

Chowgule and Company Private Limited, & Anr. Vs State of Goa, though the Secretary (Revenue), & Ors.

Court: BOMBAY HIGH COURT

Date of Decision: March 14, 2017

Acts Referred: [Land Acquisition Act, 1894](#), [Section 4](#), [Section 6](#), [Section 11A](#), [Section 7](#), [Section 5A](#) - Publication of preliminary notification and power

Hon'ble Judges: Anoop V. Mohta, C. V. Bhadang

Bench: DIVISION BENCH

Advocate: Prasheen Lotlikar, D. Lawande

Final Decision: Allowed

Judgement

1. Heard Shri P. Lotlikar, the learned Counsel for the petitioner and Shri D. Lawande, the learned Additional Advocate General for the

respondents.

2. The challenge in this petition is to the acquisition proceedings undertaken for the purposes of construction of a bypass at Onda. The acquisition

is initiated under the provisions of the Land Acquisition Act, 1894 (The Act, for short).

3. In this case the notification under Section 4 of the Act was issued on 25/02/2011 invoking urgency clause. Subsequently a declaration under

Section 6 of the Act came to be published on 10/08/2011. Aggrieved thereby the petitioners approached this Court in Writ Petition no.760/2011.

The petition was disposed off on 25/04/2012 on the basis of a statement made on behalf of the State, whereby the State had decided to withdraw

the invocation of the urgency clause and consequently the declaration under Section 6. This Court observed that in view of the withdrawal of the

urgency clause, the petitioners will be entitled to submit objections to the land acquisition in terms of Section 5-A of the said Act.

4. It appears that the State Government withdrew the earlier notification under Section 4 and the declaration under Section 6 and issued a fresh

notification under Section 4 of the Act on 4/06/2012. The said notification was last published on 8/10/2012. Subsequently, a declaration under

Section 6 came to be issued on 7/09/2013.

5. The petitioner filed the present petition challenging the acquisition. This Court by an order dated 28/04/2015 had directed that until next date the

respondent shall not pass the final award. This order continued up to 25/08/2015 on which date Rule was issued in this petition. In so far as the

interim relief is concerned this Court directed as under:

In the meanwhile, the proceedings for acquisition shall continue subject to the final result of the above Writ Petition. In case the respondents desire

to take possession of the subject property, such possession shall be taken after seeking permission of this Court.

Thus, the interim order granted on 28/04/2015 was in force only up to 25/08/2015.

6. On hearing the learned Counsel for the parties, we find that the petitioner is entitled to succeed on a short ground. Indisputably, the notification

under Section 6 of the Act was last published on 7/09/2013. In view of Section 11-A of the Act the award has to be made within two years from

the date of publication of the declaration under Section 6, failing which the entire proceedings for acquisition would lapse. The explanation

appended to Section 11-A would make it explicit that in computing the period of two years referred to in the said Section, the period during which

any action or proceedings to be taken in pursuance of the said declaration, is stayed by an order of the Court, has to be excluded. Thus, even if we

exclude the period from 28/04/2015 to 25/08/2015, the award in this case is not passed within two years of the date of the last publication of the

declaration under Section 6 of the Act.

7. The learned Additional Advocate General in all fairness does not dispute that in view of the fact that the award is not yet passed, the acquisition

would lapse by virtue of Section 11-A of the Act. In the result, the following order is passed:

O R D E R

(a) The petition is allowed.

(b) The acquisition proceedings initiated vide notifications under Section 4 and Section 6 of the Act and the order dated 19/11/2014 bearing

no.23/35/2010-RD under Section 7 of the Act is hereby quashed and set aside.

(c) Needless to mention that this will not preclude the respondents from initiating fresh land acquisition proceedings in accordance with law, if so

desired.

(d) Rule is made absolute in the aforesaid terms with no order as to costs.