

PETITIONER:
ABDUL MAJEED SAHIB & ANR.

Vs.

RESPONDENT:
THE DISTRICT COLLECTOR & ORS.

DATE OF JUDGMENT: 01/11/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:

THE 1ST DAY OF NOVEMBER, 1996

Present

Hon'ble Mr. Justice K.Ramaswamy
Hon'ble Mr. Justice G.B. Pattanaik

E.M.S. Anam, Adv. for the appellants.
V.R. Reddy, Additional Solicitor General, G. Negeswar Reddy,
C.V.S. Rao, Advs. for Mrs. Anil Katiyar, and M.T. George,
Advs, With him for the Respondents.

O R D E R

The following Order of the Court was delivered:

O R D E R

Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

Notification under Section 4(1) of the Land Acquisition Act, 1894 [for short "The ACT"] was published on October 16, 1987 proposing to acquire the land for establishment of a telephone exchange. Declaration under Section 6 was published in June 1988. It would appear that there was a negotiation between the parties for settlement by determination of compensation by agreement, but in the process, two years limitation prescribed under Section 11-A introduced by Act 68 of 1984 in Act, had lapsed on June 16, 1990. As a result, the notification and declaration by operation of Section 11-A stood lapsed. Subsequently, the appellant had filed an application under Section 48(2) on September 17, 1990 for determination of compensation which was rejected on February 18, 1992. The writ petition was dismissed in O.P. No. 1061/93 on July 9, 1993 by the High Court of Kerala, Thus, this appeal by special leave.

Shri Anam, Learned counsel for the appellant, contended that by statutory operation under Section 11-A, when the acquisition stood lapsed, it amount, it amounted to withdraw from acquisition by operation of sub-section (1) of Section 48. Therefore, sub-section (2) of Section 48 stand attracted. Resultantly, the Collector shall determine the amount of compensation due for the damages suffered by the owner in consequence of the notification published under Section 4(1) of Act and declaration under Section 6 and the proceeding taken thereafter. The High Court and the Land

Acquisition Officer, therefore, were not right in rejecting the claim of the appellant. Having regard to contention, we think that the contention of the learned counsel is not well-founded.

Section 11-A was brought on statute by Amendment Act 68 of 1984. It was notorious that the State, After Publication of declaration under Section 6 went on delaying for years, to pass the awards putting obstruction to the owner of the land for enjoyment; resultantly, loss and undue disadvantage ensued to the owner of the land. To mitigate such hardship, the Parliament introduced Section 11-A and directed the Land Acquisition officer to make the award within two years from the date of publication of last of the step under Section 6(2) publishing the declaration under Section 6. As a consequence, the Land Acquisition Officer is statutorily under an obligation, at the pain of invalidation of the acquisition itself, to make the award within two years unless it falls within one of the provisions or the Explanation added thereto. In this case, neither the proviso nor the Explanation stands attracted to the facts. Consequently, since the Land Acquisition Officer did not make the award within two years from the date of the declaration, viz., June 17, 1988, the entire acquisition shall stand lapsed.

Section 48 (1) of the Act provides that "[E]xcept in the case provided for a Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken." Consequently, due to any notification Issued under Section 4(1) of the declaration published under Section 6, if the owner is subjected to any detriment in enjoyment of the property, Though the notification is withdrawn by the Government by exercising the power under Section 48(1), since possession of the land was not taken, to statute envisages payment of compensation for the loss suffered by the owners/tenant. The right to claim compensaiton and the manner of determination has been provided in sub-section (2) of Section (48) of the Act which reads as under:

"(2) Whenever the Government withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceeding thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land."

The word 'withdraws' would indicate that the Government by its own action voluntarily withdraws from the acquisition; the Government has necessarily to withdraw from the acquisition, in other words, there should be publication of the withdrawal of the notification published under Section 4(1) and the declaration published under Section 6 by exercising the power under Section 48(1). sub-Section (2) of Section 48 would then apply. In this case, admittedly, the Government had not exercised the power under Section 48(1) withdrawing from the notification under Section 4(1) or the declaration under Section 6. The statutory lapse under Section 11-A is distinct different from voluntary act on the part of the Government. Therefore, it must be by

withdrawal of the notification by voluntary act on the part of the Stat under Section 48(1). Under these circumstances, the appellant is not entitled to avail of the remedy of sub-section (2) of 48 Section 48.

The appeal is accordingly dismissed. No costs.

JUDIS