

Gulam Mustafa and Others

Vs

The State Of Maharashtra and Others

Civil Appeal No. 675 of 1968

(V.R. Krishna Iyer, Syed M. Fazal Ali JJ)

18.09.1975

JUDGMENT

KRISHNA IYER, J. -

1. Brevity will do no inequity in this appeal where three points were urged but only one survives for serious scanning. The subject-matter is the validity of land acquisition proceeding whereby a municipality compulsorily purchased the appellant's land for the stated public purpose of running a country fair or market (mondha) under the Hyderabad Land Acquisition Act (for short, the Act) which is closely similar to the Land Acquisition Act, 1923 (sic 1894) (Central Act). The first charge is that the High Court dismissed the writ petition in limine, Seven years after the 1968 event, we cannot consider sending back the case even if there be justice in the submission. We have therefore heard Counsel Shri Deshpande on his substantive grievances. The second contention is that there is no 'public purpose' to support the acquisition which is allegedly ultra vires the municipality's powers. We disagree. Providing a village market is an obvious public purpose and a municipal facility. The last plea which has been pressed strenuously is that the acquisition exercise is bad being mala fide - an uphill task to make out against a public body. Was this colourable exercise of power ?

2. Striking down any act for mala fide exercise of power is a judicial reserve power exercised lethally, but rarely. The charge of mala fides against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant. Even so, we will examine the merits of the contention here from the point of view of the serious factors placed for our consideration.

3. Was this acquisition done colore officii ? The circumstances relied on may be examined from this standpoint. Section 5 (3) of the Act provides for declaration of the public purpose, like Section 6(3) of the Central Act. This declaration was made in 1960 and covered at least 28 acres of land belonging to the appellant. His Counsel contends that there is no public purpose mentioned in the notification because what is stated is 'government purpose'. There is no force in this terminological deviation. The purpose has been set down as for a 'mondha' or 'country fair' which is obviously a public purpose. So Counsel shifted to another shade of the same argument and stated that 'mondha' is not a word known to law and has not been defined anywhere and so such a purpose cannot be taken cognizance of by the law. We cannot agree to the linguistic game masquerading as a legal point. It is plain that a 'mondha' is a country fair or village market. 'Market' is defined in Section 2 (20) of the Hyderabad District Municipalities Act in wide terms, and Section 72 of the said Act enumerates the purposes for which property may be vested in a municipality. This includes 'markets'. It inexorably follows from a joint reading of Sections 2(20) and 72(a) that the purpose of providing a market for the townfolk falls within the powers of a municipality.

4. Failing here, Counsel finally stressed that in any case no market for a small municipal town requires 28 acres of land, especially because the master plan prepared for the municipality had allotted only 15 acres for this purpose. It is not for the Court to investigate into the area necessary for running a market. Moreover there is no mala fides emerging from this circumstance. What has to be established is mala fide exercise of power by the State Government - the acquiring authority - although the beneficiary of the acquisition is eventually the municipality. There is no scintilla of evidence suggestive of malus animus in Government.

5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis of invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in Section 6(3) declaration.

6. There is no merit in the appeal which is dismissed without costs.

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