

CASE NO.:  
Appeal (civil) 6663 of 2000

PETITIONER:  
LOK SEWA SHIKSHAN MANDAL

RESPONDENT:  
A.R. MUNDHADA CHARITABLE TRUST & ORS

DATE OF JUDGMENT: 09/04/2007

BENCH:  
C.K. Thakker & H.S. Bedi

JUDGMENT:  
JUDGMENT

C.K. THAKKER, J.

The present appeal is filed against the judgment dated March 14, 2000, of the High Court of Judicature at Bombay (Nagpur Bench) in Writ Petition No. 810 of 1986. By the said judgment, the High Court held that land acquisition proceedings in respect of acquisition of land bearing Survey No. 187/3A, admeasuring 30 ares of Malkapur Town, District Buldhana had lapsed. Shortly stated, the facts leading to the institution of present appeal are that the appellant is a 'Society' registered on June 26, 1961 under the Societies Registration Act, 1860. It is also registered as 'Public Trust' under the Bombay Public Trusts Act, 1950 on August 17, 1962. The appellant is running a school in Buldhana. It approached the Government requesting for acquisition of land for school as also for garden. It appears that a letter was written by the Under Secretary, Revenue & Forest Department, Government of Maharashtra to the appellant informing it about acquisition of land of Survey Nos. 186 and 187 of Malkapur in Buldhana District for public purpose, viz. for running a school by the appellant. It was stated by the appellant that the respondent authorities prepared Final Development Plan of Malkapur Town under the Maharashtra Regional Town Planning and Development Act, 1966 wherein 59 ares of land of Survey No. 186/4A and 30 ares of land of Survey No. 187/3A was reserved for the purpose of school and open space for garden for the appellant. A Resolution dated May 15, 1976 was also passed giving sanction to the Development Plan. Necessary proceedings were thereafter taken in accordance with law for the acquisition of land. So far as acquisition of 59 ares of land of Survey No. 186/4A for school is concerned, the question is no more under controversy. It had been finalized and the challenge to the said acquisition failed. The High Court in the impugned judgment has observed that in its opinion, "no fault can be found with the award of the Land Acquisition Officer in relation to 59 ares of land." To that extent, therefore, the petition filed by the first respondent herein (original petitioner) came to be dismissed. With regard to 30 ares of land of Survey No. 187/3A earmarked for garden for the school, the contention of the first respondent \026 original petitioner was that the award had not been passed in accordance

with the provisions of Section 11A of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') and the proceedings lapsed. The said contention was upheld by the High Court and it was ruled that after the final notification under Section 6 of the Act, award ought to have been made within a stipulated period of two years as required by Section 11A which was not done and hence the proceedings lapsed. The judgment of the High Court to the extent to which it held that the proceedings in respect of 30 ares of land of Survey No. 187/3A had lapsed that the appellant-Mandal is aggrieved and has challenged it by filing the present appeal.

It is not in dispute by and between the parties that proceedings had been initiated by the authorities for acquisition of land of two Survey Nos. (i) Survey No. 186/4A admeasuring 59 ares of land for school; and (ii) Survey No. 187/3A admeasuring 30 ares of land for garden. It is also clear from the decision of the High Court impugned in the present appeal that though the first respondent had challenged land acquisition proceedings for both Survey Nos., the High Court negatived all contentions as to acquisition of land admeasuring 59 ares of Survey No. 186/4A and the petition was dismissed. It was only for 30 ares of land of Survey No. 187/3A that the Court held that though the notification under Section 6 was published on July 2, 1986, no award was made within two years as required by Section 11A of the Act and the proceedings had lapsed.

On July 28, 2000, the matter was placed for admission-hearing. Notice was issued and parties were directed to maintain status quo. On November 20, 2000, leave was granted and interim relief was ordered to continue. The matter has now been placed for final hearing.

We have heard the learned counsel for the parties.

Dr. Rajeev Dhawan, Senior Advocate appearing for the appellant contended that the High Court has committed an error of law as also of jurisdiction in holding that the proceedings had lapsed under Section 11A of the Act. It was submitted that the Court ought to have taken into account the fact that the acquisition was challenged by the first respondent by instituting a Writ Petition which was entertained by the High Court. In view of pendency of proceedings, no award could be passed by the Land Acquisition Officer and Section 11A of the Act had no application. It was also urged that on the one hand, the first respondent challenged the proceedings and obtained interim relief and on the other hand, it sought to contend that since the proceedings could not be completed as required by law, they lapsed. Such argument, submitted the counsel, would not lie in the mouth of the person who had questioned the legality of the proceedings. It is settled law that a party cannot take undue advantage of its own delay. The High Court ought to have appreciated the said fact and dismissed the petition. According to the appellant, when the proceedings were pending in the High Court and the matter was sub-judice, the Land Acquisition Officer was justified in not passing an award. Once public purpose had been established and notification under Section 6 of the Act had been issued, it could not have been set at naught or nullified on a technical ground that award had not been made within a particular period. It was,

therefore, submitted that the appeal deserves to be allowed by setting aside the judgment of the High Court and by upholding the action of the authorities that land acquisition proceedings were in consonance with law.

Learned counsel for the first respondent, on the other hand, supported the judgment of the High Court. According to him, the language of Section 11A is explicitly clear. It is bounden duty of the Land Acquisition Officer to make award within two years from the date of publication of declaration under Section 6 of the Act. Since it was not done, the proceedings had lapsed. The counsel stated that admittedly the proceedings were not stayed by the High Court. If it is so, Explanation to Section 11A of the Act had no application and in computing the period of two years under Section 11A, the period of pendency of Writ Petition could not be excluded. He, therefore, submitted that the appeal deserves to be dismissed.

Respondent Nos. 2 and 3, in their affidavit contended that after the notification under Section 6 of the Act was issued, the first respondent approached the High Court and challenged the acquisitions proceedings. In the light of pendency of Writ Petition, the authorities did not proceed further with the acquisition proceedings and the first respondent, who had challenged the proceedings cannot take advantage of that situation. It was, therefore, submitted that the High Court was in error in allowing the petition.

The question before this Court is as to whether the High Court was right in holding that award which ought to have been made under Section 11A of the Act was not made within the stipulated period. The learned counsel for both the sides, in this connection, drew our attention to the relevant provisions of law as also to the decisions of this Court.

Now it cannot be gainsaid that every State has power of eminent domain, which is the essential attribute of sovereignty. In exercise of the said power, the State can acquire private property of its subjects for a public purpose. The expression 'public purpose' is defined in Clause (f) of Section 3 of the Act. Section 4 enables the 'appropriate Government' to issue 'preliminary notification' if it appears to such Government that any land is needed or is likely to be needed for public purpose. Section 5A of the Act then provides for hearing of objections against the proposed acquisition. Section 6 empowers the 'appropriate Government' to issue 'final notification'. Such action, however, has to be taken after considering the report, if any, submitted by the Collector under Section 5A of the Act. It also provides modes of publication of notification and contains a provision in sub-section (3) that such declaration 'shall be conclusive evidence that the land is needed for a public purpose'. The law also provides for giving of notice to persons interested before taking over possession of land as also for payment of compensation. Section 11 of the Act deals with award of compensation by the Collector. Section 11A, as inserted by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) prescribes the period within which an award should be made by the Collector. The said section is material and may be quoted in extenso :-

"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 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation. \026 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 12 of the Act makes the award of the Collector final. We are not concerned with other provisions of the Act in the present matter. Bare reading of Section 11A leaves no room of doubt that the Collector is enjoined to make an award within a period of two years from the date of publication of declaration under Section 6 of the Act. "If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse." Explanation to Section 11A, however, states as to how period of two years should be counted. It clarifies that in computing the period of two years referred to in the section, the period during which any action or proceedings is stayed by an order of a court would be excluded. Whereas it is contended by the first respondent that the case on hand is governed by the main provision of Section 11A, the argument of the appellant is that it is governed by the Explanation to the said provision. Let us now consider the relevant decisions of this Court on the interpretation of the provision., In Yusufbhai Noormohmed Nendoliya v. State of Gujarat, (1991) 4 SCC 531, a question came up for consideration before this Court probably for the first time. In that case, proceedings under the Act had been initiated for acquisition of land of the appellant and final notification under Section 6 of the Act was issued on May 12, 1988. The land-owner challenged the notification by filing a petition in the High Court of Gujarat. A prayer was made for quashing the notification and acquisition proceedings. During the pendency and final disposal of the Writ Petition, interim relief of operation and implementation of the notification was also sought. The High Court, however, granted limited interim relief by restraining the authorities from taking possession of the land pending the Writ Petition. The Land Acquisition Officer then issued a notice under sub-section (1) of Section 9 of the Act for the purpose of determining compensation of land. The land-owner in the inquiry inter alia contended that two years had lapsed after the publication of final notification under Section 6 of the Act and, hence, no award could be passed as the proceedings lapsed under Section 11A. The contention of the land-owner, however, was rejected by the Authorities. The said decision was challenged by the land-owner in the High Court by filing another petition contending that there was no stay of 'further

proceedings' by the Court restraining the Authorities and hence it was obligatory on the authorities to proceed further under the Act. As it was not done, the award ought to have been made within two years as required by Section 11A. As the award was not passed within a period stipulated by Section 11A of the Act, it was barred by statutory limitation and the proceedings lapsed. The High Court rejected the contention observing that "the Explanation to Section 11A is not confined to the staying of the making of the award pursuant to Section 6 of the notification, but it is widely worded and covers in its sweep the entire period during which any action or proceeding to be taken in pursuance of the declaration under Section 6, is stayed by a competent court". The award, therefore, could not be said to have been passed beyond the statutory period, concluded the High Court. The aggrieved land-owner challenged the said decision in this Court.

This Court was called upon to consider whether the High Court was right in invoking the Explanation to Section 11A of the Act though limited interim relief was granted qua possession only and had not stayed 'further proceedings'. On behalf of the land-owner, reliance was placed on a decision of the High Court of Kerala in *S. Bavajan Sahib v. State of Kerala*, AIR 1988 Ker 280 that the question of taking possession of the land arises only when an award is passed under the Act except the cases covered by Section 17 (Cases of urgency). When Section 17 of the Act was not invoked, the case would be governed by Section 11A of the Act and not by Explanation thereto and if the award is not made within a period of two years from the date of final notification under Section 6 of the Act, the proceedings would lapse. This Court, however, negated the contention, disagreed with Kerala view and observed: "We find ourselves unable to agree with the learned Single Judge of the Kerala High Court in the aforesaid judgment". The Court then considered the scheme of the Act and the phrase "any action or proceedings", to be taken in pursuance of the notification and held that even if limited interim relief was granted, the Explanation to Section 11A would apply.

Interpreting the Explanation liberally, the Court stated;

"The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceeding 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 land-holder. 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."

In *Government of T.N. & Anr. v. Vasantha Bai*, (1995) Supp (2) SCC 423, in a similar situation, this Court reiterated the principle laid down in *Yusufbhai* and observed that while calculating the period of limitation of two years for making an award under Section 11A of the Act, the period during which action or proceedings were stayed by an order of the High Court would be excluded. It was held that even if there was stay as to dispossession only, it would tantamount to stay of further proceedings and the entire period had to be excluded.

In *M. Ramalinga Thevar v. State of T.N. & Ors.*, (2000) 4 SCC 322 : JT 2000 (5) SC 27, this Court held that as per Explanation to Section 11A of the Act, the period of exclusion from time is the period during which "any action or proceedings" to be taken in pursuance of the said declaration is stayed. Undoubtedly, one of the actions contemplated pursuant to the declaration under Section 6 is taking possession of the land though, such action is a post award step in normal circumstances. Nonetheless, it is one of the actions to be adopted as a follow-up measure pursuant to the declaration envisaged by Section 6 of the Act. Observing that the consequence mentioned in Section 11A is a self-operating statutory process, the Court held that it can operate only when the conditions specified therein conjoin together. The consequences would step in only when there is fusion of all the conditions stipulated therein. If there is any stay regarding any of the actions being taken pursuant to the declaration then the consequence of lapse would not happen.

This Court, therefore, concluded:-

"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."

Recently, in *Bailamma (Smt.) @ Doddabailamma (dead) & Ors. v. Poornaprajna House Building Coop. Society*, (2006) 2 SCC 416 : JT 2006 (2) SC 108, it has been held that period of stay of any action or proceedings taken in pursuance of the declaration would take out the matter from the main part to Section 11A of the Act attracting the Explanation to the said section.

The Court stated;

This Court emphasized the fact that Section 11A was enacted with a view to prevent inordinate delay being made by Land Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11A 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". The emphasis, therefore, was on the Collector making his award within the period prescribed. However, the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It, therefore, became imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made, an acquisition proceeding could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter. Explanation to Section 11A was meant to deal with situations of this kind. The explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a land-owner alone. One can conceive of cases where apart from land-owners others may be interested in stalling the land acquisition proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land acquired. But that will not lead us to the conclusion that the explanation applied only to cases where stay had been obtained by the owners of the land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration, they cannot be faulted for the delay, and therefore,

the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame.

Dr. Dhawan strongly relied upon a decision of the Division Bench of the High Court of Allahabad in *Smt. Kamla Pandey v. Collector, Agra & Ors.*, 1989 AWC 686. In that case, no award was passed within a period of two years from the date of publication of final notification under Section 6 of the Act. It was, therefore, contended on behalf of the land owner that the acquisition proceedings had lapsed under Section 11A of the Act. The Court, however, negated the contention observing that it was a 'technical plea' and the omission on the part of the Authorities was that the "Special Land Acquisition Officer did not determine the compensation regarding the petitioner's plot" on the ground that the question whether the property should be exempted from acquisition was pending consideration before the State Government.

The Court then stated :-

"The only question, therefore, that arises for consideration is whether the petitioner himself had requested for exemption of the land from acquisition or the Development Authority or the Collector on their own requested the Government to exempt the same from acquisition. The normal course of human conduct persuades us to think that it is the persons whose land or houses are being taken away who would be interested in getting the land exempted from acquisition. Ordinarily, no one likes expropriation even if he might get compensation in lieu of acquisition. We would, therefore, prefer to rely on the version of the Agra Development Authority that it was the petitioner and others at whose instance the matter was referred to the Government for the exemption of their land. At any rate, there is nothing which might persuade us to accept the petitioners' version in preference to that of the Agra Development Authority."

It was also observed that when the land owner himself contributed to the delay in making the award by approaching the Government against acquisition, the proceedings could not be quashed.

The Court said:-

"The omission was not a fraud on the statute but was clearly bona fide based on the consideration that there was a move afoot for the release of the land from acquisition. Moreover, the persons who would be hit by the quashing of the acquisition proceedings are not before us. To quash the proceedings in this state of things would not, in our considered view, be appropriate. It would defeat the larger public interest if we were to quash the proceedings on the technicality, assuming that the omission to make an award in respect of the petitioners' land within time produced the effect of vitiating the entire acquisition

proceedings.

Apart from the fact that the above decision has no binding effect, the question is no longer res integra and had been finally settled by this Court in Yusufbhai and reiterated from time to time. In our opinion, therefore, the above decision is of no help to the appellant.

In our considered opinion, Dr. Dhawan is also not right in contending that as interim relief was granted, the case was covered by Explanation to Section 11A and not by the main provision of Section 11A. It is, therefore, necessary to consider the nature of order passed by the High Court when the acquisition proceedings were challenged by the first respondent. Now from the record, it is clear that the first respondent filed Writ Petition No. 810 of 1986 in the High Court on April 2, 1986. On April 30, 1986, the Court admitted the petition by issuing Rule and the following order was passed:-

"Rule. To be put up with connected matter.  
Rule on stay. Liberty to move Vacation  
Judge." (Emphasis supplied)

It is, thus, clear that the petition was admitted by issuing rule nisi. Rule was also issued on stay. In our opinion, however, the learned counsel for the first respondent is right in contending that the Court had not granted stay against "any proceeding". Merely Rule was issued on the prayer of stay made by the petitioner in the petition.

The matter then came up before the Court on July 31, 1986 for hearing on Rule on stay and following order was passed\027

"The respondent No.3 if proceeds with the construction of building that will be subject to the decision of this petition."

Dr. Dhawan vehemently contended that even if it is assumed for the sake of argument that on April 30, 1986, no actual stay was granted by the Court, interim relief was granted on July 31, 1986. He also drew our attention to the communication of the order by the Registry to the appellant herein, usually known as writ issued in pursuance of an Order passed by the Court.

The communication inter alia stated\027

"Upon reading the petition of the applicant presented to this High Court of Judicature Bombay on the 21st day of April, 1986 praying that to restrain the Respondent No. 2 and its institutions and its employees, agents, servants etc. from changing the nature of the lands admeasuring 0.59 from Survey No. 186/4A and 187/3A as referred by the Award purported to be dated 27.2.1986 in Land Acquisition Case No. LAQ/Malkapur/4/1977-78 at Annexure-L are concerned till the decision of this petition and further to refrain them from making any construction on changes therein till the decision of this petition\005"

Then quoting the order of the Court, it was stated:-

"It is hereby accordingly directed that if you proceed with the construction of building, that will be subject to the decision of this petition."

Dr. Dhawan submitted that it was an interim order communicated by the Assistant Registrar of the High Court to the appellant.

Upon reading the writ also, there is no doubt in our minds that the above communication by the Registry of the High Court did not state that acquisition proceedings were stayed by the Court. The writ, in our opinion, was in consonance with the order passed by the Division Bench of the High Court and expressly stated that if the appellant will proceed with the construction of building, it will be subject to the decision of the petition. The above communication thus does not take the case of the appellant anywhere.

It was then argued by Dr. Dhawan that the Land Acquisition Officer was of the view that the acquisition proceedings could not continue due to stay granted by the Court and he proceeded to dispatch the relevant files to the Government Advocate of the High Court. For that, the Counsel invited our attention to the facts stated in the judgment that though there was no specific order from the Court, a letter was issued by an Officer of the Government Pleader to the Land Acquisition Officer to send the record of the case. The Court, however, observed that the case file relating to the land bearing Survey No. 187/3A was never sent by the Land Acquisition Officer and the file which was sent related to acquisition of land bearing Survey No. 186/4A.

The appellant also referred to a letter dated June 27, 2000 written by the President of the appellant-Mandal to the Land Acquisition Officer seeking information on the file movement of the acquisition proceedings in the High Court which was replied by the Land Acquisition Officer vide his letter dated July 20, 2000 stating therein that the proceedings were stayed by the High Court in Writ Petition No. 810 of 1986. From the letter, it is clear that it pertained to the proceedings of Survey No. 186/4A. But even otherwise, the order passed by the Court was abundantly clear. No stay was granted by the Court, and hence, it could not be said that Explanation to Section 11A got attracted and such period would be excluded from computing the period of two years.

It may also be stated that the High Court decided the petition on March 14, 2000 whereas the letter on which reliance is placed by the appellant was written by the appellant-Mandal to the Land Acquisition Officer on June 27, 2000 and the reply was sent by the Land Acquisition Officer on July 20, 2000 both after the disposal of the writ petition in the High Court.

In our opinion, therefore, the High Court was right in observing that even if Order dated April 30, 1986, issuing Rule on stay would mean that the Court had granted stay of proceedings, (though no stay was granted on that date), the Rule on stay was disposed of on July 31, 1986 clarifying that any construction would be subject to the decision of the petition. Thereafter there was no question of any stay in the matter and as such the case was squarely covered by main part of Section 11A of the Act.

It was urged that the term 'stay' was interpreted by this Court very widely and it was held that even if stay

was limited to maintenance of status quo or against dispossession of the owner, extension of period of limitation would apply. There is no dispute about the said proposition of law. It is also immaterial and irrelevant as to which party had obtained such stay. The only question is whether there was any stay by the High Court. In the case on hand, to us, the High Court was right and wholly justified in holding that there was no stay of any proceeding and hence, Explanation to Section 11A had no application. If it is so, it cannot be held that the High Court had committed an error of law or misconstrued Section 11A by holding that since award was not made within a period of two years from the date of publication of final notification under Section 6 of the Act, the proceedings lapsed. Since the order passed by the High Court impugned in the present appeal by the appellant is in consonance with law, the appeal deserves to be dismissed.

For the foregoing reasons, we see no infirmity in the order of the High Court. The appeal deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

JUDIS