

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 638 OF 2005

STATE OF WEST BENGAL & ORS.

.....APPELLANTS

Versus

BIRESWAR DUTTA ESTATE PVT. LTD. &
ORS.

.....RESPONDENTS

O R D E R

Premises No.32A, Brabourne Road, Kolkata, which had been requisitioned for housing the Headquarters of Traffic Police Guard in the year 1958 was derequisitioned on 25.3.1992. The possession of the property continued with the police department and it was proposed to be acquired and Preliminary Notification dated 28.9.1994 was issued under Section 4(1) of the Land Acquisition Act, 1894, ('Act' for short). The said acquisition proceedings lapsed as the final declaration was not issued within one year. Subsequently another preliminary notification dated 4.3.1996 was issued under section 4(1) of the Act. The said

notification was published in the State Gazette dated 25.3.1996. The notification was published in two newspapers circulating in the locality on 9.3.1996 and 10.3.1996. As there was a misprint in the date of the Gazette, an erratum notification was published in the Calcutta Gazette on 1.4.1997. Public Notice of the substance of the said notification was published in the locality on 30.6.1997. The final declaration dated 11.8.1997 under Section 6 of the Act was published in the Gazette on 12.8.1997.

2. Respondents 1 and 2, who are the owners of property filed Civil Suit No.235 of 1996 in the Calcutta High Court against the State of West Bengal on 22.8.1996 seeking possession of the said property and mesne profits. In the said Suit, the High Court issued an interim order dated 25.9.1997 directing the parties to maintain status quo as on that date. Ultimately, the Suit was decreed by a learned Single Judge of the High Court on 9.9.1998, with a direction to the defendant in the suit to deliver possession and declaring the final Notification gazetted on 12.8.1997, issued under section 6 of the Act to be invalid. The learned Single Judge held that the final

declaration published on 12.8.1997 was made after the expiry of one year from the date of publication of the preliminary notification and therefore it was invalid. The State filed an appeal against the said judgment and in the said appeal a Division Bench of the High Court granted interim stay of the judgment dated 9.9.1998 of the learned single Judge, on 15.2.1999. Ultimately, the Division Bench allowed the appeal by judgment dated 29.7.1999 affirming the finding that appellant was bound to deliver possession, but however holding that the final declaration published on 12.8.1997 under Section 6 of the Act was valid. The appellants issued a notice under section 9 and 10 of the Act on 20.9.1999. The Award was made on 24.2.2000. Possession of the premises was taken under section 16 of the Act on 24.2.2003.

3. The acquisition was challenged by respondents 1 and 2 by filing a writ petition (W.P. No.1225 of 2000), contending that (i) the final notification under section 6 of the Act made more than one year from the date of publication of the preliminary notification was invalid; and (ii) the acquisition had lapsed under section 11A of the Act, as award was no made within two years of

publication of the declaration. A learned Single Judge, by judgment dated 18.11.2002, dismissed the writ petition. Respondents 1 and 2 filed an appeal before the appellate Bench of the Calcutta High Court. The appellate Bench, by the impugned judgment dated 2.9.2003, allowed the appeal on the following two grounds: (i) The final declaration under Section 6 of the Act was invalid, as it was published after the expiry of one year from the date of publication of the preliminary notification under Section 4(1) of the Act; and (ii) The Award dated 24.2.2000 by the Land Acquisition Officer was passed beyond a period of two years from the date of the publication of the final declaration dated 11.8.1997 and consequently, the acquisition lapsed.

4. Feeling aggrieved the appellants have filed this appeal by special leave. The appellants have challenged both the findings of the Division Bench. Therefore, two questions arise for our consideration.

(i) Whether the final declaration was made after the expiry of one year from the date of publication of preliminary notification?

(ii) Whether the Award was made beyond two years from the

date of the publication of the final declaration?

Re : Question (i)

5. Section 4(1) of the Act provides that whenever it appears to the appropriate Government that land in any locality is needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality, the last of the dates of such publication and the giving of such public notice, being referred to as date of the publication of the notification. In this case the date of publication of the preliminary notification would be 30.6.1997, as that was the date of the public notice of the substance of the preliminary notification given at convenient places in the locality, and that was the last of the dates of publication and public notice.

6. In view of the above, though the date of preliminary notification is 4.3.1996 and was published in the Gazette

on 25.3.1996, as public notice of the substance of the said notification was given in the locality only on 30.6.1997, the date of publication of the notification for the purpose of Section 4(1) of the Act, would be 30.6.1997 - the date on which the public notice was given in the locality. Final declaration was made on 12.8.1997 within two months from the date of publication of the preliminary notification. The contention that the final notification was made beyond one year from the date of publication of the preliminary notification is therefore, without basis.

7. The High Court proceeded on a wrong assumption that the public notice of the substance of the preliminary notification should be published in the locality within one year from the date of publication in the Gazette. We find that there is no such requirement under Section 4(1) of the Act. Section 4(1) does not specify the period within which public notice of the substance of the notification should be put up in convenient places of the locality. The one year period referred to in Section 6 of the Act is the period within which the final declaration has to be made from the date of publication of the preliminary notification. Publication of the notification under section

4(1) of the Act is defined as the last of the three dates, that is (i) publication in the Gazette, (ii) publication in two newspapers, and (iii) public notice of the substance of the notification in convenient places in the locality. If there is a gap of more than one year from the date of publication of preliminary notification in the Gazette and issue of public notice of the substance of such notification in the locality, it would not affect the validity of the preliminary notification but will only postpone the date of preliminary notification for other purposes like determination of market value under section 23 of the Act. As 30.6.1997 is the date of publication of the preliminary notification and not 4.3.1996, the first ground on which the appellate Bench of the High Court has invalidated the acquisition cannot be sustained.

Re : Question (ii)

8. It is not in dispute that the High Court had issued an order of status quo in regard to the acquisition of land on 25.9.1997 and the said order of status quo came to an end when the suit itself was decreed on 9.9.1998 in favour of respondents 1 and 2. If the period between 25.9.1997 and

9.9.1998, during which the order of status quo was in effect, is excluded, it is seen that the Award dated 24.2.2000 was made within two years from 12.8.1997 - the date of publication of the final declaration. The total period that elapsed between date of publication of declaration and the date of award is 2 years 6 months and 12 days. The order of status quo was in force for a period of 11 months and 14 days. If that period is deducted, we find that the Award was made within 1 year 6 months and 28 days.

9. One incidental question that is raised by respondents 1 and 2 is whether the order of status quo could be considered to be an interim stay of proceedings to be taken in pursuance of the declaration, for the purpose of Section 11A of the Act. In this context we may refer to the decision of the this Court in *M. Ramalinga Thevar Vs. State of T.N. & Ors.*, (2000) 4 SCC 322 wherein this Court held that if there is a stay of dispossession, that would amount to stay of the declaration. This Court observed :

"As per the Explanation to Section 11-A of the Land Acquisition Act, 1894 the period of exclusion from the time is the period during which 'any action or proceedings' to be taken in pursuance of the said declaration is stayed. Undoubtedly, one of the actions contemplated pursuant to the declaration is

taking possession of the land, though such action is a post-award step in normal circumstances, in emergent circumstances it can as well be a pre-award step. Nonetheless, taking possession is one of the actions to be adopted as a follow-up measure pursuant to the declaration envisaged in Section 6 of the Act. The consequence mentioned in Section 11-A is a self-operating statutory process and, therefore, it can operate only when the conditions specified therein conjoin together. The consequence would step in only when there is fusion of all the conditions stipulated therein. If there is any stay regarding any of the actions to be taken pursuant to the declaration then the consequence of lapse would not happen."

10. The validity of the final declaration published on 12.8.1997 was the subject matter of the civil suit for possession of the property in question, filed by respondents 1 and 2. As noticed above, the learned Single Judge, while decreeing the said suit for possession, held that the declaration gazetted on 12.8.1997 was invalid. The appellate bench however upheld the validity of the said declaration. In such a suit, when the High Court directed status quo, it meant that respondents 1 and 2 as the plaintiffs-owners and the State as the defendant, could not do any act with reference to the property in question. Apparently in view of the status quo order, the State did not do any act or make the award in regard to the property from 25.9.1997 till 9.9.1998, as it was prohibited from making an award by the status quo order. Thus when there

was an order of status quo, for all purposes, the appellants were prohibited from taking any further proceedings in pursuance of the declaration in regard to the property in question. Therefore, the said period of status quo will have to be excluded, for calculating the two years period under Section 11A of the Act. Therefore, even the second ground on which the High Court found the acquisition to be invalid cannot be sustained.

11. Consequently, the appeal is allowed, the order dated 2.9.2003 of the Division Bench of the High Court is set aside and the order dated 18.11.2002 of learned single Judge dismissing the writ petition of respondents 1 and 2 is upheld.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
October 21, 2010.

.....J.
(H.L. GOKHALE)