

Smt. Venkatamma and Others

Vs

City Improvement of Trust Board, Mysore and Others

Civil Appeals Nos. 1488 and 1489 of 1968

(A. N. Ray, D. G. Palekar, M. H. Beg JJ)

23.10.1972

JUDGMENT

DWIVEDI, J. -

1. These two appeals are filed against the judgment of the Mysore High Court dismissing the writ petitions of the appellants, Smt. Venkatamma and certain other persons are the appellants in Civil Appeal No. 1488 of 1968. U. L. Vishwanatha Rao and certain other persons are the appellants in Civil Appeal No. 1489 of 1968.
2. The dispute in the appeals relates to the acquisition of certain premises belonging to the appellants. Those premises have been acquired by the Board of Trustees for the improvement of the city of Mysore constituted under the City of Mysore Improvement Act, 1903 (hereinafter referred to as the Act). Pursuant to the acquisition, awards determining compensation were given in due course. The appellants filed writ petitions challenging the legality of the acquisition and awards and prayed for the quashing of the notifications acquiring the premises and the awards. The High Court dismissed in to the writ petition of Smt. Venkatamma and others. The writ petition of U. L. Vishwanatha Rao and others was partly allowed in respect of certain premises.
3. Section 14(1) on the Act enables the Board of Trustees (hereinafter called the Board) to draw up schemes called as the "improvement schemes" for the improvement or expansion or both of the areas to which the Act applies. It also enables the Board to undertake "any work" and incur any expenditure for the improvement or development of any such area and for the framing and execution of such improvement schemes as may be necessary from time to time. Section 15(1) provides that every improvement scheme under Section 14 shall provide for the acquisition of any land which will, in the opinion of the Board, be necessary for or affected by the execution of the scheme. Section 15(1)(b) provides that the scheme shall make provision for "the construction and reconstruction of buildings and the formation and alteration of streets. Section 15(2)(d) enacts that the scheme may provide for "the establishment or construction of markets". Section 16(1) requires the Board to publish a notification concerning the scheme in the Gazette. There is provision for the filing of objections to the scheme by the persons affected thereby. Section 17 provides for the hearing of those objections by the Board. After the objections have been disposed of, the Board shall apply to the Government for the approval of the scheme. After approval has been granted it shall be notified in the Gazette.
4. Facts in the two appeals are common except for the difference in the dates and the number of the premises. The appeal of Smt. Venkatamma will be treated as the leading case and the facts are taken from that case. The notification under Section 16 is dated October 30, 1945. It was published in the

Gazette on November 22, 1945. The notification under Section 18 was issued on July 23, 1959. The award determining compensation was given on May 18, 1964.

5. The first argument is that the notification issued under Section 16 did not state that the premises were required for shopping sites. Accordingly the appellant could not file an objection against the acquisition of premises for shopping sites. As the appellant did not get effective opportunity of hearing against the scheme, the notification under Section 16 and Section 18 are illegal.

6. The notification under Section 16 specified the purpose of acquisition as "forming a straight Road Scheme from Elgin Fountain to District Office and from Kothwal Krishniah's street to Chamundeswari Road". The notification under Section 18 declared that the acquisition were being made "for the second stage of the Straight Road Scheme". There is no mention of the purpose of shopping sites in the notification. But the objection now taken before us was never before raised by the appellants. It was not raised even in the High Court. It is borne out from the record that the scheme did include a provision for the acquisition of land for shopping sites. The Government Order, dated April 24, 1961, refers to an earlier Government Order of January 3, 1957. The Government Order of January 3, 1957, states that the Government's sanction was accorded to the scheme "for the formation of straight road and shopping sites". It cannot accordingly be urged that the scheme did not contain any such provision. Although the notification under Sections 16 and 18 and the notice served upon the appellants under Section 16(2) did not disclose that the land was being acquired for shopping sites, we are satisfied that no prejudice has thereby been caused to the appellants in making representation against the scheme. At the time of filing their objections, the appellants were aware of the fact that the scheme also provide for shopping sites. According to Paragraph 1 of Smt. Venkatamma's objection, the scheme was illegal as it was meant "to beautify and straighten recently proposed road and to construct the shops which is nothing but a profiteering scheme". Paragraph 13 of the objection stated that the space set apart in the scheme for the construction of shops, should be given to the owner. So Smt. Venkatamma and others were aware of the fact that their land was being acquired also for shopping sites. They had made objections against that part of the scheme. They had said all that could be said against that part of the scheme. But their objection was not accepted. U. L. Vishwanatha Rao and others had applied to the Board for allotment of a shop site to them. Thus they were also aware of the fact that the scheme also provided for the acquisition of land for shopping sites. In the result we find no substance in the argument.

7. The next argument is that the land cannot be acquired for shopping sites. It seems to us that the Board is competent to acquire land for shopping sites. Such a power is comprehended to Section 15(1)(b) and Section 15(2)(d). According to Section 15(1)(b) the improvement scheme may provide for the construction of buildings. Shops are buildings. So land may be acquired for building shops. According to Section 15(2)(d) the scheme may provide for the establishment or construction of markets. It appears to us that the construction of shops is in effect the construction of a market. So the acquisition of land for shopping sites is permissible under the Act.

8. The last argument is that the land for shopping sites is not being acquired for a public purpose because the scheme is that the shopping sites would be let out to private individuals who will erect shops thereon. It is said that it amounts to the acquisition of the land of A for the purpose of giving it to B, and that is not permissible under our Constitution. Support is sought to be given to the argument by the assertion that compensation for the shopping sites was to be paid not by the Board, but by private individuals to whom they would be let out. On July 26, 1943, certain merchants of the city gave an application to the Board for allotment of shopping sites to them. They stated in their application that they were prepared to meet the cost of acquisition which was expected to amount to

rupees four lakhs. On July 28, 1943, the Board passed a resolution regarding the scheme. The resolution stated that it was understood that the scheme could be self-supporting as several merchants had already proposed to deposit the costs of acquisition for shopping sites. But from these two documents no inference can be drawn that the compensation amount was not to come from the funds of the Board. The resolution of the Board, dated November 27, 1945, which rejected the objections of the owners of the land proposed to be acquired, does not make any mention of the payment of compensation by private individuals. Similarly, the Board's resolution, dated January 30, 1946, rejecting another set of objections to the scheme, does not make any mention of payment of compensation by private individuals. There is no evidence on record to show that compensation would not be paid from the funds of the Board.

9. Any purpose which directly benefits the public or a section of the public is a public purpose. This is not denied. It does not require much argument to show that the shops would cater for the needs of the persons living in the locality. But for the shops proposed to be built, the residents of the locality would have to go to distant parts of the city for shopping. So the building of shops in the locality would add to the comfort and convenience of the persons living there. Accordingly the land is being acquired for a public purpose.

10. In *Arnold Rodricks and Another v. State of Maharashtra*, ((1966) 3 SCR 885 : AIR 1966 SC 1788 : (1967) 1 SCA 384) land was acquired for "development and utilisation of industrial and residential areas". The majority as well as the minority judgments held that the land was acquired for a public purpose. The argument that the land was being acquired from A for the purpose of giving it to B was not accepted. Speaking for the majority Sikri, J. (now Chief Justice) said : "It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good". Wanchoo, J., in his separate judgment expressed himself more emphatically. He said that there was "no reason why the State or the local authority should not have the power to see that further development takes place even through private agencies by lease, assignment or sale of such land. So long as the object is development and the land is made fit for the purpose for which it is acquired, there is no reason why the State should not be permitted to see that further development of the land takes place in the direction for which the land is acquired and even though that may be through private agencies" Indeed, development partly with the aid of private agencies has generally been adopted by various statues dealing with the improvement of cities in this country. So this argument also cannot be accepted.

11. There is no force in the appeals. They are accordingly dismissed with costs, only one set.

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