

HIGH COURT OF GUJARAT (D.B.)**LILABEN D/O BHAILALBHAI MADHAVBHAI PATEL***Versus***STATE OF GUJARAT****Date of Decision:** 29 June 1993**Citation:** 1993 LawSuit(Guj) 206**Hon'ble Judges:** [S D Shah](#), [R D Vyas](#)**Eq. Citations:** 1994 1 GLR 220, **1994 1 GLH 32**, 1994 1 GCD 163**Case Type:** Special Civil Application**Case No:** 9103 of 1991**Editor's Note:**

Land Acquisition (Amendment) Act, 1984 S.11(A) The Section, the provi- so and the Explanation are unambiguous If the award is not made within a period of 2 years, the proceedings would come to an end Once the limitation begins to run, there would be no stoppage On the day the amendment came into force, there was no stay The fact that the Land Acquisition Officer had no knowledge of the fact that stay had been vacated would not make any difference.

The situation which is dealt with by the Parliament is of those cases where the publication of declaration under Sec. 6 has preceded introduction of Sec. 11A and when no award is made till the date the Sec. 11A came into force i.e. September 24 1984 In short the proviso to Sec. 11A is enacted with a view to empowering the Collector to make an award in cases of pending acquisition proceedings within two years from the date of commencement of Land Acquisition (Amendment) Act 1984 The proviso to Sec. 11A is also very categorically and explicitly worded so as to indicate the date on which the period of two years would commence. The use of words from such commencement in the proviso prescribes the starting point from which the period of two years would commence. Therefore in case where publication of declaration under Sec. 6 has taken place prior to the commencement of Amending Act in 1984 and where no award has been made by the Collector the Parliament has provided a period of two years from the date of commencement of the Amending Act i.e. September 24 1984 and where the

publication of declaration under Sec. 6 has preceded September 24 1984 the Collector is required to make an award within a period of two years from September 24 1984 unless of course the cases which are governed by the explanation. (Para 11) It is also undoubtedly true that the explanation is an explanation both to Sec. 11A as well as its proviso because the words a period of two years occur both in main section as well as in proviso. The explanation also uses the words the period which is referable to period of two years referred in main section as well as its proviso. The object of explanation is to safeguard against impossible situation when the Collector or authority is prevented/restrained by an order of stay granted by a competent Court from making any award or taking any step in furtherance of Sec 6 Notification. There is therefore an impossibility created by an order of the Court. The legislature wanted to safeguard against this impossibility as law does not command performance of an impossible act. If reference is made to the proviso it becomes clear that the period of two years has commenced to run on September 24 1984 The second question which we are required to ask is as to whether on September 24 1981 there was any stay granted by a competent Court so as to restrain the Collector from making an award. The answer to the aforesaid question is admittedly in the negative as it is admitted before us that the stay granted by this Court was vacated on July 10 1984 and there was no stay of any Court operative on September 24 1984 or thereafter. The Explanation could have applied only if on the date of commencement of the Act i.e. on September 24 1984 there was an order of stay under which any action or proceeding to be taken in pursuance to declaration under Sec. 6 was stayed. If on September 24 1984 any action or proceeding is not stayed proviso would operate and period of 2 years shall have to be computed from 24th September 1984 (Para 13) The principle enunciated by the Supreme Court in the case of Raja Harischandra Rajsingh (AIR 1961 SC 1500) can have no application whatsoever and it will not be permissible for us to hold that the period of two years stipulated by the proviso shall commence to run from the date of knowledge of vacation of order of stay. The period prescribed under the proviso has already commenced to run from September 24 1984 and there is no provision whatsoever which can stop that period from running. (Para 17) Kaliyappan v. State of Kerala (1) Gujarat State Transport Corporation v. Valji Mulji Soneji (2) Patel Virchandbhai Madabhai v. State of Gujarat (3) and Yusufbhai Noormohmed v. State of Gujarat (4) relied on. Yusufbhai Noormohmed Nandoliya v. State of Gujarat (5) Raja Harischandra v. Dy. L. A. Officer (6) and Burmacell Oil Storage & Distributing Co. Ltd. v. Commercial Tax Officer (7) referred to.

Acts Referred:

[Land Acquisition Act, 1894 Sec 11A](#)

Final Decision: Rule made absolute

Advocates: [J M Thakore](#), [S N Shelat](#)

Cases Cited in (+): 1

Cases Referred in (+): 7

SHAH, J.

[1] This petition under Art. 226 of the Constitution of India raises an interesting question of interpretation of Sec. 11A and its explanation of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act". If the explanation to said section is held applicable to the facts situation obtaining in this petition, the acquisition of parcels of land of the ownership of the petitioner would not lapse. On the other hand, if the explanation is strictly construed so as to hold that it is not applicable to the fact situation obtaining before this Court, the entire land acquisition proceedings would lapse, and the petition must succeed.

[2] In order to appreciate the rival submissions, which are made by the learned Counsel appearing for the parties, and particularly the manner in which explanation to Sec. 11A of the said Act is pressed into service by the respondents, it would be necessary to set out relevant facts herein :

(i) The parcels of agricultural land bearing S. Nos. 2583 & 2563 situated at village SAVLI in Baroda district were sought to be acquired for the Gujarat State Transport Corporation-respondent No. 3, and a notification under Sec. 4 of the said Act was published on April 29, 1971. After inviting objections and considering the same under Sec. 5 of the said Act notification under Sec. 6 was published on March 30, 1972. It appears that the petitioners instituted Spl. C.A. No. 814 of 1972 challenging the issuance of notification under Sec. 6 of the said Act wherein the Division Bench of this Court granted injunction on May 4, 1972 against further proceedings. Said order of stay which was granted by the Division Bench of this Court came to be vacated on February 19, 1976.

(ii) It appears that the issuance of notification under Sec. 6 was challenged by some of the present petitioners by instituting Reg. C. S. No. 332 of 1979 in the Court of Civil Judge (S.D.), Baroda. In the said suit an application for temporary injunction against further proceedings of land acquisition was granted on March 20, 1979 and the same came to be vacated after hearing both the parties on June 13,

1983. An appeal from order being Misc. Civil Appeal No. 99 of 1983 was preferred by the original plaintiffs in the District Court at Baroda and the Asstt. Judge at Baroda dismissed the said appeal on March 31, 1984. It may be stated that during pendency of said A.O. injunction against further proceedings of land acquisition as was granted by the trial Court was continued. The original plaintiffs thereafter preferred C.R.A. No. 792 of 1984 before this Court and on July 10, 1984 said C.R.A. came to be rejected by the learned single Judge of this Court." Thus, from March 20, 1979 to July 10, 1984 there was an order of injunction granted by the Court of competent jurisdiction restraining the authorities under the said Act from proceeding further with the land acquisition proceedings.

(iii) It must be mentioned that the aforesaid Reg. C. S. No. 332 of 1979 ultimately came to be dismissed on December 19, 1984 as the plaintiffs of the suit have not pressed the said suit and since the Advocate of the plaintiffs stated to the Court that the plaintiffs were not interested in conducting the suit. The suit was, therefore, dismissed for non-prosecution. In the order which is passed by the trial Court while dismissing the suit on December 19, 1984 it is mentioned by the trial Court that the Advocates of both the parties were present.

(iv) It is pertinent to note that though the proceeding before this Court in C.R.A. No. 792 of 1984 terminated on July 10, 1984 and interim relief was vacated, the land acquisition officer and the respondents were not aware of such termination of proceedings before this Court, and in fact, they were given to understand by communication addressed to them by the A.G.P. that the proceedings in the nature of C.R.A. No. 792 of 1984 were pending in this Court and the order of stay was operative. At this stage, it may be mentioned that vigilant and discrete enquiry was made, from time to time, by the office of the Special Land Acquisition Officer from the office of the G.P. of this Court and by letter, dated April 20, 1985 the Special Land Acquisition Officer was informed that the C.R.A. No. 792 of 1984 was pending in this Court for final hearing and that as and when the matter will be decided intimation will be sent. It appears that no communication was sent by the office of the G.P. to the office of the Special Land Acquisition Officer. In the year 1991 as there was pressing demand from the village people of SAVLI, the officers of the State Road Transport Corporation approached the office of the G.P. in October, 1991 and at that time on making detailed enquiry it transpired that the C.R.A. No. 792 of 1984 was decided as back as July 10, 1984, and that the information supplied by the office of G.P. vide letter, dated April 20, 1985 was patently incorrect. On that very day, i.e., in the month of October, 1991 the certified copy of the order of the learned single Judge was applied for. It was thus in the month of October, 1991 that the respondent-authorities came to know that there was no stay operating

against further proceedings of land acquisition and thereafter it immediately took action for the purpose of declaration of award which came to be declared on December 12, 1991.

(v) Notices of making the award under Sec. 12(2.) were issued to the persons interested on December 4, 1991 calling upon such persons to remain present before the Land Acquisition Officer on December 12, 1991, and the present petitioners had remained present before the Land Acquisition Officer on December 12, 1991. On the date of award the petitioners accepted the amount of award of compensation without prejudice to their rights and contentions, and subsequently they had applied for reference to the Collector under Sec. 18 of the said Act, and accordingly the references were made to the District Judge, Baroda by the competent authority on February 19, 1992. (vi) It is also not disputed before us that on December 10, 1991 the possession of the land is taken over from the petitioners and in view of the fact that the Division Bench of this Court has while entertaining this petition refused interim relief, the G.S.R.T.C-respondent No. 3 has already commenced construction. The extent of progress made in the making of construction is not exactly known to this Court.

[3] In the aforesaid fact situation Mr. A. J. Patel appearing for the petitioners has urged before this Court that the entire land acquisition proceedings commencing from the issuance of notification under Sec. 4 as back as April 29, 1971 have lapsed by virtue of operation of Sec. 11A of the said Act, inasmuch as, the award which was required to be made under Sec. 11 within a period of 2 years from the date of the publication of declaration was not made within the said period. He submits that the final declaration of intention to acquire the land was made when notification under Sec. 6 was published on March 30, 1972 while the award is made on December 12, 1991. Section 11A came to be introduced in the Statute Book in the year 1984 when by Amendment Act 68 of 1984 was passed and the said Sec. 11A came into force with effect from September 24, 1984. Since no period of limitation for making award was prescribed prior thereto, the land acquisition proceedings can be legitimately said to have continued till that date, but after coming into force of the said Amendment Act and after Sec. 11A became operative, the award was required to be made within a period of two years from the date of the commencement of the Land Acquisition (Amendment) Act, 1984. The date of commencement of said Act is September 29, 1984, and since award was not made within a period of two years from that date the entire proceedings for the acquisition of land shall lapse and have, in fact, lapsed, submits Mr. A. J. Patel, learned Advocate for petitioners.

[4] Mr. J. M. Thakore learned Advocate General appearing on behalf of the respondent No. 3 and Mr. M. R. Rawal, learned A.G P. on the other hand submitted that the land

acquisition proceedings which commenced from the date of issuance of notification under Sec. 4 of the said Act have not lapsed in the fact situation obtaining in this petition as there was a valid order of stay injunction of a competent Court firstly by way of order of injunction granted by the Division Bench of this Court in Special Civil Application No. 814 of 1972 which operated from May 4, 1972 to February 19, 1976, and secondly, the valid order of stay/injunction which was granted by the Court of Civil Judge (S.D.), Baroda in Reg. C. S. No. 332 of 1979 on March 20, 1979 which operated upto vacation of the order by the High Court in C. R. A. No. 792 of 1984 on July 10, 1984. The said period during which the order of stay granted by the competent Courts operated is required to be excluded in computing the period of two years, submits Mr. Advocate General. In other words, it is submitted that by reason of explanation to Sec. 11A aforesaid two periods during which the order of stay granted by the competent Court operated shall have to be excluded and if the aforesaid two periods are excluded the award is made strictly within the period of two years, and, therefore, the land acquisition proceedings have not lapsed. In the alternative, on the facts of this case, it is strenuously urged before this Court that in any case since the respondent-authorities never knew about the order of the High Court in C. R. A. No. 792 of 1984 vacating the order of stay and since they were given to understand that the C. R. A. No. 792 of 1984 was not finally heard by the High Court and since despite diligence shown by the office of the Land Acquisition Officer no correct information was available as regards continuance of stay of the proceedings by the High Court and since respondents came to know about the vacation of order of stay only in the month of October 1991, period of two years must commence to run from October, 1991 and as the award is made within a period of two months thereafter it should be treated to have been made within the period prescribed by Sec. 11A of the said Act. Lastly, it is submitted by the learned Advocate General that since much progress is made in the proceeding even after declaration of award no relief as prayed for should be granted to the petitioners, they having acquiesced in the proceedings.

[5] In order to answer the aforesaid rival submissions made by the learned Counsel appearing for the parties, it would be necessary to set out the provisions of Sec, 11A of the said Act which read as under :

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

The Collector shall make an award under Sec. 11 within a period of two years from the date of the publication of 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."

This Sec. 11A came to be introduced by Land Acquisition (Amendment) Act, 1984. In the statement of objects and reasons attached to the bill introducing the said Act it was stated that "pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them". It was further stated in it that "it is proposed to provide for a period of two years from the date of publication of declaration under Sec. 6 of the Act within which the Collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of land would lapse". With the aforesaid objectives, said Sec. 11A came to be introduced in the said Act. We may mention at this stage that prior to insertion of this section there was no provision corresponding to it in the Act which provided for the period within which an award should be passed by the Land Acquisition Officer. Since in large number of cases there used to be inordinate delay in making award, the Parliament stepped in and introduced Sec. 11A for the objects already set out.

[6] On plain reading of Sec. 11A it becomes clear that it requires that the Collector shall make an award under Sec. 11 of the Act within two years from the date of the publication of declaration, and if no award is made within that period the entire proceedings for the acquisition of land shall lapse. The main section, thus, prescribes a period of two years from the date of publication of the declaration as the period within which the award is required to be made. Therefore, in cases arising after the Amendment Act of 1984 where date of publication of award is subsequent to September 24, 1984 the award shall have to be made within a period of two years thereafter. The legislative intent is so clearly stated by the use of expression "within a period of two years" that it shall have to be held that the legislature intended to prescribe a period of limitation within which the authority was required to make the award, failing which the entire land acquisition proceedings shall lapse. The consequences for not making the award within prescribed period of limitation are clearly stipulated in the section which makes the section compulsive and mandatory.

[7] The proviso to Sec. 11 A, however, deals with a situation when the date of publication of declaration (Sec. 6 notification) is before the commencement of Land Acquisition (Amendment) Act, 1984, i.e. September 24, 1984. In such cases, since there was no period prescribed prior to 1984 and since award could have been made by the Land Acquisition Officer at any time, it is now stipulated by the proviso that the

award shall be made within a period of two years from such commencement, i.e., from September 24, 1984. The proviso to Sec. 11A has clearly and unambiguously brought out that intention by providing that in case where declaration has been published before September 24, 1984, the starting point of limitation should be the date of commencement of the Act, namely, September 24, 1984, and the award shall have to be made within a period of two years from such commencement. It, therefore, means, that in all cases where no award was made on or before September 24, 1984, and where the date of publication of declaration is prior to September 24, 1984, the award shall have to be made within a period of two years from September 24, 1984. The language employed in the main section as well as in the proviso is so specific and clear that no scope for any ambiguity or doubt is left. The legislative intent is made very clear. The legislature intended to provide a period of two years for the purpose of making award from the date of the publication of the declaration. In pending cases, such period of two years would commence from September, 24, 1984 and at 'the expiry of period of two years if the award is not made the entire proceedings shall lapse.

[8] However, Explanation to Sec. 11A whose ordinary object under principles of interpretation is to explain the main section, has generated some doubts and has given rise to submissions which are reproduced hereinabove. It is this Explanation which is pressed into service by the respondents for the purpose of bringing home their point. By enacting Explanation to Sec. 11A the Parliament wanted to provide against the situations which were beyond the control of the Land Acquisition Authorities. In cases where despite publication of declaration under Sec. 6 of the Act when the Land Acquisition Officer is restrained/perverted from taking any further proceeding under the Act by a Court of competent jurisdiction, or when the order of stay is granted against such officer so as to stay the proceedings for land acquisition he cannot be expected to do an impossible act and when there is an order of stay/injunction granted by competent Court an officer is duty bound to respect said order and is not expected to proceed further to declare the award. In such a situation, the period covered by the order of stay during which the officer was restrained/prevented from proceeding further with acquisition of land, shall have to be excluded and the Parliament, in fact, wanted to provide for such contingencies. The Explanation, therefore, seeks to provide as to how the period of two years from the date of publication of declaration is to be computed. While computing the "period of two years" (expression which is to be found in main section as well as in proviso) the period during which any action or proceeding to be taken by the Land Acquisition Officer pursuant to declaration is stayed by order of Court shall be excluded.

[9] The period of two years referred to in the section gets extended by the period during which an action or proceeding to be taken by the Land Acquisition Officer is stayed by a Civil Court, submits the learned Counsel for respondents, and therefore, the period during which the order of stay operated in the present case starting from March 20, 1979 to July 10, 1984 is to be excluded, and if such period is excluded, the award is made within two years. To be precise learned Advocate General has submitted that the period from 4-5-1972 to 10-2-1976 for which the order of stay operated because of the order of this Court (the period works out to three years, nine months and fifteen days) and period from March 20, 1979 to My 10, 1984 during which order of stay granted by the Civil Court in civil suit and ultimately vacated by this Court in C. R. A., (the period works out to five years, three months and twenty days) is required to be excluded, and if the said period is excluded while computing the period of two years from September 24, 1984, in his submission, the award is made well within time, and the entire land acquisition proceedings would not lapse. In his submission, this explanation is an explanation both to the main section as well to the proviso. He further submits that an explanation in a section has a definite object. The explanation in this section is introduced to explain the words "period of two years" which occur both in the map section as well as in the proviso. As and when question arises as "to how the period of two years shall have to be computed in cases where an order of stay granted by the competent Civil Court has intervened because of which the land acquisition officer has not been in a position to take any action or proceeding subsequent to declaration explanation projects itself and provides the legislative guidelines. The explanation must be interpreted according to its tenor and it is meant to explain the proviso as well as Sec. 11 A and not vice versa their roles (See : *Burmacell Oil Storage & Distributing Co. Ltd v. Commercial Tax Officer*, reported in AIR 1961 SC 315). Based on the aforesaid principle it was submitted before us that the Explanation to Sec. 11 A shall have to be given its literal meaning and it is not permissible for us to give meaning to the Explanation by reference to meaning contained in Sec. HA.

[10] Having considered the aforesaid rival submissions made by the learned Counsel appearing for the parties, we are of the opinion that the main provision of Sec. 11A and the proviso are very clear and are unambiguous. Under Sec. 11A the Collector is required to make an award within a period of two years from the date of publication of award. The use of the word "within a period of two years" read with subsequent part of Sec. 11A providing consequences for not making the award within such period, makes the provision of Sec. 11A obligatory. The Collector is obliged to make an award before the expiry of the last date of period of two years and if he fails to make award within said period the entire proceedings for the acquisition of land shall lapse. The consequences of default of the authority in making award within the prescribed period

are stipulated in the section itself. In fact. Sec. 11A prescribes limitation or restriction on the power of the authority and that limitation is that from the date of publication of declaration under Sec. 6 of the said Act he is required to make his award within two years. His power or authority to make an award is circumscribed. However, it shall have to be kept in mind that there was no express provision prior to 1984 in the Land Acquisition Act prescribing any limitation on the power of the Collector in making an award. In other words, no time limit was fixed within which the Collector was required to make an award. It is undoubtedly true that in the absence of any provision in the Statute some of the High Courts in India had taken the view that such a statutory power of making an award shall have to be exercised within reasonable time. In the context of issuance of Sec. 6 Notification after lapse of reasonable time from the date of issuance of Sec. 4 Notification, the Supreme Court in the case of Gujarat State Transport Corporation v. Vaiji Mulji Soneji, reported in AIR 1980 SC 64 : [1979 GLR 810 (SC)] was called upon to decide the question as to whether in case of exercise of statutory power concept of exercise of such power within reasonable time should be applied when the Statute has not prescribed a specific time. Reversing the decision of the Gujarat High Court Justice D. A. Desai, speaking for the Supreme Court, observed as under :

"The question then is : When a Statute confers power and prescribes time within which it can be exercised, could it ever be said that even though the power is exercised within the statutory period, yet the Court can examine the question of delay and record a finding that there was unreasonable delay in exercise of the power and, therefore, the exercise of power is bad ? This approach would defeat the very purpose for prescribing a sort of period of limitation on exercise of power. When a period is prescribed for exercise of power it manifests the legislative intention that the authority exercising the power within the prescribed time could not at least be accused of inaction or dithering and, therefore, such exercise of power could not be said to be bad or invalid on the only ground that there was unreasonable delay in exercise of the power. The very prescription of time inheres a belief that the nature and quantum of power and the manner in which it is to be exercised would consume at least that much time which the Statute prescribes as reasonable and, therefore, exercise of power within that time could not be negated on the only ground of unreasonable delay."

However, this particular principle is extended by some of the High Courts for holding that even in the absence of provision like Sec. 11A award was_ required to be made within reasonable time. By introducing Sec. 11A the first thing the Parliament has achieved is that within two years from the date of publication of declaration under Sec. 6 of the said Act an award shall have to be made by the

Collector. In our opinion, this Section, in fact, prescribes a condition on the exercise of power, and once the period of two years is provided it is not open to the authority to make the award beyond such period, except, of course, in the cases which are governed by the explanation.

[11] The second situation which is dealt with by the Parliament is of those cases where the publication of declaration under Sec. 6 has preceded introduction of Sec. 11A and when no award is made till the date the Sec. 11A came into force, i.e., September 24, 1984, In short, the proviso to Sec. 11A is enacted with a view to empowering the Collector to make an award in cases of pending acquisition proceedings within two years from the date of commencement of Land Acquisition (Amendment) Act, 1984. The proviso to Sec. 11A is also very categorically and explicitly worded, so as to indicate the date on which the period of two years would commence. The use of words "from such commencement" in the proviso prescribes the starting point from which the period of two years would commence. Therefore, in case where publication of declaration under Sec. 6 has taken place prior to the commencement of Amending Act in 1984, and where no award has been made by the Collector, the Parliament has provided a period of two years from the date of commencement of the Amending Act, i.e. September 24, 1984 and where the publication of declaration under Sec. 6 has preceded September 24, 1984, the Collector is required to make an award within a period of two years from September 24, 1984, unless of course, the cases which are governed by the explanation.

[12] The aforesaid interpretation placed on Sec. 11A and its proviso is also fortified by the observations of the Supreme Court in the case of Kaliyappan v. State of Kerala, reported in AIR 1989 SC 239 which are as under :

"The Statute prescribes the maximum period of two years for making an award from the date of the publication of the declaration under Sec. 6 of the Act and further attaches a condition that if the award is not made within the said period the proceeding for the acquisition of the land shall lapse. Similarly, in the case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 the award shall be made within two years from such commencement and if the award is not so made the proceeding for acquisition shall lapse. Thus, it is seen that the consequence of not making an award within a period of two years from the date of publication of the declaration or from the date of commencement of the Act, as the case may be, is that the entire project for which the land is acquired will have to be abandoned or if it is intended to proceed with the project for which the land had been originally notified for acquisition it would become necessary for the Government to restart the proceedings once again

with the publication of a fresh preliminary notification under Sec. 4 of the Act or the corresponding provision in any local Statute in force " in a State."

[13] That brings us to the question of interpretation of Explanation to Sec. 11 A. It is undoubtedly true that the explanation shall have to be interpreted so as to explain the provisions of Sec. 11A or its proviso and not vice-versa. It is also undoubtedly true that the explanation is an explanation both to Sec. 11A as well as its proviso because the words "a period of two years" occur both in main section as well as in proviso. The explanation also uses the words "the period" which is referable to "period of two years" referred in main section as well as its proviso. If we examine the scheme of section it is clear that the section deals with the subject of making award pursuant to publication of declaration under Sec. 6. It is also required to be noted, at this stage, that prior to amendment of 1984 no period was prescribed within which the award was required to be made though some High Courts by applying the principle of exercise of statutory power within reasonable time brought in the limitation that award should be made within reasonable time. The Parliament, in fact, wanted to achieve that objective and keeping that objective in mind the Parliament has prescribed a period of two years within which the award shall have to be made. By the main Sec. 11A the Parliament has prescribed period of two years from the date of publication of declaration under Sec. 6 while pending proceedings for acquisition the Parliament has prescribed period of two years from the date of commencement of Sec. 11 A, i.e., September 24, 1984. Therefore, keeping in mind the subject, object and context of Explanation to Sec. 11 A, in our opinion, it is to be read down as meaning that period during which any action or proceeding to be taken in pursuance to Sec. 6 declaration was prevented by order of the Court. The object of explanation is, in fact, as stated hereinabove, to safeguard against impossible situation when the Collector or authority is prevented/restrained by an order of stay granted by competent Court from making any award or taking any step in furtherance of Sec. 6 Notification, There is, therefore, an impossibility created by order of the Court. The legislature wanted to safeguard against this impossibility as law does not command performance of an impossible act. This is based on Latin maxim *Lis non Cogit ad Impossibilis* and accordingly the explanation seeks to exclude the period during which the Collector/authority is restrained from exercising power of making award. Secondly, the Parliament by enacting explanation wanted also to provide for a situation where the party who has brought about the situation by its own action cannot be permitted to take benefit of his own making. If the owner of the land has by obtaining stay/injunction from the competent Court restrained the Collector from making an award, he cannot be permitted to state that the award is made beyond prescribed period or reasonable period. With a view to deal with this situation, the explanation is enacted and its purpose only is to exclude the period during which stay of a competent Civil Court has operated so as to enlarge the period of two years.

The main question, therefore, which is required to be asked in the present case is whether explanation would be attracted in the fact situation. In our opinion, if reference is made to the proviso it becomes clear that the period of two years has commenced to run on September 24, 1984. The second question which we are required to ask is as to whether on September 24, 1984 there was any stay granted by competent Court so as to restrain the Collector from making award. Answer to the aforesaid question is admittedly in the negative as it is admitted before us that the stay granted by this Court was vacated on July 10, 1984 and there was no stay of any Court operative on September 24, 1984 or thereafter. Factually, therefore, on the date of commencement of the Act, i.e., September 24, 1984 there was no stay of any competent Court in operation and therefore, the Collector was bound to make his award within two years from September 24, 1984 as stipulated by proviso itself. In our opinion Explanation to Sec. 11A has, therefore, no application whatsoever to the fact situation obtaining before us. Explanation could have applied only if on the date of commencement of the Act, i.e., on September 24, 1984, there was an order of stay under which any action or proceeding to be taken in pursuance to declaration under Sec. 6 was stayed. If on September 24, 1984 any action or proceeding is not stayed, proviso would operate and period of 2 years shall have to be computed from September 24, 1984.

[14] Before we conclude our discussion on this submission, it will be necessary for us to refer to some of the decisions which were cited at the Bar. Reference in this connection may be made to the decision in the case of Patel Virchandbhai Madabhai v. State of Gujarat & Ann, reported in AIR 1991 Guj. 152. In the facts of the case before the D.B. of Gujarat High Court the Collector could not make an award within two years as there was an order of interim relief by the High Court restraining the authority from taking possession of land. Question that was posed before the Division Bench was as to whether an order of interim relief restraining the authority from taking possession of land amounted to staying of action or proceeding contemplated by Explanation to Sec. 11 A. Justice Mr. R. C. Mankad speaking for the Division Bench held that the expression "any action or proceeding to be taken in pursuance of the said declaration" is of much wider import and all actions and proceedings required to be taken for passing of award under Sec. 11 and taking of possession under Secs. 16 & 17 are covered by the Explanation to Sec. 11 A. If any of those actions or proceedings are stayed, the period, during which such stay is in operation, is required to be excluded under the explanation for computing period of two years within which the award is to be made. The aforesaid decision was followed by subsequent Division Bench of Gujarat High Court in the case of Yusufbhai Noormohmed Nandoliya v. State of Gujarat & Am., reported in 1992 (2) GLR 1581 wherein Division Bench of this Court took the view that the explanation to Sec. 11 A enjoins exclusion of the entire period during which any

action or proceeding to be taken pursuant to declaration under Sec. 6 is stayed by an order of competent Court. The Court observed that it is pertinent to note that the explanation is not confined to only staying of passing of award pursuant to Sec. 6 Notification, but it is widely worded and covers in its sweep the entire period during which any action or proceeding to be taken in pursuance of declaration under Sec. 6 is stayed by the competent Court. 'Any action' is a wide phrase and includes all actions which are taken in the light of Sec. 6 Notification in the process of resorting to all consequential steps flowing from Sec. 6 Notification taking the ultimate step of obtaining possession of the acquired land which would put Sec. 6 Notification to its logical end. If any of these actions is stayed by the competent Court in connection with the impugned land acquisition proceedings benefit of explanation will start flowing for the respondents.

[15] This very decision was the subject-matter of appeal before the Supreme Court in case of Yusufbhai Noormohmed Nandoliya v. State of Gujarat & Am., reported in AIR 1991 SC 2153 : [1992 (2) GLR 1591 (SC)] and the Supreme Court has confirmed the view taken by the Division Bench of this Court. Justice Mr. M. H. Kama (as His Lordship then was) speaking for the Supreme Court observed as under (at page No. 1594 para 8 of GLR) :

"The said explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the explanation to actions or proceedings preceding the making of the award under Sec. 11 of the said Act. In the first place, as held by the learned single Judge himself where the case is covered by Sec. 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Sec. 17 or otherwise. On the other hand, it appears to us that the explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration under Sec. 6 is made in cases covered by the explanation. The benefit is that the award must be made within a period of two years of the declaration failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required is that the landholder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration under Sec. 6 of the said Act so that the explanation covers only the cases of those landlords who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired in our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment."

[16] In view of the aforesaid legal position and the interpretation which we have placed on Sec. 11A, its proviso and explanation, we are of the opinion that in the fact situation of this case the proviso was not at all attracted and period of two years has already commenced to run from September 24, 1984 and for a period of more than seven years upto the date of award on 12-12-1991 there was no order of stay operative and therefore also award, if any, was required to be declared within period of two years from September 24, 1984. Admittedly, since the award is made on December 12, 1991, it is beyond the prescribed period and therefore entire land acquisition proceedings have lapsed and award passed by the Collector is null and void and inoperative.

[17] At this stage, we are required to consider the alternative submission based on facts. It is submitted before us that if the period of two years has commenced to run from September 24, 1984 the respondent authorities had no knowledge whatsoever of the fact that the order of stay which was granted by the High Court in Civil Revision Application was vacated on July 10, 1984. As is expected of a vigilant officer the Special Land Acquisition Officer has addressed a letter to the office of the Govt. Pleader and unfortunately the office of the G. P. of the High Court has by letter, dated April 20, 1985 informed that the C. R. A. was pending and therefore it was not necessary to take any further proceedings. It was, therefore, submitted before us that in any case the Collector cannot be expected to perform his duty of making award within a period of two years from September, 24, 1984 as he has no knowledge of the fact that the stay granted by the High Court was vacated on July 10, 1984. It was submitted before us that unless the Collector or the Land Acquisition Officer has knowledge of the fact that the stay is vacated it cannot be visited with the consequences flowing from negligence of the office of the Govt. Pleader or any other authority. It was further submitted before us that in such a situation principle analogous to one applied by the Supreme Court in the case of Raja Harischandra Rajsingh v. Deputy Land Acquisition Officer, reported in AIR 1961 SC 1500 should be applied and period of two years should commence to run from the date of vacation of order of stay. We are afraid we are not in a position to accept this submission firstly on our interpretation of Sec. 11 A, its proviso and explanation the period of two years has already commenced to run on September 24, 1984. Section 11A prescribes a limitation or restriction on the power of the authority and that limitation is that the power of making award shall have to be exercised within a period of two years from the date of declaration, under Sec. 6. In cases where the proviso is applicable the period of two years is granted from the date of commencement of Amending Act, i.e., September 24, 1984. In effect, therefore, when the restriction is prescribed against exercise of power by Sec. 11A it will not be permissible for us to apply the principle of enlargement of period of limitation. In the subsequent decision in the case of Kaliyappan reported in AIR 1989 SC 239 this very

decision in the case of Raja Harischandra Rajsingh, reported in AIR 1961 SC 1500 was pressed into service for considering the words 'the Collector shall make an award' occurring in Sec. 11A of the Act. It was contended before the Supreme Court that the words 'to make an award' occurring in Sec. 11A should be read as 'sign the award'. By relying upon decision of Supreme Court in the case of Raja Harischandra Rajsingh (supra) it was submitted before the Supreme Court that same meaning should be given to the words shall make an award' as is given to the words 'date of award' under Sec. 18 of the Act. Negating the said argument Justice E. S. Venkataramiah (as His Lordship then was) made following pertinent observations :

"There is no doubt a difference between the meaning given by this Court in Raja Harischandra's case (supra) to the words "date of the award" in Sec. 18 of the Act and the interpretation of the High Court of the words 'the Collector shall make an award' or 'the award shall be made' in Sec. 11A of the Act but such a distinction had to be maintained because the object of and the reason for prescribing the period of limitation under Sec. 11A of the Act are different from the object of and the reason for prescribing the period of limitation under Sec. 18 of the Act and the consequences that would flow from the violation of the Rule of limitation in two cases are also different. 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 later 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 determination of proper and just compensation. Secondly, while in the former case violation of the Rule of limitation would result in the acquisition proceeding become ineffective, in the later 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 later case we are concerned with the point of time at which the time to make an application under Sec. 18 of the Act will begin to run against the person interested in the land. The provisions of Sec. 11A 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."

It thus becomes clear from the aforesaid observations that Secs. 11A and 18 of the Act operate in different fields and distinctions which exist between them shall have to be maintained because the objects and reasons for prescribing the period of limitation under Sec. 11A of the Act are different from the objects and reasons for prescribing the period of limitation under Sec. 18 of the Act. In that view of the matter we are of the opinion that the principle enunciated by the Supreme Court in

the case of Raja Harischandra Rajsingh (supra) can have no application, whatsoever, and it will not be permissible for us to hold that the period of two years stipulated by the proviso shall commence to run from the date of knowledge of vacation of order of stay. The period prescribed under the proviso has already commenced to run from September 24, 1984 and there is no provision whatsoever which can stop that period from running, except in cases which fall under the explanation. We have already held that this case would not fall under the explanation, and therefore, this submission must also fail.

[18] Lastly, we are required to consider the submission as to whether the reliefs as prayed for should be granted to the petitioner. It shall have to be mentioned that the petitioner cannot be said to be a *pari delict*. He has not committed any wrong of which he is seeking any benefit. He was well within his right in challenging various actions of the Government. However, when his challenge to the notification has failed on July 10, 1984, he has, thereafter, not taken any action, and it was open to Government to make an award thereafter. We are, therefore, of the opinion that the relief prayed for by the petitioner cannot be denied to him. The petitioner has prayed for the following reliefs :

"9(A) A writ of certiorari and/or mandamus be issued declaring that the action of the respondent No. 2 in making the purported award, dated 9-12-1991 or 12-12-1991 is an act without any authority of law and the respondents, purported attempt to effect alleged entry to the petitioners' land is per se unlawful and they may please be restrained from doing anything further on the land in pursuance of the alleged acquisition.

(B) The respondents Nos. 1, 2 & 3 be directed to remove themselves from the land in question and they may please be restrained from interfering with the petitioners' ownership and possession.

(C) The petitioners be granted adequate compensation for the outrageous act of the respondents in preventing petitioners from taking the standing crop of tobacco."

[19] When once it is held by us that the award is null and void and could not have been made by the authority beyond the period of two years starting from September 24, 1984 the entire acquisition proceedings shall lapse. The lapsing of acquisition proceedings would necessarily render invalid the action of the respondents in taking over the possession of land. It is admitted position in this case that the possession of the land is taken over on December 12, 1991 and the respondents have put up some construction. The exact nature of the construction is not known to us as noted hereinabove. In that view of the matter this Court is required to modulate the relief. It

is pertinent to note that since the entire acquisition proceedings have lapsed the only option the respondents can have is one which is pointed out by Justice E. S. Venkataramiah (as His Lordship then was) as quoted hereinabove. It may be permissible for the respondents to restart the proceedings, once again, with the publication of preliminary notification under Sec. 4 of the Act. With a view to balance the equities while declaring that the award declared by the respondents on 12-12-1991 is null and void and that the entire acquisition proceedings have also lapsed we are granting time to the respondent authorities to take appropriate action by December 31, 1993. However, we are required to keep in mind that the respondent authorities have already taken possession of parcel of land as back as on 12-12-1991. Once the acquisition proceedings have lapsed, the respondents cannot be permitted to retain possession of the land in question. Their possession becomes illegal and unauthorised. Since the respondents have already commenced construction it would not be possible for us, at this stage, to provide any compensation but for the period beginning from taking over possession of the land till delivery thereof to the petitioners or regularisation of such possession after resorting to fresh acquisition proceedings, whichever event happens earlier, mesne profits for depriving the petitioners the user and occupation of the land shall have to be provided for. It may be noted that towards such deprivation of ownership compensation (which is disputed) is paid. In fact, on this Court declaring that acquisition proceedings have lapsed under Sec. 11 A, possession shall have to be immediately restored and the owners shall have to pay back compensation. However, in the present case, we are permitting the respondents to continue to remain in possession upto December 31, 1993 so that they can by appropriate proceeding regularise their possession. Therefore, in our opinion, direction to the respondents to pay interest at the rate of 15% p. a. on the amount of compensation from December 12, 1991 till taking over of possession is regularised or possession is restored to the petitioners, whichever even occurs earlier, shall have to be granted, and is hereby granted. At this stage, the learned Advocate General appearing for the third respondent requested the Court that the petitioners should also be directed to refund the amount of compensation along with interest. In our opinion, such request cannot be legally entertained. As against compensation the third respondent has acquired possession of the land and has put up construction thereon. Full ownership right is exercised, vis-a-vis, the land. It would continue to enjoy user and possession till it restores back the possession. As per our declaration the proceedings have already lapsed, and therefore, recovery of possession and retention thereby becomes illegal for which mesne profits at the rate of 15% p. a. on the amount of compensation awarded shall have to be granted and is hereby granted. In case the respondents do not exercise the power of regularising their possession the respondents shall handover the peaceful and vacant possession of the aforesaid parcels of land to the petitioners immediately after December, 31, 1993. The petitioners will be at liberty

to take appropriate action for compensation for damages caused to the property of the petitioners.

[20] In the result, petition succeeds. The award issued by the second respondent, dated December 12, 1991 is hereby quashed and set aside, and it is declared that the same is null and void, and it is further declared that the land acquisition proceedings have lapsed. However, with a view to enable the respondents to take remedial measures by restarting acquisition proceedings time upto December 31, 1993 is granted to respondents. It is further directed that if no action is taken before December 31, 1993, the respondents shall restore the possession of the land to the petitioners immediately thereafter. It is also directed that the respondents shall pay mesne profits at the rate of 15% p. a. on the amount of compensation awarded by the competent authority from December 12, 1991 till such taking over of possession is regularised or possession is restored to the petitioners, whichever event occurs earlier.

[21] Rule is made absolute accordingly with no order as to costs. Rule made absolute.

