

A MULCHAND KHANUMAL KHATRI

v.

STATE OF GUJARAT & ORS.
(Civil Appeal No. 4990 of 2003)

MARCH 27, 2012

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[R.M. LODHA AND H.L. GOKHALE, JJ.]

- Land Acquisition Act, 1894 - s.11A [as inserted by Land Acquisition (Amendment) Act, 1984] - Limitation period - For passing award u/s.11 - Computation of - Held : The period prescribed u/s. 11A is mandatory - The period of two years commences from the date of publication of declaration and where declaration is published before Amendment Act, it is from the date of commencement of Amendment Act - The only period excludable is the period during which proceedings remained stayed under the order of a court and no other - s.11A being a special provision, provisions of Limitation Act and particularly s.12 thereof cannot be read into it - Hence the time taken in obtaining the certified copy of judgment and bringing it to the notice of the authority before passing of award u/s.11, will not be excluded - On facts, award having not been made within period prescribed u/s. 11A, the entire acquisition proceedings lapsed - Limitation Act, 1963 - s.12.*
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- Appellant-the land-owner had challenged the land-acquisition proceedings before High Court. He was granted interim relief. In the meantime, the Land Acquisition Act was amended by Land Acquisition (Amendment) Act, 1984 whereby s.11A was inserted prescribing the limitation period within which award could be passed. Thereafter, the High Court dismissed the application of the appellant by order dated 11.1.1996. The award u/s. 11 was passed on 31.8.1998.**
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The appellant challenged the passing of the award

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u/s.11, on the ground that the same was passed beyond A
two years from the date of the publication of the
declaration u/s. 6. The High Court held that the award
could not be said to have been passed beyond two years
because the time taken in obtaining the certified copy of
the judgment of High Court and the period from the date, B
the certified copy was obtained and it was brought to the
notice of the authority, has to be excluded.

In appeal to this Court, the question for
consideration was whether s.11A permits exclusion of C
time taken in obtaining the certified copy of the judgment
of High Court and bringing it to the notice of the
authority.

Allowing the appeal, the Court

HELD: 1. The period prescribed in Section 11A of D
Land Acquisition Act, 1894 is mandatory. The
consequence of breach is provided in the provision itself
viz., the entire acquisition proceedings get lapsed. Insofar
as computation of the period is concerned, the period of E
two years commences from the date of the publication
of the declaration. Where the declaration has been
published before the Land Acquisition (Amendment) Act,
1984, then the period commences from the
commencement of the Amendment Act. The only period F
that is excludable is the period during which the action
or proceedings to be taken pursuant to the said
declaration remains stayed under the order of a court
and no other. Section 11A is a special provision for the
purposes of the Act and the legislative intent being clear G
from the bare language of the explanation appended
thereto, there is no justification to read the provisions of
the Limitation Act, 1963 and particularly Section 12
thereof into it. [para 12] [594-B-D]

A *Ravi Khullar and Anr. Vs. Union of India and Ors. (2007)*
 5 SCC 231: 2007(4) SCR 598 - relied on.

B 2. In the present case, the award having not been
 made within the period prescribed in Section 11A of the
 Act, the entire proceedings for the acquisition of the
 appellant's land has lapsed. The High Court was clearly
 in error in excluding the period from January 11, 1996 to
 September 5, 1997 (i.e. time taken in obtaining certified
 copy of the order of High Court and the time taken in
 placing the same before the authority). This period
 C cannot be excluded under explanation appended to
 Section 11A of the Act. [para 13] [594-E-F]

Case Law Reference:

D 2007(4) SCR 598 Relied on Para 11
 CIVIL APPELLATE JURISDICTION : Civil Appeal No.
 4990 of 2003.

E From the Judgment & Order dated 26.12.2002 of the High
 Court of Gujarat at Ahmedabad Special Civil Application No.
 7738 of 1998.

Subrat Birla, S.C. Birla for the Appellant.

F Hemantika Wahi, Jesal, Rojalin Pradhan for the
 Respondents.

The Judgment of the Court was delivered by

G R.M. LODHA, J. 1. The judgment and order dated
 December 26, 2002 passed by the Gujarat High Court is under
 challenge in this Appeal by special leave.

H 2. The appellant claims to be joint owner of the land being
 Survey No. 11430 admeasuring 34 sq. mtr. at Palanpur, Gujarat.
 On April 1, 1980, a notification was issued under Section 4 of
 the Land Acquisition Act, 1894 (for short, 'the Act') that

proposed acquisition of the appellant's land and some other land for the public purpose, namely, construction of Palanpur City and taluka Police Station. The said notification was published in the Government Gazette on January 8, 1981. Later on, Section 4 notification was revised and published in the Official Gazette on September 22, 1983. The declaration under Section 6 was published on January 5, 1984. The appellant challenged the acquisition of his land through the above notifications in a Special Civil Application before the Gujarat High Court. An interim relief in the above matter was granted on April 18, 1984.

3. The Act was amended on September 24, 1984 by the Land Acquisition (Amendment) Act, 1984 (for short, 'the Amendment Act') whereby Section 11A was brought in the statute book.

4. The Special Civil Application filed by the appellant was dismissed on January 11, 1996. The Dy. Collector made the award on August 31, 1998.

5. Before the High Court, *inter alia*, the argument was canvassed on behalf of the appellant that the award having been passed beyond two years from the date of the publication of the declaration under Section 6, by virtue of Section 11A of the Act, the entire acquisition proceedings had lapsed. The High Court, however, repelled the above argument and held as follows :

"The submission of the learned Counsel for the petitioner was that their earlier petitions were dismissed and the stay granted earlier stood vacated by the Division Bench of this Court on 11.1.96. Therefore, the Authority was supposed to declare the Award within a period of 2 years from that day i.e. 11.1.96. The said period would expire on January 10, 1998 whereas Award u/s 11 came to be passed only in August, 1998 which is admittedly after a period of 2 years. It is no doubt true that the Division Bench of this

- A Court earlier dismissed their writ petitions on 11.1.96 and vacated the interim relief, but the vacation of interim relief granted in favour of the petitioners must be brought to the notice of the concerned Authority. Merely because they were represented through their counsel before the court would not be sufficient. Unless and until certified copy of the said judgment and order passed by the court is brought to the notice of the Authority, the Authority is not supposed to act. The period of 2 years would start only from the date of the notice. In reply affidavit it has been clearly stated that the copy of the judgment and order passed by this Court on 11.1.96 was received by them only 5.9.97.

In that view of the matter, admittedly the Award dt. 31.8.98 passed u/s 11 of the Act was within a period of 2 years."

- D 6. From the above discussion, it is apparent that the High Court was of the view that unless and until certified copy of the judgment and order passed by the court was brought to the notice of the authority, the authority was not supposed to act and the period of two years under Section 11A of the Act would start only from the date of such notice and as the copy of the judgment and order passed by the High Court on January 11, 1996 was received by the competent authority on September 5, 1997, the respondents were entitled to the benefit of the entire period from January 11, 1996 to September 5, 1997.

- F 7. We are unable to accept the view of the High Court.

8. Section 11A of the Act reads as under :-

11A. Period within which an award shall be made.-

- G (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:

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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. A

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. B

9. Section 11A mandates that an award shall be made by the Collector under Section 11 of the Act within a period of two years from the date of the publication of the declaration. The non-adherence to this period results in entire acquisition proceedings being lapsed. The proviso that follows sub-section (1) states that where the declaration under Section 6 has been published before the commencement of the Amendment Act the award shall be made within a period of two years from such commencement. The Explanation appended to Section 11A clarifies that the period during which any action or proceeding relating to acquisition taken pursuant to such declaration remains stayed by an order of the court, such period shall be excluded. C D E

10. Insofar as present case is concerned, there is no dispute that the proviso that follows sub-section (1) of Section 11A is attracted because the declaration under Section 6 was published before the commencement of the Amendment Act and the award was made after coming into force of Section 11A. The period of two years shall thus commence from September 24, 1984 when the amendment to the Act was notified. It is also not in issue that in computing the period of two years, the period during which the interim relief granted by the Gujarat High Court remained operative shall have to be excluded. The stay order of the High Court remained operative for the period September 24, 1984 to January 11, 1996. The F G H

A question is, whether Section 11A of the Act permits exclusion of time that was taken in obtaining the certified copy of the judgment and order passed by the High Court and the period from the date the certified copy was obtained and it was brought to the notice of the authority.

B 11. The question with which we are concerned came up for consideration in *Ravi Khullar and Another Vs. Union of India and Others*, (2007) 5 SCC 231. In paras 54, 55 and 56 of the report, this Court stated as follows:

C “54. In the matter of computing the period of limitation three situations may be visualized, namely, (a) where the Limitation Act applies by its own force; (b) where the provisions of the Limitation Act with or without modifications are made applicable to a special statute; D and (c) where the special statute itself prescribes the period of limitation and provides for extension of time and/or condonation of delay. The instant case is not one which is governed by the provisions of the Limitation Act. The Land Acquisition Collector in making an award does not act as a court within the meaning of the Limitation Act. E It is also clear from the provisions of the Land Acquisition Act that the provisions of the Limitation Act have not been made applicable to proceedings under the Land Acquisition Act in the matter of making an award under Section 11-A of the Act. However, Section 11-A of the Act F does provide a period of limitation within which the Collector shall make his award. The Explanation thereto also provides for exclusion of the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a court. Such being G the provision, there is no scope for importing into Section 11-A of the Land Acquisition Act the provisions of Section 12 of the Limitation Act. The application of Section 12 of the Limitation Act is also confined to matters enumerated therein. The time taken for obtaining a certified copy of the H

judgment is excluded because a certified copy is required to be filed while preferring an appeal/revision/review etc. challenging the impugned order. Thus a court is not permitted to read into Section 11-A of the Act a provision for exclusion of time taken to obtain a certified copy of the judgment and order. The Court has, therefore, no option but to compute the period of limitation for making an award in accordance with the provisions of Section 11-A of the Act after excluding such period as can be excluded under the Explanation to Section 11-A of the Act.

55. Our conclusion finds support from the scheme of the Land Acquisition Act itself. Section 11-A of the Act was inserted by Act 68 of 1984 with effect from 24-9-1984. Similarly, Section 28-A was also inserted by the Amendment Act of 1984 with effect from the same date. In Section 28-A the Act provides for a period of limitation within which an application should be made to the Collector for redetermination of the amount of compensation on the basis of the award of the Court. The proviso to sub-section (1) of Section 28-A reads as follows:-

“Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.”

56. It will thus be seen that the legislature wherever it considered necessary incorporated by express words the rule incorporated in Section 12 of the Limitation Act. It has done so expressly in Section 28-A of the Act while it has consciously not incorporated this rule in Section 11-A even while providing for exclusion of time under the Explanation. The intendment of the legislature is therefore unambiguous and does not permit the court to read words into Section

A 11-A of the Act so as to enable it to read Section 12 of
the Limitation Act into Section 11-A of the Land Acquisition
Act.”

12. We are in respectful agreement with the above legal
B position. The period prescribed in Section 11A is mandatory.
The consequence of breach is provided in the provision itself
viz., the entire acquisition proceedings get lapsed. Insofar as
computation of the period is concerned, the period of two years
commences from the date of the publication of the declaration.
C Where the declaration has been published before the
Amendment Act, then the period commences from the
commencement of the Amendment Act. The only period that
is excludable is the period during which the action or
proceedings to be taken pursuant to the said declaration
remains stayed under the order of a court and no other. Section
D 11A is a special provision for the purposes of the Act and the
legislative intent being clear from the bare language of the
explanation appended thereto, we find no justification to read
the provisions of the Limitation Act, 1963 and particularly
Section 12 thereof into it.

E 13. In view of the above legal position and the facts noticed
above, we hold as we must, that the award having not been
made within the period prescribed in Section 11A of the Act,
the entire proceedings for the acquisition of the appellant's land
F has lapsed. The High Court was clearly in error in excluding the
period from January 11, 1996 to September 5, 1997. This
period cannot be excluded under explanation appended to
Section 11A of the Act.

G 14. In view of the above, Civil Appeal is allowed and the
impugned judgment and order is set aside. The entire
proceedings for the acquisition concerning the appellant's land
is declared to have lapsed. No costs.

K.K.T

Appeal allowed.

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