

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.11606 OF 2014

ORDER:

The petitioner prays for Mandamus declaring the draft notification of the 1st respondent vide G.O.Ms.No.182 Higher Education (UE-I) Department dated 26.09.2007 and the draft declaration under G.O.Ms.No.20 Higher Education (UE-I) Department dated 25.02.2009 for acquisition of land of an extent of Ac. 0.45 cents in Sy.No.475/1-A part, an extent of Ac. 6.68 cents in Sy.No. 476/2 and 476/3, and extent of Ac.0.84 cents in Sy.No.477 of Velugubanda Village, Rajanagaram Mandal, East Godavari District (hereafter referred as 'subject land'), as illegal and contrary to Section 11-A of the Land Acquisition Act (for short 'the Act').

The petitioner claims to be the absolute owner and possessor of subject land. The petitioner is in actual and physical possession of the subject land. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India complaining against the continuation of land acquisition proceedings for the subject land even after expiry of two years from the date of draft declaration as illegal and unconstitutional. The facts stated by the petitioner are not disputed by the contesting respondents.

On 18.11.2006, the District Collector issued notification under Section 4(1) of the Act proposing to acquire an extent of Ac.293-56 cents in various survey numbers at Velugubanda Village, Rajanagaram Mandal, East Godavari District. The purpose of acquisition is establishment of Adi Kavi Nannayya University. Section 4(1) notification dated 18.11.2006 was subject matter of challenge in writ petition filed in this Court. The competency of District Collector to issue a notification under Section 4(1) of the Act was the issue.

On 14.08.2007, this Court allowed the writ petition and quashed Section 4(1) notification dated 18.11.2006. The 2nd respondent through G.O.Ms.No.182 dated 26.09.2007 issued Section 4(1) notification under the Act proposing to acquire an extent of Ac.293-56 cents at Velugubanda Village, Rajanagaram Mandal, East Godavari District.

On 22.11.2007, Section 4(1) notification was published in Eenadu daily newspaper. Fresh challenge to the notification under Section 4(1) dated 26.09.2007 is taken up in W.P.No.199 of 2008. From 04.01.2008 till 12.02.2009, it appears an order of *status quo* was operating in the matter of acquisition of lands covered by the 4(1) notification dated 22.11.2007.

On 25.02.2009, the 2nd respondent issued draft declaration through G.O.Ms.No.20 Higher Education Department. The subject land is included in the draft declaration dated 25.02.2009. In this factual background, the grievance of petitioner is that the respondents did not pass Award within two years from the date of draft declaration dated 25.02.2009 and the land acquisition proceedings are lapsed.

The learned counsel while reiterating the contentions placed strong reliance upon the decisions reported in

MULCHAND KHANUMAL KHATRI V. STATE OF GUJARAT AND OTHERS ^[1] and **SINGARENI**

COLLIERIES COMPANY LIMITED V. VEMUGANTI RAMAKRISHAN RAO AND OTHERS^[2] and prays for setting aside the proceedings impugned in the writ petition.

The 3rd respondent filed counter-affidavit opposing the prayer both in fact and law. The 3rd respondent refers to the details of acquisition of land in other survey numbers, including payment of compensation to petitioner for acquiring land in an extent of Ac.1-19 cents in Sy.No.476/3. This Court is not considering the legality of acquisition of other survey numbers. As already noted, the grievance in the writ petition is against continuation of land acquisition proceedings against the subject land. The following excerpt from the counter-affidavit would avoid detailed consideration of various averments stated by the 3rd respondent in the counter-affidavit.

“The status of the writ petitioners schedule lands are shown below:

Sl. No.	Name of land owner notified in D.N(u.s 4(1) of LA Act)	Sy.No	Extent notified in Ac.Cts	Extent denotified	Balance extent available for acquisition	Name of the owner in the draft declaration (u/s 6 of LA Act	Sy.No	Extent decal- red	Compensation paid and draft award passed	Possession taken or not
1.	A.V.Subba Rao	475/1A	8.40	7.95	0.45	Kothapalli Madhavi, Nekkanti Sathemma	475/1A	0.45	Not paid no award passed (0.45)	Not taken (0.45)
2.	Nekkanti Sathemma	476/2	1.16	0	1.16	Nekkanti Sathamma	476/2	6.68	Not paid no award passed (5.49)	Not taken (5.49)
3.	Nekkanti Sathemma	476/3	5.52	0	5.52		476/3		1.19	1.19
4.	Nekkanti Sathemma	477	0.20	0	0.20	Nekkanti Sathemma	477	0.84	Not paid no award passed (0.84)	Not taken (0.84)
	Total		15.28	7.95	7.33			7.97	1.19	1.19

The remaining extent of Ac.6.78 cts was not taken possession so far from the writ petitioner. It is submitted that the present land acquisition is inevitable for establishment of Adi Kavi Nannayya University to develop the educational activities”.

The 3rd respondent emphasises that the subject land is also required for the public purpose of establishing Adikavi Nannayya University at Velugubanda Village, Rajanagaram Mandal, East Godavari District and prays for dismissal of writ petition.

This Court is not considering the public purpose of acquisition or any of the procedural deviations in the enquiry conducted by the competent authority under Section 5-A of the Act.

The short question that falls for consideration is – whether the land acquisition proceedings initiated through Section 4(1) notification dated 26.09.2007 and the draft declaration dated 25.02.2009 can be continued or are lapsed by operation Section 11-A of the Act.

The declaration under the Act is dated 25.02.2009. The admitted position is that as on date no Award is passed by the Land Acquisition Officer. The legal implication of expiry of two years’ period from the date of draft declaration is that the entire proceedings for acquisition of the land shall lapse. The computation of period or the legal effect is no more *res integra*.

In **Mulchand Kanumal Khadari’s** case, the Apex Court held as follows:

“Section 11A of the Act reads as under:-
11A. Period within which an award shall be made.- (1) 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, 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.

Section 11A mandates that an award shall be made by the Collector under Section 11 of the Act within a period of two years from the date of the publication of the declaration. The non-adherence to this period results in entire acquisition proceedings being lapsed. The proviso that follows sub-section (1) states that where the declaration under Section 6 has been published before the commencement of the Amendment Act the award shall be made within a period of two years from such commencement. The Explanation appended to Section 11A clarifies that the period during which any action or proceeding relating to acquisition taken pursuant to such declaration remains stayed by an order of the court, such period shall be excluded.

Insofar as present case is concerned, there is no dispute that the proviso that follows sub-section (1) of Section 11A is attracted because the declaration under Section 6 was published before the commencement of the Amendment Act and the award was made after coming into force of Section 11A. The period of two years shall thus commence from 24.09.1984 when the amendment to the Act was notified.

It is also not in issue that in computing the period of two years, the period during which the interim relief granted by the Gujarat High Court remained operative shall have to be excluded. The stay order of the High Court remained operative for the period September 24.09.1984 to 11.01.1996. The question is, whether Section 11A of the Act permits exclusion of time that was taken in obtaining the certified copy of the judgment and order passed by the High Court and the period from the date the certified copy was obtained and it was brought to the notice of the authority.”

In ***Singareni Collieries Company Limited’s*** case, the Apex Court has reiterated the principle and further held as follows:

“It is evident from the above that in order to be valid, the award must be made within a period of two years from the date of the publication of the declaration under Section 6 of the Act. The declaration in the instant case was published on 2-3-1994 while the award was made on 5-11-1999. The same was, therefore, clearly beyond two years’ period stipulated under the above provisions. Even so the award could be held to be valid if the same was within two years of the declaration after excluding the period during which the High Court had stayed the proceedings in the writ petition filed by the respondent landowners. That is because the Explanation to Section 11-A (supra) permits exclusion of the period during which the court had stayed the acquisition proceedings for the purpose of reckoning the period of two years prescribed for making the award. In the case at hand the interim order of stay was issued by the High Court on 6-12-1995 which order was finally vacated on 28-7-1999 with the dismissal of the writ petition. This means that the restraint order remained in force for a period of 3 years, 7 months and 22 days. That period shall have to be added to the period of two years prescribed for making the award in the light of the Explanation to Section 11-A. The difficulty is that even if the said period is added to the time allowed for making an award, the award stands beyond the period prescribed.”

By applying the rigour of Section 11-A of the Act and also the principle of law in the reported cases, the instant case is one where the respondents by not making the Award within a period of two years from 25.02.2009 have allowed the land acquisition proceedings to get lapsed. Had it been a case where the respondents are taking any other plea that the non-passing of Award within the stipulated period is on account of circumstances beyond the reach or that a few exclusions are required to be given in computing the period, this Court would have examined these aspects of the matter. From the admission in the counter-affidavit, it is evident that no Award within the period prescribed by Section 11-A of the Act is made and the land acquisition proceedings, insofar as the subject land, are

concerned, are lapsed and accordingly the proceedings are declared as lapsed.

The respondents are free to acquire the subject land in accordance with law if the land is required for public purpose for establishing the university.

The writ petition is, accordingly, allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V. BHATT, J

03rd February, 2015
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[\[1\]](#) (2012)5 SCC 365
[\[2\]](#) (2013)8 SCC 789