
(13) The candidates, already appointed, may be allowed to continue in service on a purely temporary basis for the time being after giving notice to them in the light of the conclusions recorded in this judgment.

R.N.R.

Before V. K. Bali & B. Rai, JJ

DEVINDER KUMAR & OTHERS,—*Petitioner*

versus

U.T. CHANDIGARH & OTHERS,—*Respondents*

C.W.P. No. 14804 of 1998

30th September, 1998

Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—S. 11-A—Period of award—Notification under Sections 4 & 6 sought to be quashed on grounds of delay in passing of award—Collector did not make award within two years from date of publication—Stay obtained by some landowners—Held that it is wholly immaterial whether or not a particular individual had obtained stay qua acquisition of his land or not—Period for which stay remained in vogue should be excluded in computing the period of limitation.

Held that the underlined idea of excluding the period for which stay remained in vogue in computing the period of limitation for issuing declaration under Section 6 or computing the acquisition proceedings is though by virtue of stay granted by this Court, the concerned authorities could not possibly proceed to finally acquire the land and put it to the public purpose for which the land is sought to be acquired. The moment the Court grants stay, it becomes impracticable and if not impossible to execute the scheme for the land stands notified for acquisition and everything comes to a stand still. It was for that precise reason that it was held by the Apex Court and this Court that period for which the stay remained in vogue should be excluded from computing the period of limitation and it is wholly immaterial whether or not a particular individual had obtained stay *qua* acquisition of his land or not.

(Para 7)

P.S. Saini, Advocate with J. R. Joshi,—*for the Petitioner.*

Ashok Aggarwal, Sr. Advocate, with Lisa Gill, Advocate,—*for the Respondents.*

ORDER

V. K. Bali, J. (Oral)

(1) By this common order we propose to decide three connected Civil Writ Petitions bearing No. 14804 of 1998, 14903 of 1998 and 14892 of 1998 as the common questions of law and facts are involved in all these petitions. As agreed between both the parties, the facts have been extracted from CWP No. 14804 of 1998.

(2) Devinder Kumar and 56 others through present petition filed by them under Article 226 of the Constitution of India seek a writ in the nature of Certiorari so as to quash notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter to be referred to as the Act) dated 31st January, 1992 (Annexure P-I) as also follow up declaration that came to be issued under section 6 of the Act dated 31st January, 1992 (Annexure P-2) on the only ground that the Land Acquisition Collector has not made the award in the time stipulated and therefore notifications, Award and all subsequent proceedings have lapsed by virtue of provisions of Section 11-A, of the Act. As projected in the petition, it is the case of the petitioners that even though notifications under Sections 4 and 6 were issued on 31st January, 1992 and 29th January, 1993 respectively and the Collector had not made the Award under section 11 within a period of two years from the date of publication of the declaration and therefore, the entire proceedings stand lapsed under section 11-A of the Act. Reliance has been placed upon the judgment of this Court in CWP 4433 of 1996 (Annexure P-4A) dated 11th August, 1997,—*vide* which the very notifications as are involved in the present case were quashed in the case referred to above. The short order relied upon by the petitioner Annexure P-4A reads as follows :—

“The present writ petition in our considered view deserves to succeed on admitted facts. The disputed land was acquired by the respondents by issuance of notification under section 4 of the Land Acquisition Act (for short the Act) on 31st January, 1992. The notification under section 6 of the Act was issued on 29th January, 1993. Admittedly no award

has been given within these four years. Section 11-A of the Act envisages the passing of the award within a period of two years failing which it is further envisaged in the aforementioned section that the acquisition proceedings would lapse. This is not the case of the respondents that the pronouncement of the award was stayed by any Court and in view thereof this Court is left with no option but to hold that the acquisition proceedings have lapsed. Accordingly, notifications issued under section 4 and 6,— *vide* Annexure P-2 and P-6 are quashed. The writ is allowed at the stage of motion hearing.”

(3) Mr. Ashok Aggarwal, Senior Advocate with Mrs. Lisa Gill, Advocate, who appears for the respondents seriously contests the claim of the petitioners. He contends that so far order in CWP 4433 of 1996 dated 11th August, 1997 is concerned, the same came to be passed on concession of the Counsel then representing the respondents where even written statement had not been filed. According to him, there was a stay obtained by the present petitioners and others in CWP No. 2126 of 1995 which was granted on 24th November, 1993 and continued upto 22nd September, 1995. Some other petitioners by way of yet another petition bearing No. CWP 10297 of 1997 obtained stay on 22nd July, 1997 which continued upto 4th August, 1998. Before we might proceed in the matter, we would like to mention that if the two periods stated above from 24th November, 1993 to 22nd September, 1995 and 22nd July, 1997 to 28th April, 1998 are excluded in computing the limitation of two years, concededly the land acquisition proceedings would not lapse. With this background, time is now ripe to assess the contentions raised by the learned Counsel representing the parties.

(4) Mr. Saini, learned Counsel representing the petitioners in CWP 14804 of 1998 vehemently contends that the period that needs to be excluded for computing the limitation is the one for which petitioners had obtained the stay whereas it is argued with equal vehemence by Mr. Ashok Aggarwal, the learned Counsel representing the respondents that entire period, be it in the case of petitioners or others for which stay remained in vogue has to be excluded in computing the period of limitation. The State is entitled to exclude the period when stay was granted in any of the petitions, whether filed by the petitioners or others when it was first granted. For his aforesaid contention, learned Counsel relies upon the recent judgment of this Court in CWP 10297 of 1997 (Puran Chand and

others vs. Union of India and others) decided on 4th August, 1998, wherein the very notifications that are involved in the present case were under challenge and on the same grounds as have pressed into service by the learned Counsel representing the petitioners. The Hon'ble Division Bench of this Court while dismissing the aforesaid writ petition and other connected writ petitions in the very beginning framed the question as follows :—

“The point to be considered is whether the period of stay to be excluded in computing the period of two years prescribed by Section 11-A of the Act is to be counted from 24th February, 1993, when the stay was granted for the first time in regard to the same acquisition, or from different dates when stay was granted in the writ petitions filed by the present petitioners.”

(5) After relying upon number of judgments as also the one rendered by the Supreme Court in *Government of Tamil Nadu & another vs. Vasantha Bai* (1), the Division Bench answered the question as follows :—

The contention of the learned Counsel for the petitioners that stay or dispossession did not mean that the authorities were precluded from proceeding further in the matter and they were bound to announce the award within two years of the publication of Notification under section 6 of the Act as prescribed under Section 11-A of the Act has no force in view of the law laid down by the Apex Court in *Vasantha Bai's Case* (supra). As such, the award which was pronounced on 23rd July, 1997 was well within time after excluding the period of stay of further proceedings i.e. from 24th February, 1993 to 22nd September, 1995. For the aforesaid reasons we do not find any merit in these writ petitions and the same are hereby dismissed with no order as to costs.

(6) Confronted with the judgment referred to above which pertains to the same notifications as are involved in the present petition, Mr. Saini learned Counsel for the petitioners relies upon the judgment of the Apex Court in *Shri Abhey Ram & Ors. v. Union of India and others* (2). The facts of the case referred to above reveal that notification under section 4(1) of the Land Acquisition was issued on 5th November, 1980 and declaration under section 6 was

(1) J.T. 1997 (10) S.C. 511

(2) J.T. 1997 (5) S.C. 354

published on 7th June, 1985. Challenging the declaration several writ petitions came to be filed in the High Court. The contention was that declaration having been published after three years was barred by law and therefore, notifications under sections 4(1) and 6 of the Land Acquisition Act stood lapsed. The Full Bench of the High Court up held the validity of notification under section 4(1) and declaration under section 6 on the ground that some of the land owners whose land was covered under the common notification under section 4(1) had already approached the High Court and obtained stay of further proceedings including publication of declaration under section 6. As a consequence, the stay obtained continuing in operation stood excluded by operation of Explanation II to section 6 (1), of the Land Acquisition Act. Therefore, the declaration published under section 6(1) of the act was held valid in law. Aggrieved the petitioners of the said case agitated the matter before the Apex Court. While interpreting explanation II of section of the Land Acquisition Act, it was held that a notification under section 4(1) is composite one and equally the declaration under section 6 is also a composite one and stay granted to some other operates and declaration qua the appellants has not been barred by provision to section 6 nor is vitiated by any error of law. We are surprised as to how the judgment in *Shri Abhey Ram & Ors. v. Union of India & Ors.* (supra) relied upon by the Counsel for the petitioners helps their cause. In fact, the judgment turns totally against the petitioners.

(7) Mr. Saini, learned counsel for the petitioners then contends that the notifications subject matter of challenge wherein stay was obtained, as has been mentioned above, whether filed by the petitioners or others pertained to different notifications whereas notifications involved in the present case were different. In the context of the submissions made above, the Counsel referred to notification Annexure P-2 wherein Khasra numbers pertained to Pocket No. 8. Learned Counsel further states that so far as notification that was challenged in the earlier petitions wherein the stay was granted pertained to pocket No. 6. Nothing as such has been pleaded but assuming the argument that on facts the learned counsel is right, it would still not make any difference in the matter. Learned Counsel concedes that both notifications whether pertaining to Pocket No. 8 i.e. involved in the subject matter of challenge in the present writ or the one in which stay was granted were issued on the same day i.e. 31st January, 1992 follow up.

declaration under section 6 pertaining to the land mentioned either in Pocket No. 8 or of Pocket No. 6 were also issued on the same date and the purpose of the acquisition was also the same. The public purpose mentioned in both the notifications is for development of residential-cum-commercial complex and for the construction of a College building and Sports Stadium etc. by the Notified Area Committee, Manimajra, Union Territory, Chandigarh. This Court is of the considered view that the underlined idea of excluding the period for which stay remained in vogue in computing the period of limitation for issuing declaration under section 6 or computing the acquisition proceedings is though by virtue of stay granted by this Court, the concerned authorities could not possibly proceed to finally acquire the land and put it to the public purpose for which the land is sought to be acquired. The moment the Court grants stay, it becomes impracticable and if not impossible to execute the scheme for the land stands notified for acquisition and everything comes to a stand still. It was for that precise reason that it was held by the Apex Court and this Court that period for which the stay remained in vogue should be excluded from computing the period of limitation and it is wholly immaterial whether or not a particular individual had obtained stay *qua* acquisition of his land or not. Even in the judgment that has been stayed by the learned Counsel representing the petitioner, the Apex Court, had proceeded on assumption that the petitioners of that case had not obtained any stay but in as much others who are equally affected and challenged the very notifications as were challenged by the petitioners of that case had obtained stay, the notifications issued under section 4 and 6 were upheld. In view of what has been stated above, even if it is assumed that the present notification pertains to pocket No. 8 in which stay was granted and reference of which has been made above, it would make the least difference. As mentioned above, notifications were issued on the same day and so were follow up declaration and purpose for the acquired land could not be achieved if stay was granted though pertaining to pocket No. 8 or Pocket No. 6. The purpose by virtue of issuance of two separate identical notifications could not be achieved, if stay was granted in any of the notifications either pertaining to Pocket No. 8 or Pocket No. 6.

(8) In view of what has been stated above, we find no merit in this petition and dismiss the same *in limine*.

J.S.T.