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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1562/2008

% Date of Decision : 27th February, 2008

BAIJ NATH AGGARWAL DHARAMARTH TRUST SOCIETY
REGD. & ANR. Petitioners

! Through : Mr. Ravinder Sethi, Sr. Adv. with
Mr. Rakesh Mukhija, Adv.
Mr. Sanjay Parikh, Adv.
Mr. Jitin Sahni, Adv.
Ms. Mamta Saxena, Adv.
Mr. A.N. Singh, Adv.

versus

\$ LT.GOVERNOR OF DELHI & ANR. Respondents
^ Through Mr. Sanjay Poddar, Adv.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment? ✓
- (2) To be referred to the reporter or not? ✓
- (3) Whether the judgment should be reported in the Digest ? ✓
- ys

: Per Thakur, J (oral)

1. Three earlier rounds of litigation having proved abortive, the petitioner has instituted the present fourth round to assail the ongoing acquisition proceedings. This attempt is on the face

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of it an utter abuse of process of this Court not only because the ground that has been now urged in the present writ petition was available to the petitioner but was not urged in the previous writ petition dismissed by this Court in terms of order dated 8.2.2008 but also because on the admitted facts the petitioner has not made out a case for interference with the acquisition proceedings. It is, in our opinion, unnecessary to trace over again the history of previous rounds of litigation between the parties. All that we need say is that the entire background in which the said proceedings were initiated some 8 years back with the filing of W.P. (C) No. 6384/2000 have been set out in our order dated 8.2.2008 passed in W.P. (C) No. 8791/2007 which represented the third round of litigation to challenge the acquisition of the land owned by the petitioner. We would therefore rest content with setting out the broad features of the case relevant to the issue which has been raised in the present proceedings.

2. The short question that the petitioner now raises is whether the acquisition proceedings stood lapsed on account of the failure of the respondent to make an award within the stipulated period of two years from the date of the issue of

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declaration under Section 6 of the Land Acquisition Act. According to the petitioner, since the declaration in question was issued on 9.4.2001, any award made beyond 9.4.2003 would be hit by the provisions of Section 11-A of the Act. That argument may on the face of it sound attractive, when we look at the date when the declaration was issued and the fact that no award had been made by the respondent even after lapse of seven years. But the contention does not survive closer scrutiny. We say so because in W.P. (C) No. 6384/2000 filed by the petitioner to challenge the notification under Section 4 & 17(1) of the Act, this Court had passed an interim order dated 23.10.2000 directing the parties to maintain status quo as to possession. That petition was eventually dismissed by this Court on 22.8.2006, but the interim order continued for a period of one week from the date of dismissal. On 29.8.2006 when the life of the extended interim order expired, the petitioner obtained an interim order of stay of dispossession in the second writ petition filed by it viz W.P. (C) No. 13653/2006. That interim protection continued to remain operative till the dismissal of the said petition on 18.9.2007. As a matter of fact the dismissal order continued the interim protection in favour of the petitioner for another four weeks beyond the date of

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dismissal. In the meantime, the petitioner filed a review petition in which there was again an interim order issued on 8.10.2007 which continued till the date of the dismissal of the review petition. An application was then filed by the petitioner which resulted in a further extension of interim order till the matter was taken to the Supreme Court in three Special Leave Petitions against the orders passed by this Court in Writ Petitions No. 6384/2000 and 13653/06 and in review petition No. 380/2007.

3. It is a common ground that the Supreme Court had also granted an interim order in the above Special Leave Petitions till the said petitions were eventually dismissed by their Lordships on 23.11.2007. The second round thus concluded with the said order, but the matter was not allowed to rest there because the petitioner filed a third round of litigation in W.P. (C) No. 8791/2007 which was dismissed on 8.2.2008. Learned counsel for the petitioner did not dispute that during pendency of this third round of proceedings also which remained pending for just about three months, there was an order of restraint (though not recorded) issued orally by this Court to protect the interest of the petitioner till the said petition was finally

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disposed of. Suffice it to say that right from 23rd of October, 2000 till 8th of February, 2008, the petitioner has been protected against dispossession by interim orders obtained by it in multiple proceedings instituted in this Court challenging the acquisition proceedings.

4. In the matter of computation of the period of 2 years stipulated under Section 11-A, the period during which the land owner has obtained an interim order of stay or status quo restraining further proceedings or dispossession from the land under acquisition shall have to be excluded. That is evident from a plain reading of the explanation to Section 11-A which is to the following effect:-

"11-A. Period within which an award shall be made - (1) The Collector shall make an award under section 11 within a period of two ye+ars 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, the award shall be made within a period of two years from such commencement."

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5. The legal purport of the explanation has been the subject matter of a number of decisions delivered by the Supreme Court and by this Court. We need refer only to two of the said decisions rendered by their Lordships of the Supreme Court in ***Usufbhai NoorMohmed Nendoliya v. State of Gujarat - (1991) 4 SCC 531 and Ramalinga Thevar v. State of Tamil Nadu and Others - (2000) 4 SCC 322.***

6. In ***Usufbhai's case (supra)*** the Supreme Court has explained the purport of the explanation in the following words:

"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 landholder. 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. In our opinion, the Gujarat

High Court was right in taking a similar view in the impugned judgment."

7. To the same effect is the decision of the Supreme Court in ***Ramalinga Thevar's case (supra)*** where the Supreme Court has explained the legal position in the following words:-

"6. As per the Explanation the period of exclusion from the time is the period during which "any action or proceedings" to be taken in pursuance of the said declaration is stayed. We have no doubt that one of the actions contemplated pursuant to the declaration is taking possession of the land, though such action is a post-award step in normal circumstances and in emergent circumstances it can as well be a pre-award step. Nonetheless, pursuant to the declaration envisaged in Section 6 of the Act. The consequence mentioned in Section 11-A is a self-operating statutory process and, therefore, it can operate only when the conditions specified therein conjoin together. The consequence would step in only when there is fusion of all the the conditions stipulated therein. If there is any stay regarding any of the actions to be taken pursuant to the declaration then the consequence of lapse would not happen.

7. A three-Judge Bench of this Court had considered the scope of the Explanation to Section 11-A of the Act in *Yusufbhai Noormohmed Nendoliya v. State of Gujarat (supra)*:

"8. The said Explanation is in the

widest possible terms and, in our opinion, 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 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 landholder. 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."

8. We may also refer to two decisions of this Court rendered in ***Suleman v. Union of India & Ors. - 123 (2005) DLT 206***

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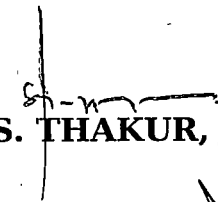
and Shanti India (P) Ltd. v. LT. Governor & Ors. - 2007

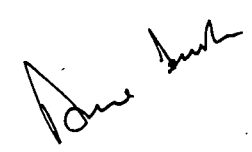
(94) DRJ 550 which explain the true meaning and interpretation of the explanation to Section 11-A.

9. Mr. Sethi, learned counsel appearing for the petitioner, fairly conceded that the legal position in regard to the exclusion of the period during which there was interim order of restrain issued by a competent court is fairly well settled by the pronouncements of the Supreme Court and those of this Court. He, however, urged that since the petitioner propose to question the ratio of the said decisions in the Supreme Court by filing a special leave petition, this Court may pass an appropriate order thereby enabling the petitioner to agitate the matter suitably. In the circumstances, there is hardly any room for us to interfere with the on going proceedings on the ground that the same have lapsed by reason of non making of award by the Collector within the time stipulated under Section 11-A. Since there was an interim protection granted to the petitioner right from 23.10.2000 till 8.2.2008, the said period shall have to be added to the period of two years stipulated under Section 11-A for making of the award. When so added, the Collector still has time for making of the award. The

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argument that the proceedings have lapsed on account of the failure of the Collector to make an ward within the stipulated period of two years must accordingly fail and is hereby rejected. In the result, the writ petition fails and is dismissed with costs assessed at Rs. 5000/-.


T.S. THAKUR, J.


ARUNA SURESH, J.

FEBRUARY 27, 2008
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