

Laxmichand

Vs

Indore Improvement Trust, Indore and Another

Hiralal

Vs

Indore Improvement Trust, Indore and Others

Writ Petitions Nos. 517 of 1972 and 240 of 1973

(K. K. Mathew, V. R. Krishna Iyer, P. K. Goswami JJ)

24.02.1975

JUDGMENT

GOSWAMI, J.

1. This judgment will govern Writ Petitions Nos. 517 of 1972 and 240 of 1973.
2. The applications are directed against what is described as a Housing Accommodation Scheme sanctioned by the Indore Improvement Trust (briefly the Trust) under the Madhya Pradesh Town Improvement Trust Act, 1960 (briefly the Act). Brief facts of Writ Petition No. 517 of 1972 may alone be sufficient. There was an earlier attempt to acquire the land of the petitioner by sanctioning a scheme in July, 1961, but the same was cancelled some time in September, 1962. The petitioner personally wanted to develop his land for industrial purposes and with that end in view obtained No Objection Certificates from various government departments as well as from the Trust. The petitioner also succeeded in covering his patta from agricultural purpose to industrial purpose, subject, inter alia, to the limitation that the construction work on the land shall be carried out in accordance with the plans sanctioned by the same Improvement Trust (Annexure 'G'). Later, however, the petitioner found from a letter of the Trust of October 26, 1964, that a scheme was being approved for his land and other neighbouring lands, and therefore, the Trust was unable to issue the No Objection Certificate for development of his land on individual basis. The Trust framed a Scheme No. 62 under Section 46(1) of the Act and published a notice to that effect in the Gazette and in local newspapers in January, 1965. The scheme includes that land of the petitioner. The representations which the petitioner made against the scheme were of no avail. The Trust served a notice dated February 10, 1965, upon the petitioner under Section 48(1) of the Act proposing to acquire his land for the purpose of the scheme. The petitioner submitted his objections on April 15, 1965, stating, inter alia, that the land was being developed into industrial area and several small scale industries were functioning there and as such development was already in progress. It was also stated "that the land having been put to the use of industrial purposes could not be reconverted for the purpose of housing accommodation". It was further stated that the land was mortgaged to the State Bank for about Rs. 2 lakhs and the compensation that would be required to be paid by the Trust would be necessarily higher than in the case of other suitable vacant lands. The petitioner was given a hearing but ultimately the representations were rejected. The Trust duly applied to the State

Government for sanction of the scheme which was accorded on April 19, 1968, under Section 51 of the Act. The Trust published a notice dated July 12, 1968, under Section 68(1) of the Act declaring its intention to acquire the land. The petitioner filed his objections under Section 68(2) against the proposed acquisition of the land but these, were rejected and the Trust obtained sanction of the State Government (respondent No. 2) to acquire the land under Section 70 of the Act, and the notification was duly published on September 27, 1968. Thereafter the Trust published a notification in the Government Gazette, dated September 8, 1972, acquiring the said land and under Section 71(2) of the Act the land vested absolutely with the Trust free from encumbrances from the date of the publication. Before the Trust could take possession of the petitioner's land, he filed the writ application under Article 32 of the Constitution and obtained rule nisi and interim stay of dispossession was granted pending disposal of the matter.

3. The following are the common submissions made on behalf of the petitioners :

1. The Housing Accommodation Scheme is invalid because it does not specify the class of inhabitants for whom the same has been made.
2. The scheme being a Housing Accommodation Scheme, it is for residential occupation only and it is not competent to include plans for industrial purposes.
3. Section 31 of the Act does not empower the Trust to frame a scheme for industrial purposes at all.
4. There is no application of the mind in terms of Section 45 in making the scheme.
5. The acquisition of the land for the purpose of the scheme is mala fide.
6. Since the Act makes no provision for payment of interest from the date of delivery of possession of the land to the Trust to the determination of compensation by the Tribunal, acquisition of the land is violative of Article 31(2) of the Constitution.

4. At the very outset it should be pointed out that the petitioners have not challenged the vires of any provisions of the Act.

5. In order to appreciate the first three submissions, which may be taken up together, we may note a few relevant provisions of the Act.

6. Chapter IV of the Act describes the contents of improvement schemes. Section 30 provides that an improvement scheme may provide for all or any of the following matters, namely -

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(j) the provision for accommodation for any class of inhabitants :

Section 31 may be set out in full :

31. Types of improvement schemes. - An improvement scheme shall be of one of the following types or may combine any two or more of such types or of any special features thereof, that is to say -

- (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 town expansion scheme;
- (i) a drainage or drainage including sewage disposal scheme; and
- (j) a playground, stadium and recreation ground scheme.

Section 38, Housing accommodation scheme. - Whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within the Trust area, the Trust may frame a housing accommodation scheme for such purpose.

Section 39, Town expansion scheme. - (1) Whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future improvement or expansion of a town to which this Act is applicable, the Trust may frame a town expansion scheme for such town.

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(3) Such scheme shall show the methods in which it is proposed to lay out the area to be developed and the purposes for which the particular areas are to be utilised.

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7. It is submitted on behalf of the petitioners that the impugned scheme is not a housing accommodation scheme under Section 38 but a scheme purely for industrial purposes. IT is pointed out that there is no reference in the scheme to the class of inhabitants within the Trust area for whose accommodation the scheme has been framed under Section 38. Since it is a housing accommodation scheme it cannot include plans for industrial purposes.

8. The argument fails to take count of Section 31 which permits in terms for combining two or more schemes or supplementing some special features of a particular scheme in another scheme. In other words Section 31 envisages composite schemes. Section 39 which provides for a town expansion scheme authorises under sub-section (3) to indicate the method of layout as well as the purposes for which particular areas under the scheme may be utilised. This section goes to show that there is no legal bar in framing a housing accommodation scheme with some of the features of a town expansion scheme which will even indicate the purposes for which particular areas may be utilised. There is nothing in the Act to ban industrial purposes from consideration under Section 39(3). The

fact that a scheme is described merely as a housing accommodation scheme does not prevent the adaptation of the scheme to the incidental requirements which may be overlapping in another scheme. We are also not satisfied that housing accommodation scheme must necessarily be a residential scheme only and that it cannot admit of providing housing accommodation for any other purpose or object. The Madhya Pradesh High Court took the same view in Beni Prasad Tandan v. Jabalpur Improvement Trust (1970 MPLJ 292).

9. Again it is difficult to appreciate how Section 31 prevents the Trust from framing an industrial scheme. We do not find anything in Section 31 or in any of the provisions of the Act disabling the Trust from framing a scheme for industrial purposes. To mention only Section 39, it is clear that under that section a town expansion scheme may be framed even without the limits of the town and that would indicate that a town expansion scheme may envisage industrial expansion to meet the growing needs of the community. We, therefore, do not see any substance in the aforesaid three submissions on behalf of the petitioners.

10. With regard to the fourth submission of the petitioners, it is difficult to accept the same. Section 45 requires certain matters specified in (a) to (c) therein to be considered when framing an improvement scheme. The specified matters touch on the inherent utility, efficiency and adequacy of the scheme and the objections and representations of the persons affected will be directed to negative such assumptions. The scheme in question was open to inspection. There was no ambiguity or vagueness about the scheme or its purposes. From even the nature of the representations and objections it is apparent that the Trust did have all relevant matters in their mind in framing the scheme. Indeed without actually taking into consideration the various matters specified in Section 45 it may not be possible to frame a scheme and finally to obtain sanction of the Government in the teeth of objections and representations against the same. Where factual satisfaction is evident formal recitals being omitted may not matter. At any rate sub-section (2) of Section 52 puts a final seal of imprimatur on the scheme after publication of the sanction of the Government. The submission is, therefore, devoid of merit.

11. With regard to the fifth submission, which is actually urged by the petitioner in Writ Petition No. 517 of 1972, we are not satisfied that the acquisition of the land for the purpose of the present scheme is mala fide. It is submitted that the Trust by formulating the present scheme had an oblique motive to change the ownership of the land already under a private scheme for development to let it out to tenants who will run the existing enterprises already started on the land. We are not satisfied that any oblique motive can be attributed to the Trust in making the impugned scheme. It is clear that the land was originally owned by the petitioner for agricultural purpose and when he obtained a patta converting it to industrial purpose, it was clearly made subject to a condition that construction work on the land shall be carried out in accordance with the plans sanctioned by the Trust. The petitioner had been given reasonable opportunity to submit representations and was given a hearing by a Committee constituted under the Act. The State Government on the application of the Trust examined the scheme was sanctioned the acquisition was in public interest. There is no particular allegation of mala fide against the State Government whose sanction was a pre-requisite for the acquisition. The order of acquisition cannot, therefore, be characterised as mala fide and the submission fails.

12. With regard to the sixth and last submission there was a good deal of argument at the Bar. The respondents urged that this point was not specifically taken in the petitions. Under Sections 72(1) of the Act where any land is acquired by the Trust it shall pay for such acquisition "compensation the amount of which shall be determined in accordance with the provisions hereinafter contained".

Under Section 73 a tribunal is constituted for the purpose of determining the amount of compensation. Section 77 provides for matters to be considered for determining compensation, namely, "firstly, the market value of the land at the date of the publication of the notification under sub-section (1) of Section 68" and six other factors. It is also provided in the same section that the Tribunal shall not take into consideration certain factors mentioned under eight heads. Under sub-section (2) of Section 77 "in addition to the market-value of the land as above provided, the Tribunal shall in every case award a sum of fifteen percent or such market-value in consideration of the compulsory nature of the acquisition". There being no provision for payment of interest from the date of compulsory acquisition of the land upto the date of payment, acquisition, it is submitted, is invalid in law.

13. It is true that there is no provision for awarding interest unlike under the Land Acquisition Act, 1894 (See Sections 28 and 34 of that Act). It is, however, submitted on behalf of the respondents that there is no bar under the Act against awarding interest by the tribunal even though there is no enabling express provision to that effect under the act. It is stated that the Tribunal under Section 78 exercise powers for summoning witnesses and enforcing attendance, etc., in the same manner as provided in the case of civil courts under the Code of Civil Procedure. Under Section 147 an appeal from the Tribunal lies to the High Court in cases where the value of the claim exceeds Rs. 500 and in any other case to the District Judge. It is, therefore, submitted that the Tribunal is empowered even as a civil court to award interest under Section 34 of the Civil Procedure Code. Section 34 of the Civil Procedure Code, however, authorises the Court to award interest from the date of the suit to the date of the decree and thereafter to the date of payment. Section 34, therefore, would not come to the aid of the Tribunal to award interest from the date of delivery of possession of the land to the date of determination of compensation.

14. The respondents relied upon the decision of this Court in *Satinder Singh v. Amrao Singh* ((1961) 3 SCR 676 : AIR 1961 SC 908) In this case this Court had to deal with Section 5(e) of the East Punjab Acquisition and Requisition of Immovable Property (Temporary Powers) Act, 1948 (briefly the Punjab Act) which provided that an arbitrator in making his award shall have regard to the provisions of sub-section (1) of Section 23 of the Land Acquisition Act, 1894 so far as the same can be made applicable. The submission in that case was that since sub-section (1) of Section 23 is alone mentioned, sub-section (2) of Section 23 is impliedly excluded and necessarily also Section 28 and Section 34 stand excluded. The argument, therefore, was that the Tribunal was not empowered to award interest under the Punjab Act. Repelling the said argument this Court held as follows :

It would be legitimate to hold that by the application of Section 23(1) in terms the provisions of Section 23(2) are by necessary implication excluded. If the Legislature has provided that only one part of Section 23 should be applied it would be reasonable to hold that the other part of Section 23 was not intended to be applied; but we do not see how it would be reasonable to hold that by the application of Section 23(1) the principles underlying the provisions of Section 28 and 34 are also excluded. Therefore, it is necessary to examine this question on general grounds and principles without assuming that the application of these general considerations is excluded by any of the provisions of the Act.

This Court finally held as follows :

The power to award interest on equitable grounds or under any other provisions of the law is expressly saved by the proviso to Section 1 (of the Interest Act, 1839)

We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right; and so, the proviso to Section 1 of the Interest Act saves the said right. The Court in that case, therefore, awarded interest to be claimants.

15. The petitioners on the other hand drew our attention to a decision of this Court in *Godhra Electricity Co. Ltd. v. State of Gujarat* ((1975) 1 SCC 199), where one of us, Mathew, J., speaking for the Court held as follows : (pp. 209-210, para 23)

There can be no doubt about the correctness of the general rule under which a purchaser who takes possession is charged with interest on his purchase money from that time until it is paid. This rule has been applied to compulsory purchases (see *Satinder Singh v. Amrao Singh*). But the question is whether the arbitrator has power under the act to award interest in the purchase price. In *Toronto City Corpn. v. Toronto Rly. Corpn.* (1925 AC 177, 193 - 194) the Privy Council held that the general rule under which a purchaser who takes possession is charged with interest on his purchase money from that time until it is paid was well established, and had on many occasions been applied to compulsory purchases but the duty of the arbitrators in that case was not to determine all the rights of the company, but only to ascertain the actual value of certain property at a certain time and that it was a truism to say that such value could not include interest upon it and that the liability for interest lay outside of the arbitration for its enforcement.

16. Although in the *Godhra Electricity Co.'s* case (supra) the Court has noticed the decision in *Satinder Singh's* case (supra), it may be observed that the Court's attention in the latter case was not drawn to Section 5(g) of the Punjab Act to the following effect :

Save as provided in this section and in any rules thereunder, nothing in any law for the time being in force shall apply to arbitration under this section. And the Court, therefore, in that case rendered the decision "without assuming that the application of these general considerations is excluded by any of the provisions of the Act". In view of the *Godhra Electricity Co.'s* case it is not possible to hold that the Compensation Tribunal which is at par with an arbitrator, will be entitled to award interest without any express provision in the Act. This is particularly so since under the Act the Tribunal is entitled to take into consideration some given factors and to peremptorily ignore certain other specified factors in determining the compensation. It has also been empowered to grant solatium as similarly provided for under the Land Acquisition Act. In the entire scheme of the self-contained Act, in absence of a provision to authorise the Tribunal to award interest, it is not possible to hold that it can award interest on the amount of compensation determined by the Tribunal subsequent to the acquisition of the land. The petitioners are, therefore, right in their contention that this Act does not provide for awarding interest from the date of taking possession of the property to the date of determination of compensation, which will always be on a later date under the provisions of the Act (see Sections 72 and 73).

17. The petitioners, however, have an indirect object. They are not interested in the interest a such but want the land back and will not be satisfied unless the order of acquisition is quashed.

Unfortunately, however, it is not possible for this Court to quash the acquisition in these cases in absence of a challenge of the vires of the provisions of the Act. Presumption of constitutionality will forbid casting an evil eye on the Act in absence of a clear challenge. The Act must be assumed to be valid for the purpose of these petitions and we will proceed on that basis. Then law being valid the attack will reverberate upon the quantum of compensation, pure and simple. It is sufficient to point out that the quantum of compensation which may be determined according to the provisions of the Act for acquisition of the land cannot be challenged under Article 31(2) of the Constitution. In that view of the matter this submission of the learned Counsel also fails.

18. In Writ Petition No. 240 of 1973, Mr. Patel additionally that publication of the notice of the scheme was not made in accordance with Section 46(2) of the Act which requires weekly publication in the Gazette for three consecutive weeks. Apart from the fact, in this case, that the petitioner was well aware of the scheme and submitted objections and representations, Section 52(2) appears to be conclusive on the question. That sub-section provides that the publication of a notification by the State Government sanctioning the scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. In view of this, ticklish skirmishes over publication on technical ground at a distant date are completely out of place. The submission is devoid of merit.

19. In the result both the writ petitions fail and are dismissed with no order as to costs.

20. We should observe that Mr. Shroff pointed out that in view of the decision of the Supreme Court in Satinder Singh's case (supra) and another decision of the Madhya Pradesh High Court in Lakhanlal v. Town Improvement Trust, Jabalpur (1970 MPLJ 316), the Tribunal has been always awarding interest in acquisition cases under the Act and he undertakes on behalf of the respondents, irrespective of our decision, to pay interest for the petitioner at 6% per annum from the date of actual delivery of possession upto the date of payment of the compensation.

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