

Chandrasena Vs. the State of Karnataka, Represented by Its Secretary and Commissioner, Vidhana Soudha, Bangalore and Others

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Court : Karnataka

Decided On : Apr-11-2011

Judge : The Honourable Mrs. Justice B.V. Nagarathna

Appeal No. : Writ Petition NO. 18681 of 2007 (LA-RES)

Appellant : Chandrasena

Respondent : The State of Karnataka, Represented by Its Secretary and Commissioner, Vidhana Soudha, Bangalore and Others

Advocate for Pet/Ap. : For the Petitioner: Sundaraswamy Ramdas and Anand, Advocates. For the Respondent: M. Keshava Reddy, AGA.

Judgement :

(Prayer: This Petition is filed Under Articles 226 and 227 of the Constitution of India, praying to quash the award dt. 25.6.2001 vide Annexure - F passed by R2 and ETC...)

1. Though this writ petition was posted for consideration of application for vacating stay filed by the respondent-State, with the learned counsel on both sides, the main writ petition has been heard finally.

2. In this writ petition, the petitioner has sought the following reliefs:

- a) quash the award bearing No.LAQ:SR:2:93-94 dated 25.6.2001 (Annexure-F); passed by 2nd respondent;
- b) quash all further proceedings pursuant to preliminary notification issued by 2nd respondent on 15.10.1998 (Annexure-A), declaration made under Section 6[1] of Act dated 25.11.1999 (Annexure-B), and award notice issued under section 12[2] of Act (Annexure-E) insofar as it relates to acquisition of petitioner's land situated in Sy.No.332, Hoskote Village, Doddaballapur Sub-Division. Bangalore;
- c) Declare that the acquisition proceedings in respect of Sy.No.332, Hoskote Village, Doddaballapur Sub-Division, Bangalore have lapsed by operation of Section 11A of Land Acquisition Act, 1894;
- d) Award cost of proceedings;
- e) Pass such other order as this Honorable court may deem fit the facts and circumstances of this case.
3. According to the petitioner, he is the absolute owner of agricultural land bearing Sy.No.332, Hoskote Village, Doddaballapur Sub-division, Bangalore Rural District Bangalore, measuring 5 acres 13 guntas. The said property originally belonged to his father and he submits that he succeeded to the same in the year 1975 after the demise of his father and that he has been cultivating the land by growing paddy, coconuts, pulses, corn and other seasonal crops. That when the matter stood thus .the petitioner became aware that 2 acres of land (hereinafter referred to as the land in question) was sought to be acquired by the first respondent for the purpose of construction of a court complex and on enquiry he came to know that the second respondent had issued preliminary notification dated 3.9.2988 under section 4[1] of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') notifying the acquisition of 2 acres of the said land which was published in the official gazette on 15.10.1998. That the said notification was also published in two regional daily newspapers on 8.10.1998. It is the case of the petitioner that the second respondent has not caused any public notice of the said notification in the locality as envisaged under section 4[1] of the Act. Hence, the petitioner addressed a letter dated 29.7.1999 to the respondents stating that he had no

notice of the proposed acquisition and had also sought denotification of the said land from acquisition. Since the respondents did not reply to the said letter, the petitioner addressed another letter dated 4.12.1999 addressed to the Revenue Minister of the State seeking denotification. The petitioner learnt that in the interregnum the respondents had proceeded to make the declaration as required under section 6[1] of Act, a copy of which was published in the kannada daily newspaper on 14.12.1999. According to the petitioner no public notice of the said declaration had been given as per Section 6(2) of the Act. Under the circumstances, the petitioner had filed W.P.Nos.12211-12/2000 challenging the acquisition proceedings, this court had granted interim order of stay of further proceedings for a period of two weeks on 3.04.2000. Subsequently, This court dismissed the writ petition on 12.04.2000 on the ground that there had been publication in the village chawadi and also in the newspaper on 26.11.1998 and 8.10.1998 and that the question of personal service of notice did not arise. According to the petitioner, after the dismissal of the writ petition, no action was initiated by the respondents for over two years. Therefore, by operation of law, the acquisition proceedings have lapsed by virtue of Section 11A of the Act.

4. When the matter stood thus, the petitioner received notice dated 2.8.2007 issued under Section 12(2) of the Act calling upon the petitioner to appear before the authorities to collect the award amount. The said notice was served on the petitioner on 17.8.2007. It is the case of the petitioner that such a notice could not have been issued belatedly and at any rate after the lapse of acquisition which therefore, had no validity in the eye of law. As per Annexure-E which is the notice dated 2.8.2007, the petitioner became aware that without any notice to the petitioner, award has been passed on 25.6.2001. He had obtained copies of notings in file bearing No. LAQCR 5/1993-94. It is the contention of the petitioner that since the beneficiary was not interested in depositing the compensation amount inspite of reminders, notice was issued under Section 12(2) of the Act only in the year 2007 even though the award has been passed in the year 2001 and that since the notice was served on the petitioner after over two years from the date of publication of notification under Section 6 of the Act, the acquisition had lapsed. Hence, the petitioner has sought the aforesaid reliefs on the said facts.

5. On behalf of respondent No.3, statement of objections have been filed contending that the petitioner cannot once again seek the same reliefs which have been sought by him in W.P.Nos.12211-12/2000 which was dismissed by order dated 12.4.2000. It is stated that on 26.11.1998, a mahazar was drawn and that the petitioner was well aware of the acquisition proceedings inasmuch as she had filed the writ petitions earlier and had also sought for denotification of his land from acquisition which has been negated by order dated 12.4.2000. It is also contended that notice under Sections 9 and 10 of the Act has been served on the petitioner on 30.3.2000 which has been acknowledged by him. He was asked to appear before the Land Acquisition Officer on 6.4.2000 with regard to the making of the award. That the petitioner remained absent on the said date and thereafter the Land Acquisition Officer proceeded to pass an award on 25.6.2001 which was approved by the Deputy Commissioner on 20.8.2001 which was stipulated under the Land Acquisition Act. Therefore, the contention of the petitioner that the acquisition has lapsed under Section 11A of the Act is not correct. Copies of the notices under Sections 9 and 10 of the Act acknowledged by the petitioner are produced as Annexure-R2. When the Land Acquisition officer had written letters to the beneficiary to deposit the compensation amount on various dates so as to facilitate the payment of compensation to the land owners and since the beneficiary did not deposit the compensation for sometime even after passing of the award notice under Section 12(2) of the Act could not be sent to the petitioner until the said compensation to be deposited. Thereafter under Section 12(2) notice has been issued and the same was received on 17.8.2007 and the petitioner cannot contend that the acquisition is vitiated on account of delay in service of notice under Section 12(2) of the Act and hence, the third respondent has contended that the writ petition being pointed on merit has to be dismissed.

6. I have heard the learned senior counsel Sri.Naganand for M/s.Sundaraswamy Ramdas Assts. For the petitioner and Sri.Keshava Raddy, learned Government Advocate for respondent-State.

7. It is contended on behalf of the petitioner that Sy.No.332 totally measures 5 acres 13 guntas of land. That a portion of the said land was converted for non-agricultural purpose in the year 1975. That preliminary notification with regard to 2

acres of land was issued as early as on 3.9.1998. Subsequently, final notification under Section 6(1) of the Act making the declaration was issued on 14.12.1999. That on various legal contentions, the petitioner had challenged the acquisition in W.P.Nos.12211-12/2000 and that on 3.4.2000, there was an interim order of stay of further proceedings granted by this court. Thereafter, the writ petition was rejected on 12.4.2000. That the further proceeding with regard to the making of the award has taken place subsequently from 20.4.2000 onwards. That though enquiry notice under Sections 9 and 10 of the Act was issued to the petitioner by the respondents asking the petitioner to be present on 6.4.2000, in view of the interim order of stay granted on 3.4.2000, no further proceedings could have taken place on the said date. Thereafter the writ petition was rejected on 12.4.2000. That the further proceedings with regard to the making of the award has taken place subsequently from 20.4.2000 onwards, no further proceedings could have taken place on the said date. After the dismissal of the writ petition on 12.4.2000 no fresh notices had been issued under Sections 9 and 10 of the Act though such a mandatory requirements had to be complied with by the respondent-acquiring authority. The third respondent without giving the petitioner an opportunity of being heard had passed an award behind his back. Though the award has been passed as early as 26.6.2001 and was approved on 20.8.2001, for nearly six years, no notice under Section 12(2) of the Act read with Karnataka Amendment Act was issued to the petitioner though the said Section says that such a notice must be given immediately or at any rate within a reasonable time and on account of non-service of such notice the acquisition has lapsed by virtue of Section 11A of the Act.

8. Drawing my attention to the definition of the word “immediately” as given in Stroud’s Judicial Dictionary of Words and Phrases and the Random House Dictionary of English language, learned Senior Counsel has stated that the word “immediately” has been used for achieving a definite purposes under the Act. That in the instant case, the service of notice under Section 12(2) after seven years from the making of the award would clearly imply that the said notice was not issued as envisaged under the Act and the communication of the award within reasonable time i.e., seven years cannot be considered as a reasonable time. In support of his submission, he has relied upon the decision of the Apex court and

other courts reported in the case of **Raja Harish Chandra Raj Singh V/s. The Deputy Land Acquisition Officer and another (AIR 1961 SC 1500)**, a decision of the Gujarat High Court reported in Manupatra, **(2006)2 SCC 416** and a latest decision of the Supreme Court **Dev Sharan and others V/s. State of U.P. and others (8.3.2011)**. He has also contended that the location of the land is such, it is wholly unsuitable for the establishment of court complex inasmuch as the said land is abutting NH4 which is a very busy highway and therefore, a court complex to be situated on such a highway would imply that there would be lot of disturbance for the proceeding of the court. That very close to the land in the question Government land measuring 2 acres 8 guntas is available but the said land is not being utilized by the state Government.

9. Therefore, he submitted that on a reading of the various decisions and applying the same to the facts of the present case, the only conclusion that could be arrived is that the non- service of notice on the petitioner would imply that the acquisition has lapsed and therefore, the aforementioned prayers sought by the petitioner may be granted by this court.

10. Per contra, learned Government Advocate, submitted that notice under Sections 9 and 10 of the Act was served on the petitioner calling upon him to appear before the Land Acquisition Officer on 6-4-2000 with regard to the making of the award. The said fact is admitted by the petitioner, that on the said date, no proceeding took place and subsequently the proceeding was recommenced on 20-4-2000, after the disposal of W.P. Nos.12211-12 of 2000. Since the petitioner was aware of the fact that proceedings for making of the award had been initiated by issuance of notice under Section 9 and 10 of the Act, which he had received, and it was the petitioner who had obtained an order of stay from the hands of this court and thereafter was also aware of the fact that the writ petition filed by him was dismissed and it was incumbent on the petitioner to respond to the notice issued under section 9 and 10 of the Act after the conclusion of the proceeding before this court. If the petitioner did not take any steps to find out from the Land Acquisition Officer (LAO) about the continuation of the proceeding after the disposal of the writ petition, for the said lapse on the part of the petitioner, the respondents cannot be held liable. He has also stated that the Act does not envisage issue of notice under

Section 9 and 10 of the Act once again on the conclusion of a writ proceeding challenging the very acquisition proceeding.

11. Drawing my attention to the relevant date in the instant case, learned Government Advocate submitted that section 6[1] notification dated 25-11-1999 was published in the gazette on 13-1-2000; that later on a chawdi publication was made on 30-3-2000; that newspaper publication was made on 14-12-1999; that from the date of the last publication there was two year time to make the award. In the instant case, a draft award was made on 25-6-2001 by the third respondent and the same was approved by the government on 20-8-2001. The said award was made after issuance of notice under Section 9 and 10 of the Act. It is further submitted by the learned Government Advocate that on account of there being a delay in depositing of compensation amount by the beneficiary, notice under Section 12(2) of the Act was issued and served on the petitioner on 2-8-2007 and 17-8-2007 respectively; that the receipt of the notice issued under Section 12(2) of the Act by the petitioner is admitted. He further submitted that the contention and the said notice is issued belatedly, is in correct as what is relevant is the date of making of the award and approval of the same within a period of two years from the date of publication of the declaration and the date of service of notice under Section 12(2) of the Act cannot be read into the provisions of Section 11-A of the Act, which is an event which takes place subsequent to the making of the award. Therefore, according to learned Government Advocate, the contention of the learned Senior counsel appearing for the petitioner that since the notice under Section 12(2) of the Act in the instant case was issued after a lapse of six years from the date of declaration, the acquisition had lapsed under Section 11-A of the Act cannot be accepted.

12. He has also stated that the word "immediate" occurring in Section 12(2) of the Act has to be interpreted by taking into consideration the surrounding circumstances and that in the instant case, on account of there being a delay in depositing of the compensation amount by the beneficiary, the third respondent was engaged in several correspondence with the beneficiary for the deposit of the said amount and when once the compensation amount was posited by the beneficiary, immediately notice under Section 12(2) of the Act has been is sued to

the petitioner and there has been no time lost in issuing the said notice, when once the compensation amount was deposited with the third respondent and therefore the contention of the learned Senior counsel appearing for the petitioner that there has been delay in making of the award cannot be accepted. In support of the submission, learned Government Advocate has relied upon decisions in the case of **RAGENAHALLI VENKATASWAMY vs CITY IMPROVEMENT TRUST BOARD [1971(2)MLJ SN ITEM No352 P 148]**, **KAMALA KUNWAR vs LAKHAN GOALA [AIR 1967 CALCUTTA 105]**, **ROSHANARA BEGUM vs UNION OF INDIA [AIR 1996 DELHI 206]** and **KALIYAPPAN vs STATE OF KERALA [AIR 1989 SC 239]**.

13. As far as the contention regarding the suitability of the land is concerned, it is contended by the learned Government Advocate that the petitioner can have no say in this regard, since it is within the wisdom of the acquiring authority to notify the land which is most suitable having regard to the public purpose for which the acquisition is made and therefore the contention with regard to the suitability of the land raised by the learned Senior counsel appearing for the petitioner is not tenable. In support of this submission, he has relied on the decisions of the Supreme Court in the case of **STATE OF PUNJAB vs GURDIAL SINGH [AIR 1980 SC 319]**, and **S K GOSAVI vs SPECIAL LAND ACQUISITION OFFICER [AIR 1996 SC 3169]**. He has also drawn my attention to the fact that on 26-10-2007 possession has been taken over by the respondents by drawing a mahazar and the land has been handed over to the beneficiary - PWD for construction of a court complex and residential quarters for the judicial officers, but on account of the status quo order passed by this court on 31-5-2008, which was subsequently continued, no further steps have been taken by the respondents and since in the instant case the acquisition is for a public purpose, there is no scope for interference in this writ petition.

14. Referring to each of the citations relied upon by the learned Senior counsel appearing for the petitioner, learned Government Advocate has stated that those decisions are not applicable to the case on hand, having regard to the facts of the present case and that the Judgments relied upon by him are squarely applicable to the present case. He, therefore, submitted that there is no merit in the writ petition

and the same is to be dismissed.

15. Having regard to the rival contentions and by taking into consideration the pleadings and material on record, it is apparent that in the instant case preliminary notification was issued on 3-9-1998 under Section 4(1) of the Act, followed by a declaration under Section 6(1) of the Act dated 25-11-1999. The acquisition is for the purpose of construction of a court complex and residential quarters for the judicial officers at Hoskote. It is also clear that publications, which are mandatory under Section 6 of the Act, were made on various dates and therefore within a period of two years from the last of the said dates, award has to be passed. It is seen that on 25-6-2001, a draft award was prepared by the third respondent and the same was approved by the Deputy Commissioner on 20-8-2001. Prior to the making of the said award, notice dated 22-2-2000 was issued under Section 9 and 10 of the Act was served on the petitioner on 30-3-2000, notifying the date for his appearance for making of the award as 6-4-2000. It is also not in dispute that WP No 12211-12 of 2000 was filed by the petitioner herein, impugning the acquisition of land in question and by order dated 3-4-2000, this court passed an order in the said writ petition, staying all further proceedings. The said stay order operated till 12-4-2000 i.e. the date on which WP No 12211-12 of 2000 was dismissed after hearing both sides and on perusal of the records.

16. The fact that petitioner had challenged the notice dated 22-2-2000 issued under Sections 9 and 10 of the Act would clearly imply that the petitioner was served of the said notice and he was also aware of the fact that 6-4-2000 was the date on which the proceeding for making of an award would commence and he had to appear on the said date. No doubt, on the said date, the interim order passed in the writ petition referred to above was operating and therefore, technically speaking, no proceeding could have gone on the said date. However, subsequent to the dismissal of the writ petition on 12-4-2000, proceedings with regarding to making of award had to recommence and continue. At this stage, the two contentions raised by the learned Senior counsel appearing for the petitioner would have to be taken into consideration.

17. The first contention is that notice issued under Sections 9 and 10 of the Act, though served on the petitioner, virtually became infructuous in view of the fact that on the date mentioned in the said notice viz., 6-4-2000, no proceeding for making of the award could have taken place in view of the stay granted by this court and therefore subsequent to the rejection of the writ petition. Petitioner had to be served with a fresh notice under Sections 9 and 10 of the Act and that in the absence of issuance of such a notice in the instant case, the petitioner was not at all aware of the making of the award and hence the said award is illegal and not in accordance with the Act.

18. The said contention can be answered by holding that Sections 9 and 10 notices were issued and served on the petitioner, as early as on 30-3-2000 and the petitioner was also aware of the fact that on 6-4-2000, proceedings for making of the award would commence. It was the petitioner who approached this court by filing WP No 12211-12 of 2000 and sought stay of all further proceedings pursuant to the issuance of the acquisition proceedings and also notice dated 22-2-2000 issued by the third respondent to the petitioner and which was served on 30-3-2000. When once the writ petition was rejected, there was no impediment for the proceeding to continue. Since the petitioner was aware of the fact that his writ petition was unsuccessful, it was his duty to approach the third respondent and participate in the proceedings already initiated for making of the award. The petitioner cannot therefore insist for fresh notice to be issued under Sections 9 and 10 of the Act, when once proceedings concluded before this court. Such an action is not envisaged under the Act, nor can it be held that non-issuance of notices under Sections 9 and 10 of the Act for the second time after the conclusion of the writ proceeding initiated by the very petitioner before this court would violate the principle of natural justice. It is also to be borne in mind that in respect of the acquisition of land, when once notices are issued under Section 9 and 10 of the Act to the land owner/s and specific date is given to appear before the LAO for participating in the proceedings for making of an award and if a few land owners choose to challenge acquisition before the court of law, and any interim order is granted in so far as those persons are concerned, then in the case, the entire proceeding for making of the award cannot be stalled, particularly in so far as the land owners who have not approached the court. In fact, there has to be

consistent proceedings in respect of making of an award and therefore there has to be certainty in so far as the land owners are concerned for passing of award as such. In the instant case, it was the petitioner who had approached this court and was granted an interim order of stay of the acquisition proceedings and was well aware that after the dismissal of the writ petitioner, the acquisition proceeding would continue. The petitioner therefore cannot insist that Sections 9 and 10 notice be issued once again after the conclusion of the court proceedings. When once, notice under Section 9 and 10 of the Act issued by the LAO is served on the land owner and the date for holding the proceedings for making the award is known to the land owner, it would be the duty of the land owner to find out the date on which the proceedings would be held subsequent to the conclusion of any proceeding with regard to the challenge made to the acquisition, if any, initiated by any land owner. Particularly, as in the present case, when the petitioner herein, who was served with the notice under Sections 9 and 10 of the Act, was made known the date of commencement of the proceedings for making of the award as 6-4-2000 and it is at his instance that this court had granted an interim order of stay and he was also aware of the conclusion of the writ proceedings before this court. The petitioner, when once served with the notice under Sections 9 and 10 of the Act, had only to approach the authority concerned with regard to the continuation of the proceeding for making of the award subsequent to the conclusion of the proceedings before this court. Therefore, the contention of the learned Senior counsel appearing for the petitioner that when once the writ proceedings before this court was concluded, a fresh notice under Sections 9 and 10 of the Act had to be issued to the petitioner, so as to enable him to participate in the proceedings before the LAO for making the award, cannot be accepted. Such a step is also not envisaged under the provisions of the Act. In fact, petitioner was well aware of the conclusion of the proceedings before this court and therefore it was his duty to approach the authority concerned so that he could effectively participate in the proceeding for making of the award.

19. As far as the other contention of the learned Senior counsel appearing for the petitioner is concerned, that the acquisition has lapsed in the instant case since after making of the award and its approval on 20-8-2001, third respondent authority did not immediately or within a reasonable time, issue a notice under

Section 12(2) of the Act to the petitioner and instead after six long years issued such a notice, would imply that the award itself has been made belatedly and therefore there has been non-compliance of Section 11-A of the Act is concerned, the contention seems to be that the award when made within a period of two years has to be also immediately communicated to the land owner and that the said communication has to be within two years as envisaged under the Act. That service of notice of the award has to be within the statutory period of two years and that in the instant case, since notice for making of the award was communicated by issuance of notice under Section 12(2) of the Act only on 17-8-2007, the acquisition proceedings was to be declared to have been lapsed. In support of this contention, certain citation have been relied upon by the learned senior counsel and the certain other citations have been relied upon by the learned government advocate to contend that such a proposition cannot be envisaged having regard to the provisions of the Act and taking into consideration the factual situation in the instant case.

20. Before advertng to the said citations, it would be useful to refer to Sections 11, 11-A, 12 and 18 of the Act along with the Karnataka amendments, as under:

11. Enquiry and award by collector:- On the day so fixed, Or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him,

Karnataka Amendment:

The land Acquisition (Mysore Extension Amendment) Act 17 of 1961(1) To Section 11 of the principal Act the following proviso shall be added, namely:

“Provided that no such award shall be made by the Deputy Commissioner, without the previous approval of the State Government or such officer as the State Government may appoint in this behalf who in the case of an award made by an officer below the rank of the Deputy Commissioner of a district, may be the Deputy Commissioner of the district.”

(2) For “Collector” substitute “Deputy Commissioner”.

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

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:

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.

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.

12. Award of collector when to be final:-

(1) Such award shall be filed in the Collector’s office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the

award is made.

Karnataka Amendment

Land Acquisition (Mysore Extension Amendment) Act XVII of 1961, Section 15

In Section 12-

(1) in sub-section (1) after the words “and shall” the words, figures and letter “subject to the provisions of Section 15-A and” shall be inserted;

(2) for sub-section (2), the following sub-section shall be substituted, namely-

“(2) The Deputy Commissioner shall give immediate notice of his award, of the amendment thereof made under Section 12-A to the persons interested”.

(3) For “Collector” substitute “Deputy Commissioner”.

18. Reference to Court:-

(1) Any person interested who has not accepted the award may, be written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the appropriate of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,---

(a) if the person making it was present or represented before the Collector at the time when he made his award, within 90 days from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Karnataka Amendment

Land Acquisition (Mysore Extension and Amendment) Act XVII of 1961, Section 4 (24-8-1961) In Section 18, -

(1) after the word “award” where it occurs for the first time insert the words “or amendment thereof” and after the said word, wherever it occurs thereafter, insert the words “or the amendment”:

(2) in sub-section (2), substitute for the proviso the following proviso, namely:

“Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under sub-section (2) of Section 12”;

(3) after sub-section (2), add the following sub-section, namely -

“(a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under sub-section (1), make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the court within a period of ninety days from the date of receipt of the application the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the court may direct the Deputy Commissioner to make the reference within such time as the Court may fix”.

(4) for the word “Collector” wherever it occurs, substitute the words “Deputy Commissioner”

21. Section 11-A of the Act contemplates that the collector has to 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. The proviso and explanation to this section deal with the computing the period of two years in the event of there being a stay granted by an order of court. Since section 11-A was inserted by way of an amendment to the Act with effect from 24-9-1984, the proviso thereto states that the award has to be made within a period of two years from the date of such

commencement in those cases where the awards are pending.

22. The enquiry that is envisaged for making an award is mentioned in Section 11 of the Act. The said section says that on the date so fixed or any other day the enquiry has been adjourned, the Collector has to proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9, with regards to various aspects and having regard to the criteria mentioned in Section 11, an award has to be made by the collector. Proviso to Section 11, as per the Karnataka Amendment, stated that no such award shall be made by the Deputy Commissioner, without the previous approval of the State Government or such officer, as the State Government may appoint in this behalf, who, in the case of an award made should be an officer not below the rank of the Deputy Commissioner of a district, Therefore, the approval of award made by the state government or the designated officer not below the rank of Deputy Commissioner, is mandatory requirement and until and unless award is approved in accordance with Section 11 [Karnataka Amendment], there would be no valid award in the eye of law.

23. Having regard to a combined reading of Sections 11 and 11-A of the Act, what becomes clear is that not only making of an award by the officer concerned which can be conveniently called as a draft award, but also the approval of such award would have to be made within a period of two years from the date of last publication of the declaration and when no such award is made within said period, acquisition would lapse.

24. At this stage, it is necessary to refer to the steps which would have to be taken subsequent to the approval of the award. Under-section (1) of section 12 of the Act, it is stated that after approval, the award has to be filed in the Collector's office and it would be final and conclusive evidence as between the Collector and the person/s interested, irrespective of the fact as to whether they have appeared before the Collector or not with regard to certain matters viz., true area and value of the land and the apportionment of compensation amongst the persons interested.

25. Under sub-section (2) of section 12 of the Act, it is stated that the collector has to give immediate notice of his award to such of the persons interested as are not present personally or by representative when the award is made. However, under the Karnataka Amendment, it is stated that the Deputy Commissioner shall give immediate notice of his award or amendment thereafter made under Section 11A to the persons interested. Under the Karnataka Amendment, issuance of notice of the award or amendment to the award is a mandatory requirement, irrespective of whether the person interested appeared before the officer making the award or not.

26. Under sub-section (1) of Section 18 of the Act, any person interested and who has not accepted the award, may seek reference for enhancement of compensation on the basis of his objection to the measurement of the land or determination of compensation or apportionment of compensation amongst persons interested for the determination of the Court. Sub-section (2) of Section 18 of the Central Act is substituted by the Karnataka Amendment. Sub-section (2) states that the application to the collector shall state the grounds on which the objection to the award is taken. But, proviso to sub-section (2) of the Karnataka Amendment states that such an application has to be made within 90 days from the date of service of award from the Deputy Commissioner under sub-section(2) of Section 12 of the Act. The Deputy Commissioner has to then, within 90 days from the date of receipt of application from the person interested or objector, make reference to the court and if the Deputy Commissioner does not make reference to the court within a period of 90 days from the date of receipt of application, the applicant himself may apply to the court to direct the Deputy Commissioner to make reference and the court may direct the Deputy Commissioner within such time as the court may fix.

27. A combined reading of Section 12 with Section 18 of the Act, in the context of the Karnataka Amendments, makes it clear that there is a mandatory requirement to issue notice under sub-section (2) of Section 12 of the Act to the land owners and it is only after service of notice and within a period of 90 days therefrom, that the person/s interested can file objections to the award. Therefore, service of notice in the context of Section 12 has relevance in so far as state of Karnataka is

concerned, inasmuch as the limitation period of 90 days would run from the date of service of notice from the Deputy Commissioner under sub-section (2) of Section 12 of the Act for making an application objecting to the award. However, under sub-section (2) of Section 12 of the Act [Karnataka Amendment], what is envisaged is that immediate notice of the award has to be given by the Deputy Commissioner. The giving of immediate notice of award is different from the service of notice of the award, inasmuch as, what is stated in sub-section (2) of Section 12 of the Act [Karnataka Amendment] is that notice of the award has to be issued immediately. Service of notice of the award is not envisaged under sub-section (2) of Section 12 of the Act.

28. In the instant case, however, the contention of the learned senior counsel appearing for the petitioner is that service of notice of the award is neither within the period envisaged under Section 11A of the Act nor within a reasonable period and therefore the award itself is liable to be quashed.

29. As already stated, the award becomes final when once it is approved by the state government or the officer designated by the state government and thereafter service of notice of the award on the land owner or the person interested has to be made. Therefore notice to be issued under sub-section (2) of Section 12 of the Act is a step to be taken subsequent to making of the award and therefore such a step is not envisaged within the scope of Section 11-A of the Act. Under the circumstances, any notice issued even after the two years period as envisaged under Section 11-A of the Act, cannot be held to be in violation of Section 11-A as such. What Section 11-A mandates is that of an award attaining finality on the approval of the same by the state government or the designated officer. Issuance of a notice is a subsequent step, which cannot be read into the provisions of Section 11-A of the Act.

30. This leaves me with the issue of answering the question as to whether the respondent-authority by not issuing a notice 'immediately' after the passing of the award has allowed the award to be vitiated. The award attained finality on 20-8-2001 in the instant case, whereas notice under sub-section (2) of section 12 of the Act was issued only on 17-8-2007. The question is as to whether the said notice

was not issued 'immediately' after the passing of the award and therefore on account of there being non-service of the notice sub-section (2) of Section 12 of the Act [Karnataka Amendment] for many years, the award vitiated. What in substance is called in question in the instant case is the meaning to be given to the phrase 'immediate notice of the award'. In this context, the learned senior counsel appearing for the petitioner has relied upon certain authorities referred to supra, to contend that 'immediate' means occurring without delay, instantly occurring or accomplished without delay, without lapse of time. Reference is also made to the **Stroud's Judicial Dictionary of Words and Phrases**, wherein the word 'immediate' is defined as under:

'Immediately' in its strict sense exclude any intervening time but from earliest judicial decisions, it has almost invariably meant the same forthwith, namely, with speedy and prompt action and as quickly as is reasonably possible.

(underlining by me)

Therefore, while the word 'immediate' in strict sense would normally imply with out lapse of time or delay or instantly and without intervention of time, the contextual meaning of the word 'immediate' would also mean speedy and prompt action as quickly as is reasonably possible.

31. In the instant case, on a perusal of the records, it is noticed that the beneficiary viz., Public Works Department deposited the compensation amount only on 25-6-2007 and thereafter notice under sub-section (2) of Section 12 of the Act was issued 2-8-2007, which was received by the petitioner on 17-8-2007. The fact of the matter is that even after approval of the award on 20-8-2001, the beneficiary did not deposit the compensation amount, but the same was deposited only on 25-6-2007. Several correspondence in this regard took place between the acquiring authority and the beneficiary and it is only in the year 2007 that the cost of acquisition was deposited in the government treasury and thereafter on 2-8-2007 notice under sub-section (2) of Section 12 of the Act was issued in accordance with Section 45 of the Act read with the Karnataka Amendment dealing with the service of notice and the same was served on the petitioner on 17-8-2007. Therefore, it cannot be held that there was no service of notice as envisaged

under sub-section (2) of Section 12 of the Act [Karnataka Amendment]. The word 'immediate', as already stated, has to be read in the context in which it has to be applied and not strict sensu and having regard to the fact that the said word implies prompt action to be taken but as is reasonably possible, would mean that in the instant case after the deposit of the amount by the beneficiary, the authority concerned has issued the said notice. Therefore, having regard to the facts of the present case, it cannot be held that service of notice under sub-section (2) of Section 12 of the Act was belated as the award attained finality in the year 2001 and such notice was served in the year 2007 and therefore the acquisition has lapsed.

32. The contention of the learned senior counsel appearing for the petitioner in this regard is on the basis of certain decisions, which are to be adverted to at this stage.

a. The decision in the case **HARISH CHANDRA vs DEPUTY LAND ACQUISITION OFFICER [AIR 1961 SC 1500]**, relied on by the learned senior counsel appearing for the petitioner, was rendered by the apex court prior to the insertion of section 11-A of the Act. It is stated that if the award is treated as administrative decision taken by the collector in the matter of valuation of the property sought to be acquired, it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the state party. It is further held in this case that the knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision brought into force. The apex court opined that thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filling it in the office of the collector: but it must involve the communication of the said award to the party concerned either actually or constructively. It is further held that if the award is pronounced in the presence of the party whose rights are affected by it, can be said to be made when pronounced and if the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced, the award is said to be

communicated to the said party even if the said party is not actually present on the date of its pronouncement. The apex court further observed that if without notice of the date of its pronouncement an award is pronounced and a party is not present, the award can be said to be made when it is communicated to the party later. It was further held that the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice, the expression 'the date when the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In those circumstances, the apex court opined that it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to section 18 of the act in a literal or mechanical way.

(b) In **CHACHITTAR SINGH vs STATE OF PUNJAB [AIR 1963 SC 395]**, relied upon by the learned senior counsel appearing for the petitioner, is a decision rendered under Article 311 of the Constitution of India, is relied upon to contend that in order to make known the decision of the government, it is necessary that the same is communicated to the person concerned. It is further held in this case that it is the essence of the order that the same has to be communicated to the person who would be affected by that order, so that he/she is bound by the said order and until the order is communicated to the person affected, the order cannot be regarded as anything more than provisional in character.

(c) The decision in **BAILAMMA vs POORNAPRAJNA HOUSE BUILDING COOPERATIVE SOCIETY [(2006) 2 SCC 416]**, is a case in which the judgments of this court in certain writ appeals were challenged in the context of Section 11 and 12(2) of the Act. In the said case, it was held that if the award is approved by the state government without alteration, it becomes an offer to be made to persons interested and the collector can give notice to persons interested of the date on which he may orally pronounce the award or he may inform them by giving them written notice of the award. It is further held in this case that the date of notice is relevant for determining the period of limitation for filing reference section 18 or 30, but even if the award is pronounced without giving notice of the date of pronouncement to the person interested, such an award will not become invalid

and if the award is already signed by Collector at the time of sending it for governments approval, it becomes an award as soon as it is approved without alteration by government or at least when notice is given to the parties interested.

d) The above observations of the Apex Court were made in the context of the contention raised that after the government has accorded approval, the Collector should have signed the award and thereafter communicated the same to the parties and if the same was not done, in the eye of law, there was no award passed by the collector. While answering the said contention, at para-24 of the judgment, the Apex Court held as under:

24. Section 11 of the Act requires the Collector to make an enquiry into the objections, if any, made by the persons interested pursuant to the notices given under Sections 8 and 9 of the Act as to the value of the land on the date of publication of the notification under Section 4. He is also required to make an enquiry into the respective interest of the persons claiming the compensation. After considering the objections raised by the persons interested he is required to make an award under his hand which should contain his findings on the matters enumerated in (i),(ii) and (iii) of sub-section (1) of Section 11. The proviso to Section 11, however, mandates that the Collector shall not make an award under this sub-section without previous approval of the appropriate Government.

and answered the contention by stating that mere fact that the Collector did not pronounce the award after notice in the presence of the parties interested will not invalidate the award, though it may have a bearing on the question of limitation, in the matter of seeking a reference under Section 18 or 30 of the Act. Though reference has to be made to sub-section (2) of Section 12 of the Central Act, there is no reference made to Karnataka Amendment. At any rate, the fact that immediate notice of the award has to be issued to the person interested was not a point for consideration in the said decision.

e) The latest decision of the Apex Court is in the case of **DEV SHARAN vs STATE OF UP [Civil Appeal No 2334 of 2011, decided on 7-3-2011]**, is in the context of Section 17 read with Section 5-A of the Act, wherein the Apex Court has held that while discussing the ambit and extent of the property rights, expropriatory

legislation must be given strict construction. The Apex Court held that even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. In the context of invoking the emergency clause under Section 17 of the Act with the consequential dispensation of right to hearing under Section 5-A of the Act, the Apex Court held that these questions have to be examined carefully, when little Indians lose their small property in the name of mindless acquisition at the instance of the state. It was held in the said case that for 11 months and 23 days, i.e. almost one year time had lapsed between the publication of 4(1) notification and section 17 notification and section 6 declaration in the local newspapers and therefore it was clearly a case of there being no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act. It was under those circumstances, section 4 and 6 notification in so far as they related to the appellant therein were quashed.

f) In the case of **BHANUBEN DURLABHBHAI PATEL vs STATE OF GUJARAT (Special Civil application No 18146 of 2003 and connected matters, decided on 24-9-2010)** the award was sought to be set aside on the ground that the delay had vitiated acquisition and it had lapsed with the consequential relief of setting aside the notice under Sections 11(2) and 12(2) of the Act. It was contended in the said case that the inordinate and unexplained delay of 13 years in offering compensation had vitiated the acquisition and such acquisition must be declared to have lapsed. Referring to the statement of objects and reasons to the Land Acquisition (Amendment) Act of 1984, it was observed that acquisition of land for private enterprises, ought not to be placed on the same footing as acquisition for the state or an enterprise under it. After referring to various decisions of the Apex Court and High Courts, it was held that though the award was to be made within a period of two years, and no notice was served upon the petitioners therein under Section 12(2) of the Act, but was issued only after more than 12 years of the award; that no explanation was given by the respondents for the delay in the service of notice under Section 12 of the Act for more than 12 years and placing reliance on the decision of the Apex Court in the case of **DATTATRAYA GOVIND MAHAJAN vs STATE OF MAHARASHTRA [AIR 1977 SC 915]**, the award impugned therein as well as notice under Section 12 of the Act were quashed, as

far as the petitioners were concerned.

33. While the learned senior counsel appearing for the petitioner has relied upon the afore said decisions, the learned Government Advocate has relied upon the following decisions.

a) In the case of **RAMNIKLAL N BHUTA vs STATE OF MAHARASHTRA [(1997) 1 SCC 134]**, the Apex Court held that whatever may be the practice in the past, time has come where the courts should keep the larger public interest in mind while exercising their power or grant any stay/injunction, when acquisitions are challenged. The Apex Court held that though the power under Article 226 is discretionary, it could be exercised only in furtherance of interests of justice and not merely on the making out of a legal point and in the matter of land acquisition for public purposes, the Apex Court held that, the interests of justice and the public interest coalesce and they are very often one and the same. The Apex Court opined that the courts have to weigh the public interest vis--vis the private interest while exercising the power under Article 226 and there are many ways of affording appropriate relief and redressing a wrong, and quashing the acquisition proceedings is not the only mode of redress.

(b) In **KALIYAPPAN vs STATE OF KERALA [AIR 1989 SC 239]**, the Apex Court considered an earlier decision in **AIR 1961 SC 1500**, on which the reliance is placed by the learned senior counsel appearing for the petitioner. In the said case, it was contended that the date on which notice of award was served on the land owner would have to be considered to be the date of the award by placing reliance on the decision in **AIR 1961 SC 1500**. In the said case, the Apex Court held at para-5 as follows:

5. Under section 11-A of the Act the Collector is empowered to make an award before the expiry of the period of two years from the date of the publication of the declaration under section 6 of the Act and in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 before the expiry of the period of two years from the date of its commencement. If an award is not made within the prescribed period of two years in either case, it is open to the person interested in the land to approach the

Collector and tell him that the acquisition proceeding should be dropped unless the Collector is able to produce before him an award made by him within the period of two years. He may also in such a case question the continuance of the acquisition proceeding in court. Thus no prejudice will be caused to the person interested in the land. At the same time it would not be open to a person interested in the land to get rid of the acquisition of proceeding by avoiding service of notice issued by the Collector within the prescribed period. We are of the view that under section 11-A of the Act the words "the Collector shall make an award.... Within a period of two years from the date of the publication of the declaration" mean that the Collector is empowered to make an award till the expiry of the last date the period of two years irrespective of the date on which the notice of the award is served upon the persons interested in the land. 'To make an award' in this section means 'sign the award'. That is the ordinary meaning to be ascribed to the words 'to make an award'. An extended or a different meaning assigned to the words 'the date of the award' by this court in Raja Harish Chandra's case (AIR 1961 SC 1500) (supra) cannot be applied in this case since such an extended or different meaning is neither warranted by equity nor will it advance the object of the statute. Similarly under the proviso to section 11-A of the Act the Collector is empowered to make an award within two years from the date of commencement of the Land Acquisition (Amendment) Act, 1984 irrespective of the date on which the notice of award is served on the person concerned. We do not find any analogy between section 11-A and section 18 of the Act insofar as the above question is concerned. The High Court was, therefore, right in rejecting the above contention of the petitioner.

Referring to the decision in **AIR 1961 SC 1500**, the Apex Court held that no doubt the said decision while construing Section 18 of the Act by giving an extended meaning that the date of the award for purposes of calculating the period of limitation should be the date on which the notice of the award is served on the owner of the land. It was held that the said interpretation was given by the Apex Court on the principle that if a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and, therefore, must be presumed to have the knowledge of the order. It is further held that under section

18 of the Act the person on whom the notice of the award is served has to make an application before the Land Acquisition Officer within six weeks from the date of the award if such person was present or represented before the Land Acquisition Officer at the time when he made his award and in other cases within six weeks of the receipt of the notice of the Collector under section 12(2) or within six months from the date of the award whichever expires first. It is observed that in a case where a person interested in the land is not present at the time when the award is made by the Collector, he is entitled to make an application under section 18 of the Act seeking a reference of the case to the Civil Court for the determination of the proper compensation within six weeks of the receipt of the notice from the Collector under section 12(2) of the Act or within six months from the date of the Collector's award, whichever expires first. It is observed that since the process of service of notice issued under section 12(2) would occupy some time, the Apex Court was of the view that it would lead to injustice if the period of limitation prescribed by Section 18 of the Act was computed from the date on which the award was actually made and not from the date on which the notice under section 12(2) of the Act was served on the person interested in the land, as it would result in the reduction of the period of six weeks by the time required for serving the notice on the person interested in the land. The Apex Court further observed that a distinction has to be maintained between the object and the reason for prescribing the period of limitation under section 18 of the Act and the consequences that would flow from the violation of the rule of limitation as the two cases are different. While, highlighting the said difference, the Apex Court opined as follows:

.....In the former case the period of limitation is prescribed for preventing official delay in making the award and the consequent adverse effect on the person or persons interested in the land but in the latter case the period of limitation is prescribed for providing a remedy to the persons whose lands are acquired to seek a reference to the civil court for the determination of proper and just compensation. Secondly, while in the former case violation of the rule of limitation would result in the acquisition proceeding becoming ineffective, in the latter case such a violation will not have any effect on the validity of acquisition proceeding. Thirdly, while in the former case the period of limitation prescribed represents the outer limit within which an award can be made in the latter case we are concerned

with the point of time at which the time to make an application under section 18 of the Act will begin to run against the person interested in the land. The provisions of section 11-A have to be construed bearing in mind these points of difference. It is well-known that the meaning to be assigned to the words in a statute depends upon the context in which they are found and the purpose behind them.

Ultimately, the Apex Court opined that to make an award under Section 11-A of the Act, would imply that it should be signed within the period prescribed for limitation envisaged under Section 11-A of the Act, irrespective of the date on which notice of the award was served on the person concerned and that there is no analogy between Section 11-A and Section 18 of the Act, in so far as the said question is concerned.

In the circumstances, **AIR 1961 SC 1500** was distinguished. Detailed references to the said decision of the Apex Court has been made, inasmuch as it is an answer to the contention raised by the learned senior counsel appearing for the petitioner that the date of the award would be the date of service of award. In view of the fact that the Apex Court itself has distinguished **AIR 1961 SC 1500**, it would not be necessary for this court to dilate further in the matter except stating that the Apex Court's decision in the case of **AIR 1989 SC 239** squarely applicable to the facts of the present case.

c. A Full Bench of the Delhi High Court in the case of **ROSHANARA BEGUM vs UNION OF INDIA [AIR 1996 DELHI 206]**, on a conspectus reading of Sections 4, 9, 10 and 12 of the Act, held that it is the date of signing of the award and communication of the award is not sine qua non for making of the award. The purpose of notice under Section 12 is only to enable the interested person to decide whether the compensation given in the award is to be accepted or reference is to be made to the court concerned for enhancement of the compensation and non-issuance of notice soon after making of the award does not vitiate the award in any manner, which is only an offer of payment of compensation for the land sought to be acquired.

d. Similarly, in the case of **KAMALA KUNWAR vs LAKSHAN GOALA [AIR 1967 CALCUTTA 105]**, it has been held that notice under Section 12(2) unlike a notice

under Section 9 of the Act is not intended to invite objections which has not been done and completed yet. It is further observed that a notice under Section 12(2) of the Act is only a notice ex post facto and it is a notice of fiat accompli viz., of an award already made, it is only an informative notice, its purpose being to enable such persons to call for reference under Section 18(2) of the Act within the time allowed by the proviso to Section 18(2) and it is not a kind of notice which goes to the root of the matter, in the sense, failure to give the same will vitiate the award itself. On facts of the said case, it was held that the suit challenging the validity of the award was not maintainable at the instance of the plaintiffs, who admittedly had received notice under Section 9, but one of them had not received it and had allowed the remedies under the Act to go by default.

e. In the case of **RAGHAVAN vs COLLECTOR OF MADRAS [AIR 1961 MADRAS 33]**, it is stated that the object of issue of notice under Section 12(2) of the Act after passing of the award is to enable the person interested to know about the award and also to file an application under Section 18 of the Act within the prescribed period of limitation, if the land owner or any person interested has any objection to the award.

f. In fact a Division Bench of this court in the case of **Ragenahalli Venkataswamy V/S.City Improvement Trust Board [WP No 1091 of 1971 and connected matters, decided on 3-9-1971] (1971 (2) MLJ 143 S.N.352)** has also taken the view that non-issue of a notice to the petitioner either under Section 9(3) or section 12(2) of the Act would not invalidate the award made by the LAO and in that case, the LAO was also directed to entertain an application under Section 18 of the Act, which would be made by the petitioner in the said case.

34.Having regard to the decisions of the Apex Court in **AIR 1989 SC 239**, which distinguishes the earlier decision in **AIR 1969 SC 1500**, the conclusion that can be arrived at in the instant case is that though the service of notice under Section 12(2) of the Act [Karnataka Amendment] is mandatory, and the said section also states that the said notice must be served immediately after the award is passed, nevertheless, the surrounding circumstances would have to be taken into consideration to come to a conclusion as to whether there was any delay on the

part of the authorities in issuing the said notice.

35. In fact, it would be of relevance to relay on the decision of the Andhra Pradesh High Court in the case of **E RAMASUBBAREDDY vs STATE OF AP [AIR 1990 AP 8]**, wherein it has been stated that though an award must be made within a period of two years as envisaged under Section 11-A of the Act, the non-tendering of compensation awarded under the award within the said period would not make it incomplete. It was stated that tendering of payment of compensation awarded by the collector must be immediately after the award as is practicable and delay in payment of compensation should be avoided and that nevertheless interest of the award is impliedly safeguarded by the provision of Section 34 of the Act against any possible delay in payment or deposit of compensation.

36. In the instant case, having regard to the fact that the beneficiary viz., Public Works Department had not deposited the compensation amount for quite some time after making of the award, there has been no issue of notice under Section 12(2) of the Act till the said deposit was made. Having regard to the said circumstance, the issuance of 12(2) notice on 2-8-2007 i.e. within a few week's time after the deposit of compensation amount in the government treasury on 25-6-2007 cannot be held to be belated. In fact, there is a justifiable cause for the issuance of Section 12(2) notice only after the receipt of the on amount in the government treasury. Under these circumstances and keeping in mind the ground realities of the case, in my view issuance of Section 12(2) notice on 2-8-2007 has not vitiated the acquisition in the instant case. Reliance placed on the decision of the Apex Court in the case of **BIHAR STATE HOUSING BOARD vs STATE OF BIHAR [(2003) 10 SCC 1]**, to distinguish the decision in **KALIYAPPAN vs STATE OF KERALA [AIR 1989 SC 239]** is also of no assistance to the petitioner, inasmuch as in the said decision, the Apex Court observed that the decision in **AIR 1989 SC 239** was on a different aspect of the problem raised in the factual position presented in that case and it did not deal with the question raised in the other case, which was regard to which date has to be reckoned for the purpose of computation of two years from the date of publication of declaration, considering various modes of publication.

37. Also reliance placed on the decisions of Apex Court in **AIR 1961 SC 1500, AIR 1963 SC 395, (2006) 2 SCC 416** as also the decision of the apex court dated 7-3-2011 and the decision of the Gujarat High Court, relied on by the learned senior counsel appearing for the petitioner, are of no assistance, in the light of the judgment of the Apex Court and other High Courts as well as this court, which have been relied on by the learned Govt Advocate. Hence, the contention of the petitioner that the award is vitiated on account of delay in service of Section 12(2) notice is rejected.

38. The only other contention which is raised by the learned senior counsel appearing for the petitioner is with regard to the suitability of the land in question to be acquired for the purpose of construction of court complex and for residence of judicial officers. In this regard, it was contended that the said land is abutting NH4, which is a busy national high way and therefore the proceedings of the court would be affected on account of heavy traffic on the said road. Under the circumstances, it was also contended that the other stretch of the land measuring 2 acres very close to the land in question could have been acquired by the state for the said purpose, as it was located a little away from NH4 and would have been more suitable for conducting proceedings of the court.

39. In this regard, learned Government Advocate has placed reliance on the decision of the Apex Court in the case of **S K GOSAVI vs SPECIAL LAND ACQUISITION OFFICER [AIR 1996 SC 3169]**, wherein, in the context of setting up of a bus stand and bus depot, the contention raised that it was in a congested area and not convenient for extension, the Apex Court held that court cannot give any finding on such plea or decide which place is convenient and it is for the state government to take a decision in public interest and such exercise cannot be termed as arbitrary. As far as suitability of the land sought to be acquired is concerned, it is a matter which rests with the wisdom of the state government and this court cannot sit in judgment over such a decision, which is administrative in nature. Under these circumstances, the contention that the land in question is not suitable for the construction of court complex is rejected.

40. Under these circumstances, the prayers sought for by the petitioner specifically that the Acquisition notification is to be quashed as also the award dated 25-6-2001 on the ground that the said acquisition has lapsed by virtue of Section 11-A of the Act, cannot be granted. In the result, writ petition is dismissed. Parties to bear their own costs.

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