

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**WRIT PETITION NO.195 OF 2015**

Mrs. Aienla Semelhago,  
Indian National, major of age,  
r/at H.No.175, Alto Monte, Nagali Hill  
Colony,  
Dona Paula, Goa.

... Petitioner

***Versus***

1. State of Goa,  
through the Secretary (Revenue),  
having office at Secretariat,  
Porvorim Goa.
2. The Dy. Collector ( Revenue) & LAO,  
Panaji Goa.
3. North Goa Planning & Development  
Authority, through its Member  
Secretary, having office at Archdiocese  
Building, 1<sup>st</sup> Floor, Mala Link Road,  
Mala, Panaji Goa.

... Respondents

Mr. Shivan Desai, Advocate for the petitioner.

Mr. Manish Salkar, Government Advocate for the respondents.

**CORAM:     M. S. SONAK &  
                   R. N. LADDHA, JJ**

**DATE :       27<sup>th</sup> January 2022**

ORAL JUDGMENT ( Per M. S. Sonak, J)

1. Heard Mr. S. Desai, learned counsel for the petitioner, and Mr. M. Salkar learned Government Advocate for the respondents.
2. The challenge in this petition is to the Notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 ( the said Act) in the context of the acquisition of the petitioner's property admeasuring 540.75 square metres bearing Chalta No.2A of P.T. Sheet No. 173 of the city of Panaji for the recreational purpose i.e. extension of the existing garden at Caranzalem in Panaji city.
3. Mr. Desai submitted that on the date when this petition was filed, no award had been made under the said Act. However, he submitted that later on i.e. 21.05.2015 an award was indeed made. He submitted that even though no formal amendment has been applied for by the petitioner to challenge this award dated 21.05.2015, if the impugned Notifications are quashed then, as a corollary, even the award dated 21.05.2015 will have to be quashed. Mr. Desai submitted that the petitioner's case is almost entirely based on the provisions of Section 11-A of the said Act which provide that an award under Section 11 of the said Act has to be made within a period of two years from the date of the publication of the declaration under Section 6 of the said Act and

if no award is made within that period, the entire proceedings for the acquisition of land shall lapse.

4. Mr. Desai pointed out that in this case the declaration under Section 6 was made on 07.11.2012 and was published in two newspapers on 09.11.2012 and the Official Gazette on 15.11.2012. He pointed out that two years period from the date of declaration i.e. 07.11.2012 expired on or about 07.11.2014. This petition was therefore instituted on 24.02.2015 for quashing the Notifications under Sections 4 and Section 6 of the said Act because as of 24.02.2015, there was no award made by the respondents.

5. Mr. Desai, in the context of returns filed on behalf of the respondents, submitted that it is extremely doubtful whether the substance of Section 6 declaration was at all given at the site of the acquisition. He, however, submitted that even if it is assumed that the same was done on 22.05.2013 as pleaded, there was an unreasonable delay for which there is no explanation whatsoever in the returns. He submitted that the object of Section 11-A of the said Act is to ensure that awards are made expeditiously. He submitted that this provision is made for the benefit of the party whose lands are compulsorily acquired and have to be construed accordingly. He submitted that merely because there is no time

limit prescribed for giving public notice of the substance of the declaration at convenient places, the Authorities cannot give such notice after some unreasonable and unexplained delay. He submitted that if this is permitted then the very object of enacting Section 11-A of the said Act will be frustrated. He relies on ***R. Kolandaivelu (Dead) by Lrs and others Vs Government of Tamil Nadu and another***<sup>1</sup> and ***Ramchand and others Vs Union of India and others***<sup>2</sup>, in support of his contentions.

6. Mr. M. Salkar countered the submissions of Mr. Desai by pointing out that Section 6(2) of the said Act makes it clear that every declaration has to be published in the Official Gazette and two newspapers and further, the Collector has to cause public notice of the substance of such declaration to be given at convenient places in the locality. He pointed out that in terms of Section 6(2), the last of the dates of such publication and giving of such public notice is to be construed as the date of the publication of the declaration. He pointed out that since the public notice was given on 22.05.2013, the award made on 21.05.2015 was well within the period of two years prescribed under Section 11-A of the said Act. He submits that the petition was prematurely instituted and there is no challenge to the award ultimately made on 21.05.2015. He submitted that the

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<sup>1</sup> (2010) 2 SCC 97

<sup>2</sup> (1994) 1 SCC 44

publication of notice was within a reasonable period and in the absence of any specific challenge to such period being unreasonable or that there was no publication, the proceedings for acquisition of petitioner's land for a public purpose may not be quashed.

7. Mr. Salkar pointed out that this petition was instituted on 24.02.2015 and the documents annexed to the returns, which include communication dated 06.06.2013 addressed by the Mamlatdar to the Land Acquisition Officer and the accompanying panchanama clearly establish that such public notice was given at the locality on 22.05.2013. Mr. Salkar submits that there is no question of raising any doubt about such publication across the bar. He pointed out that even in the rejoinder filed by the petitioner no such doubts were raised and the only contention was that the publication of notice was inordinately delayed and such delay cannot have the effect of extending the time stipulated in Section 11-A of the said Act. Mr. Salkar submits that the acquisition is for the extension of the existing park at Caranzalem which is a public purpose. Mr. Salkar submitted that quashing such an acquisition will impose an undue burden on the State and perhaps deprive the citizen of the facility of a larger public park at Caranzalem close to the Miramar

beach. For all these reasons, Mr. Salkar submitted that this petition may be dismissed.

8. The rival contentions now fall for our determination.

9. The Notification under Section 4 of the said Act proposing to acquire the petitioner's land admeasuring 540.75 square metres was issued on 30.09.2011 and published soon thereafter. Section 6 declaration was made on 07.11.2012. The same was published in two newspapers on 09.11.2012 and the Official Gazette on 15.11.2012.

10. From the returns filed and the documents accompanying the returns, it is clear that the public notice of the substance of Section 6 declaration was given at a convenient place in the locality on 22.05.2013. The doubts expressed by Mr. Desai across the bar as to whether or not such public notice was indeed given on the said date cannot be entertained in the absence of pleadings in the petition or for that matter even in the absence of any such doubts being expressed in the affidavit in rejoinder filed by the petitioner on 29.09.2015. In any case, based upon such doubts, we cannot conclude that no such public notice was given in the locality on 22.05.2013 or at all.

**11.** Along with the returns, the respondents have relied on a panchanama dated 22.05.2013 which states that such notice dated 22.05.2013 was pasted at the convenient place at the site of the acquisition at about 1.35 p.m. in the presence of two witnesses. The signatures of the two witnesses appear on the panchanama. This public notice by way of affixation was given by the Talathi Sapresh Verenkar.

**12.** Besides, along with the returns the respondents have placed on record communication No. MAM/TIS/LA/2154/ 2013/479 dated 06.06.2013 addressed by the Mamlatdar of Tiswadi Taluka, Panaji Goa to the Deputy Collector and Land Acquisition Officer informing that the Talathi has published two notices at the requisite places i.e. one at the notice board of the office of the Mamlatdar of Tiswadi Taluka and one on the notice board of the Corporation of the City of Panaji and two notices on the proposed acquisition site on 22.05.2013. Copy of the panchanama was also enclosed along with this communication dated 06.06.2013. This communication bears a stamped mark of the Collectorate of North Goa District as also the entry No.12558 dated 07.06.2013 thereby confirming that such a communication was indeed received in the office of the Collector on 07.06.2013. Now all this is much before the date of institution of the petition i.e. 24.02.2015. Therefore, based on

doubts expressed across the bar we cannot hold that the public notice of the declaration under Section 6 was either never given or in any case never given on 22.05.2013.

13. Section 11-A of the said Act reads as follows:-

*“11-A. Period within which an award shall be made.- —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 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.”*

14. The expression “*the date of the publication of the declaration*” has been explained under Section 6(2) of the said Act which reads as follows:-

*“6(2). [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and*

*the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.”*

15. Section 6(2) contemplates that every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language. Section 6(2) also contemplates that the Collector shall cause public notice of the substance of such declaration to be given at convenient places of the said locality. Section 6(2) thereafter clearly and unambiguously provides that the last of the dates of such publication and giving of such public notice are hereinafter referred to as *the date of the publication of the declaration*.

16. In the present case, since the public notice of the substance of the declaration at the locality was given on 22.05.2013, it is this date that will have to be held as the date of the publication of the declaration for Section 6(2) and consequently also for Section 11-A of the said Act. The award, in this case, was made on

21.05.2015 which is within two years from the date of publication of the declaration. Therefore, on the facts, as they stand, the proceedings for acquisition cannot be said to have lapsed on account of alleged failure on the part of the respondents to make an award under Section 11 within two years from the date of the publication of the declaration.

17. Mr. Desai however, submitted that the spirit of provisions of Section 11-A of the said Act have been breached by the respondents and that is a good enough ground to declare that the proceedings for acquisition have lapsed. In the context of this contention, Mr. Desai placed reliance on *R. Kolandaivelu* (supra).

18. In *R. Kolandaivelu* (supra) the Hon'ble Supreme Court has held that in terms of the provisions of Section 11-A, the State Authorities are required to pass a final award within two years from the date of publication of the declaration under Section 6 of the Act failing which the acquisition proceedings would lapse. This would clearly show the intention of the Legislature that the benefit of this provision would be in favour of the landowner. If no award is passed within two years from the date of declaration when no order was obtained by the landowner from the Court

staying the acquisition then the land would revert to the landowner.

**19.** The Hon'ble Supreme Court also explained that the purpose for which Land Acquisition Act was amended and Section 11-A was enacted was to prevent inordinate delay being caused by the Land Acquisition Officer in making an award that deprived the landowners of enjoyment of their land or dealt with the land whose possession was already taken. The delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11-A into the Act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and "it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act."

**20.** The aforesaid observations were made by the Hon'ble Supreme Court primarily in the context of determining the scope and object of the explanation to Section 11-A which had provided that 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 the Court shall be excluded. The Hon'ble Supreme Court factually found that after excluding the period for which the landowner had obtained a stay, the award was made within two years. Therefore, the Hon'ble Supreme Court concluded that there was no breach of Section 11-A and proceedings for acquisition of land could not be declared as lapsed.

**21.** Although indeed, the object and the purpose for introducing Section 11-A in the said Act was to curb the inordinate delay on the part of the Land Acquisition Officer in making awards, at the time of introduction of Section 11-A in the said Act, the Legislature also amended the provisions of Section 6(2) of the said Act to provide that the last of the dates of publication of the declaration or giving of the public notice shall be referred to as the date of the publication of the declaration. In any case, at the stage when Section 11-A was introduced in the said Act, the Legislature was very much aware of the provisions of Section 6(2) which had provided that the last of such dates of publication or giving a public notice shall be referred to as the date of the publication of declaration. Therefore, based on the contention that the spirit of provisions of Section 11-A or object or purpose of enactment of Section 11-A has been allegedly breached, a declaration as to the lapsing of proceedings cannot be made when the record bears out that the award dated 21.05.2015

was made within two years from the date of the publication of the declaration under Section 6 of the said Act.

**22.** Mr. Desai then pointed out that there was an inordinate and unexplained delay on the part of the respondents in giving public notice of the declaration under Section 6 of the said Act in the locality. He submitted that the respondents cannot take advantage of such inordinate and unexplained delay and thereby extend the period of limitation prescribed under Section 11-A of the said Act. He submitted that it is well settled that even where no period of limitation is prescribed for doing a particular act, the Authorities are required to do such an act within a reasonable period. Based on this principle, Mr. Desai submitted that the public notice of the declaration ought to have been given in the locality within a maximum of two to four weeks from the date of declaration under Section 6 i.e. on or before 07.12.2012. He submits that if this is regarded as the date of publication of the declaration then, an award made on 21.05.2015 is clearly beyond the period of two years prescribed in Section 11-A of the said Act and the proceedings should therefore be declared as having lapsed. He relied on *Ramchand* (supra).

**23.** *Ramchand* (supra) is a matter which concerns acquisition before the introduction of Section 11-A in the said Act. That was

a case where Section 4 Notification was issued between the years 1959 and 1965 but no awards were made up to the years 1979 - 1980 although the declarations under Section 6 of the said Act had been made in the years 1966 and 1969. Thus, there was a delay of almost 15 to 20 years between the issuance of Notification under Section 4 of the said Act and the making of awards. Similarly, there was a delay of 10 to 12 years between the dates of publication of the declaration under Section 6 of the said Act and the making of the awards. In the context of such facts and such inordinate delay of 10 to 15 years in making the awards, the Hon'ble Supreme Court held that the awards have to be made within a reasonable period even though the provisions of Section 11-A were not on the statute book at the relevant time and even though the Legislature had not provided for any time limit within which such awards could be made. The observations in paragraph 14 upon which emphasis was laid by Mr. Desai are in the context of inordinate delay of almost 10 to 15 years from the date of declaration under Section 6 of the said Act in making the awards.

**24.** In the present case, the award has been made within two years from the date of the publication of the declaration under Section 6 having regard to the provisions of Section 6(2) of the said Act. True, there is some delay between the date of the publication of the declaration in the newspapers/Official Gazette

and the date of public notice of the declaration in the locality. This delay is for about 5 to 6 months. Although no specific period as such has been prescribed by the Legislature for giving public notice of declaration in the locality, it is expected that the Authorities give such public notice within a reasonable period having regard to the object and purpose for enacting Section 11-A of the said Act. The provisions of Section 11-A cannot be frustrated by the Authorities by simply delaying in giving public notice in the locality for some unreasonable length of time.

**25.** In the facts of this case, however, we find that the petition as was instituted proceeded on the basis that there was no public notice of declaration given in the locality. This petition was instituted on 24.02.2015 and now the record bears out that the public notice of declaration was given in the locality on 22.05.2013. In the affidavit in rejoinder filed by the petitioner on 29.09.2015, the petitioner has not disputed either the panchanama dated 22.05.2013 or the factum of public notice of the declaration being given in the locality on 22.05.2013. In paragraph 4 of the affidavit in rejoinder, this is all the petitioner has stated:-

*“4. I say that the letter dated 06/06/2013 and the Panchanama dated 22/05/2013 is completely misconceived. The Respondent No.2 has no produced*

*any Panchanama pertaining to the publication of notices on the notice board of Mamlatdar of Tiswadi and Corporation of City of Panaji. The said Panchanama cannot be related to all the publications. I put the Respondent No.2 to strict proof thereof as regards publication of notices on the board of Mamlatdar of Tiswadi and Corporation of City of Panaji. Respondent No.2 cannot rely on successive and multiple publications to malafidely extent the time period.”*

**26.** Since the petitioner in her affidavit in rejoinder has not disputed the panchanama or the factum of giving notice in the locality on 22.05.2013, the petitioner was expected to refer to such declaration in the petition which was instituted on 24.02.2015. In any case, after the respondents filed their affidavit in reply and clarified the position regards the public notice given on 22.05.2013, the petitioner was expected to amend the petition so that the respondents would have an opportunity to explain why there was some time gap between the date of the declaration and public notice in terms of Section 6(2) of the said Act. The petitioner did not also bother to amend the petition and challenge the award dated 21.05.2015 even though, the respondents in their return filed on 30.07.2015 had clearly stated that such award was indeed made on 22.05.2013. Even if this last aspect is ignored as a technicality, in the facts of the present case, the acquisition proceedings cannot be declared as lapsed on the

ground of inordinate or unexplained delay in issuing public notice of the declaration under Section 6 of the said Act.

**27.** As noted earlier, there are no pleadings based on which the respondents could have filed a proper response and explained the time gap. Besides, the time gap is also not of the nature referred to by the Hon'ble Supreme Court in *Ramchand* (supra). In para 5 of the rejoinder, all that the petitioner has stated is that there was an inordinate delay and such inordinate delay cannot have the effect of extending the time stipulated in Section 11-A of the said Act. Based on such statement and that too in an affidavit in rejoinder, we are not persuaded to declare that the proceedings for acquisition have lapsed.

**28.** Though in the facts of the present case, we are not persuaded to grant the petitioner any relief, we must say that the Authorities must not unreasonably delay the publication of the declaration under Section 6 of the said Act either in the Official Gazette or newspapers. Similarly, the Authorities must not unreasonably delay the public notice in the locality simply because Section 6(2) of the said Act provides that the date of publication of the declaration will mean the last of the dates of such publication and giving of such public notice. Ultimately, the Authorities must keep in mind that compulsory acquisition of

land is a serious matter and the acquisition proceedings, once commenced should be concluded without unreasonable delay. This is necessary because the market value of the acquired land is determined as on the date of the issuance of Notification under Section 4 of the said Act. Even after issuance of Notification under Section 4 of the said Act, there are restrictions on the landowners when it comes to dealing with the property which is proposed to be acquired. All these factors coupled with the purpose and object behind enacting Section 11-A of the said Act suggest that the State Authorities must conclude the acquisition proceedings without unreasonable delay once, the declaration is made under Section 6 of the said Act to proceed with the acquisition.

**29.** In the facts of the present case, the State may consider whether the compensation can be determined in the context of the date of public notice i.e. 22.05.2013, or whether some additional compensation can be given to the petitioner. Mr. Salkar however pointed out that under the said Act, the landowner is entitled to the substantial interest as well as solatium, and prejudice, if any, to such landowner is therefore set off by these statutory measures. We leave this matter to the State since we are aware that we cannot issue any directions in this regard.

**30.** For all the aforesaid reasons, we are not persuaded to grant any relief to the petitioner by way of declaring that the proceedings for acquisition have lapsed in the facts of the present case. This petition is therefore liable to be dismissed and is hereby dismissed. The rule is discharged. There shall be no order for costs.

**31.** Mr. Desai prayed for an extension of interim relief granted by us on 16.07.2015 restraining the respondents from taking possession of the disputed property of the petitioner till the returnable date. He pointed out that this interim relief was continued to date. Accordingly, we continue this interim relief for a period of a further six weeks from today.

**R. N. LADDHA,J**

**M. S. SONAK, J**