

BIHAR STATE HOUSING BOARD

v.

STATE OF BIHAR AND ORS.

SEPTEMBER 5, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Land Acquisition Act, 1894—Sections 4, 6(1) & (2) and 11A—Publication of declaration—Period of Limitation prescribed under Section 11A for the Award—Computation of—Held, the three modes of declaration envisaged under section 6(2) are cumulative and inseparable—Hence, the period must be computed from the last date of the three modes of publication.

A notification under Section 4 of the Land Acquisition Act, 1894 was issued and published in the District Gazette on 16.3.1989. The notification was subsequently published in two daily newspapers on 29.4.1989 and the local publication was made on 20.3.1989. The declaration under section 6 of the Act was published in the District Gazette on 1.2.1990, in the daily newspapers on 27.2.1990 and in the local publication on 15.3.1991. The award under the Act was made on 25.3.1992.

Respondent-landowner filed a Writ Application before the High Court on the ground that the award made on 25.3.1992 was invalid since it was made after two years from the date of the publication of the declaration in the daily newspapers on 27.2.1990. Single Judge allowed the Writ application which was affirmed by the Division Bench of the High Court. The application for review by the appellant was dismissed.

In appeal to this Court, the appellant contended that the period of limitation under Section 11A of the Act has to be reckoned from the last date out of the series of publications envisaged under the Section; and that the award was made within two years from the last date.

The respondent-landowner contended that the date of local publication is of no consequence after the publication in the two local newspapers; that the local publication was made for the convenience

A of the parties, whose lands were acquired; and that such local publication cannot extend the period of limitation envisaged under Section 11A of the Act.

Allowing the appeal, the Court

B HELD : 1.1. Section 6(2) of the Land Acquisition Act, 1894 deals with the various modes of publication, as enjoined by the legislature and what is envisaged by the Statute is a co-joint publication, by all such methods. Various modes as prescribed in the provision itself are
 C (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language and (c) public notice of the substance of such declaration at convenient places in the locality. There is no option left with any one to give up or waive any or other of the modes and all such modes have to be strictly resorted to.

[399-B, C]

D 1.2. Section 6(2) of the Act makes it abundantly clear that the last of the dates of the publication and giving of such public notice shall "hereinafter" be referred to as the date of publication of the declaration. Therefore, the expression "date of publication of declaration" appearing
 E in section 11A of the Act a stage subsequent to section 6, answering the stipulation "hereinafter" has to be the last of the dates out of the three modes of publication ordained by the Statute. In substance, the triumvirate modes are cumulative and inseparable in the sense that unless all the three modes are resorted to and completed, there is no
 F scope for the limitation period of two years beginning to run or for the penal consequences envisaged ensuing therefrom. [399-C-E]

G 1.3. From the parenthesis appearing in Section 6(2), it is clear that reference to the subsequent provisions of the Act to the date of publication of declaration has to be determined as the last of the dates of the publication and the giving of the notice. As the date of local
 H publication was 15.3.1991, the award made on 25.3.1992 was not beyond the prescribed period of limitation. [399-G, H]

Krishi Utpadan Mandi Samiti & Anr. v. Makrand Singh & Ors., [1995] 2 SCC 497 and *Eugenia Misquita & Ors. v. State of Goa & Ors.*,

[1997] 8 SCC 47, relied on.

Kaliyappan v. State of Kerala & Ors., AIR (1989) SC 239, A distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7011 of 2003.

From the Judgment and Order dated 8.5.2001 of the Patna High Court in C.R. No. 262 of 1999. B

Himanshu Shekhar for the Appellant.

Ms. J.S. Wad, Ms. Niharika Bahl and Ms. Ram Bore for J.S. Wad & Co. for the Respondents. C

B.B. Singh and Kumar Rajesh Singh for State of Bihar.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted. D

The basic issues involved in this appeal revolve round the question whether the award made under Section 11A of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') is barred by limitation. E

Factual position in a nutshell is as follows:

A Notification under Section 4 of the Act was issued and published in District Gazette on 16.3.1989 and was subsequently published in two daily newspapers on 29.4.1989 and local publication was made on 20.3.1989. Publication of the declaration under Section 6 of the Act was made on different dates in the following manner: (a) in the District Gazette on 1.2.1990, (b) daily newspapers on 27.2.1990 and (c) local publication on 15.3.1991. The award under Section 11A of the Act was made on 25.3.1992. F

A Writ application was filed by the landowner (respondent no.5 herein) before the Patna High Court taking the stand that the award was made after the expiry of two years period as reckoned from the date of publication of the declaration on 27.2.1990 when it was published in two G

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A local daily newspapers. Referring to Section 11A of the Act the plea was accepted. This Court's judgment in *Kaliyappan v. State of Kerala and Ors.*, AIR (1989) SC 239 was referred to for upholding the stand of the landowner. Challenge before the Division Bench did not yield any result to the present appellant, for whose benefit the land was acquired. An application for review was filed which was dismissed by the impugned judgment by taking the view that there was no scope for review of the judgment and what was attempted to be done in essence amounted to appeal in the guise of a review petition.

C Learned counsel for the appellant-Board submitted that the approach of the High Court is erroneous. The period has to be reckoned from the last date out of the series of publication envisaged and in view of the clear language of Section 11A, there was no scope for holding that the award was made beyond the prescribed time. Learned counsel for the State of Bihar supported the stand. But learned counsel for the respondent no.5-landowner submitted that the date of local publication is really of no consequence after the publication in the two local newspapers. Since a grievance was made by some of the landowners whose lands were simultaneously acquired that they had not been given due notice, the land acquisition authorities made a local publication of the substance of the declaration. This was an act done for the convenience of the parties and it cannot extend the period of limitation as prescribed under Section 11A of the Act.

F In order of appreciate the rival contentions few provisions of the Act need to be noted. They are:

Sections 4(1), 6(1) and (2) and 11A read as follows:

G "4. *Publication of preliminary notification and powers of officers thereupon* – (1) Whenever it appears to the appropriate government that land in any locality is needed or is likely to be 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 that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at

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convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

* * *

6. *Declaration that land is required for a public purpose.* – (1) Subject to the provisions of Part VII of this Act, when the appropriate government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

A *Explanation 1.*- 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.

B *Explanation 2.*- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenue.

C (2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration 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 hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(Emphasis supplied)

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F 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:

G 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.

H *Explanation.* - 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." A

The crucial words in Section 11A are "within a period of two years from the date of publication of the declaration". Section 6(2) deals with the various modes of publication, as enjoined by the legislature and what is envisaged by the Statute is a conjoint publication, by all such methods. Various modes as prescribed in the provision itself are (a) publication in the official gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and (c) public notice of substance of such declaration at convenient places in the locality. There is no option left with any one to give up or waive any one or other of the modes and all such modes have to be strictly resorted to. Sub-section (2) of Section 6 therefore necessarily makes it abundantly clear that the last of the dates of the publication and giving of such public notice shall "hereinafter" be referred to as the date of publication of the declaration. Therefore, the expression "date of publication of declaration" appearing in Section 11A a stage subsequent to Section 6, answering the stipulation 'hereinafter' has to be the last of the dates out of the three modes of publication ordained by the Statute. In substance the triumvirate modes are cumulative and inseparable in the sense that unless all the three modes are resorted to and completed, there is no scope for the limitation period of two years beginning to run or for the penal consequences envisaged ensuing therefrom. B
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In *Krishi Utpadan Mandi Samiti and Anr. v. Makrand Singh and Ors.*, [1995] 2 SCC 497 while considering the various provisions (in which only the period of limitation was changed by amending Act 68 of 1984) it was noted that there are three modes of publication and the three steps are as indicated supra. F

If one takes note of the parenthesis appearing in Sub-section (2) of Section 6, it is clear that reference to the subsequent provisions of the Act to the date of publication of declaration has to be determined as the last of the dates of the publication and the giving of public notice. As the date of publication by local publication was the last at that point of time i.e. on 15.3.1991 the award on 25.3.1992 was not beyond the prescribed period of limitation. G
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- A The decision in *Kaliyappan's* case (supra) was on different aspect of the problem raised in the factual position presented in that case, and did not deal with the question of the nature involved in the present appeal. Even in that case, this Court observed that under Section 11A, the Collector is empowered to make an award within two years from the date of publication of the declaration meaning thereby that it will be till the expiry of the last date of the period of two years. The further question as to how the said period is to be computed did not arise in that case, as in the present case. Therefore, no assistance is available to the respondent-land owner from that decision. On the contrary, the decision in *Eugenio Misquita and Ors. v. State of Goa and Ors.*, [1997] 8 SCC 47 was rendered on identical legal set up after advertising to the relevant distinctions in computing the period of limitation for making the declaration under Section 6 in contrast to the one for computing the period of limitation stipulated for making the award under Section 11A of the Act, in the special context of the mandate contained in Sub-section (2) of Section 6 of the Act. We are in respectful agreement with the principles laid down therein and the same squarely governs this case, in favour of the stand taken for the appellant, the limitation having necessarily to be computed from the last of the publication viz., 15.3.1991.
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- E Judgments of the High Court by learned Single Judge, the Division Bench in the appeal and the review application have not taken the correct view. They are set aside. The appeal is allowed but with no order as to costs.

B.S.

Appeal allowed.