

Nagpur Improvement Trust and Another

Vs.

Vithal Rao and Others

Civil Appeal No. 2139 of 1968

(CJI S. M. Sikri, A. N. Ray, S. N. Dwivedi, D. G. Palekar, M. H. Beg, I. D. Dua, J. M. Shelat JJ)

11.12.1972

JUDGMENT

SIKRI, C.J. -

1. This appeal by certificate of fitness granted by the High Court of Judicature at Bombay, Nagpur Bench, is directed against the judgment of the High Court in Writ Petition No. 504 of 1967 filed under Article 226 and 227 of the Constitution, by Vithal Rao, respondent before us, hereinafter referred to as the petitioner.

2. The petitioner was a tenant of some fields in village Binakhi in Patwari Circle No. 10, Nagpur. He had applied to the Agricultural Lands Tribunal under a local act for fixing the purchase price of the said fields. On May 3, 1962, a notice was issued under Section 39 of the Nagpur Improvement Trust Act, 1936, hereinafter referred to as the Improvement Act. Section 39 of this Act deals with the preparation, publication and transmission of notice as to improvement schemes and supply of documents to applicants.

3. On November 17, 1961 the Improvement Trust applied for sanction of its scheme by the Government and on January 9, 1965, the Government sanctioned the scheme under Section 45 of the Improvement Act. On February 28, 1966 proceedings were started before the Land Acquisition Officer and on June 12, 1967 an award was passed by the Land Acquisition Officer fixing the compensation at Rs. 45,910 for 44.19 acres of land acquired.

4. On June 15, 1967, the petitioner filed the writ petition under Articles 226 and 227 of the Constitution. In this petition the validity of the Improvement Act was challenged on various grounds, one of the grounds being that the Improvement Act was in violation of Article 14 of the Constitution inasmuch as it empowered the acquisition of lands at price lower than those which would have been payable if they had been acquired under the Land Acquisition Act, 1894.

5. The High Court held that as the acquisition is by the State in all cases where the property is required to be acquired for the purposes of a scheme framed by the Trust and such being the position, it is not permissible without violating the guarantee under Article 14 of the Constitution for the State to acquire any property under the provisions of the Land Acquisition Act as amended by the Improvement Trust Act insofar as they relate to the basis of determination and payment of compensation. It must, therefore, be held that the provisions of Paragraphs 10(2) and 10(3) insofar as they add a new clause (3)(a) to Section 23 and a proviso to sub-section (2) of Section 23 of the Land Acquisition Act are ultra vires as violating the guarantee of Article 14 of the Constitution.

6. In the result the petition was allowed, the award set aside, and the matter was remanded to the Land Acquisition Officer for determination of compensation according to the law and in the light of the decision by the High Court.

7. As the case was important, the High Court granted a certificate under Article 132(1) and Article 131(1)(c) of the Constitution.

8. Before we deal with the contentions of the learned counsel for the appellant we may briefly examine the relevant provisions of the Improvement Act. This Act came into force on December 25, 1936. It was passed before the Government of India Act. 1935 came into force. The preamble states :

"Whereas it is expedient to make provision for the improvement and expansion of the Town of Nagpur in the manner hereinafter provided ....."

9. Section 3 of the Act creates the Nagpur Improvement Trust as a body corporate. Chapter IV of the Act deals with the Improvement schemes. Section 26 provides for the matters which may be included in an improvement scheme. One of the matters is "the acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme". Section 27 describes various types of improvement schemes. They are : (a) a general improvement scheme; (b) a re-building scheme; (c) a re-housing scheme; (d) a street scheme; (e) a deferred street scheme; (f) a development scheme; (g) a housing accommodation scheme; (h) a future expansion or improvement scheme and (i) a drainage or drainage including sewage disposal scheme.

10. The scheme in pursuance of which the lands in the present case were acquired was a housing accommodation scheme. Section 39, as stated above, provides for the issue of a notice after an improvement scheme has been framed. Under Section 41, the Trust is obliged to serve a notice of the proposed acquisition of land on certain persons. Section 43 enables the Improvement Trust to abandon an improvement scheme, after considering any objection, representation or statement of dissent received and after hearing all persons, or to apply to the State Government for sanction to the scheme with such modifications, if any, as the Trust may consider necessary. The decision would be that of the Improvement Trust.

11. Section 44 gives wide powers to the Government to sanction with or without modification or to refuse a sanction or to return for consideration any improvement scheme submitted to it under Section 43. Under Section 45 the State Government is obliged to notify the sanction of an improvement scheme. Section 46 enables the Trust to alter an improvement scheme before it has been completed, subject to certain conditions.

12. Chapter V deals with the powers and duties of the Trust where a scheme has been sanctioned. Chapter VI deals with acquisition and disposal of land. Under Section 58 the Trust is enabled to acquire by purchase, lease or exchange any land within the area comprised in a sanction scheme. Section 59 deals with compulsory acquisition and may be set out in full. It provided :

"59. The Trust may, with the previous sanction of the State Government acquired land under the provisions of the Land Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act".

13. Section 60 says that "a Tribunal shall be constituted, as provided in Section 62, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under

the Land Acquisition Act, 1894". Section 61 modifies the Land Acquisition Act in the following words :

"For the purpose of acquiring land under the Land Acquisition Act, 1894, for the Trust -

(a) the Tribunal shall except for the purposes of Section 54 of that Act, be deemed to be the Court, and the President of the Tribunal shall be deemed to be Judge thereunder;

(b) the Act shall be subject to the further modifications as indicated in the Schedule;

(c) the President of the Tribunal may summon witnesses and enforce their attendance and may compel the production of documents, by the same means, and so far as may be, in the same manner, as is provided in case of Civil Court under the Code of Civil Procedure, 1908; and

(d) the award of the Tribunal shall be deemed to be the ward of the Court under Land Acquisition Act, 1894, and shall be final".

14. We need not deal with the provisions dealing with the constitution of the Tribunal, remuneration of its members, etc.

15. Section 68 enables an owner to apply to the Trust requesting that the acquisition of land not required for the purpose of a scheme may be abandoned on his executing an agreement to observe conditions specified by Trust in respect of the development of the property and to pay a charge to be calculated in accordance with sub-section (2) of Section 69 of the Act. The Trust can abandon an acquisition without requiring sanction of the Government.

16. The Scheduled modifies the Land Acquisition Act in various respects. The relevant modification are these :

(1) After clause (e) of section 3, the following clause shall be deemed to be inserted, namely, -

"(ee) the expression 'local authority' includes the Trust constituted under the Nagpur Improvement Trust Act, 1936".

2. (1) The first publication of a notice of an improvement Trust scheme under Section 39 of the Nagpur Improvement Trust Act, 1936, shall be substituted for, and have the same effect as publication in the official Gazette, and in the locality of, a notification under sub-section (1) of Section 4, except where a declaration under Section 4 or Section 6 has previously been made and is still in force.

(2) Subject to the provisions of Clauses 10 and 11 of this Schedule, the issue of a notice under sub-section (4) of Section 32 of the Nagpur Improvement Trust Act, 1936, in the case of land acquired under that sub-section, and in any other case the publication of a notification under Section 45 of the Nagpur Improvement Trust Act, 1936, shall be substituted for, and have the same effect as a declaration by the State Government under Section 6, unless a declaration under the last mentioned section has previously been made

and is in force.

3. The full-stop at the end of Section 11 shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely -

"and

(iv) the cost which, in his opinion, should be allowed to any persons who is found to be entitled to compensation and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of Section 23 as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the collector.

The Collector may disallow wholly or in part costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant".

#4. ....##

5. (1) In sub-section (3) of Section 17 after the figure "24" the words, figures, and letter "or Section 24-A" shall be deemed to be inserted.

(2) To Section 17, the following shall be deemed, to be added, namely :

"(5) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession".

17. Para 6 of the Schedule inserts Section 17-A. It reads :

"17-A. In every case referred to in Section 16 or Section 17, Collector shall, upon payment of the cost of acquisition, make overcharge of the land to the Trust and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition".

18. Para 10 amends Section 23 thus :

#"10(1) .....##

10(2) The full-stop at the end of sub-section (2) of Section 23 shall be deemed to be change to a colon, and the following proviso shall be deemed to be added :

"Provided that this sub-section shall not apply to any land acquired under the Nagpur Improvement Trust Act, 1936, except -

(a) building in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(b) gardens not let to tenants but used by the owners as a place of resort".

10(3) For the purposes of clause first of sub-section (1) of this section -

(a) the market value of the land shall be the market value according to the use to which the land was put is the date with reference to which the market value is to be determined under that clause; ....."

19. Another advantage which is said to accrue to these persons is provided by Section 48-A, as inserted by Para 14. It reads :

"48-A. (1) If within a period of two years from the date of the publication of the declaration under Section 6 in respect of any land, the Collector has not made an award under Section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply so far as may be, to the determination of the compensation payable under this section".

20. It would be seen that the effect of the modifications in two respects is tremendous. First, the owner whose land is acquired under the Improvement Act is paid compensation not according to the market value of the land but the market value according to the use to which the land was put at the date with reference to which the market value is to be determined in that clause. In other words, if the land is being used for agricultural purposes, even though it has a potential value as a building sit, the potential value is to be ignored. The second respect in which the owner suffers if the land is acquired under the Improvement Act is that he does not get a solatium of 15% which he would have got if the land had been acquitted under the Land Acquisition Act. It is true that he has some minor advantages which have been pointed out by the learned counsel but they have no comparison in value to the loss suffered by virtue of the market value being determined according to the use to which the land was being put or the loss of 15% of the market value of the land.

21. The first point which was raised was : whether it is the State which is the acquiring authority or it is the Improvement Trust which is the acquiring authority, under the Improvement Act. It seems to us that it is quite clear, especially in view of Section 17-A as inserted by Para 6 of the Schedule, that the acquisition will be by the Government and it is only on payment of the cost of acquisition to the Government that the lands vest in the Trust. It is true that the acquisition is for the Trust and may be at its instance, but nevertheless the acquisition is by the Government.

22. If this is so, then it is quite clear that the Government can acquire for a housing accommodation scheme either under the Land Acquisition Act or under the Improvement Act. If this is so, it enables the State Government to discriminate between one owner equally situated from another owner.

23. This Court held in *Nandeshwar Prasad v. U.P. Government* (AIR 1964 SC 1217 : (1964) 3 SCR 425 : (1965) 1 SCJ 90) that the fact that the lands could be acquired for a scheme under the Kanpur Urban Development Act (U.P. Act VI of 1945) did not prevent the Government from acquiring the lands for the same purpose under the Land Acquisition Act (as amended by the Kanpur Act). We may mention that the Kanpur Act amended the Land Acquisition Act by the Schedule for the purpose of acquisition of land for the Board in a similar manner as in the Nagpur Improvement Trust Act.

24. A similar point was abandoned in *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras* ((1965) 1 SCR 614, 619 : AIR 1965 SC 1017 : (1964) 2 SCJ 703) by Mr. Viswanatha Sastri in view

of the above decision of this Court in Kanpur case.

25. The question then arises whether the High Court is right in holding that the impugned provisions were hit by Article 14 of the Constitution.

26. It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests : (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be born in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purpose ?

28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is a politician or an advocate. Why is this sort of classification not sustainable ? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired ? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building ? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value ? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determination compensation. The position is different when the owner of the land himself is the recipient of the benefit from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land ? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.

31. It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for

hospital, one law for acquiring lands for schools, one law acquiring land for clearing slums, another for acquiring lands for Government building; one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. The neighbour could sell his land and reap the unearned increment. If the object of the legislature is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece meal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owner whose lands are acquired, unless as we have said the owners are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.

32. It will not be denied that a statute cannot tax some owners of land leaving untaxed others equally situated. If the owners of the land cannot be taxed differently how can some owners be indirectly taxed by way of compulsory acquisition ? It is urged that if this were the law it will tie the hands of the State in undertaking social reforms. We do not agree. There is nothing in the Constitution which debars the State from bettering the lot of millions of our citizens. For Instance there is nothing to bar the State from taxing unearned increment if the object is to deny owners the full benefit of increase of value due to development of a town. It seems to us, as we have already, said, that to accede to the contentions of the appellant and the State would be destructive of the protection afforded by Article 14 of the Constitution. The State would only have to constitute separate acquiring bodies for each city, or Division or indeed to achieve one special public purpose and lay down different principle of compensation.

33. In *P. Vajravelu Mudaliar v. Special Deputy Collector Madras* (supra), there were two Acts under which the land of an owner could be acquired. The land could have been acquired for various schemes under the Land Acquisition Act, referred to as the Principal Act, in the judgment, and the Amending Act [The Land Acquisition (Madras Amendment) Act, 1961]. This court observed :

"The land could have been acquired for all said purpose under the Principle Act after paying the market value of the land. The Amending Act empowers the State to acquire land for housing scheme at a price lower than that the State has to pay if the same was acquired under the principal Act".

The Court examined various justifications for the classifications which were put forth by the State, and then concluded :

"From whatever aspect the matter is looked at, the alleged differences have not reasonable relation to the object sought to be achieved. It is said that object of the Amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the house. It is one thing to say that the existence differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owing lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said

categories can be acquired under the Amending Act. So, too, for a public purpose any such land can be acquired under the Principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Article 14 of the Constitution and is void".

34. In *Balammal and Others v. State of Madras* ((1969) 1 SCR 90 : AIR 1968 SC 1425 : (1969) 1 SCJ 209) in which the facts are substantially similar, the Board constituted under the Madras City Improvement Trust Act (Madras Act 16 of 1945), was authorised by virtue of Section 71, with the previous sanction of the Government, to acquire land under the provisions of the Land Acquisition Act, 1894 for carrying out any of the purposes of the Act which included Town Expansion Scheme (This Section 71 is equivalent to Section 59 of the Improvement Act). For the purpose of acquiring land for the Board under the Land Acquisition Act, 1894, Section 73 provided inter alia, that the said Act shall be subjected to the modifications specified in the Schedule (This Section 73 corresponds to Section 61 of the Improvement Act). The Schedule to the Act provided for modification in the Land Acquisition Act for certain specific purposes. The Madras Act of 1945 as replaced by the Madras City Improvement Trust Act (Madras Act 37 of 1950) made an important change inasmuch as the result was that by the change persons whose lands were compulsorily acquired under the Madras act 37 of 1950 were deprived of the right to the solatium which would be awardable if the lands were acquired under the Land Acquisition Act. In this connection this Court observed :

"But in our judgment, counsel for the owners is right in contending that sub-clause (2) of Clause 6 of the Schedule to Act 37 of 1950, insofar as it deprived the owners of the lands of the statutory addition to the market value of the lands under Section 23(2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value 15% statutory under Section 23(2) of Land Acquisition Act. But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which is also a public purpose the owners are, it is claimed, deprived of the right to that statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market value for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the law arises, and the owners of land which are compulsorily acquired must on the decisions of this Court, be deemed invalid".

After reviewing some earlier cases, the Court held :

"We therefore, hold that Clause 6, sub-clause (2) of the Schedule, read with Section 73 of Madras Act 37 of 1950 which deprives the owners of the statutory right to solatium at the rate of 15% on the market value of the lands, is invalid, and the owners of the lands are entitled to the Statutory solatium under Section 23(2) of the land Acquisition Act in consideration of compulsory acquisition of their land".

35. The learned counsel was not able to satisfy us that the above case was distinguishable. We are of

the opinion that the case was rightly decided and must govern this case. In this view of the matter, it is not necessary to refer to all the cases referred to us at the Bar. We may mention that Mr. Tarkunde also placed reliance on Article 31(A)(1)(a) of the Constitution. It is now well settled that Article 31(A)(1)(a) has relevance to agrarian reforms and development. It has nothing to do with acquisition of land for building of a capital of a State.

36. In the result the appeal fails and is dismissed with costs.

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