4(1) was vitiated by any error of law—Equally increase in price of land is no ground—Order of High Court is set aside and Notification u/s. 4(1) and declaration u/s. 6 stand restored.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2223 of 1997.

From the Judgment and Order dated 31.8.95 of the Allahabad High Court in C.M.W.P. No. 3354 of 1988.

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R.B. Misra and K. Misra for the Appellant

Naresh K. Sharma for Shrish Kumar Misra for the Respondents.

The following Order of the Court was delivered :

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Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

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Notification under section 4(1) of the Land Acquisition Act (for short, the 'Act') was published on May 7, 1986. The notice under Section

5-A was issued and the objections filed on December 17, 1986 were over-ruled after due consideration. Declaration under Section 6 was published on August 25, 1987. After conducting of enquiry, the award came to be made on December 17, 1988. The symbolic possession was taken on the said date. The respondents filed the writ petition on August 19, 1989. The High Court allowed the writ petition by the impugned judgment dated August 31, 1995 in W.P. No. 3354/1988. The question is : whether the procedure followed by the Land Acquisition Officer was vitiated by any error manifest on the face of the record warranting interference by the High Court? Shri Naresh Kumar Sharma, learned counsel for the respondents, contends that the respondent/tenant has not been given any opportunity at the enquiry under Section 5-A. The land is the only source of livelihood and scheme was temporary. In view of the long lapse of time the purpose of the acquisition under Section 4(1) of the Act no longer survived. Therefore, it does not serve any purpose. Counter affidavit filed in the High Court by the respondents shows that pursuant to the notice under Rule 30 of the Land Acquisition Rules, the respondents had filed the objections and it is stated therein as under :

"The concerned farmers were issued notices under section 5-A under the Land Acquisition Act and Rule 30 giving 30 days time for raising objections on 2.9.1986, concerned farmer Shri Mussa alia Swesha Nanda objected which was taken on record."

Obviously, after consideration of all the objections and rejection thereof, declaration under Section 6 was published. As stated earlier, the award was made and symbolic possession was taken on December 17, 1988. Under the circumstances, the land stood vested in the State free from all encumbrances. After the proceedings had become final, the writ petition came to be filed on May 19, 1989. The mere fact that due to lapse to time no action was taken after the filing of the writ petition, does not give ground for interference. The further fact that public purpose must have been served by constructing the quarters for the officers elsewhere, is without any substance. The mere fact that on account of the pending litigation, no construction was made, is no ground to say that notification under section 4(1) was vitiated by any

A error of law; equally, increase in the prices of the lands is no ground.

The appeal is accordingly allowed. The judgment of the High Court stands set aside. The notification under Section 4(1) and declaration under Section 6 of the Act stand restored. No costs.

R.P.

Appeal allowed.