

SUPREME COURT OF INDIA

Municipal Corporation, Indore

Vs.

K. N. Palsikar

C.A.Nos.1137 and 1138 of 1965

(S. M. Sikri, R. S. Bachawat and K. S. Hegde, JJ.)

06.09.1968

JUDGEMENT

SIKRI, J.:-

1. These appeals by special leave are directed against the judgment of the Madhya Pradesh High Court in two Civil Revisions, Civil Revision No. 195 of 1962 and Civil Revision No. 497 of 1962. These revisions came to be filed in the High Court in the following circumstances.

2. On January 21, 1961, the respondent K. N. Palsikar - hereinafter referred to as the applicant - filed an application under Sections 387 (4) and (5) of the Madhya Bharat Municipal Corporation Act, 1956 - hereinafter referred to as the Act - in the Court of District Judge, Indore. He alleged that the Municipal Corporation by its Memo No. 816 dated October 30, 1959, had informed him that in accordance with the Road Widening Scheme a set back of total area of 1455.1 sq. ft. had been cut down from his land comprised in House No. 1 (New No. 38) on Road No. 1, Choti Gwaltoli No. 1, Indore, and that the Municipal Corporation proposed to give him compensation only at the rate of Rs. 2.50 per sq. ft. which was not acceptable to him. He further alleged that the arbitrators

appointed by the parties had given an award which was also not acceptable to him. The arbitrators had given Rs. 50/per sq. ft. while he demanded Rs. 145/per sq. ft. The Municipal Corporation in its reply dated February 28, 1961, submitted that the compensation given by the arbitrators was very much in excess of the actual price of the land and prayed that the application be dismissed.

3. Various issues were framed by the Additional District Judge, Indore, but they were all directed to determining the fair amount of compensation including interest.

4. The Municipal Corporation also applied on January 19, 1961, under Sec. 387 (4) of the Act praying that the price of the land be settled as per Section 387 (4). In Para 10 of this application it was alleged that the memo regarding set back was issued on October 30, 1959, and therefore the price is to be settled at the rates prevailing on that date.

5. In his reply to this application the applicant, Palsikar, accepted para 10 of the application.

6. The Additional District Judge on February 6, 1962, disposed of both the applications by one order and he fixed the compensation of land in question at the rate of Rs. 30 per sq. ft. with interest at 6 per cent per annum from the date of the delivery of the possession. He further ordered that the applicant shall be entitled to 15 per cent Solatium as decided by the award. He also valued the structure.

7. During the pendency of these applications the Municipal Corporation applied on August 1, 1961, to the Additional District Judge for withdrawing the claim of the Corporation over a portion of the land in question. On February 2, 1962, the Additional District Judge passed the following order.

"The N. A. applied that the Improvement Board is going to acquire portion of the land in question and hence the N. A. shall not be compelled to acquire this nothing to show that the Improvement Trust is going to acquire the land. Moreover, I have to fix the compensation in the case. The N. A. may or may not acquire the land at its own risk. The application is rejected."

8. Against the common order of the Additional District Judge, three revisions, two by the Municipal Corporation and one by the applicant, were filed. Civil Revision No. 195 of 1962 was filed by the Municipal Corporation alleging that the compensation awarded by the learned Additional District Judge was excessive and praying that fair compensation be fixed.

9. The High Court held that the Additional District Judge had given opportunity to the parties to lead evidence and determined the amount of compensation after hearing the parties and in these circumstances it could not be said that he was guilty of committing irregularity in the exercise of his jurisdiction, even assuming that the amount determined as payable was either too high or too low. The High Court then dealt with the point raised by the learned counsel for the Municipal Corporation that the Additional District Judge had refused to permit the Corporation to withdraw the acquisition proceedings and had thus refused to exercise jurisdiction. The High Court held that in a proceeding under S. 387 (4) of the Act there was no provision to enable the Corporation to withdraw from any set back already given and no statutory provision had been pointed out entitling the Court to permit the Corporation to withdraw. In the result the High Court dismissed the revision petition.

10. In the meantime the applicant filed an application under section 388, of the Act for execution of the order of the Additional District Judge dated February 6, 1962. The Corporation objected to the execution on the ground that the applicant had not given possession of the disputed land to the Corporation nor had he executed a sale deed with respect to it in its favour. The applicant controverted these objections and submitted that demand of possession prior to deposit of the decretal amount was illegal and contrary to S. 387(5) of the Act. He further submitted that under s. 305 of the Act the vesting of the property occurs immediately when the rebuilding starts and, therefore there is no necessity of executing the sale deed. The Corporation again filed an application for permission to withdraw from the acquisition proceeding and in the alternative it was prayed that the money deposited in Court against this execution case may be given to the applicant only when he gives vacant possession of the land covered by the set back scheme.

11. The Additional District Judge by his order dated October 31, 1962, repelled these contentions and allowed the applicant to withdraw the money deposited by the Corporation. Against this order the Corporation filed Civil Revision No. 497 of 1962 to the High Court. The High Court by its judgment dated December 19, 1962, held that "the terms of S. 387 (5) indicate that taking of possession of the property has to follow the payment of the amount of compensation determined by the Court. In view of the terms of this provision it is not correct to contend that the opponent (applicant) ought first to secure vacant possession of the property and then alone can claim to withdraw the compensation amount." The High Court noted in the order that the applicant was willing to give such possession as he himself could. This is the second judgment of the High Court against which the Court gave leave to appeal.

12. the learned counsel for the Corporation contends:

(1) that approval of the site plan will not divest the applicant of the ownership and therefore, it was possible for the Corporation to withdraw from the acquisition proceedings;

(2) when the projecting portion is the main building no compensation is payable unless the rebuilding starts and the portion is cleared;

(3) that the Act provides only for compensation and not for solatium; and

(4) that the amount of compensation is excessive.

13. The learned counsel for the applicant, Palsikar, made a statement before us that he was willing to deposit Rs. 6,000 in the District Court within four months in respect of the area which is in possession of the tenants and that he will be entitled to withdraw this amount once the possession is given to the Corporation and not before. In view of this undertaking it is not necessary to determine point No. 2. The point is not free from doubt and we hesitate to express our opinion when the point has become academic in view of the under taking given by the learned counsel for the applicant, Palsikar.

14. Regarding point No. 1, we agree with the High Court that there is no provision in the Act for enabling the Corporation to withdraw from the acquisition proceedings. In fact it seems to us that there is automatic vesting of the land in the Corporation under Sec. 305 once the requisite conditions are satisfied. Section 305 reads as follows:

"305. Power to regulate line of buildings.- (1) if any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may-

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time, or

(b) If the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down; require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation:

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustainable in consequence of his building or any part thereof being set back.

(2) The Corporation may, on such terms as it thinks fit, allow any building to be set forward for the improvement of the line of the street."

15. In this case it is not necessary to determine whether land affected by a notice vests when the notice is given or when the part or some portion of the part projecting beyond the regular line or beyond the front of the immediately adjoining building is removed, or when the building when being rebuilt is set back, because it seems to have been common ground between the parties that the date for the determination of compensation in this case is the date of the memo, i. e. October 30, 1959.

16. Coming to the third point, the relevant section which required interpretation is S. 387 (3) which reads:

"387. Arbitration in cases of compenation, etc.

(3) In event of the Panchayat not giving a decision within one month or such other longer period as may be agreed to by both the parties from the date of the selection of Sarpanch or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party be determined by the District Court which shall, in cases in which the compensation is claimed in respect of land, follow, as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court:

Provided that

(a) no application to the Collector for a reference shall be necessary, and

(b) the court shall have full power to give and apportion the costs of all the proceedings in manner it thinks fit."

17. The learned counsel for the appicant relies on the decision of the Bombay High Court in The Borough Municipality of Ahmedabad v. Jayendra Vajubhai Divatia, ILR (1937) Bom 632 = (AIR

1937 Bom 432). In that case Beaumont, C. J., interpreting Section 198 of the Bombay Municipal Boroughs Act (Bom. Act XVIII of 1925), which section is, in terms, similar to Section 387 of the Act observed as follows:

"There is no express provision in the Bombay Municipal Boroughs Act allowing for such addition to the compensation, but under the Land Acquisition Act fifteen per cent is allowed in respect of the compulsory nature of the acquisition, and the question is whether that provision in the Land Acquisition Act can be treated as incorporated into Section 198 of the Bombay Municipal Boroughs Act as being part of the procedure provided by the Land Acquisition Act. I agree that, prima facie, a provision of this sort, adding to the compensation to be payable for the value of the land, is not aptly described as procedure, but still one has to look at the Land Acquisition Act and note the phraseology adopted. One finds Part III headed "Reference to Court and Procedure thereon....."

Then he referred to Sections 23, 24 and 25 of the Land Acquisition Act and concluded:

"It seems to me that Sections 23, 24 and 25 of the Act constitute a code laying down the principles on which the District Court is to act in arriving at the compensation to be paid, and it is quite impossible to leave out of that code subsection (2) of Section 23, as Mr. Shah has invited me to do. His contention is that the fifteen per cent is an allowance of something in addition to the value of the land, which has to be paid for under the Municipal Act. But the truth is that the sections determine the basis on which the value of the land is to be ascertained on compulsory purchase and the allowance of the fifteen per cent must be set off against matters disallowed under Sec. 24. These provisions in the Land Acquisition Act are contained in a Chapter entitled "Reference to Court and procedure thereon" and I think that they must be treated as applicable to proceedings in the District Court under Section 198 of the Bombay Municipal Boroughs Act."

18. The learned counsel for the Corporation was not able to cite any authority which has dissented from this view. We agree with the reasoning of the learned Chief Justice and hold that the Additional District Judge was right in awarding 15 per cent solatium.

19. Coming to the fourth point, the revision to the High Court was filed under Section 392 of the Act which provides that "notwithstanding anything to the contrary in any other law for the time being in force, the District Court shall exercise all the powers and jurisdiction expressly conferred on or vested in it by the provisions of this Act, and unless it is otherwise expressly provided by this Act, its decision shall be subject to revision by the High Court." The High Court could not, in a revision under Section 392, go into questions of fact and determine the amount of compensation, and the High Court was right in declining to deal with this question. It is not necessary to determine whether the powers of revision under Section 392 are the same as under Section 115, C. P. C., because even if the powers under Section 392 of the Act are wider than that under Section 115, C. P. C., they do not extend to determining questions of fact. In view of this conclusion this point cannot

be agitated before us.

20. In the result the appeals fail, but the applicant-Shri Palsikar-shall deposit the amount of Rs. 6,000 in the Court of the Additional District Judge within four months, as stated by his counsel, and he shall be entitled to withdraw this amount once vacant possession is given of the land in dispute to the Corporation. If so requested by the applicant, Shri Palsikar, the Corporation should join as co-plaintiff in a suit or proceeding to be filed by him against the tenants for securing possession. If it refuses to do so within 3 months from the date the applicant requires it to join as co-plaintiff the respondent may withdraw this Rs. 6,000 deposited by him. The Corporation shall also give such further assistance as may be required by the applicant in accordance with law.

21. The applicant shall be entitled to costs; one bearing fee.

Appeal dismissed.