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STATE OF U.P. AND ORS. ETC.

v.

RAJIV GUPTA AND ANR. ETC.

JULY 14, 1994

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[K. RAMASWAMY AND G.N. RAY, JJ.]

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Land Acquisition Act, 1894—Sections 11,11A—Award—Proposed award sent within two years from date of declaration by Land Acquisition Officer to the Commissioner for prior approval—Such approval not given—Since approval is mandatory, on the expiry of the two years period entire proceedings stood lapsed—The date of communication of the proposed award for approval—Not to be taken as date of award.

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A notification under s.4(1) of the Land Acquisition Act, 1894 was published on 20.4.1990 proposing to acquire certain lands for construction of sub-station and staff quarters, by the U.P. State Electricity Board. Declaration under s.6 was published on 22.12.1990. By virtue of s.11A of the Act, the award should have been made within two years from the date of publication, i.e. before 21.12.1992. But, before the award could be made, the respondents filed writ petition before the High Court for a direction to the appellants to take possession of the lands after paying compensation. The High Court directed the appellants to take a decisions for passing the award before 21. 12. 1992. The Land Acquisition Officer wrote to the Commissioner on 20.12.1992 pointing out the dispute of title to certain items of the land under acquisition and to accept the proposed conditional award and requested prior approval to pass the proposed award. The approval was not given. The High Court directed the State to take possession of the lands and pay the compensation immediately as per award dated 20.12.1992.

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In the appeal preferred to this Court, the award was upheld and the Land Acquisition Officer was directed to deposit the amount in the reference court. A review petition was filed stating that no award has been made on 20.12.1992.

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On behalf of the appellant-state it was contended that the government had issued statutory order directing that if the value of the acquisition exceeds Rs. 1 crore, the prior approval of the Commissioner, Board

of Revenue was mandatory, and since no prior approval was given before 21.12.1992 there was no award made in the eye of law, and what was communicated to the commissioner was only a 'proposed award' for approval and the date of the communication viz. 20.12.1992 could not be taken as the date on which the award was made. A

The Respondents contended that though the award was styled as a proposed award, there was no need to get prior approval and so in the eye of law there was an award passed under S.11 of the Act. B

Allowing the appeal and the Review Petition, this Court

HELD : 1. The High Court was not right in its construction that there was an award made by the Collector on 20.12.1992 and the direction to take further steps in that behalf are clearly illegal. [692-C] C

2. A bare reading of S.11-A of Land Acquisition Act, 1894 indicates and emphasises the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration. It is a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation under s.11A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. [691-E; G] D

3. The State had not produced rules or orders issued under the first proviso to s.11 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, Board or revenue. But nonetheless, there is a statutory inhibition by first proviso to s.11 that the prior approval either of the appropriate government or of an officer which the appropriate government authorises in that behalf, is mandatory for making an award. It is a condition precedent. Obviously, for this reason, the Collector in his letter dated 20.12.1992, addressed to the Commissioner, seeking prior approval. The heading of the award itself clearly indicates working of his that it is only a proposed award and after prior approval is given, he is enjoined to make the award under s.11 of the Act, Since prior approval was not given before the expiry of December 21, 1992 there is no award made by the Land Acquisition Officer. [691-D-E-F; 692-B] E F G H

A CIVIL APPELLATE JURISDICTION : Review Petition (C) No. 131 of 1994 in Civil Appeal No. 7456 of 1993.

From the Judgment and Order dated 26.4.93 of the Allahabad High Court in C.W.P. No. 899 of 1993.

B With

SLP (C) No. 341/94 and SLP (C) Nos. (CC22215/93, 22188/93).

Y. Prasad and A.K. Srivastava for the Petitioners in review Petition only.

C Ms. C. Markandaya for the Petitioner in SLPs.

N. Safaya and R. Jain for the Intervenor.

D S. Markandeya, A. Singh, H.P. Sharma and Markandaya for the Respondent.

A.K. Srivastava for the Respondent in SLPs.

The following Order of the Court was delivered :

E The admitted facts are that a notification under s.4(1) of the Land Acquisition Act, 1894, (for short 'the Act') was published in the State Gazette on April 20, 1990 proposing to acquire 220 bighas of land approx. for construction of 765 k.v. sub-section and staff quarters at - Gagoal, Dist, Meerut by the U.P. State Electricity Board, Declaration under s.6 was published on December 22, 1990. By operation of Section 11A, the award

F should be made within two years from the date of the publication of s.6, declaration i.e. on or before December 21, 1992. Before it could be made, it would appear that Rajiv Gupta and Ors., the respondents filed Writ Petition No. 33863/92 in the High Court at Allahabad seeking direction to the respondents to take possession of the lands after paying them due

G compensation. On 23.11.1992 the High Court directed the appellants to take a decision for passing the award before 21.12.1992. The Land Acquisition Officer by his letter dated December 20, 1992 wrote to the Commissioner, Directorate of land Acquisition, Lucknow, pointing out the dispute of title to certain items of the land under acquisition; to accept the

H conditional award proposed in that behalf and also requested the Commis-

sioner to accord him prior approval to pass the proposed award. The approval was not given. Nonetheless the High Court in the impugned order dated April 26, 1993 allowed the writ petition and directed the State to take possession of the lands and pay the compensation immediately, as per the award dated 20.12.1992. The appellants have filed this appeal.

On March 11, 1994, we issued notice, Sri Markandey, learned counsel appeared for Rajiv Gupta & Ors. and by an order dated December 12, 1993 we upheld the award dated 20.12.1992 and directed the Land Acquisition Officer to deposit the amount in the reference court within a period of four weeks from that date and if there is any dispute with regard to the title, the dispute would be inquired into under s.30 of the Act. Thereafter, review petition was filed stating that no award has been made on 20.12.1992. Then, we issued notice to produce the record. After perusing the record we found that it was a "proposed award" made by the Land Acquisition Officer on 20.12.1992 and sought approval of the commission which was not given. Therefore, we issued the notice on the review petition on 11.3.1994.

Shri Yogeshwar Prasad, Learned Senior counsel for the State, contended that a reading of ss.11 and 11A would indicate that unless prior approval of the appropriate Government or an officer authorised in this behalf by the appropriate Government was obtained by the Land Acquisition Officer has no power to pass the award. He also stated that the government had issued statutory order directing that if the value of the acquisition exceeds Rs. 1 crore, the prior approval of the commissioner, Board of Revenue is mandatory. Before December 21, 1992 no prior approval was given and therefore there was no award made in the eye of law, what the Land Acquisition Officer communicated to the Commissioner, Board or Revenue, was only 'proposed award' for prior approval. The date, December 20, 1992, is date on which he wrote the letter to the Commissioner seeking prior approval and that date could not and should not be considered to be a date on which the award was made. Therefore, the High Court was wrong in its conclusion that the award was made on December 20, 1992. Sri Markandey, learned counsel for the respondents, contended that pursuant to the direction issued by the Court on 23.11.1992, the Collector was required and made the award and sent it, though styled as a proposed award, to the Commissioner for approval. Except getting

A approval nothing further need to be done by the Collector and therefore, the High Court is right in its holding that the Collector made the award on 20.11.1992. He being the statutory authority, there was no need for him to get any prior approval of the State Government or the Commissioner, nor he be bound by it. Therefore, in the eye of law there is an award passed under s.11 of the Act. He also further contended that when the Collector passed the award, pursuant to the direction issued by the Court, the authorities are bound to comply with the directions and, therefore, the final order passed by the High Court in the impugned judgment is consistent with its interim directions issued on 23.11.1992.

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C Having given our anxious consideration to the respective contentions, we are of the considered opinion that the High Court has committed grievous error of law in its conclusion that the Land Acquisition Officer made the award on 20.12.1992. Section 11-A reads thus :

D "Period within which an award shall be made - (1) The Collector shall make an award under s.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."

E Proviso and explanation are not relevant. Hence omitted.

F Its bare reading indicates and emphasises the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration. It is common knowledge that after declaration was published, years used to role by to make the award and the owners of the lands were put to great hardship. Parliament intended to relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of S.4(1) notification. It is, therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation under s.11A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from the date of the publication of the declaration unless the proviso is attracted, if no award is made in the meantime, in the eye of law the proceedings initiated under s.4(1) of the Act culminated in the declaration

G made under s.6 shall stand lapsed and no proceedings, in the eye of law

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thereafter do exist, to take further action. A

Section 11 postulates of conducting an enquiry and making the award by the Collector. The first proviso envisages that "no award shall be made by the Collector under sub-section without the previous approval of the appropriate government or of such officer as the appropriate government may authorise in this behalf". It is common knowledge that exercising the power under the first proviso, the appropriate government made rules or statutory orders or instructions whatever be the nomenclature, they have statutory operation giving authorisation to the Land Acquisition Collector to make an award upto a particular pecuniary limit without prior approval either of the appropriate government or an officer authorised by the appropriate government in that behalf. If the award exceeds the limit, prior approval of the State Government or authorised officer is mandatory. Any award made in violation thereof, renders the award *non est* and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer. No doubt, Mr. Markandeya is right that the State had not produced before us rules or orders issued under the first proviso to s.11 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, namely, Commissioner, Board of Revenue. But nonetheless, there is a statutory inhibition by first proviso to s.11 that the prior approval either of the appropriate government or of an officer which the appropriate government authorises in that behalf, is mandatory for making an award. It is a condition precedent. Obviously, for this reason, the collector in his letter dated 20.12.1992, addressed to the Commissioner, seeking prior approval thus : C D E

"Proposed award" F

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"Thus the proposed lands are disputed lands, and therefore, it has been mentioned in the *proposed award* that payment of compensation shall be made after obtaining the final report of the enquiry officer and the final judgment passed in the case pending in different courts. Since, in the present case, the award is to be made upto 21.12.1992 only, it is to request you to kindly give your prior approval on the proposed award." G

Its bare reading clearly indicates that the conscience that he is H

- A required to make the award on or before 21.12.1992 and to seek prior approval and accordingly he requested the Commissioner to grant him prior approval as is enjoined in the 1st proviso to s.11 to make the proposed award. The heading of the award itself clearly indicates working of his mind that it is only a proposed award and after prior approval is given, he is enjoined to make the award under s.11 of the Act. Since prior approval was not given before the expiry of December 21, 1992, there is no award made by the Land Acquisition Officer. In the eye of law the proposed award of the collector under s.11 of the Act is not the award. As seen, s.11A is mandatory and on expiry of two years from the date of publication of declaration, i.e. on December 21, 1992, the entire proceedings under the Act stood lapsed. We are not concerned in this case of the proviso to s.11A. The High Court was, therefore, not right in its construction that there was an award made by the Collector on 20.12.1992 and the direction to take further steps in that behalf are clearly illegal. The review petition is accordingly allowed. The order dated 10.12.1993 of the High Court is set aside and the appeal is allowed. The writ petition stands dismissed but in the circumstances parties are directed to bear their own costs.

In view of allowing the appeal of State of U.P., Special Leave Petition (Civil) Nos. 341/94, (CC22215/93) and (CC22188/93) are dismissed.

G.N.

Appeal allowed.
SLPs. dismissed.