

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted.

2. The first respondent was the owner of lands bearing Gata Nos.106, 118, 119, 123, 126 and 145 in village Kakrahi, District Auraiya, Uttar Pradesh. The said lands, among others, were acquired for a special railway project, that is, the Dedicated Freight Corridor at Kanpur (Rural), Auraiya and Etava Districts. The acquisition was under chapter IVA of the Railways Act, 1989 ('Act' for short) which dealt with land acquisitions for special railway projects. A notification dated 10.6.2008 (gazetted on 10.6.2008) under section 20A(1) of the Act was published by the Central Government declaring its intention to acquire lands in question for execution of a special railway project. This was followed by a declaration dated 12.12.2008 (gazetted on 16.12.2008) under section 20E(1) of the Act declaring that the lands mentioned therein should be acquired for the purpose mentioned in the notification under section 20A(1) of the Act. On such declaration, the land vested absolutely in the Central Government free from encumbrances, in view of the vesting provision in section 20E(2) of the Act. A public notice referring to the notifications dated 10.6.2008 and 12.2.2008 under section 20A(1) and 20E(1) of the Act and inviting claims from all persons interested in the lands was published by the competent authority in two newspapers (Amar Ujala and Dainik Jagran) dated 20.2.2009. Thereafter an order dated 8.2.2010 was made by the competent authority determining the compensation payable, under section 20F(1) of the Act.

3. The first respondent filed W.P.No.14945/2010 for quashing

the award dated 8.2.2010 and for a declaration that the entire acquisition proceedings stood lapsed under section 20F(2) of the Act, as the award was not made within one year from the date of publication of the date of declaration dated 12.12.2008. A Division bench of the High Court allowed the said writ petition by the impugned order dated 12.5.2010. It quashed the award dated 8.2.2010 and declared that the acquisition proceedings stood lapsed. The said decision was based on the following findings recorded by the division bench :

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(a) The award was made beyond one year from the date of publication of the declaration under section 20E(1) of the Act.

(b) The benefit of the first proviso to section 20F(2) of the Act which enabled the competent authority to make the award within an extended period of six months (after the expiry of one year specified in section 20F(2) of the Act) was not available to save the acquisition, as the competent authority failed to record in writing any reason to show that he was satisfied that the delay was caused due to unavoidable circumstances.

Questions for consideration

4. Feeling aggrieved the appellant has filed this appeal.

The appellant contends that the award was validly made within one year from the date of declaration under section 20E(1) of the Act, as it was made within one year from 20.2.2009, the date on which public notice of the said notification dated 12.12.2008 was published in the newspapers. According to the appellant, where

the publication is made in the official gazette and the newspapers, the last of the dates of such publication shall be the date of publication of the declaration. It is alternatively contended that as the award was made within 18 months of the date of publication of the declaration, the acquisition did not lapse.

On the contentions urged the following questions arise for consideration :

(i) Whether the period of one year, stipulated under section 20F(2) of the Act, for making the award, has to be reckoned from the date of publication of the declaration under section 20E(1)

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of the Act in the official gazette or from the date of any

subsequent publication of the declaration in newspapers?

(ii) Whether an award made within six months after the expiry of one year from the date of publication of the declaration, is valid under the first proviso to section 20F(2) of the Act, even if reasons are not recorded by the competent authority in writing to show that he was satisfied that the delay had been caused due to unavoidable circumstances?

The relevant legal provisions

5. A reference to the relevant provisions will be necessary to provide answers to these questions. Chapter IVA was inserted in the Act by Amendment Act 11 of 2008 with effect from 31.1.2008. The said chapter is a self contained code in regard to land acquisitions for special railway projects.

5.1) Sub-section 20A relates to power to acquire land and reads thus :

"20A. Power to acquire land, etc.: (1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land.

(2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

(3) The State Government or the Union Territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required.

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.

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5.2) "Special railway project" is defined in section 2(37A) of the Act and means a project, notified as such by the central government from time to time, for providing national infrastructure for a public purpose in a specified time-frame, covering one or more states or the union territories. Clauses (7A) and (26) of section 2 of the Act define "competent authority" and notification as under :

"2(7A). 'competent authority' means any person authorized by the Central Government, by notification, to perform the functions of the

competent authority for such area as may be specified in the notification.

2(26). 'notification' means a notification published in the Official Gazette."

5.3) Section 20B deals with power to enter for survey etc.

Section 20C relates to evaluation of damages during survey, measurement etc. Section 20D provides for hearing of objections to the acquisition.

5.4) Section 20E deals with declaration of acquisition and the same is extracted below :

"20E. Declaration of acquisition : (1) Where no objection under sub-section (1) of section 20D has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification, that the land

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should be acquired for the purpose mentioned in sub-section (1) of section 20A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 20A for its acquisition, but no declaration under sub-section (1) of this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect :

Provided that in computing the said period of one year, the period during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 20A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority."

5.5) Section 20F deals with determination of amount payable as compensation. Sub-sections 1, 2 and 4 which are relevant for our purpose are extracted below :

"20F. Determination of amount payable at compensation - (1) Where any land is acquired under this Act, there shall be paid an amount which shall

be determined by an order of the competent authority.

(2) The competent authority shall make an award under this section within a period of one year 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 the competent authority may, after the expiry of the period of limitation, if he is satisfied that the delay has been caused due to unavoidable circumstances, and for the reasons to be recorded in writing, he may make the award

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within an extended period of six months.

Provided further that where an award is made within the extended period, the entitled person shall, in the interest of justice, be paid an additional compensation for the delay in making of the award, every month for the period so extended, at the rate of not less than five per cent of the value of the award, for each month of such delay.

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(4) Before proceeding to determine the amount under sub-section (1) or sub-section (3), as the case may be, the competent authority shall give a public notice published in two local newspapers, one of which shall be in a vernacular language inviting claims from all persons interested in the land to be acquired."

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Re : Question (i)

6. Sub-section (1) of section 20E of the Act provides that the central government shall, on receipt of the report of the competent authority, declare by notification that the land should be acquired for the purpose mentioned in section 20A(1). Sub-section (2) of section 20E of the Act provides that on the publication of such declaration by notification, by the central government, under sub-section (1), the lands shall vest absolutely in the central government free from all encumbrances. Clause (26) of section 2 defines "notification" as a notification published in the official gazette. Section 20E thus requires the notification to be published only in the official gazette. The section does not require the notification of declaration to be published in any newspaper or by any other mode. By way of

contrast, we may refer to section 20A(4) relating to preliminary notification and 20F(4) relating to public notice inviting claims before making the award of the Act. Section 20A(4) requires that in addition to publication of a notification by the central government, of the declaration of its intention to acquire any land, the competent authority shall cause the substance of the notification to be published in two local newspapers one of which will be in a vernacular language. Section 20F(4) of the Act requires that before proceeding to determine the compensation, the competent authority shall give a public notice in two local newspapers inviting claims. Wherever newspaper publication is required, it has been specifically provided by the legislature. The absence of a similar provision in section 20E for publication in newspapers, makes it clear that the publication of the declaration under section 20E(1) is complete when it is published in the official gazette. The publication of the notification under section 20E(1), or its substance, in any newspaper, is not therefore a requirement under the Act. Even if it is published in any newspaper, such publication will be only for general information and will not serve any purpose under the Act.

7. The appellant submits that a public notice under section 20F(4) of the Act was published in two newspapers on 20.2.2009 notifying the public about the declaration under section 20E(1) and inviting claims from persons interested and consequently, the period of one year should be reckoned from 20.2.2009 and not from

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16.12.2008 (date on which the notification was gazetted). According to appellant, if the date of publication in the newspapers (20.2.2009) is taken into account, the award made on 8.2.2010 would satisfy the requirement of making the award within one year stipulated in section 20F(2) of the Act. We find no merit in this contention. The public notice dated 20.2.2009 published in the newspapers was not a publication of the notification of declaration under section 20E(1) of the Act, but

a public notice required to be issued under sub-section (4) of section 20F by the competent authority inviting claims, after the publication of a notification under Section 20E(1) of the Act. Even if the public notice in the newspapers dated 20.2.2009, is to be regarded as publication of the declaration under section 20E(1) of the Act, it would not be of any relevance to calculate the period of one year under section 20F(2) of the Act. As noticed above what is relevant for the purpose of reckoning the period of one year is the date of publication of notification of declaration under section 20E(1) of the Act in the official gazette and nothing else.

Re : Question (ii)

8. Sub-section (2) of section 20F of the Act requires the competent authority to make an award within a period of one year from the date of publication of the declaration and provides that if no award is made within that period, the entire proceedings for acquisition of land shall lapse. The term "publication" in

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section 20F(2) refers to publication of the declaration in the official gazette. In this case, the declaration under section 20E(1) was made by a notification dated 12.12.2008 which was published in the official gazette on 16.12.2008. Therefore the award ought to have been made within one year from 16.12.2008.

The award made on 8.2.2010, was clearly beyond one year from the date of publication of the declaration.

If the benefit

additional period of six months under the first proviso to

section 20F(2) is taken, the award made on 8.2.2010 would be in time and the acquisition proceedings would not lapse.
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lapse.

question is whether it is permissible to do so on the facts of this case.

9. Though sub-section (2) of section 20F provides that if

the award is not made by the competent authority within one year from the date of publication of the declaration, the entire proceedings for acquisition of land shall lapse, the proviso thereto enables the competent authority to make the award within an extended period of six months if he is satisfied that the delay had been caused due to unavoidable circumstances and reasons therefor are recorded in writing. In this case admittedly the competent authority has not recorded any reasons in writing to hold that the delay was due to unavoidable circumstances.

10. In view of the inconsistencies and ambiguities in section 20F of the Act, (enumerated in para 12 below), it becomes

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necessary to read the provisions of the section harmoniously. The effect of such harmonious reading will be as under :

- (a) The award has to be made within one year from the date of publication of the declaration.
- (b) If the competent authority is satisfied that the award could not be made within a period of one year due to unavoidable circumstances, which are to be recorded in writing, he could make the award within eighteen months. The requirement regarding recording of reasons is not mandatory.
- (c) The acquisition proceedings will stand eclipsed at the end of one year from the date of publication if no award is made within one year. If no award is made within eighteen months, the proceedings for acquisitions would lapse.
- (d) If the award is made within eighteen months, the acquisition will emerge out of the eclipse and will not lapse. But additional compensation will become payable for the period beyond one year, as provided in the second proviso to section 20F(2). If the reasons are not recorded or if the reasons are not satisfactory, the additional compensation under the second proviso can be at a rate higher than the minimum of 5% per month stipulated in the second proviso to section 20F(2).

11. The award dated 8.2.2010 by the competent authority proceeds on the basis that the notification of declaration under section 20E(1) of the Act has to be published not only in the official gazette, but also in the form of a public notice in two newspapers and that the latter of the two dates of publication

would be the date of commencement of the period of one year,
under section 20F(2) of the Act. This is evident from the
following observations in the said award dated 8.2.2010 of the
competent authority:

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"Thereafter, the proposal for the issuance of the notification for the acquisition of land under section 20E of Indian Railways Act and report of the competent officer has been presented before the Central Government. The Central Government issued notification through Gazette No. Ka.Aa.2903 (A) dated 12.12.2008 for the acquisition of total 1.2180 hectare land in village Kakahari. The publication of above mentioned notification has been issued in two daily newspapers Amar Ujjala and Dainik Jagran under the amended provisions of section 20E(4) of the Indian Railways Act 1989 on 20.2.2009."

(emphasis supplied)

It is evident from the award that the competent authority proceeded under the bona fide impression that publication of the public notice under section 20F(4) in the two newspapers (Amar Ujala and Dainik Jagran) on 20.2.2009 referring to the declaration under section 20E(1), subsequent to the date of gazette publication (16.12.2008) is also part of the process of publication of the declaration under section 20E(1). As a consequence, he applied the principle that when publication is required to be made by more than one mode, the date of publication by the last of the prescribed modes is the date of publication. He therefore assumed that the date of publication of the public notice in the two newspapers dated 20.2.2009 to be the date of publication of declaration for the purposes of section 20E(1) and 20F(2) of the Act and that consequently the award was made within one year from such date.

On the facts of the case and on a harmonious reading of the provision of section 20F of the Act, the aforesaid reasoning in the award can be treated as

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the reason for the delay in making the award. The acquisition did not, therefore, lapse. However, having regard to the second proviso to section 20F(2), the land owners (described as

"entitled persons") will be entitled to additional compensation for the delay in making of the award at a rate not less than 5% of the value of the award for each month of delay.

Certain anomalies in the provisions of Chapter VIA of the Act

12. Before parting we may refer to several apparent anomalies noticed in Chapter IVA of the Act, in particular in section 20F, which requires the attention of the law makers. As neither the validity of Chapter VIA of the Act nor the validity of any provision therein is under challenge in this appeal, but as we have faced difficulties in the application of section 20F, we are referring to some of the anomalies in the provisions of Chapter IVA, without pronouncing upon the validity of the provision.

(i) Sub-section (2) of section 20F provides that if no award is made within one year from the date of publication of the declaration, the entire proceedings for the acquisition shall lapse. The first proviso to sub-section (2) provides that the competent authority may, after the expiry of the period of one year, if he is satisfied that the delay has been caused due to unavoidable circumstances and for reasons to be recorded in writing, make an award within an extended period of six months. This means that when an award is not made within one year from

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the date of publication of the declaration, the proceedings for acquisition would lapse, but if within six months of such lapsing, the competent authority makes an award after recording reasons for the delay, what stood lapsed would stand revived. But if the acquisition proceedings had already lapsed at the end of one year, mere making of an award thereafter cannot revive the acquisition proceedings, in the absence of any provision in the Act providing for revival of the lapsed acquisition.

(ii) Sub-section (2) of section 20F requires the award to be made by the competent authority and the first proviso requires

the competent authority to record the reasons for the delay. What are "unavoidable circumstances" leading to the delay which would enable the competent authority to make an award beyond one year, would invariably lead to litigations as to whether there were unavoidable circumstances, whenever the award is made beyond one year. As the consequence of making an award beyond one year but within eighteen months, involving payment of additional compensation, is set out in the second proviso to section 20F(2), there is no need for requiring the competent authority to record reasons in writing showing that the delay was due to unavoidable circumstances.

(iii) The second proviso to section 20F(2) requires payment of additional compensation for the delay in making of the award, at the rate of not less than five percent of the value of the award,

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for each month of delay. This vests unguided discretion in the competent authority or the Arbitrator to award additional compensation at any higher rate and gives room for unnecessary litigation at the instance of "entitled persons" claiming higher percentages as additional compensation. It is necessary to consider whether specifying a fixed monthly rate of increase would serve the ends of justice better instead of indicating a minimum rate per month.

(iv) Sub-section (1) of section 20F refers to an "order" of the competent authority determining the amount to be paid for the land acquired. Sub-section (2) refers to the competent authority making an "award". It is not clear whether the award by the competent authority is consequential to the order that is made under sub-section (1) of section 20F or whether the order under sub-section (1) is itself the award referred to in sub-section (2) of section 20F. Confusion can be avoided by using only one of the words - 'order' or 'award' - to refer to the decision of the competent authority determining compensation, at all places.

(v) Sub-section (4) of section 20F provides that before determining the amount under sub-section (1) or sub-section (3), the competent authority shall give a public notice inviting claims from all persons interested in land to be acquired. The issue of such public notice under section 20F(4) is after the publication of notification of declaration under section 20E(1).

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Sub-section (2) of section 20E provides that on publication of the declaration, the land vests in the central government. If the land has already vested in the government on publication of the declaration under section 20E(1), the question of issuing a public notice thereafter, inviting claims under section 20F(4) from persons interested in the lands "to be acquired" does not arise. The words "to be acquired" may have to be replaced by the words "acquired".

(vi) If the land has already vested absolutely in the Central Government on publication of declaration of acquisition in the Official Gazette under section 20E(1), it is not clear how the proceedings for acquisition could lapse if the award is not made within one year or even 18 months. This Court while dealing with other enactments relating to acquisition has held that acquisition would not lapse as consequence of not making the award within the specified time, if the land had already vested in the government and the Act does not provide for re-vesting in the land owner. [See : Satendra Prasad Jain vs. State of U.P. - 1993 (4) SCC 369, Awadh Bihari Yadav vs. State of Bihar - 1995 (6) SCC 31, UP Jal Nigam, Lucknow vs. Kalra Properties (P) Ltd. - 1996 (3) SCC 124, Allahabad Development Authority vs. Nasiruzzaman - 1996 (6) SCC 424 and Ginnar Traders (3) vs. State of Maharashtra - 2011 (3) SCC 1].

(vii) Section 20 I of the Act provides that though the land

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vests in the central government on publication of the declaration

under section 20E(1), the competent authority can demand the surrender or delivery of possession only after the compensation is determined under section 20F and is deposited under section 20 H. However section 20 J provides that once the land vests in the central government on publication of a declaration under section 20E(2), it shall be lawful for any persons authorized by the central government "to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of the special railway project or part thereof or any work connected therewith". In other words section 20-J enables the central government to enter upon possession of the land on publication of the declaration under section 20E, even before the award is made, and carry on the activities connected with the special railway project for which the land was acquired. The provisions of section 20-J apart from being badly worded, are contrary to provisions of section 20-I. Section 20 J would lead to deprivation of possession of the land to the land owner without even determining or offering any compensation. This requires to be examined and corrected. Further, there is no indication as to what should happen if the central government or person authorized by it starts executing the special railway project in the acquired land under section 20 J and thereafter, the acquisition lapses on account of the award not being made within the time frame mentioned in section 20F(2).

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We have referred to these anomalies as they are likely to give room for considerable avoidable litigation, in regard to acquisitions under Chapter IVA of the Act. These anomalies may also defeat the very legislative intent to provide a progressive form of land acquisition when compared to the provisions of Land Acquisition Act, 1894. Be that as it may.

Conclusion

13. In view of our finding that the acquisition has not lapsed, we allow this appeal, set aside the judgment of the High

Court, and dismiss the challenge to the acquisition. It is however made clear that in view of the delay in making the award beyond one year, the first respondent shall be entitled to additional compensation as provided under the second proviso to section 20F(2) of the Act. Parties to bear their respective costs.

14. The Registry is directed to send copies of this order to the Law Commission of India and Ministry of Railways.

.....J.
(R V Raveendran)

New Delhi;
March 30, 2011.

.....J.
(A K Patnaik)