

General Government Servants Cooperative Housing Society Ltd., Agra

Vs

Sh. Wahab Uddin and Others

Civil Appeals Nos. 2085 of 1978 and 7 & 8 of 1979

(R.S. Pathak, O. Chinnappa Reddy, Baharul Islam JJ)

02.03.1981

JUDGMENT

ISLAM, J. -

1. The above appeals arise out of land acquisition proceedings and involve similar questions of fact and the same question of law. This common judgment, therefore, will dispose of all the three appeals. It will be sufficient, if we refer to the material facts of the Civil appeal 2085 of 1978 only.

2. The land involved, belonged to one Imam Khan as an occupancy tenant. Before the partition of India, he migrated to Pakistan, whereafter his rights in the lands were declared evacuee property. Subsequently, in pursuance of a notification issued under Section 12 of the Displace Persons (Compensation and rehabilitation) Act, 1954, the Central Government acquired the lessee right. As a result of the notification, these rights vested in the Central Government free from all encumbrances. The Central Government thereafter sold these rights by auctions in August/September 1962. The first respondent purchased a plot of land for a sum of Rs. 21,700. He deposited the entire amount with the Managing Officer, Evacuee Property, Agra. A sale certificate was issued to him on September 12, 1962.

3. It appears that one Ramlal Lamba was in the possession of the land in question. He was asked by the Managing Officer, Evacuee Property, to vacate the land, and deliver possession to the first respondent. Instead of delivering possession of the land to the first respondent Lamba, filed a writ petition under article 226 of the constitution in the Punjab High court at Delhi. The writ petition was dismissed on December 4, 1969. He then filed an appeal which was also dismissed on February 2, 1970. He then filed a suit in the Court of the Munsif, Agra, for restraining the Managing Officer, Evacuee Property, from interfering in is possession. Thus the first respondent could not get possession of the land.

4. After the auction sale, the State U. P. (respondent 2 herein) filed a suit under Section 171 of U. P. Tenancy Act, 1939(hereinafter 'the Tenancy Act') against the custodian of the Evacuee property, ad the four auction purchasers including the first respondent, for possession. This suit was dismissed by the assistant Collector, First Class, on March 24, 1969 on the ground that it was not maintainable. An appeal was filed. This was also dismissed on October 24, 1970. Thus before the petitioner could obtain possession of the land, the Collector of Agra (respondent 3 herein) issued a notification under Section 4 of the Land Acquisition Act (hereinafter 'the Act') on March 1, 1970, notifying that the plots in dispute (and several other plots) were intended to be acquired by the State government for construction of residential houses for the members of the General Government Servants Cooperative Housing Society Ltd., Agra, the appellant before, us. The first respondent did not have any

knowledge or information of the said notification under Section 4 of the Act and so he did not, as he could not, file any objection under Section 5-A of the Act. The notification under Section 4 was followed by a notification under Section 6 of the Act on May 4, 1973. After the said notifications, proceedings relating to determination of compensation for the lands were started. In that connection the first respondent was served with notice under Section 9(3) of the Act, calling upon him to prefer his claim for compensation. Thereupon the first respondent filed objections, but before the objections were disposed of he filed a writ petition before the High court of Allahabad. The High court allowed the writ petition and struck down the notification dated May 4, 1973, under Section 6 of the Act. The High court held that as the acquisition was made by the State Government for the benefit of a Cooperative Society, it could do so only after complying with the provisions of Part VII of the Act, and the Land Acquisition (companies) Rules, 1963 (hereinafter called 'the Rules'), but as the State Government did not do so, there was a breach of the principle of natural justice. Repelling the argument of the appellant to the contrary, the High court also held that the first respondent was a 'person interested' within the meaning of Section 3(b) of the Act.

5. Respondents 2,3 and 4 who are co-respondents appearing through Mr. Dikshit before us have supported the case of the appellant.

6. The first question for determination is whether the first respondent is not a 'person interested' within the meaning of Section 3(b) of the L. A. Act and as such he had no locus standi to file the writ petition before the High Court, as contended by the appellant.

7. Section 3(b) of the Act is in the following terms (material portions only) :

3. In this Act, unless there is something repugnant in the subject or context -

(b) the expression "person interested" included all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

8. In support of the argument the appellant refers to Section 45(f) and Section 180 of the Tenancy Act, 1939. Clause (f) of Section 45 provides that the interest of the tenant to recover possession is barred by limitation. The limitation provided is for a period of twelve years, for a suit for ejectment of a person occupying the land without title and for damages - if the land is contiguous to any other land lawfully occupied by such other person - (a) if such person has, at the commencement of the Tenancy Act, occupied the land for more than six years, the period runs from the time the landholders first knew of the unauthorised occupation. In any other case the period of limitation is six years. This point which has been urged for the first time before us is a mixed question of fact and law. It does not appear to have been taken before the High Court. A mixed question of law and fact needing investigation into facts cannot be allowed to be urged for the first time in an appeal by special leave under Article 136 of the Constitution.

9. It is true that admittedly the first respondent was out of possession at the relevant time but there is no evidence before us to show whether or not the land in question was contiguous to any other land occupied by the person who is in possession and that his possession had been lawful. We are therefore not in a position to accept the submission of the appellant that the first respondent's claim was barred by limitation. On the contrary there is ample evidence before us to show that the first respondent had interest in the land in question. We come to this conclusion from the following

circumstances :

(1) a sale certificate had been issued to the first respondent after the purchase of the land in auction sale held in 1962;

(2) the collector, Agra, knew that the first respondent had purchased the land in auction, for he had himself filed a suit for ejection from the land in question under Section 171 of the U. P. Tenancy Act against the first respondent, and that the suit was dismissed by the Assistant collector, First Class, on March 24, 1969; the appeal preferred against the said order had also been dismissed by the commissioner on October 27, 1970;

(3) The Collector issued notice under Section 9(3) of the act calling upon the first respondent to prefer his claim, if any, for compensation of the land acquired. (this amounts to an admission of the first respondent's interest in the land by the Collector); and

(4) that in the counter-affidavit filed by the Collector, in reply to the affidavit filed by the first respondent before the High Court, the claim of the petitioner to get compensation for the rights acquired by the government was not denied by the appellant.

We therefore agree with the High Court that the first respondent was a 'person interested' within the meaning of clause (b) of Section 3 of the Act.

10. The next point urged before us by the appellants is that the first respondent in fact filed objection which was inquired into and he was given an opportunity of being heard. The High Court, therefore, it is contended, was no right in holding that there was a breach of the principle of natural justice. In our opinion, the real question, as urged by the first respondent, is not whether there has been any violation of any principle of natural justice but whether rule 4 of the Rules has been complied with by the Collector. Sub-section (1) of Section 4 of the Act provided that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the official Gazette and that he shall also cause a public notice of the substance of the notification to be given at convenient places in the said locality.

11. Section 5-A of the act provides that any person interested in any land which has been notified under sub-section (1) of Section 4, as being needed or likely to be needed for a public purpose or for a company may, within thirty days (twenty-one days according to the U. P. amendment) after the issue of the notification object to the acquisition of the land or of any land in the locality as the case may be. Under Section 3(e), the expression 'company', inter alia, includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Cooperative Societies Act, 1912 or any other law relating to cooperative society for the time being in force in any State. The appellant - The General Government Servants Cooperative Housing Society Ltd., Agra, is a company. The appellant has not contended to the contrary. It is also not disputed that when land is acquired for the purpose of a company, Part VII of the Act is attracted and the provisions of that Part have to be followed.

12. Rule 4 of the Rules which is material and falls for our interpretation runs thus :

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.-(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely -

- (i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;
- (ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;
- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the Company is in a position to utilise the land expeditiously; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the Company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall, -

- (i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;
- (ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which in the opinion of the Collector, should be acquired for the Company; and
- (iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.-For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under Section 6 of the Act unless -

- (i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any submitted under Section 5-A of

the Act; and

(ii) the agreement under Section 41 of the Act has been executed by the Company.

13. Sub-rule (1) required the government to direct the Collector to submit a report to it on the matters enumerated in clauses (i) to (vi) of the sub-rule (1) which is for the benefit of the company. The purpose is to avoid acquisition of land not suitable for a company. Clause (ii) of sub-rule (1) requires that the company has to make all reasonable effort to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such effort have failed. The purpose of clause (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of clauses (iii), (iv) and (v) are obvious. The purpose of clause (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. sub-rule (2) of rule 4 requires the Collector to give reasonable opportunity to the company so that the Collector may hold an inquiry into the matters referred in sub-rule (1). The Collector has to comply with clauses (i), (ii) and (iii) of sub-rule (2) during the course of the inquiry under sub-rule (1). The Collector under sub-rule (3) then has to send a copy of this report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the land Acquisition Committee constituted under rule 3 for the purpose of advising the government in relation to acquisition of land under Part VII of the Act, the duty of the committee being to advise the government on all matters relating to or arising out of acquisition of land under Part VII of the Act [sub-rule (5) of Rule 3]. No declaration shall be made by the appropriate Government under Section 6 of the Act unless the committee has been consult by the government and has considered the report submitted by the Collector under Section 5-A of the Act. In addition, under clause (ii) of sub-rule (4) of Rule 4, the company has to execute an agreement under Section 41 of the Act. The above consideration shows that Rule 4 is mandatory; its compliance is no idle formality; unless the directions enjoined by Rule 4 are complied wit, the notification under Section 6 will be invalid. A consideration of Rule 4 also shows that its compliance precedes the notification under Section 4 as well as compliance of Section 6 of the Act.

14. In the instant case, as stated earlier, the first respondent on receipt of the notice under Section 9(3) of the Act submitted a representation. After the representation, a brief written note of the arguments was also supplied (Annexure 6). The first respondent's objections, inter alia against the acquisition of the land were : (1) that the land being that of the government cannot be legally acquired; 92) that the land or lessee rights having been once acquired by the Central Government under the provisions of the Displace Persons (Compensation and Rehabilitation) Act, 1954, it cannot be acquired by the State Government and (3) that the proceedings for the acquisition of the land for the appelland were illegal as the mandatory procedure for acquisition of land for private companies had not been followed. It was also stated in the representation that no efforts to purchase report submitted by the Collector does not shown that he applied his mind to the provisions of Rule 4 as stated above, or to the objections of the first respondent. In fact there was no report under Rule 4. The report that was submitted was one under Section 5-A of the Act. We have examined this aspect of the matter to see that although the enquiry was belated and not in accordance with law, there has been no failure of justice. In our opinion there has been failure of justice., Agreeing with the fining of the High court, although for deferent reasons, we hold that the notification under Section 6 is invalid for non-compliance of rule 4 of the Rules. As a result we dismiss the appeals with costs.

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