PETITIONER:
STATE OF KERALA AND ORS.

Vs.

RESPONDENT:
ANTONY FERNANDEZ & ANR.

DATE OF JUDGMENT: 12/02/1998

BENCH:
S.B.MJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
THE 12TH DAY OF FEBRUARY, 1998
Present:
Hon'ble Mr.Justice S.B. Majmudar
Hon'ble Mr.Justice N. Jagannadha Rao
Mr.P.S.Poti, Sr. Advocate and Ms. Malini Poduval, Advocate with hi for the appellants.
Mr. P. Krishnamurthy, Sr. Advocate and Mr. M.P. Vinod, Advocate with him for the respondents.

O R D E R

The following Order of the Court was delivered:
Leave granted.

We have heard learned counsel for the parties finally in this appeal.

A short question in this appeal that arises for consideration is as to whether the High Court in the impugned judgment was justified in quashing the notification under Section 6 of the Land Acquisition Act (hereinafter to be referred to as 'the Act) on town counts - (i) that it was issued beyond one year from the date of publication of Section 4 notification; and (ii) that enquiry under Section 5A of the Act was not conducted by the authorities before issuance of Section 6 notification.

So far as the first contention is concerned, learned senior counsel, Shri Poti, vehemently contended that the said ground is not sustainable on the facts of this case. He submitted that Section 4 notification was published on 27th May 1993 while Section 6 notification was gazetted on 08th June 1994. Therefore, apparently it appeared to be beyond one year from the date of publications Section 4 notification. However, he invited our attention to an earlier decision in this case of the High Court of Kerala in a writ petition numbered as O.P. No. 8235 of 1993-E. The said writ petition was filed by the present respondents challenging Section 4 notification before the High Court at that stage. Their contention was that Section 4(1) notification should not be followed by Section 6 notification without giving an opportunity to the respondents to have their say under Section 5A of the Act. That writ petition was heard by Justice P.A. Mohammed in the Kerala High Court on 02nd July 1993 and was allowed. Learned

Judge noted that the writ petitioner, i.e, the present respondent No.2 had expressed her readiness to surrender the remaining portion of the land since she also preferred to have an Industrial Training Institute in the locality and her claim for exemption of 55 cents of land just on the side of the road was required to be enquired into by the District Collector. This contention was accepted by the learned Judge by its judgment dated 02nd July 1993 and in the penultimate paragraph of the said judgment learned judge directed that till final decision is taken in Ext.P.3 (written objections) the writ petitioner shall not be dispossessed from the disputed land. It was further pointed out by Shri Poti, learned senior counsel appearing for the appellants, that the final decision on the objections was taken by the authorities on 19th January 1994 when the District collector forwarded the objections with recommendation to the Board of Revenue. Therefore, the period from 02nd July 1993 when the learned Single Judge delivered the judgment till at least 18th January 1994 amounting to almost six months ought to be excluded under Explanation I to Section 6 of the Act for computing the period of one year for issuance of the Section 6 notification.

Accordingly Section 6 notification can be said to be within time. Explanation I to Section 6 of the Act reads as under:

> "In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded."

On the second point, Shri Poti, submits that it is of course true that in the counter before the High Court a general statement was made that objections under Section 5A were considered. But in the present proceedings he has produced sufficient material to show that in the enquiry under Section 5A of the Act after the order of the learned Single Judge of the High Court full opportunity was given to the respondents to have their say concerning the objections and they were heard through their counsel and not only that they had also addressed written representation to the Chief Minister wherein they had also admitted that hearing was given to them by the Collector but they did not expect any favorable response from the Collector. It was, therefore, submitted by Shri Poti, that even on that count the impugned order is patently erroneous when it holds that no enquiry under Section 5A was conducted after decision of the High Court in Writ Petition being O.P. No. 8235 of 1993-E.

Repelling these cententions, learned senior counsel for the respondents, Shri Krishnamurthy, submitted that so far as the question of elapsing of one year after the publication of Section 14 notification is concerned, Explanation I to Section 6 will not be available to the appellant-State of Kerala for the simple reason that the period during which action or proceeding which is to be taken pursuant to Section 4 notification, had not got intercepted by any stay order of the Court. He, however, fairly conceded that stay of possession would amount to stay as held by a catenate of decisions of this Court but his submission is that when Section 1(1) notification was challenged before the High Court in O.P. No. 8235 of 1993-E, there was no occasion for the Court, while allowing the writ petition and directing the authorities to consider the

objections, Ext P.3 under Section 5A, to observe that the writ petitioner shall not be dispossessed from the disputed land as Section 6 notification has to be issued after considering the objections and, there fore, there was no question of dispossessing the writ petitioner till objections are decided. in this connection he submitted that once enquiry under Section 5A is to be held there would be no possibility of dispensing with such enquiry under the provisions of Section 17(4) and consequently there would be no occasion for dispossessing the writ petitioner pursuant to Section 6 notification. If at all such a threat would arise after Section 6 notification is issued invoking Section 17(1) of the Act such an eventuality had not occurred when o.p. No. 8235 of 1993 of 1993-E was decided. It was, therefore, contended that the direction contained in the 1993 cannot strictly be considered to be any stay of further proceedings as contemplated by Explanation 1 to Section 6.

At first blush the said argument appeared to be having substance. But on a closer scrutiny we find that it cannot be sustained. The reason is obvious. Explanation I to Section 6 is couched in very wide terms. It states that the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4(1) is stayed by an order of a court that period is to be excluded. It is not disputed that the proceedings under Section 5A is also pursuant to Section 2(1) notification. Secondly the direction of the Court is that possession should not be taken till enquiry under Section 5A is held and objections are considered which would amount to stay of further proceedings pursuant to Section 4 notification after Section 5A enquiry. It was obviously an order of competent court. It has been held by this Court vide [(1994) 4 SCC 145] Sangappa Gurulingappa Sajjan v. State of Karnataka and others: [1995 Supp (2) SCC 423] Government of T.N. and another v. Vasantha Bai: and [(1997) 9 SCC 128] Venkataswamappa v. Special Deputy Commissioner (Revenue), that even stay of dispossession granted by the Court while considering challenge to Section 4(1) notification would amount to stay as contemplated by Explanation 1 to Section 6. Consequently, it has to be held that the period during which there was stay of dispossession, i.e, from 02nd July 1993 to 18th January 1994 amounting to almost 6 months is to be excluded and consequently, issuance of Section 6 notification on 20th May 1994 cannot be said to be beyond the permissible period as per Explanation I to Section 6. The first contention raised by Shri Poti, learned senior counsel for the appellants, therefore, has to be accepted. It is held that the High Court had erred in taking the view that Section 6 notification was beyond the permissible period of one year as contemplated by Section 6. In view of the aforesaid conclusion of ours the wider question whether the period of one year is to be considered in the light of date of Section 6 notification, i.e., 20th May 1994 or its publication in the Gazette on 08th June 1994 would pale into insignificance and it is not necessary focus to consider that wider question.

So far as the second point is concerned we find that Shri Poti, learned senior counsel for the appellants is equally on a strong footing. It is of course true that the effort which was made before us to sustain the proceedings under Section 5A enquiry, was not made before the High Court and a general statement was made in the counter affidavit filled in the writ petition, that as per the direction contained in the judgment of the high Court the appellant

authorities considered the objections and disposed them of on merits. Whether hearing was given to the respondents in respect of written objections or not was not made clench and that seems to have weighed with the High Court when it observed that it is not in dispute by the counsel for the parties, especially the counsel for the sent petitioner that hearing was not given. However, in the rejoinder filed by the appellant in these proceedings, at page 88 of the paper book it has been clearly averred in paragraph 4 as follows:

"Thereupon the respondent in the O.P. i.e Petitioner in this Special Leave Petition issued notice fixing Section 5A enquiry on 25.8.1993 to all persons interested including the petitioners in O.P. and as scheduled Section 5A enquiry was conducted on 25.8.1993. Shri Rajesh K.S. Counsel for (1) Mrs. Annie Antony (2) Mr Antony Fernandez (3) Mrs. Moses Pereira and (4) Augustine Pereira was present. He argued that their property has very high potentiality and if the property is acquired they will be put to irreparable loss, injury and hardship. He also argued that the acquisition is unjust, illegal, arbitrary, vitiated by malafide and against all principles of natural justice. The objections were examined in detail and it was found that they are not sustainable and hence the objections along with connected records were forwarded to the Secretary, Board of Revenue for the approval of Draft Declination under Section 6 of LA Act overruling the objections raised by the petitioners. Board of Reverted examined the objection in detail and overruled the objections vide proceedings No. I.R.(C) 15634/94 (Annexure-C in the SLP) and draft declaration was approved on 20.5.94 and declaration made on the same day itself...."

Not only that but our attention was invited to the written application moved by the respondents to the Chief Minister, copy of which is annexed to the rejoinder affidavit at page 111 of the paper book. That application is addressed by all the four respondents to the Chief Minister of Kerala and in paragraph 10 of the said written application it had been averred as under:

> "On the basis of the said order the Distinct Collector Trivandrum heard the petitioner on 25.8.1993 and from the attitude of the District Collector, the petitioners apprehend that the acquisition authorities are still attached to their earlier proposal without considering not he merits of the claims that are put forth by the petitioners and hence we are presenting this petition before the Hon'ble Chief Minister of Kerala for Your Excellency's kind hearted and humanitarian considerations."

There averments in the rejoinder submitted by learned senior counsel for the appellants could not be effectively countenanced by learned senior counsel for the respondents. Therefore, it has to be held that after the order of the learned Single Judge of Kerala High Court in O.P. No.8235 of 1993-E, full opportunity was given to the respondents to have their say in support of written objections and their counsel was heard. Consequently, even the second ground on which the High Court allowed the writ petition cannot be sustained. As a result of the aforesaid discussion the twin points on which the acquisition was challenged before the High Court are found to be unsustainable.

In the results, the ap[peal is allow, the judgment and order of the High Court are set aside and the writ petition filed by the respondents is dismissed. In the facts and circumstances of the case, there will be no order as to costs.