

M.Ramalinga Thevar vs State Of Tamil Nadu And Others on 19 April, 2000

Bench: K.T. Thomas, M.B. Shah

CASE NO.:

Special Leave Petition (crl.) 3229 of 2000

PETITIONER:

M.RAMALINGA THEVAR

Vs.

RESPONDENT:

STATE OF TAMIL NADU AND OTHERS

DATE OF JUDGMENT: 19/04/2000

BENCH:

K.T. THOMAS & M.B. Shah

JUDGMENT:

Thomas J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T...J A Land Acquisition Collector passed award only after the expiry of two years from the date of publication of the declaration under Section 6 of the Land Acquisition Act, 1894 (for short the "Act"). The owner of the land wanted a declaration that proceedings for acquisition covered by the said publication stood lapsed on the expiry of the said period of two years. But a Division Bench of the High Court of Madras which the owner of the land approached for such a relief, repelled his contentions. The High Court took into account the time during which proceedings for taking possession of the land were stayed by an order passed in a writ petition. When that period was excluded from the time fixed for passing the award the Division Bench held that the award was passed within the permitted range of time. The owner of the land challenges the said judgment in this appeal.

After hearing learned counsel for the appellant we did not find the necessity to issue notice to the respondent State as the appeal can be disposed of without resorting to such a course.

A notification under Section 4(1) of the Act was published in the gazette on 27.2.1991. That notification was challenged by the appellant in writ petition No.9715 of 1991 which he filed before the High Court of Allahabad on 16.7.1991. On the same day an order was passed by the High Court staying dispossession of the appellant from the property involved. Despite the pendency of the said writ petition the Government published declaration under Section 6 of the Act on 10.4.1992. But the award was passed only on 16.9.1994. Thus, there is no doubt that the award was passed only after the expiry of two years from the date of declaration.

Learned counsel for the appellant submitted that since there was no stay for passing an award the period of two years should have been counted from 10.4.1992 which had expired on 9.4.1994 and by such expiry the proceedings had become lapsed. Section 11A and the Explanation thereto (omitting the proviso which is not material in this case) are extracted below:

"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.

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]."

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, taking possession is one of the actions to be adopted as a follow- up measure pursuant to the declaration envisaged in Section 6 of the Act. The consequence mentioned in Section 11A 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 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. A three judge bench of this court had considered the scope of the Explanation to Section 11A of the Act in *Yusufbhai Noormohmed Nendoliya vs. State of Gujarat*[1991 (4) SCC 531]:

"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 the Explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made 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 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 Section 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."

In *Sangappa Gurulingappa Sajjan vs. State of Karnataka* [1994 (4) SCC 145] the question considered was the scope of Explanation 1 to the proviso of Section 6 of the Act which also contained a similar restriction that no declaration under the section shall be made after the expiry of three years from the date of publication of the notification under Section 4. The said Explanation states that in computing the aforesaid period of three years "the period during which any action or proceedings to be taken in pursuance of the notification issued under Section 4 (1) is stayed by an order of a court shall be excluded." As there was only a stay of dispossession from the land concerned the High Court did not permit that period of stay to be excluded from the three years' period. But this Court reversed the said view of the High Court and stated thus:

"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 adjudication of the legality of Section 4(1), notification. If any action is taken to preempt the proceedings, it would be stigmatised 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 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 dismissed. No costs."

Both the above decisions were later followed by this Court in *Government of Tamil Nadu vs. Vasantha Bai* {1995 Supple. (2) SCC 423}.

Thus, the position is now well settled that even when dispossession alone is stayed by the Court the period during which such stay operates would stand excluded from the time fixed for passing the award, the expiry of which would render the acquisition proceedings lapsed. In the light of the said interpretation it is now idle to contend that the Government is debarred from proceeding with the

acquisition. The appeal is accordingly dismissed.