

CASE NO.:
Appeal (civil) 2013-2015 of 1999

PETITIONER:
Smt. Bailamma @ Doddabailamma (Dead) and others

RESPONDENT:
Poornaprajna House Building Co-operative Society and others

DATE OF JUDGMENT: 31/01/2006

BENCH:
B.P. Singh & Arun Kumar

JUDGMENT:
J U D G M E N T
WITH

Civil Appeal Nos. 2016-2023 of 1999
Sri M. Kondandaraju and others

\005 Appellants

Versus

The State of Karnataka and others
AND

\005 Respondents

Civil Appeal Nos. 2073-2077 of 2000
Smt. Muthamma etc. etc.

\005 Appellants

Versus

State of Karnataka and others

\005 Respondents

B.P. SINGH, J.

These appeals by special leave are directed against the Judgment and Order of the High Court of Karnataka at Bangalore dated February 12, 1998 in Writ Appeal No.2079 of 1993, Writ Appeal Nos.2080-2081 of 1993 and Writ Appeal Nos.2090-94 of 1993. Civil Appeal Nos.2073-2077 of 2000 are directed against the judgment and order of the High Court dated September 21, 1999 dismissing the Writ Appeals following the judgment of the High Court in the earlier batch of Writ Appeals. The High Court by its impugned judgment and order upheld the award made by the Collector holding that the requirements of Section 11 and 11A of the Land Acquisition Act, 1894 (hereinafter referred to as 'The Act') were met if the award was made and signed by the Collector and approved by the Government within a period of two years from the date of last publication of declaration under Section 6 of the Act. In the instant case the Collector signed his award after an enquiry as contemplated by the Act on March 13, 1990 and sent the same on the same date for the approval of the Government. The award was approved by the Government on November 16, 1992, but after excluding the period during which an order of stay operated against the Government from acting pursuant to the declaration made under Section 6 of the Act, the same was deemed to be approved within the period of two years from the date of last publication of declaration under Section 6 of the Act. The contention urged on behalf of the appellants herein, that after the approval of the Government the Collector should have declared the award was repelled, since it was found in the facts of the case that the award had already been signed by the Collector and sent to the Government for approval. To appreciate the contentions urged before us it is necessary to narrate the relevant facts of the case.

A Notification under Section 4 of the Land Acquisition Act dated August 11, 1987 was published in the Official Gazette on

August 13, 1987. Objections received from the owners of the lands were considered by the Collector and rejected. Thereafter, a declaration under Section 6 of the Act dated June 30, 1988 was published in the Official Gazette on July 1, 1988. The last date of publication of the aforesaid declaration in accordance with Section 6 of the Act was November 5, 1988. In normal course, therefore, the award should have been made before November 5, 1990. However, the Collector made his award on March 13, 1990 and after signing the same sent the award to the Government for its approval.

It appears that the Respondents- Society was apprehensive that the Government may not approve the award within the statutory period fixed by the Act and, therefore, it filed a writ petition on June 27, 1990 for issuance of a Writ of Mandamus to the Government to approve the award. In the said writ petition an interim order was made on June 29, 1990 staying the operation of the declaration dated June 30, 1988 for a period of two weeks from the date of the order. Subsequently, the stay was extended till further orders. On February 7, 1991, the order of stay was modified only to the extent that it was clarified that the order of stay shall not prevent the Government from granting approval to the award, submitted to it by the Collector. The order of stay, however, continued to operate subject to the clarification given, and other steps could not be taken till the order of stay finally stood vacated on November 18, 1992. It is only thereafter that notice of the award could be given to the persons interested. On November 16, 1992 the Government granted approval to the award submitted by the Collector. On November 18, 1992 the Writ Petition filed by the Respondents \026 Society was withdrawn, and thereafter the order of stay finally stood vacated.

From the facts stated above, it would appear that an order of stay operated against the Government from taking any further steps pursuant to the declaration dated June 30, 1988 which included grant of approval to the award of the Collector and its communication to the persons interested and other steps to be taken under the Act, till November 18, 1992. It is the contention of the Respondents that in computing the period of two years for making the award in accordance with Section 11A of the Act the period during which the stay order operated must be excluded. The High Court has upheld this contention and held that the award was approved within the period prescribed by Section 11A of the Act.

The award was challenged by the appellants herein contending that there was nothing on record to indicate that after approval was granted by the Government the Collector signed the award. The contention was that Section 11 read with Section 11A of the Act provided that after the award is approved by the Government, the Collector can make an award, meaning thereby, that after the award submitted by the Collector is approved by the Government, the Collector must formally sign the award as approved and inform the parties concerned. If he fails to do so within the period prescribed by Section 11A of the Act the entire proceeding for the acquisition must lapse. The learned single Judge who heard the writ petition upheld the contention of the respondents and quashed the acquisition proceedings. Appeals were preferred by the State of Karnataka and other interested parties to the High Court which were initially placed for disposal before a division bench of the High Court which referred it to a larger bench since it appeared to the learned judges that an earlier division bench judgment of the High Court in Writ Petition No.4244 of 1989, which took the view that Section 11A will be satisfied if approval is granted by the Government within the specified period to the award made by the Collector, required re-consideration. That is how the matter came up for hearing before a bench of three learned judges of the High Court.

The scheme of the Land Acquisition Act, 1894 is that if a declaration is published under Section 6 of the Act, the Collector is to take an order for acquisition of the lands notified. For this purpose, the Collector is required to demarcate the lands proposed to be acquired, get the same measured and a plan to be prepared as required to be done by Sections 7 and 8 of the Act. Under Section 9 the Collector is required to get published a public notice stating that the Government intends to take possession of the land and that claims to compensation for all interested in such land may be made to him. The notice must enumerate the particulars mentioned in Sub-Section (2) of Section 9 of the Act. The said notice must also be served on the persons interested as provided in Sub-Sections (3) and (4) of Section 9. After notices have been issued under Section 9 of the Act, the Collector proceeds to enquire into all the matters specified in Section 11 of the Act. Sections 11, 11A and 12 of the Act as amended by Land Acquisition (Amendment) Act 1984 are crucial for deciding the questions involved in these appeals. They provide as follows :

"11. Enquiry and award by Collector \026 (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of \026

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf;

Provided further that it shall be competent for the Appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the Appropriate Government may specify in this behalf];

[(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in anyway affect the determination of compensation in respect of other

lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

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, 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].

12. Award of Collector when to be final - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made".

Section 11 envisages that an enquiry may not be concluded on the very first day and, therefore, authorizes the Collector to adjourn the considerations of objections to any day fixed in the notice. However, after considering the objections he is obliged to make an award under his hand regarding (i) the true area of the land; (ii) the compensation which in his opinion should be allowed and (iii) the apportionment of the compensation amongst the persons interested.

The first proviso to Section 11 provides that an award shall not be made by the Collector without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize. Thus before an award can be said to have been made it is mandatory that it must be approved by the Government or the officer authorized in this behalf.

Section 11A provides the period within which an award shall be made. It prescribes a period of two years from the date of publication of declaration as the period within which an award must be made. If no award is made within that period the entire proceedings for the acquisition of the land shall lapse. The explanation to Section 11A clarifies that in computing the period of two years, the period during

which action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

Before we consider the main submission urged on behalf of the appellants, we shall consider the submission urged by them that in the instant case, the period during which the stay granted by the High Court operated can not be excluded because the order of stay had been obtained by the Society itself and, therefore, it can not take advantage of the stay granted by the High Court. The submission must be rejected. The order of stay passed on 29.6.90 by the High Court was in the following terms :-

"Operation of the declaration dated 30.6.1988 issued by the respondent No.1 in No. RD 182 AQB 84 (Annexure-A to the W.P.) be and the same is hereby stayed, for a period of two weeks from 29.6.1990".

As noticed earlier, the operation of the order of stay was continued until further orders and was ultimately modified by an order of February 7, 1991 which is as follows :-

"Interim order of stay granted by this Court on 29.6.90 and continued by order dated 10.7.1990 shall not prevent the Government in giving approval to the draft Award which is said to be pending considerations before the Government".

A mere reading of the order of stay of June 29, 1990 makes it abundantly clear that the operation of the declaration made under Section 6 of the Act was itself stayed, that is to say, as if no declaration has been made under Section 6 of the Act. Such being the position no steps required to be taken under the Act after publication of the declaration under Section 6 could be taken either by the Collector or by the Government. The Government was, therefore, prevented from approving the award submitted to it by the collector. Thus, it was on account of the order of stay passed by the High Court that the Government was prevented from granting approval earlier than February 7, 1991, when it was clarified that the order will not prevent the Government only from giving approval to the draft award pending consideration before it. Once, the order of stay was so modified, the Government granted approval on November 16, 1992. It was not disputed before us that if the period from June 6, 1990 to November 18, 1992 is excluded from the time taken in making the award, the award must be held to have been made within two years from the day of last publication of the declaration under Section 6 of the Act.

The submission that the stay order was obtained by the Society itself is of no consequence, having regard to the language of explanation to Section 11A of the Act. The exclusion of the period during which the order of stay operated is not dependant upon the party obtaining such an order. An order passed by the Court must be obeyed by all concerned. In the instant case the Society moved the High Court and obtained an order of stay. In effect, the order operated in such a manner that the Government was prevented from granting approval to the award even if it so desired, nor could it refuse approval during the period the order of stay operated. Therefore, explanation to Section 11A came into operation and in accordance therewith the period during which the order of stay operated must be excluded from the total time taken to make the award.

Reliance was placed by the appellants on the observations made by this Court in Yusufbhai Noormohmed Nendoliya Vs. State of

Gujarat & Another (1991) 4 SCC 531. In our view the aforesaid decision in fact supports the case of the respondents. In the aforesaid judgment it was held:-

"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".

That was no doubt a case where an order of injunction was obtained by the land-holder restraining land acquisition authorities from taking possession of the land. It was, in that context, that this Court observed that to get the benefit of the said provision the land-holder who seeks the benefit must not have obtained any order from Court restraining any action or proceedings in pursuance of declaration under Section 6 of the Act. It is, therefore, not possible to accept the submission urged on behalf of the appellants that Section 11A of the Act must be read in a narrow sense so as to apply to only those cases where the land-owner himself obtained an order of stay or injunction. We are not prepared to add words in the explanation by reading into it a provision that gives to the explanation a narrower operation than what was intended for it by the legislature, so as to apply only to cases where an order of injunction is obtained by the land-owner and not by anyone else.

We may usefully refer to the observations of this Court in Government of T.N. and Another vs. Vasantha Bai, (1995 (supp) 2 SCC 423). This Court observed :-

"Parliament enacted Section 11-A with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award. The price to be paid for the land acquired under compulsory acquisition is the prevailing price as on the date of publication of Section 4(1) notification. The delay in making the award deprives the owner of the enjoyment of his property or to deal with the land whose possession has already been taken, and delay in making the award, would subject the owner of the land to untold hardship. With a view to relieve hardship to the owner or person interested in the land and to remedy the lapses on the part of the Land Acquisition Officer in making the award, Section 11-A was enacted which enjoins making of award expeditiously. So, outer limit of two years from the last of the dates of publications, envisaged in Section 6 of the Act was fixed. If he fails to do so, all the acquisition proceedings under the Act would stand lapsed and the owner of the land or person interested in the land is made free to deal with the land as an unencumbered land. Cognizant to the fact that the acquisition proceedings are questioned in a court of law, Parliament enacted Explanation to Section 11-A declaring that the period during which action or proceedings taken in pursuance of the declaration under Section 6 is stayed by an order of the court, the same "shall be excluded".

This Court emphasized the fact that Section 11-A 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 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". 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 11-A 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.

We, therefore, agree with the High Court that after excluding the period during which the order of stay operated, the award was made within the period prescribed by Section 11A of the Act.

This takes us to the main point urged in the appeals by the appellants. Mr. T.L.V. Iyer, senior advocate, submitted that no award was made in accordance with Section 11 of the Act. The award sent to the Government for approval was at best a draft award. After the Government granted approval no further action was taken by the Collector to make an award. It is his contention that after the award was approved by the Government the Collector should have signed the award and thereafter communicated his award to the parties. This was not done and, therefore, in the eye of law no award was made by the Collector. He further submitted that no consent award was made in accordance with sub-section (2) of Section 11. Moreover, before the Full Bench it was not even argued by the respondents that a consent award under sub-section (2) of Section 11 was made by the Collector. In any event even the question of making an award by consent did not arise, since no award whatsoever was made within the period prescribed by law, since the approved award remained a draft award.

Mr. Ganguli appearing for some of the appellants submitted that the notice issued under Section 11 of the Act was not relevant. What was relevant was the date of the signing of the award. The

award attained finality under Section 12, if it was filed in the Collector's office, regardless of the fact whether the persons interested appeared before the Collector or not. According to him, the award referred to in Section 12 is the award made under Section 11. Therefore, unless an award is made under Section 11 the stage of filing of the award in the Collector's office under Section 12 is not reached and, therefore, unless the award is first made in accordance with Section 11, no award can be filed in the Collector's office under Section 12.

Shri Nageshwar Rao, senior advocate appearing on behalf of some of the appellants, adopted the arguments advanced on behalf of other appellants and in particular submitted that there was non-compliance with the legal requirements for making an award by consent. He also took us through the material on record to submit that no consent award was made, and in any event the legal requirements were not fulfilled to bring into existence a consent award.

On the other hand, Shri P.P. Rao, senior advocate appearing on behalf of some of the respondents, contented that under Section 11 the Collector has to make an award but with the prior approval of the State Government. The award made by the Collector is an offer to the persons concerned which binds the Collector but not the persons concerned who may challenge the findings of the Collector in a proceeding under Section 18 or Section 30 of the Act. Adverting to the facts of the case, he submitted that the award sent to the Government for approval was a signed award. Once the said award was approved as it was, that is without any alteration, the award came into effect and the moment it was filed in the office of the Collector under Section 12 of the Act, it became final subject to the objections that may be raised by the persons concerned in proceedings under the Act. According to him, the award was filed in the office of the Collector between 16th November, 1992 and 20th November, 1992 and a notice was given to the parties concerned regarding making of the award on November 20, 1992. Thus, an award was made in accordance with law. There was no need for the Collector to sign the award twice. It was enough if the award was made by the Collector and approved by the Government within the statutory period of two years from the date of last declaration published under Section 6 of the Act. In the alternative, he submitted that in respect of 18 acres and 1 guntha of land a consent award was made and the dispute related only to 2 acres and 10 gunthas belonging to Bailamma (Petitioner) in Civil Appeal No. 2013 of 1999.

At this stage, we may observe that having regard to the controversy raised before us, we required the State to produce before us the original file. Shri Sanjay Hegde, counsel for the State, produced before us the original file, from which it appears that after the award was signed by the Collector on March 13, 1990, the Society had moved the High Court by way of Writ Petition for a mandamus directing the State Government to approve the award. However, after the order of the High Court dated 7th February, 1991, modifying the earlier interim order of stay and permitting the Government to take a decision with regard to the approval of the award, the Divisional Commissioner sent the award to the Government for approval on 10.6.1991. The Government granted its approval on 16.11.1992 and the record was returned to the office of the Collector. On November 20, 1992, notice under Section 12(2) was issued after the file was received by the Deputy Commissioner. He also pointed out the agreements in Form 'D' signed by the person authorized under Article 229 of the Constitution of India, namely, the Special Land Acquisition Officer.

In this factual background, we now proceed to consider the submissions urged before us.

Section 11 of the act requires the Collector to make an enquiry into the objections, if any, made by the persons interested pursuant to

the notices given under Sections 8 and 9 of the Act as to the value of the land on the date of publication of the notification under Section 4. He is also required to make an enquiry into the respective interest of the persons claiming the compensation. After considering the objections raised by the persons interested he is required to make an award under his hand which should contain his findings on the matters enumerated in (i), (ii) and (iii) of sub-section (1) of Section 11. The proviso to Section 11, however, mandates that the Collector shall not make an award under this sub-section without previous approval of the appropriate Government.

The Collector is required to hear the persons interested and enquire into the objections, if any, raised by them on the points which he is required to determine. It is possible to conceive that he may hear the objections on several dates having regard to the number of objectors and the nature of the dispute that may arise, where-after he must make up his mind and prepare his award. It is not expected of him that he should prepare his award in presence of the persons interested, since the Collector may take some time to make up his mind on the matters he is required to incorporate in his award. Thereafter, he is required to send his award to the Government for approval. The approval of the award may take sometime, and it is not known to the Collector as to when the Government will approve the award. However, after the award is approved, if there is no alteration in the award, he is required to notify the parties concerned about the award. He may do so by fixing a date on which the parties may be required to appear for pronouncement of the award, or he may inform them by giving them written notice of the award. This is because an award is in the nature of an offer and must be communicated to the persons to whom the offer is made. There is nothing in Section 11 which expressly requires the Collector to announce his award in the presence of the persons interested, though there is nothing which prevents him from declaring the award on a date fixed by him for the purpose. However, having regard to the provisions of Section 12(2) of the Act, he must give immediate notice to such of the persons interested as are not present personally or by their representative when the award is made. Thus viewed, there can be no doubt that after the award is approved the same becomes an offer to be made to the persons interested, and this can be done by either giving notice to the persons interested of the date on which he may orally pronounce the award, or by giving written notice of the award to the persons interested. The question of limitation for filing a reference under Section 18 or Section 30 of the Act has to be determined by reference

to the date on which the award was either pronounced before the parties who were present, or the date of the receipt of notice of the award by those not present. The mere fact that the Collector did not pronounce the award after notice in the presence of the parties interested will not invalidate the award, though it may have a bearing on the question of limitation in the matter of seeking a reference under Section 18 or 30 of the Act. The award which has already been signed by the Collector becomes an award as soon as it is approved by the Government without any alteration. At best the appellants can contend that it becomes an award when notice is given to the parties interested. Viewed from any angle, having regard to the fact that there is no dispute that the Government granted its approval on 16.11.1992 and notices were issued under Section 12(2) of the Act on November 20, 1992, it must be held that the award was made within the period prescribed by Section 11A of the Act. There was really no necessity for the Collector to sign the award again, nor does Section 11 require that for the purpose of pronouncing the award notice should be given by the Collector to the persons interested. Section 11 requires notice to be given for the purpose of hearing objections. After the objections are heard, the Collector has to apply his mind to all the relevant facts and circumstances and prepare an award

whereafter he is required to send it to the Government for approval. There is nothing in Section 11 which requires him to give notice to the persons interested of the date for pronouncement of the award, though, as we have observed earlier, there is also nothing which prevents him from giving such notice. We agree with the finding of the High Court that once it is shown that the award was made and signed and approved by the Government within the period prescribed by Section 11A of the Act an award is validly made. In the instant case, we have satisfied ourselves that the award was received by the Deputy Commissioner after approval, and notice was thereafter issued under Section 12(2) of the Act on November 20, 1992.

In view of our finding it is not necessary for us to consider the submission urged on behalf of the respondents that the award made by the Collector was a consent award at least in respect of 18 acres and 1 guntha of land.

We find no merit in these appeals and the same are accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.