

Shri Ramtanu Co-Operative Housing Society Ltd. and another

Vs

State of Maharashtra and Others

Writ Petitions Nos. 182 of 1969 and 42 to 45 of 1968

(CJI M. Hidayatullah, J. M. Shelat, G. K. Mitter, C. A. Vaidialingam, A. N. Ray JJ)

05.08.1970

JUDGMENT

RAY, J. -

1. These petitions raise two principle questions. First, whether the State of Maharashtra (hereinafter referred to as the State), is competent to enact the Maharashtra Industrial Development Act, 1961 (hereinafter referred to as the Act), secondly, whether there is procedural discrimination between the Maharashtra Industrial Development Act, 1961 and the Land Acquisition Act, 1894.
2. The contentions of the petitioners are that the Act is for the incorporation, regulation and winding up of the Maharashtra Development Corporation (hereinafter referred to as the Corporation) and that the Corporation is a trading one and therefore the impugned legislation falls within Entry 43 of List I of the Seventh Schedule of the Constitution. On behalf of the State it is said on the other hand that the Act is for the growth and development of industries in the State of Maharashtra and for acquisition of land in that behalf and the Corporation is established for carrying out the purpose of the Act, and, therefore, the legislation is valid.
3. The true character, scope and intent of the Act is to be ascertained with reference to the purposes and the provisions of the Act. The Act is one to make a special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid.
4. The Corporation is established for the purpose of securing and assisting the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Maharashtra. The Corporation consists of 8 members two of whom are nominated by the State Government of whom one shall be the Financial Adviser of the Corporation, one member nominated by the State Electricity Board, one member nominated by the Housing Board and three members nominated the State Government, from amongst persons appearing to Government to be qualified as having had experience of, and having shown capacity in industry or trade or finance or who are in the opinion of the Government capable of representing the interest of persons engaged or employed therein, and the Chief Executive Officer of the Corporation, who shall be the Secretary of the Corporation.
5. The function of the Corporation shall be generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Maharashtra and to establish and manage industrial estates at places selected by the State Government, develop industrial areas

selected by the State Government for the purpose and make them available for undertaking to establish themselves, assist financially by loans industries to move their factories into such estates or areas, and to undertake schemes or works, either jointly with other corporate bodies or institutions or with Government of local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith.

6. An "industrial area" under the Act means any area declared to be an industrial area by the State Government by notification in the Official Gazette which is to be developed and where industries are to be accommodated. An "industrial estate" under the Act means any site selected by the State Government, where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. "Development" under the Act means the carrying out of building, engineering, quarrying or other operations in, on, over or under land, or the making of any material change in any building or land, and includes redevelopment, but does not include mining operations. "Amenity" under the Act includes road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience as the State Government may by notification in the Official Gazette specify to be an amenity for the purposes of the Act.

7. We have referred to these expressions, "industrial area", "industrial estate", "development" and "amenity" in order to appreciate the general powers of the Corporation to discharge the functions of the corporation in regard to the establishment, growth and development of industries in the State. These powers are to acquire and hold property, movable and immovable for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by the Corporation on such conditions as may be deemed proper by the Corporation and also to purchase by agreement or to take on lease or under any form of tenancy and land, to execute such buildings and to execute such other works as may be necessary for the purpose or carrying out its duties and function, to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings therefore, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings to construct buildings for the housing of the employees of such industries, to allot factory sheds or such buildings or parts of buildings, including residential tenements to suitable person in the industrial estates established or developed by the Corporation and to do such other things and perform such acts as it may think necessary of expedient for the proper conduct of its function, and the carrying into effect the purposes of this Act.

8. Broadly stated the function and powers of the Corporation are to develop industrial areas and industrial estates by providing amenities of road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and other convenience, secondly to construct works and buildings, factory sheds and thirdly, to make available building on hire or sale to industrialists or persons intending to start industrial undertakings and to allot factory sheds, buildings, residential tenement to suitable person in industrial estates established or developed by the Corporation and to lease, sell, exchange or otherwise transfer any property held by the Corporation on such conditions as may be deemed proper by the Corporation.

9. The development of industrial areas and industrial estates is intended to serve two objects. In the first place, there is to be an orderly establishment and growth of industries in the Bombay Poona sector. The second object is to secure dispersal of industries from the congested areas of the Bombay Poona sector to the underdeveloped parts of the State. The industrial areas are broadly classified into two categories, namely, first, those means for engineering and other industries which are not obnoxious and, secondly those meant for chemical industries. The establishment and growth of

industries in the State is inextricably bound up with availability of land. Available land is limited. Such limited supply leads to speculation in land. Power is therefore required for compulsory acquisition of land to achieve the purposes of the Act. At the same time, land owners are not to be deprived of the legitimate benefit of reasonable increases in the land values in a developing economy.

10. Development of chemical industries requires long stretches of pipelines to be laid for moving gas other liquid chemical products. The growth of industries in the State by establishment of industrial areas and industrial estates also means laying pipelines for carrying gas, water, electricity and constructing sewerage and drains. These amenities are essential. The absence of amenities is envisaged and answered in the Act by empowering the Corporation to provide these essential amenities, facilities and conveniences.

11. The principal functions of the Corporation in regard to the establishment, growth and development of industries in the State are first to establish and manage industrial estates at selected places and secondly to develop industrial areas selected by the State Government. When industrial areas are selected the necessity of acquisition of land in those areas is apparent. The Act therefore, contemplates that the State Government may acquire land by publishing a notice specifying the particular purpose for which such land is required. Before the publication of the Notice, the owner of the land is given an opportunity to show cause as to why the land should not be acquired. After considering the cause shown by the owner the State Government may pass such orders as it deems fit. When a notice is published for acquisition of land, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances. Where the land has been acquired for the Corporation or any local authority, the State Government shall, after it has taken possession of the land, transfer the land to the Corporation or that local authority, for the purposes for which the land has been acquired subject to such terms and conditions which the State Government may deem fit to impose. We have already noticed that for the purpose of the Act, namely, the establishment and development of industries in the State the Corporation will establish industrial estates and develop industrial areas.

12. Apart from establishing industrial estates and developing industrial areas the Corporation may dispose of any land acquired by the state Government and transfer to the Corporation without undertaking or carrying out any development thereof or transfer such land after undertaking or carrying out any development as it thinks fit. These powers of the Corporation with respect to the disposal of land are to be exercised so far as practicable, that where the Corporation proposes to dispose of the sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the person from whom it was required if they desire to purchase it subject to such requirements as to its development and use as the Corporation may think fit to impose. Again, the persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirement on terms settled with due regard to the price at which any such land has been acquired from them.

13. The other provisions in the Act are that the State Government may upon such conditions as may be agreed between the State Government and the Corporation, place at the disposal of the Corporation any land vested in the State Government. After any such land has been developed by, or under the control and supervision of the Corporation, it shall be dealt with by the Corporation in

accordance with the regulations made, and directions given, by the State Government in this behalf. Further, if any land placed at the disposal of the Corporation is required at any time thereafter by the State Government, the Corporation shall replace it at the disposal of the State Government upon such terms and conditions as may be mutually agreed upon.

14. There are two other important provision in the Act. In the first place, the State Government may issue to the Corporation such general to special directions as to policy as it may think necessary or expedient for the purpose of carrying out the purposes of the Act, and the Corporation shall be bound to follow and act upon such directions. These direction will be in the filed of establishment and manager of industrial estates and development of industrial areas and carrying out the other powers of the Corporation in regard to the provisions of amenities and common facilities and assisting industrialists or industrial undertakings in obtaining buildings or factory-sheds or residential tenements or land for development of industries. The second important provision is that when the State Government is satisfied that the purposes for which the Corporation is established under the Act have been substantially achieved so as to render the continued existence of the Corporation in the opinion of the State Government unnecessary that Government may by notification in the Official Gazette declare that the Corporation shall be dissolved with effect from such date as may be specified in the notification and the Corporation shall be deemed to the dissolved accordingly. Upon such dissolution, all properties, funds and dues which are vested in or realisable by the Corporation shall vest in or be realised by the State Government and all liabilities enforceable against the Corporation shall be enforceable against the State Government.

15. It is in the background of the purposes of the Act and powers and function of the Corporation that the real and true character of the legislation will be determined. That is the doctrine of finding out the pith and substance of an Act. In deciding the pith and substance other legislation, the true test is not to find out whether the Act has encroached upon or invaded any forbidden filed but what the pith and substance the Act is. It is that true intent of the Act which will determine the validity of the Act. Industries come within Entry 24 of the State List subject to the provision of Entry 7 and Entry 52 of the Union List of the Constitution. Entry 7 of the Union List relates to industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 of the Union List relates to industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest. The establishment, growth and development of industries in the State of Maharashtra does not fall within Entry 7 and Entry 52 of the Union List. Establishment, growth and development of industries in the State is within the State List of industries. Furthermore, to effectuate the purposes of the development of industries in the State it is necessary to make land available. Such land can be made available by acquisition or requisition. The Act in the present case deals with acquisition of land by the State and on such acquisition, the State may transfer the land to the Corporation which again may develop it itself and establish industrial estates or may develop industrial areas. Acquisition to requisition of land falls under Entry 42 of the Concurrent List. In order to achieve growth of industries it is necessary not only to acquire land but also to implement the purposes of the Act. The Corporation is therefore established for carrying out the purposes of the Act. The pith and substance of the Act is establishment, growth and organisation of industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation show in no uncertain terms that these are all in aid of the principle and predominant purpose of establishment, growth and establishment of industries. The Corporation is established for that purpose. When the Government is satisfied that the Corporation has substantially achieved the purpose for which the Corporation is established, the Corporation will be dissolved because the *raison d'etre* is gone. We, therefore, hold that the Act is

valid piece of legislation.

16. The petitioner contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land; that the Corporation had borrowing powers; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land, or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading Corporation are absent. The Corporation is established by the Act for carrying out the purposes of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries.

17. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund of the Corporation consists of moneys received from the State Government, all fees, costs and charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, building and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.

18. The Corporation is not a Government company within the meaning of Section 617 of the Companies Act, 1956, nor can the Companies Act, 1956, be said to apply to the Corporation because under the provisions contained in Section 616 of the Companies Act that Act will apply to a company governed by any special Act except in so far as the provisions of the Companies Act are inconsistent with the provision of such special Act. The provisions of the Act in the present case in regard to incorporation, functions, powers and dissolution of the Corporation show that the purposes

and objects of the Act and the function and powers of the Corporation are like the warp and the woof of the fabric of development of industries by the State.

19. There are two provisions of the Act which are not to be found in any trading Corporation. In the first place, the sums payable by any person to the Corporation are recoverable by it under this Act as an arrear of land revenue on the application of the Corporation. Secondly, on dissolution of the Corporation the assets vest in and the liabilities become enforceable against the State Government.

20. The underlying concept of a trading Corporation is buying and selling. There is no aspect of buying or selling by the Corporation in the present case. The Corporation carried out the purposes of the Act, namely, development of industries in the State. The construction of buildings, the establishment of industries by letting buildings on hire or sale, the acquisition and transfer of land in relation to establishment of industrial estate or development of industrial areas and of setting up of industries cannot be said to be dealing in land or buildings for the obvious reason that the State is carrying out the objects of the Act with the Corporation as an agent in setting up industries in the State. The Act aims at building an industrial town and the Corporation carries out the objects of the Act. The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of opinion that the Corporation is not a trading one.

21. Counsel on behalf of the petitioners contended that there was procedure discrimination between the Land Acquisition Act the Act in the present case. It was said that there was a special procedure designed by the Land Acquisition Act for acquisition of land for the companies whereas in the present case the State was acquiring land for companies without adopting the procedure of the Land Acquisition Act. It is to be remembered that the Act in the present case is a special one having the specific and special purpose of growth, development and organisation of industries in the State of Maharashtra. The Act has its own procedure and there is no provision in the Act for acquisition of land for a company as in the case of Land Acquisition Act. In the present case, acquisition under the Act is for the purpose of development of industrial estates or industrial areas by the Corporation or any other purpose in furtherance of the objects of the Act. The policy underlying the Act is not acquisition of land for any company but for the one and only purpose of development, organisation and growth of industrial estates and industrial areas. The Act is designed to have a planned industrial estates and industrial areas. The Act is designed to have a planned industrial city as opposed to haphazard growth of industrial areas in all parts of the State. That Act is intended to prevent growth of industries in the developing parts of the State. Industries are therefore to be set up in the developing or new parts of the State where new industrial towns will be brought into existence. The object of the Act is to carve out planned areas for industries. On one side there will be engineering industries and on the other there will be chemical industries. There will be localisation of industries with the result that the residents and dwellers of towns and cities will not suffer either from the polluted air or obnoxious chemicals of industries or the dense growth of industries and industrial population, within and near about the residential areas. The Land Acquisition Act is a general Act and that is why there is specific provision for acquisition of land by the State for public purpose and acquisition of land by the State for companies. The present Act on the other hand is designed for the sole purpose of development of industrial areas and industrial estates and growth and development of industries within the State. Industrial undertaking or person who are engaged in industries all become entitled to the facilities on such industrial growth. Under

the Land Acquisition Act acquisition is at the instance of and for the benefit of a company, whereas under the present Act acquisition is solely by the State for public purposes. The two Acts are dissimilar in situations and circumstance.

22. The petitioner contended that the provision as to compensation were a restriction not the judicial power of the Collector. Section 33 of the Act deals with compensation. The amount of compensation under the Act can be determined by agreement between the State Government and the person to be compensated. Where on the other hand no such agreement can be reached, the State Government shall refer the case to the Collector, that is sub-section (3) of Section 33 of the Act. The proviso to that sub-section is that no compensation exceeding such amount as the State Government may by general orders specify to be paid for such acquisition shall be determined by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in that behalf. This proviso was construed on behalf on the petitioners to be a fetter on the judicial powers of the Collector to determine compensation. Sub-section (5) of Section 33 of the Act states that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Section 23 and 24 and other relevant provisions of the Land Acquisition Act. These provisions indicate that if the Collector will determine an amount higher than what the State Government may by general orders specify, the approval of the State Government will be necessary. There is no ceiling fixed by the Government. Finally, there is an appeal to the Court from the decision of the Collector. The decision of the Court will finally determine the amount of compensation. We are of opinion that there is no restriction on the powers of the Collector in the matter of determination of compensation, although the approval of Government may be necessary in the Government interest.

23. All the contentions advanced by the petitioners fail. The petitions are dismissed with costs.

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